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From:	General Secretariat of the Council
To:	Delegations
No. Cion doc.:	15149/1/16 ENER 419 IA 134 CODEC 1815 REV 1 + ADD 1 REV 1
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing a European Union Agency for the Cooperation of Energy Regulators (recast)

Delegations will find in annex a further slightly revised text of the draft ACER Regulation. This version includes the following changes:

- the parts corrected by the corrigendum to the Commission proposal, as included in doc.15149/1/16 REV1) (**highlighted in yellow**):
- ROC has been changed to "**Regional Security Coordinators** [+]"
- Article 23 has been further revised.

New changes compared to the Commission proposal are indicated in **bold underlined text**; deletions are marked with ~~[striktthrough text]~~.

All delegations have a general scrutiny reservation on the text.

2016/0378 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**establishing a ~~an~~ ☒ European Union ☒ Agency for the Cooperation of Energy Regulators
(recast)**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒ , and in particular Article ~~95~~ ☒ 194(2) ☒ thereof,

Having regard to the proposal from the ☒ European ☒ Commission,

☒ After transmission of the draft legislative act to the national parliaments, ☒

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ☒ ordinary legislative ☒ procedure ~~laid down in Article 251 of the Treaty,~~

Whereas:

↓ new

- (1) Regulation (EC) No 713/2009 of the European Parliament and of the Council¹ has been substantially amended. Since further amendments are to be made, that Regulation should be recast in the interest of clarity.
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↓ 713/2009 recital 1 (adapted)

~~The Communication of the Commission of 10 January 2007 entitled ‘An Energy Policy for Europe’ highlighted the importance of completing the internal markets in electricity and natural gas. Improving the regulatory framework at Community level was identified as a key measure to achieve that objective.~~

¹ 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 (OJ L 211, 14.8.2009, p. 1)

↓ 713/2009 recital 2 (adapted)

~~An independent advisory group on electricity and gas, called the European Regulators Group for Electricity and Gas (ERGEG) was established by Commission Decision 2003/796/EC² to facilitate consultation, coordination and cooperation between the regulatory bodies in Member States, and between those bodies and the Commission, with a view to consolidating the internal markets in electricity and natural gas. That group is composed of representatives of the national regulatory authorities established pursuant to Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity³ and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas⁴.~~

↓ 713/2009 recital 3 (adapted)

~~The work undertaken by the ERGEG since its establishment has made a positive contribution to the internal markets in electricity and natural gas. However, it is widely recognised by the sector, and has been proposed by the ERGEG itself, that voluntary cooperation between national regulatory authorities should now take place within a Community structure with clear competences and with the power to adopt individual regulatory decisions in a number of specific cases.~~

² ~~OJ L 296, 14.11.2003, p. 34.~~

³ ~~OJ L 176, 15.7.2003, p. 37.~~

⁴ ~~OJ L 176, 15.7.2003, p. 57.~~

↓ 713/2009 recital 4 (adapted)

~~The European Council of 8 and 9 March 2007 invited the Commission to propose measures to set up an independent mechanism for national regulators to cooperate.~~

↓ new

- (2) The creation of the Agency has manifestly improved coordination between regulators on cross-border issues. Since its creation, the Agency has received new important tasks concerning the monitoring of wholesale markets under Regulation (EU) No 1227/2011 of the European Parliament and of the Council⁵ and in the field of cross-border energy infrastructure under Regulation (EU) No 347/2013 of the European Parliament and Council⁶.
- (3) It is projected that the need for coordination of national regulatory actions will increase further in the coming years. Europe's energy system is in the middle of its most profound change in decades. More market integration and the change towards more variable electricity production requires increased efforts to coordinate national energy policies with neighbours and to use the opportunities of cross-border electricity trade.

⁵ Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

⁶ Regulation (EU) No 347/2013 of the European Parliament and 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 (OJ L 115, 25.4.2013, p. 39).

- (4) Experience with the implementation of internal market rules has shown that uncoordinated national action can lead to severe problems for the market, notably in closely interconnected areas where decisions of Member States often have a tangible impact on their neighbours. To achieve the positive effects of the internal electricity market for consumer welfare, security of supply and decarbonisation Member States, and in particular independent national regulators, are required to cooperate on those regulatory measures which have a cross-border effect.
- (5) Fragmented national state interventions in energy markets constitute an increasing risk to the proper functioning of cross-border electricity markets. The Agency should therefore be given a role in the development of a coordinated **European resource adequacy assessment**, in close cooperation with the European Network of Transmission System Operators for Electricity ("ENTSO for Electricity"), in order to avoid the problems of fragmented national assessments which follow different uncoordinated methods and do not sufficiently take into account the situation in neighbouring countries. The Agency should also supervise the technical parameters developed by the ENTSO for Electricity for an efficient participation of cross-border capacities and other technical features of capacity mechanisms.
- (6) Security of electricity supply requires a coordinated approach to prepare against unexpected supply crises. The Agency should therefore coordinate national actions related to risk preparedness, in line with [Risk Preparedness Regulation as proposed by COM(2016) 862].
- (7) Due to the close interconnection of the Union electricity grid and the increasing need to cooperate with neighbouring countries to maintain grid stability and integrate large volumes of renewable energies, ~~[regional operational centres]~~ **Regional Security Coordinators [+]** will play an important role for the coordination of transmission system operators. The Agency should guarantee regulatory oversight over the **[+] Regional Security Coordinators [+]** where necessary.

- (8) As large parts of new electricity generation will be connected at local level, distribution system operators will play an important role when it comes to operating the European electricity system in a flexible and efficient manner.
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↓ 713/2009 recital 5 (adapted)

- (9) ~~The~~ Member States should cooperate closely, eliminating obstacles to cross-border exchanges of electricity and natural gas with a view to achieving the objectives of ~~Community~~ ☒ the Union ☒ energy policy. ~~On the basis of the impact assessment of the resource requirements for a central entity, it was concluded that an independent central entity offered a number of long-term advantages over other options. An~~ ☒ European Union ☒ Agency for the Cooperation of Energy Regulators (the Agency) ~~should be~~ ☒ was ☒ established ☒ by Regulation (EC) No 713/2009 ☒ in order to fill the regulatory gap at ~~Community~~ ☒ Union ☒ level and to contribute towards the effective functioning of the internal markets in electricity and natural gas. The Agency ~~should also enable~~ ☒ enables ☒ national regulatory authorities to enhance their cooperation at ~~Community~~ ☒ Union ☒ level and participate, on a mutual basis, in the exercise of ~~Community~~ ☒ Union ☒ -related functions.

- (10) The Agency should ensure that regulatory functions performed by the national regulatory authorities in accordance with [the recast Electricity Directive as proposed by COM(2016) 864/2] ~~Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity⁷~~ and Directive 2009/73/EC of the European Parliament and of the Council ~~of 13 July 2009 concerning common rules for the internal market in natural gas⁸~~ are properly coordinated and, where necessary, completed at ~~the Community~~ ☒ Union ☒ level. To that end, it is necessary to guarantee the independence of the Agency from electricity and gas producers, transmission and distribution system operators, whether public or private, and consumers and to ensure the conformity of its actions with ~~Community~~ ☒ Union ☒ law, its technical and regulatory capacities and its transparency, amenability to democratic control and efficiency.

⁷ ~~See page 55 of this Official Journal.~~

⁸ ~~See page 94 of this Official Journal.~~

↓ 713/2009 recital 7

⇒ new

- (11) The Agency should monitor regional cooperation between transmission system operators in the electricity and gas sectors as well as the execution of the tasks of the ~~European Network of Transmission System Operators for Electricity~~ (ENTSO for Electricity), and the European Network of Transmission System Operators for Gas ("ENTSO for Gas"). ⇒ The Agency should also monitor the implementation of the tasks of other entities with regulated functions of Union-wide dimension, such as energy exchanges. ⇐ The involvement of the Agency is essential in order to ensure that the cooperation between transmission system operators ⇒ and the operation of other entities with Union-wide functions ⇐ proceeds in an efficient and transparent way for the benefit of the internal markets in electricity and natural gas.

↓ 713/2009 recital 8

- (12) The Agency should monitor, in cooperation with the Commission, the Member States and relevant national authorities, the internal markets in electricity and natural gas and inform the European Parliament, the Commission and national authorities of its findings where appropriate. Those monitoring tasks of the Agency should not duplicate or hamper monitoring by the Commission or national authorities, in particular national competition authorities.

↓ 713/2009 recital 10 (adapted)

⇒ new

- (13) ~~It is appropriate to~~ ☒ The Agency ☒ provides an integrated framework ~~within~~ which ☒ enables ☒ national regulatory authorities ~~are able~~ to participate and cooperate. That framework ~~should~~ facilitates the uniform application of the legislation on the internal markets in electricity and natural gas throughout the ~~Community~~ ☒ Union ☒. As regards situations concerning more than one Member State, the Agency ~~should be~~ ☒ has been ☒ granted the power to adopt individual decisions. That power should under ⇒ clearly specified ⇐ ~~certain~~ conditions cover technical ⇒ and regulatory ⇐ issues ⇒ which require regional coordination ⇐, ~~the~~ ⇒ notably concerning the implementation of network codes and guidelines, cooperation within [] **Regional Security Coordinators** [+], ⇐ the regulatory ~~regime for~~ ⇒ decisions necessary to effectively monitor wholesale market integrity and transparency, decisions concerning ⇐ electricity and natural gas infrastructure that connects or that might connect at least two Member States and, as a last resort, exemptions from the internal market rules for new electricity interconnectors and new gas infrastructure located in more than one Member State.

↓ 713/2009 recital 9 (adapted)

⇒ new

- (14) The Agency has an important role in developing framework guidelines which are non-binding by nature ("framework guidelines"). ~~with which a~~ Network codes ~~must~~ ☒ should ☒ be in line ☒ with those framework guidelines ☒. It is also considered appropriate for the Agency, and consistent with its purpose, to have a role in reviewing ⇒ draft ⇐ network codes ~~(both when created and upon modification)~~ to ensure that they are in line with the framework guidelines ⇒ and provide for the necessary degree of harmonisation ⇐, before it ~~may recommend~~ ☒ submits ☒ them to the Commission for adoption.
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↓ new

- (15) With the adoption of a set of network codes and guidelines which provide for a stepwise implementation and a further refinement of common regional and Union-wide rules, the role of the Agency in monitoring the implementation of the network codes and guidelines has increased. Effective monitoring of network codes and guidelines is a key function of the Agency and crucial for the implementation of internal market rules.
- (16) From experience with the implementation of network codes and guidelines it has emerged that it is useful to streamline the procedure for the regulatory approval of regional or Union-wide terms and conditions or methodologies to be developed under the guidelines and network codes by submitting them directly to the Agency in order for national regulators, represented in the Board of Regulators, to be able to decide upon them.

(17) Since the stepwise harmonisation of the Union energy markets involves finding regional solutions regularly as an interim step, it is appropriate to reflect the regional dimension of the internal market and to provide for appropriate governance mechanisms. Regulators responsible for coordinated regional approvals should be able to prepare Board of Regulators decisions on issues of regional relevance in a regional subcommittee of the Board of Regulators, unless those issues are of general importance for the Union.

↓ 713/2009 recital 11 (adapted)

(18) Since the Agency has an overview of the national regulatory authorities, it should have an advisory role towards the Commission, other ~~Community~~ ☒ Union ☒ institutions and national regulatory authorities as regards the issues relating to the purpose for which it was established. It should also be required to inform the Commission where it finds that the cooperation between transmission system operators does not produce the results which are needed or that a national regulatory authority whose decision is not in compliance with the Guidelines does not implement the opinion, recommendation or decision of the Agency appropriately.

↓ 713/2009 recital 12

- (19) The Agency should also be able to make recommendations to assist regulatory authorities and market players in sharing good practices.

↓ 713/2009 recital 13

- (20) The Agency should consult interested parties, where appropriate, and provide them with a reasonable opportunity to comment on proposed measures, such as network codes and rules.

↓ 713/2009 recital 14 (adapted)

- (21) The Agency should contribute to the implementation of the guidelines on trans-European energy networks as laid down in Regulation (EU) No 347/2013 of the European Parliament and of the Council⁹ ~~Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks¹⁰~~, in particular when providing its opinion on the non-binding ☒ Union ☒ ~~Community~~-wide ten-year network development plans (☒ Union ☒ ~~Community~~-wide network development plans) in accordance with Article 4 ~~6~~(3) of this Regulation.

⁹ 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 (OJ L 115, 25.4.2013, p. 39).

¹⁰ ~~OJ L 262, 22.9.2006, p. 1~~

↓ 713/2009 recital 15

(22) The Agency should contribute to the efforts of enhancing energy security.

↓ 713/2009 recital 16

⇒ new

(23) ⇒ In order to ensure that the Agency's framework is efficient and coherent with other decentralised agencies, the rules governing the Agency should be aligned to the Common Approach agreed between the European Parliament, the Council of the EU and the European Commission on decentralised agencies¹¹. However, insofar as necessary, ⇄ ~~the~~ the structure of the Agency should be adapted to meet the specific needs of energy regulation. In particular, the specific role of the national regulatory authorities needs to be taken fully into account and their independence guaranteed.

↓ new

(24) Additional changes to the present Regulation may be envisaged in the future in order to bring the Regulation fully in line with the Common Approach on decentralised agencies. Based on the current needs of energy regulation, deviations from the Common Approach are necessary. This proposal therefore does not prejudge any further amendments to the Founding Regulation of the Agency which the Commission may wish to propose following further evaluation, as provided for in this act or on its own initiative.

¹¹ Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies of 19.7.2012.

↓ 713/2009 recital 17

- (25) The Administrative Board should have the necessary powers to establish the budget, check its implementation, draw up internal rules, adopt financial regulations and appoint a Director. A rotation system should be used for 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. The Administrative Board should act independently and objectively in the public interest and should not seek or follow political instructions.
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↓ 713/2009 recital 18 (adapted)

⇒ new

- (26) The Agency should have the necessary powers to perform its regulatory functions in an efficient, transparent, reasoned and, above all, independent manner. The independence of the Agency from electricity and gas producers and transmission and distribution system operators is not only a key principle of good governance but also a fundamental condition to ensure market confidence. Without prejudice to its members' acting on behalf of their respective national authorities, the Board of Regulators should therefore act independently from any market interest, should avoid conflicts of interests and should not seek or follow instructions or accept recommendations from a government of a Member State, from ⇒ Union institutions ⇐ ~~the Commission~~ or another public or private entity ⇒ or person ⇐ . The decisions of the Board of Regulators should, at the same time, comply with ~~Community~~ ☒ Union ☒ law concerning energy, such as the internal energy market, the environment and competition. The Board of Regulators should report its opinions, recommendations and decisions to the ~~Community~~ ☒ Union ☒ institutions.

↓ 713/2009 recital 19 (adapted)

⇒ new

- (27) Where the Agency has decision-making powers, interested parties should, for reasons of procedural economy, be granted a right of appeal to a Board of Appeal, which should be part of the Agency, but independent from its administrative and regulatory structure. ⇒ In order to guarantee its functioning and full independence, the Board of Appeal should have a separate budget line in the budget of the Agency. ⇐ In the interest of continuity, the appointment or renewal of the members of the Board of Appeal should allow for partial replacement of the members of the Board of Appeal. The decisions of the Board of Appeal ☒ can ☒ ~~may~~ be subject to appeal before the Court of Justice of the European ☒ Union ☒ ~~Communities~~.
-

↓ new

- (28) The Agency should exercise its decision-making powers in line with the principles of fair, transparent and reasonable decision-making. All procedural rules of the Agency should be laid down in its rules of procedures.

↓ 713/2009 recital 20 (adapted)

⇒ new

- (29) The Agency should be mainly financed from the general budget of the European Union, by fees and by voluntary contributions. In particular, the resources currently pooled by regulatory authorities for their cooperation at ~~Community~~ ☒ Union ☒ level should continue to be available to the Agency. The ~~Community~~ ☒ Union ☒ budgetary procedure should remain applicable as far as any subsidies chargeable to the general budget of the European Union are concerned. Moreover, the auditing of accounts should be undertaken by ⇒ an independent external auditor ⇐ ~~the Court of Auditors~~ in accordance with Article ~~94~~ ☒ 107 ☒ of ☒ Commission Delegated Regulation (EU) No 1271/2013¹² ☒ ~~Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities~~¹³.

¹² Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

¹³ ~~OJ L 357, 31.12.2002, p. 72.~~

↓ 713/2009 recital 21 (adapted)

- (30) ~~After the establishment of the Agency, its~~ ☒ The Agency's ☒ budget should be assessed by the budgetary authority on an ongoing basis, with reference to the Agency's workload and performance. The budgetary authority should ensure that the best standards of efficiency are met.
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↓ 713/2009 recital 22 (adapted)

- (31) 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 Staff Regulations") and the Conditions of employment of other servants of the European Communities ("the Conditions of Employment"), laid down in Regulation (EEC, Euratom, ECSC) No 259/68¹⁴ and the rules adopted jointly by the ~~European Community~~ ☒ Union ☒ institutions for the purpose of applying those regulations should apply to the staff of the Agency. The Administrative Board, in agreement with the Commission, should adopt appropriate implementing rules.

¹⁴ Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

↓ new

- (32) The regulatory work of the Director and the Board of Regulators pursuant to this Regulation, may be supported by working groups.

↓ 713/2009 recital 23 (adapted)

- (33) The Agency should apply the general rules regarding public access to documents held by ~~Community~~ ☒ Union ☒ bodies. The Administrative Board should establish the practical measures to protect commercially sensitive data and personal data.

↓ new

- (34) Through the cooperation of national regulators within the Agency it is evident that majority decisions are a key pre-requisite to achieve progress on matters concerning the internal energy market which have significant economic effects in various Member States. National regulators should therefore vote with simple majority within the Board of Regulators.

↓ 713/2009 recital 24

~~The Agency should be accountable to the European Parliament, the Council and the Commission, where appropriate.~~

↓ 713/2009 recital 25 (adapted)

- (35) Countries which are not members of the ~~Community~~ ☒ Union ☒ should be able to participate in the work of the Agency in accordance with appropriate agreements to be concluded by the ~~Community~~ ☒ Union ☒ .
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↓ 713/2009 recital 26

~~The measures necessary for the implementation of this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission¹⁵.~~

↓ 713/2009 recital 27

~~In particular, the Commission should be empowered to adopt the Guidelines necessary in situations in which the Agency becomes competent to decide upon the terms and conditions for access to and operational security of cross-border infrastructure. Since those measures are of general scope and are designed to amend non-essential elements of this Regulation, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.~~

¹⁵ ~~OJ L 184, 17.7.1999, p. 23.~~

↓ 713/2009 recital 28 (adapted)

~~The Commission should submit to the European Parliament and to the Council by three years after the first director has taken up his duties, and every four years thereafter, a report on the Agency's specific tasks and the results achieved, accompanied by any appropriate proposals. In that report, the Commission should make suggestions on additional tasks for the Agency.~~

↓ 713/2009 recital 29 (adapted)

- (37) Since the objectives of this Regulation, namely the participation and cooperation of national regulatory authorities at ~~Community~~ ☒ Union ☒ level, cannot be sufficiently achieved by the Member States and can therefore be better achieved at ~~Community~~ ☒ Union ☒ level, the ~~Community~~ ☒ Union ☒ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ☒ on European Union ☒. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
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↓ new

- (38) The Agency's host Member State should provide the best possible conditions to ensure the smooth and efficient functioning of the Agency, including multilingual, European-oriented schooling and appropriate transport connections.

↓ 713/2009 (adapted)

⇒ new

HAVE ADOPTED THIS REGULATION:

CHAPTER I

~~ESTABLISHMENT AND LEGAL STATUS~~ ☒ OBJECTIVES AND TASKS ☒

Article 1

~~Subject matter~~ ☒ Establishment and objectives ☒

1. This Regulation establishes an ☒ European Union ☒ Agency for the Cooperation of Energy Regulators ("the Agency").

2. The purpose of the Agency shall be to assist the regulatory authorities referred to in Article 57 ~~35~~ of [the recast Electricity Directive_{as proposed by COM(2016) 864/2}] Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity¹⁶ and Article 39 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas¹⁷ in exercising, at ☒ Union ☒ Community level, the regulatory tasks performed in the Member States and, where necessary, to coordinate their action.

~~3. Until the premises of the Agency are ready, it will be hosted on Commission premises.~~

Article 42

Type of acts of the Agency

The Agency shall:

- (a) issue opinions and recommendations addressed to transmission system operators, ☒ [regional operational centres] **Regional Security Coordinators** ☒ and nominated electricity market operators ☒ ;
- (b) issue opinions and recommendations addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the European Parliament, the Council, or the Commission;

¹⁶ ~~See page 55 of this Official Journal.~~

¹⁷ ~~See page 94 of this Official Journal.~~

- (d) take individual decisions in the specific cases referred to in Articles ~~6, 7,~~⁸, and ~~11 9~~ ¹⁰ of this Regulation ~~11~~,
- (e) submit to the Commission non-binding framework guidelines ("framework guidelines") in accordance with Article ~~55~~⁶ of [recast Electricity Regulation as proposed by COM(2016) 861/2]¹⁸ ~~Regulation of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross border exchanges in electricity¹⁹~~ and Article 6 of Regulation (EC) No 715/2009 of the European Parliament and of the Council²⁰ ~~of 13 July on conditions for access to the natural gas transmission networks.~~

¹⁸ ~~See page 15 of this Official Journal.~~

¹⁹ ~~See page 15 of this Official Journal.~~

²⁰ Regulation (EC) No 715/2009 of the European Parliament and the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (OJ L 211, 14.8.2009, p. 36).

~~CHAPTER II~~

~~TASKS~~

Article ~~53~~

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 ~~64~~

Tasks ~~☒~~ of the Agency ~~☒~~ 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 ~~265~~(2) of [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] 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 ~~29~~ 9 of [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] and of the ENTSO for Gas in accordance with Article 9 of Regulation (EC) No 715/2009.

3. The Agency ~~shall~~ ⇒ may ⇐ provide an opinion:
 - (a) ~~to the ENTSO for Electricity in accordance with Article 8(2) of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 29(2) 9(2)** of [recast Electricity Regulation as proposed by COM(2016) 861/2], 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, ~~on~~ ~~the draft Community~~ ~~Union~~ ~~-wide~~ network development plan and other relevant documents referred to in Article ~~27(1)8(3)~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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~~ ~~Union~~ ~~-wide~~ network development plan submitted to it in accordance with the second subparagraph of **Article 29(2) 9(2)** of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 [OP: recast Electricity Regulation as proposed by COM(2016) 861/2 and recast Electricity Directive as proposed by COM(2016) 864/2] or Directive 2009/73/EC and Regulation (EC) No 715/2009.

Article 5

☒ Tasks of the Agency as regards the development and implementation of network codes and guidelines ☒

1. The Agency shall participate in the development of network codes in accordance with Article ~~55~~6 of [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 6 of Regulation (EC) No 715/2009. ☒ It shall in particular: ☒
 - (a) ~~The Agency shall submit a non-binding framework guideline~~ ☒ guidelines ☒ to the Commission where ☒ it is ☒ requested to do so under Article ~~6(2)~~55(3) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(2) of Regulation (EC) No 715/2009. The Agency shall review the non-binding framework ~~guideline~~ ☒ guidelines ☒ and re-submit it to the Commission where requested to do so under Article ~~6(4)~~ 55(6) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(4) of Regulation (EC) No 715/2009_;
 - (b) ~~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_;~~
 - (c) ~~The Agency shall submit the~~ ⇒ revised ⇐ network code to the Commission ~~and may recommend that it be adopted~~ in accordance with Article ~~6(9)~~ 55(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or ☒ pursuant to ☒ Article 6(9) of Regulation (EC) No 715/2009. The Agency shall prepare and submit a draft network code to the Commission where ☒ it is ☒ requested to do so under Article ~~55(11)~~6(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6(10) of Regulation (EC) No 715/2009_;

- (d) ~~5. The Agency shall~~ provide a duly reasoned opinion to the Commission, in accordance with Article 29(1)9(1) of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 ~~27(1)(a) 8(2)~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 8(2) of Regulation (EC) No 715/2009 or a network code which has been established in accordance with Article 55(2)6(1) to (11) of ~~those Regulations~~ [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 6(1) to 10 of Regulation (EC) No 715/2009 but which has not been adopted by the Commission under Article 55(12) of [recast Electricity Regulation as proposed by COM(2016) 861/2] and under Article 6(11) of ~~those Regulations~~ Regulation (EC) No 715/2009.
- (e) ~~6. The Agency shall~~ monitor and analyse the implementation of the network codes and the ~~g~~Guidelines adopted by the Commission in accordance with Article 55(12) 6(11) of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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.

2. In cases where the network codes and guidelines developed pursuant to Chapter VII of [recast Electricity Regulation as proposed by COM(2016) 861/2] provide for the development of proposals for terms and conditions or methodologies for the implementation of those network codes and guidelines which require regulatory approval by all regulatory authorities or by all regulators of the concerned region, the terms and conditions or methodologies shall be submitted for revision and approval to the Agency. Before approving the terms and conditions or methodologies, the Agency shall revise and change them where necessary in order to ensure that they are in line with the purpose of the network code or **guidelines** and contribute to market integration, non-discrimination and the efficient functioning of the market. The procedure for the coordination of regional tasks in accordance with Article 7 shall apply.
3. In the context of the bidding zone review, the Agency shall approve and may request amendments to the methodology and assumptions that will be used in the bidding zone review process pursuant to Article 13(3) of [recast Electricity Regulation as proposed by COM(2016) 861/2].

~~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.~~

4. ~~9.~~ The Agency shall monitor the regional cooperation of transmission system operators referred to in Article ~~31~~¹² of [recast Electricity Regulation as proposed by COM(2016) 861/2] and Article 12 of Regulation (EC) No 715/2009, and take ☒ into ☒ ~~due~~ account of the outcome of that cooperation when formulating its opinions, recommendations and decisions.

↓ 713/2009 (adapted)

⇒ new

Article ~~67~~

Tasks ☒ of the Agency ☒ as regards the national regulatory authorities

1. The Agency shall adopt individual decisions on technical issues where those decisions are provided for in [OP: recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [OP: recast Electricity Regulation as proposed by COM(2016) 861/2] or Regulation (EC) No 715/2009.
2. The Agency may, in accordance with its work programme, ~~or~~ at the request of the Commission ⇒ or at its own initiative ⇐, 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~~ ☒ Union ☒ level ⇒ to ensure interoperability, communication and monitoring of regional performance in those areas which are still not harmonised at Union level ⇐ and shall take ~~due~~ ☒ into ☒ 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 ☒ factual ☒ 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 ~~g~~Guidelines referred to in [recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 ☒ the ☒ ~~g~~Guidelines referred to in [recast Electricity Directive as proposed by COM(2016) 864/2], Directive 2009/73/EC, [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 paragraph 8 and following Article 8.

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

8. ~~1. For~~ ☒ As regards ☒ ☐ regulatory issues with ☐ cross-border ☐ relevance ☐ ~~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, or methodologies with relevance ☐ for ☐ cross-border trade or ☐ ~~access and~~ operational security, ☐ or other regulatory issues with cross-border relevance ☐ ~~, only~~:
- (a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months ~~from when~~ ☒ after referral ☒ of 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~~ ☒ be ☒ 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.~~

9. ~~2.~~ Where a case has been referred to the Agency under paragraph ~~8~~ 1, the Agency:

- (a) shall ~~provide its~~ ☒ issue a ☒ decision within a period of ~~6~~ ☒ six ☒ 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.~~

10. ~~5.~~ Where the regulatory issues referred to in paragraph ~~8~~ 1 include exemptions within the meaning of Article ~~59~~ 17 of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 36 of Directive 2009/73/EC, the deadlines provided for in this Regulation shall not be ☒ cumulative ☒ ~~cumulated~~ with the deadlines provided for in those provisions.

Article 7

Coordination of regional tasks within the Agency

1. For decisions pursuant to Article 5(2) of the present Regulation, on joint regional terms and conditions or methodologies to be developed under network codes and guidelines pursuant to Chapter VII of the [recast Electricity Regulation as proposed by COM(2016) 861/2] which regularly concern a limited number of Member States and require a joint regulatory decision at regional level, the Agency may be assisted by a subset of the Board of Regulators, consisting only of the regulatory authorities of the concerned region, following the procedure in paragraphs 2 to 4 of this Article.
2. The Director shall assess the possible impact of the joint proposal on the internal market and issue an opinion if the joint proposal is mainly of regional relevance or if it has a tangible impact on the internal market, notably in cases where the issue at stake has a significant relevance beyond the concerned region.
3. The Board of Regulators shall, if appropriate, and notably taking into account the opinion of the Director, establish a regional subgroup consisting of the concerned members of the Board of Regulators to revise the proposal and make a recommendation to the Board of Regulators on the approval, including possible amendments.

4. When the Board of Regulators decides on its opinion on the proposal, it shall take due account of the recommendation of the regional subgroup.
5. The regulatory authorities of the region shall jointly designate a single coordinating national regulatory authority responsible for the coordination of the regional subgroups of the national regulatory authorities. The function of the coordinating national regulatory authority shall rotate every two years. The coordinating national regulatory authority shall act as contact point for all concerned parties, including for the Agency. It may request information relevant for the implementation of regulatory functions at regional level from all concerned parties on its own initiative or at the request of another national regulatory authority or authorities of the region and shall provide the Agency with information concerning the regional activities of the national regulatory authorities of the region. Regulatory authorities acting in regional subgroups of the Board of Regulators shall make sufficient resources available to enable the group to carry out its functions.

Article 8

Tasks of the Agency as regards [] Regional Security Coordinators [+]

1. The Agency, in close cooperation with the national regulatory authorities and the ENTSO for Electricity, shall monitor and analyse the performance of [] **Regional Security Coordinators** [+], taking into account the reports provided for in [Article 43(4) recast Electricity Regulation as proposed by COM(2016) 861/2].

2. To carry out the tasks referred to in paragraph 1 in an efficient and expeditious manner, the Agency shall in particular:
- (a) [decide on the configuration of system operation regions pursuant to Article 33(1) of [recast Electricity Regulation as proposed by COM(2016) 861/2]]
 - (b) request information from [] **Regional Security Coordinators** [+] where appropriate pursuant to Article 43 of [recast Electricity Regulation as proposed by COM(2016) 861/2];
 - (c) issue opinions and recommendations to the European Commission, the Council and the European Parliament;
 - (d) issue opinions and recommendations to [] **Regional Security Coordinators** [+].

Article 9

Tasks of the Agency as regards Nominated Electricity Market Operators

In order to ensure that Nominated Electricity Market Operators carry out their functions under the [recast Electricity Regulation as proposed by COM(2016) 861/2] and Commission Regulation 1222/2015 of 24 July 2015²¹, the Agency shall:

- (a) monitor the Nominated Electricity Market Operators' progress in establishing the functions under Regulation 1222/2015;

²¹ Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management, OJ L 197, 25.7.2015, p. 24–72

- (b) issue recommendations to the Commission in accordance with Article 7(5) of Regulation 1222/2015
- (c) request information from Nominated Electricity Market Operators where appropriate.

Article 10

Tasks of the Agency as regards generation adequacy and risk preparedness

1. The Agency shall approve and amend where necessary
 - (a) the proposals for methodologies and calculations related to the European resource adequacy assessment pursuant to Article 19(2), (3) and (5) of [recast Electricity Regulation as proposed by COM(2016) 861/2].
 - (b) the proposals for technical specifications for cross-border participation in capacity mechanisms pursuant to Article 21(10) of [recast Electricity Regulation as proposed by COM(2016) 861/2].
2. The Agency shall approve and amend where necessary the methodologies
 - (a) for identifying electricity crisis scenarios at a regional level as described in Article 5 of [Risk Preparedness Regulation as proposed by COM(2016) 862];
 - (b) for short-term adequacy assessments as described in Article 8 of [Risk Preparedness Regulation as proposed by COM(2016) 862].

↓ 713/2009 (adapted)

Article ~~11~~⁹

~~Other tasks~~ ☒ **Tasks of the Agency as regards exemption and certification decisions** ☒

~~1.~~ The Agency may decide on exemptions, as provided for in Article ~~59~~¹⁷(5) of [recast Electricity Regulation as proposed by COM(2016) 861/2]. 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.~~

↓ 713/2009 (adapted)

⇒ new

Article 12

☒ **Tasks of the Agency as regards infrastructure** ☒

⇒ With respect to trans-European energy infrastructure, the Agency, in close cooperation with the regulatory authorities and the ENTSOs, shall: ⇐

- (a) ~~7. The Agency shall~~ monitor progress as regards the implementation of projects to create new interconnector capacity~~;~~ :

- (b) ~~8. The Agency shall~~ monitor the implementation of the ~~Community~~ ☒ Union ☒ -wide network-development plans. If it identifies inconsistencies between ~~such a~~ ☒ those ☒ plans and ~~its~~ ☒ their ☒ 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~~ ☒ Union ☒ -wide network-development plans.
-

↓ new

- (c) carry out the obligations laid out in Article 5, 11, 12 and 13 of Regulation (EU) No 347/2013.

Article 13

Tasks of the Agency as regards wholesale market integrity and transparency

In order to effectively monitor wholesale market integrity and transparency, the Agency, in close cooperation with the regulatory authorities and other national authorities, shall

- (a) monitor wholesale markets, collect data and **establish a European register of** market participants in accordance with Article 7 to 9 of Regulation (EU) 1227/2011²²;
- (b) issue recommendations to the Commission in accordance with Article 7 of Regulation (EU) 1227/2011;
- (c) **coordinate** investigations pursuant to Article 16(4) of Regulation (EU) 1227/2011.

²² Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency OJ L 326, 8.12.2011, p. 1–16.

↓ 713/2009 (adapted)

⇒ new

Article 14 ~~9~~

⊠ Commissioning of new tasks to the Agency ⊠

The Agency may, in circumstances clearly defined by the Commission in ~~g~~Guidelines adopted pursuant to Article 57 ~~48~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] 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 ⇒ respecting the limits of transfer of executive powers to Union agencies ⇐ ~~which do not involve decision-making powers.~~

Article 15 ~~10~~

Consultations and transparency

1. In carrying out its tasks, in particular in the process of developing framework guidelines in accordance with Article 55 ~~6~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6 of Regulation (EC) No 715/2009, and in the process of proposing amendments of network codes under ⊠ Article 56 of [recast Electricity Regulation as proposed by COM(2016) 861/2] or ⊠ Article 7 of ⊠ Regulation (EC) No 715/2009 ⊠ ~~either of these 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 ~~556~~ of [recast Electricity Regulation as proposed by COM(2016) 861/2] or Article 6 of Regulation (EC) No 715/2009, or during the amendment of network codes ☒ referred to in paragraph 1 ☒ ~~under Article 7 of either of those Regulations~~ shall be made public.

3. Before adopting framework guidelines ~~in accordance with Article 556 of Regulation (EC) No 714/2009 or Article 6 of Regulation (EC) No 715/2009~~, or proposing amendments to network codes ☒ as referred to in paragraph 1 ☒ ~~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.

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 ~~⇒ wholesale and retail ⇐ internal~~ markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, ~~⇒ compliance with the consumer rights laid down in [recast Electricity Directive as proposed by COM(2016) 864/2] and Directive 2009/73/EC, ⇐ access to the networks~~ including access of electricity produced from renewable energy sources, ~~⇒ potential barriers to cross-border trade, state interventions preventing prices from reflecting actual scarcity, the performance of the Member States in the area of electricity security of supply based on the results of the European resource adequacy assessment as referred to in Article 19 of [recast Electricity Regulation], in particular taking into account the ex-post evaluation referred to in Article 16 of [Risk Preparedness Regulation as proposed by COM(2016) 862] ⇐ and~~ ~~compliance with the consumer rights laid down in [recast Electricity Directive] and Directive 2009/73/EC.~~
2. The Agency shall ~~make public~~ ☒ publish annually a ~~☒ an annual~~ report on the results of the monitoring ☒ referred to ☒ ~~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 ☒ publishing ☒ ~~making public~~ its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the ☒ possible ☒ measures ~~that could be taken~~ to remove the barriers referred to in paragraph 2.

CHAPTER ~~III~~ II

ORGANISATION ~~OF~~ OF THE AGENCY ~~OF~~

Article ~~17~~ 2

Legal status

1. The Agency shall be a ~~Community~~ ~~of~~ Union ~~of~~ body with legal personality.
2. In each Member State, the Agency shall enjoy the most extensive legal capacity accorded to legal persons under national law. It shall, in particular, be able to acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Agency shall be represented by its Director.

↓ new

4. The seat of the Agency shall be Ljubljana, Slovenia.

The Agency may establish local offices in the Member States, subject to their consent and in accordance with Article 25(j).

↓ 713/2009 (adapted)

⇒ new

Article ~~18~~ 3

~~Composition~~ ☒ **Administrative and Management Structure** ☒

The Agency shall ~~comprise~~ ☒ be composed of ☒ :

- (a) an Administrative Board, which shall exercise the tasks set out in Article ~~13~~ 20;
- (b) a Board of Regulators, which shall exercise the tasks set out in Article ~~23~~ 15;
- (c) a Director, who shall exercise the tasks set out in Article ~~25~~ 17; and
- (d) a Board of Appeal, which shall exercise the tasks set out in Article ~~29~~ 19.

Article ~~19~~ 12

☒ **Composition of the** ☒ **Administrative Board**

1. The Administrative Board shall ☒ be composed of ☒ ~~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.

2. 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.
3. ~~2.~~ The Administrative Board shall ~~appoint~~ ⇒ elect by a two-thirds majority ⇐ 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.
4. ~~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.
5. ~~4.~~ Decisions of the Administrative Board shall be adopted on the basis of a ⇒ simple ⇐ ~~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.

6. ~~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.
7. ~~6.~~ A member of the Administrative Board shall not be a member of the Board of Regulators.
8. ~~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 ~~20~~ ~~13~~

~~Tasks~~ ⊗ **Functions** ⊗ of the Administrative Board

1. The Administrative Board shall:
 - (a) after having consulted the Board of Regulators and obtained its favourable opinion in accordance with **Article 23(5)**~~15(b)~~, appoint the Director in accordance with Article ~~24(2)~~~~16(2)~~ ⇒ and where relevant extend **his** term of office or remove **him** from office; ⇐

- (b) ~~2. The Administrative Board shall~~ formally appoint the members of the Board of Regulators in accordance with Article ~~22~~44(1);
- (c) ~~3. The Administrative Board shall~~ formally appoint the members of the Board of Appeal in accordance with Article ~~26(2)~~18(1) and (2);
- (d) ~~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;
- (e) ~~5. The Administrative Board shall adopt, before 30 September~~ each year ⇒ the draft programming document referred to in Article 21 before its submission to the Commission for its opinion, and shall, ⇐ ~~after consulting~~ ⇒ following the opinion of ⇐ the Commission and after having received approval by the Board of Regulators in accordance with Article ~~23(5)(c)~~15(3), ⇒ adopt ⇐ the ~~work programme~~ ⇒ programming document ⇐ of the Agency ~~for the coming year~~ ⇒ by a two thirds majority its members ⇐ and shall transmit it to the European Parliament, the Council and the Commission. The ~~work programme~~ ⇒ **programming document** ⇐ 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.~~
- (f) ~~7. The Administrative Board shall~~ ⇒ adopt by a two thirds majority, the annual budget of the Agency and ⇐ exercise its ⇒ other ⇐ budgetary ~~powers~~ ⇒ functions ⇐ in accordance with Articles ~~31 to 35; 21 to 24.~~

- (g) ~~8. The Administrative Board shall~~ decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other ~~Union~~ ~~Community~~ sources or any voluntary contribution from the Member States or from the regulatory authorities. The opinion ~~of~~ ~~that~~ the Administrative Board ~~shall deliver~~ ~~delivered~~ ~~delivered~~ pursuant to Article ~~3524~~(5) shall address the sources of funding set out in this paragraph;
- (h) ~~9. The Administrative Board,~~ in consultation with the Board of Regulators, ~~shall~~ exercise disciplinary authority over the Director. ~~⇒ In addition, in accordance with paragraph 2, it shall exercise, with respect to the staff of the Agency, the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants on the Authority Empowered to conclude a Contract of Employment; ⇐~~
- (i) ~~10. The Administrative Board shall, where necessary,~~ draw up the Agency's implementing rules for giving effect to the Staff Regulations ~~⇒ and the Conditions of Employment of Other Servants in accordance with Article 110 of the Staff Regulations ⇐~~ pursuant to Article ~~3928~~(2);
- (j) ~~11. The Administrative Board shall~~ adopt practical measures regarding the right of access to the documents of the Agency, in accordance with Article ~~41,30~~

- (k) ~~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 25(h)47(8)**, and shall transmit that report to the European Parliament, the Council, the Commission ☒ , and ☒ the Court of Auditors, ~~the European Economic and Social Committee and the Committee of the Regions~~ by ~~15 June~~ ⇨ 1 July ⇨ 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 ☒ that ☒ year; ~~considered~~.
- (l) ~~13. The Administrative Board shall~~ adopt and publish its own rules of procedure; ~~3~~

↓ new

- (m) adopt the financial rules applicable to the Agency in accordance with Article 36;
- (n) adopt an anti-fraud strategy, proportionate to the risk of fraud, taking into account the costs and benefits of the measures to be implemented;
- (o) adopt rules for the prevention and management of conflicts of interest in respect of its members as well as members of the Board of Appeal;
- (p) adopt and regularly update the communication and dissemination plans referred to in Article 41;
- (q) appoint an Accounting Officer, subject to the Staff Regulations and the Conditions of Employment of other servants, who shall be totally independent in the performance of **his** duties;

- (r) ensure appropriate follow-up to findings and recommendations stemming from the internal or external audit reports and evaluations, as well as from investigations of the European Anti-Fraud Office ("OLAF");
- (s) authorise the conclusion of working arrangements in accordance with Article 43.
2. The Administrative Board shall adopt, in accordance with Article 110 of the Staff Regulations, a decision based on Article 2(1) of the Staff Regulations and on Article 6 of the Conditions of Employment of Other Servants, delegating relevant appointing authority powers to the Director and defining the conditions under which that delegation of powers can be suspended. The Director shall be authorised to sub-delegate those powers.
3. Where exceptional circumstances so require, the Administrative Board may by way of a decision temporarily suspend the delegation of the appointing authority powers to the Director and those sub-delegated by the latter and in favour of itself or delegate them to one of its members or to a staff member other than the Director.
-

↓ new

Article 21

Annual and multi-annual programming

1. Each year, the Administrative Board shall adopt a programming document containing multi-annual and annual programming, based on a draft put forward by the Director, taking into account the opinion of the Commission and in relation to multiannual programming after consulting the European Parliament. It shall forward it to the European Parliament, the Council and the Commission no later than 31 January each year.

The programming document shall become definitive after final adoption of the general budget and if necessary shall be adjusted accordingly.

2. The annual work programme shall comprise detailed objectives and expected results including performance indicators. It shall also contain a description of the actions to be financed and an indication of the financial and human resources allocated to each action, in accordance with the principles of activity-based budgeting and management. The annual work programme shall be coherent with the multi-annual work programme referred to in paragraph 4. It shall clearly indicate tasks that have been added, changed or deleted in comparison with the previous financial year. Annual and multi- annual programming shall include the strategy for relations with third countries or international organisations referred to in Article 43 and the actions linked to that strategy.

3. The Administrative Board shall amend the adopted annual work programme when a new task is given to the Agency.

Any substantial amendment to the annual work programme shall be adopted by the same procedure set out for the initial annual work programme. The Administrative Board may delegate the power to make non-substantial amendments to the annual work programme to the Director.

4. The multi-annual work programme shall set out overall strategic programming including objectives, expected results and performance indicators. It shall also set out resource programming including multi-annual budget and staff.

The resource programming shall be updated annually. The strategic programming shall be updated where appropriate, and in particular to address the outcome of the evaluation referred to in Article 45.

↓ 713/2009 (adapted)

⇒ new

Article 22 ~~44~~

⊠ Composition of the ⊠ Board of Regulators

1. The Board of Regulators shall ~~comprise~~ ⊠ be composed of ⊠ :
 - (a) senior representatives of the regulatory authorities, in accordance with Article **57(1)35(1)** of [Recast Electricity Directive] and Article 39(1) of Directive 2009/73/EC, and one alternate per Member State from the current senior staff of those authorities ⇒, both nominated by the national regulatory authority ⇐ ;
 - (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 ⊠ member ⊠ 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.

Article 23

⊠ Functions of the Board of Regulators ⊠

1. ~~3.~~ The Board of Regulators ⇒ [and its sub-committees pursuant to Article 7] ⇐ shall act by a ~~two-thirds~~ ⇒ [simple] **two thirds** ⇐ majority of the members present, ⇒ with one vote for each member [; except for the opinion pursuant to paragraph 5(b) which shall be delivered on the basis of a two-thirds majority of members present] ⇐.
2. ~~4.~~ The Board of Regulators shall adopt and publish its ~~R~~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.
3. ~~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.
4. ~~6.~~ The secretarial services of the Board of Regulators shall be provided by the Agency

~~Tasks of the Board of Regulators~~

5. ~~The~~ The Board of Regulators shall:
- (a) provide opinions²³ to the Director on **all documents containing** [the] opinions, recommendations and decisions referred to in Articles **3 to 11 and 14 and 30**, ~~6, 7, 8 and 9~~ that ☒ which ☐ are considered for adoption. In addition, the Board of Regulators, within its field of competence, shall provide guidance to the Director **and the Agency's working groups** in the execution of [his] tasks, ☐ with the exception of **tasks** pursuant to Regulation 1227/2011²⁴. ☐
- (b) ~~The Board of Regulators shall~~ deliver an opinion to the Administrative Board on the candidate to be appointed as Director in accordance with Article ~~20(1)~~(1)(a) and Article ~~24(2)~~(2). ~~The Board of Regulators shall reach that decision on the basis of a three-quarters majority of its members.~~
- (c) ~~The Board of Regulators shall~~, in accordance with Article ~~20(1)(e)~~(1)(e) and Article ~~25(f)~~(1)(f) and in line with the ☒ provisional draft estimate ☐ ~~preliminary draft budget~~ established in accordance with **Article 33(1) to 33(3)**~~22(1)~~, approve **the draft of multi-annual and annual programming proposed by the Director and** 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.

²³ In order to reassure the national regulatory authorities and provide sufficient time for preparing their opinions, it is proposed that the revised Article 25 includes a task of the Director to consult the BoR on his drafts several weeks in advance.

²⁴ Regulation (EU) 1227/2011 of the European Parliament and of the Council of 25 October on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, p. 1.

- (d) ~~4. The Board of Regulators shall~~ approve the independent section on regulatory activities of the annual report, in accordance with Article ~~20(1)(k) + 13(12)~~ and Article ~~2547~~(h).
- (da) provide an opinion to the Administrative Board on the rules of procedure under Article 20(1)(t).**
- (db) provide an opinion to the Administrative Board on the communication and dissemination plans referred to in Article 41 and on the strategy for relations with third countries or international organisations referred to in Article 43.**
6. ~~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 24 ~~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 23(5)(a) + 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~~ ⇨ Union institutions ⇨ , or from any other public or private entity ⇨ or person. The Director shall be accountable to the Administrative Board. The Director may attend the meetings of the Board of Regulators as an observer. ⇨

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 ⇒ an open and transparent selection procedure ⇐ ~~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. ⇒ For the purpose of concluding the contract with the Director, the Agency shall be represented by the Chairman of the Administrative Board. ⇐
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 ☒ following ☒ ~~coming~~ years.
- ~~The assessment referred to in 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~~ ⇒ five ⇐ years. ⇒ A Director whose term of office has been extended may not participate in another selection procedure for the same post at the end of the extended period. ⇐

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~~ ⇒ two-thirds ⇐ 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.

Tasks of the Director

⊗ The Director shall: ⊗

- (a) ~~1. The Director shall be responsible for representing~~ ⊗ be the legal representative of ⊗ the Agency and shall be in charge of its ⊗ day-to-day ⊗ management;;
- (b) ~~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. ⇒ The Director shall be responsible for implementing the decisions adopted by the Administrative Board; ⇐
- (c) ~~3. The Director shall~~ ⇒ draft ⇐, adopt and publish the opinions, recommendations and decisions. ⊗ Opinions, recommendations and decisions ⊗ referred to in Articles 3 to 11 and 14 ~~5, 6, 7, 8 and 9~~ , ⇒ shall only be adopted if they ⇐ ~~that~~ have received a favourable opinion of the Board of Regulators;;
- (d) ~~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;;
- (e) ~~5. The Director shall~~ take the necessary measures, ⊗ in particular ⊗ notably as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency in accordance with this Regulation;;

- (f) ~~6. Each year the Director shall~~ prepare a draft work programme of the Agency for the following year, and shall ~~⇒~~ , after the adoption of the draft by the Administrative Board ~~⇐~~ submit it to the Board of Regulators, to the European Parliament and to the Commission by ~~30 June of that~~ ~~⇒~~ 31 January ~~⇐~~ ~~⇒~~ every ~~⇐~~ year. ~~⇒~~ The Director shall be responsible for implementing the programming document and reporting to the Administrative Board of its implementation; ~~⇐~~
- (g) ~~7. The Director shall~~ draw up a ~~⇐~~ provisional draft estimate ~~⇐~~ preliminary draft budget of the Agency pursuant to Article ~~3323~~(1) and shall implement the budget of the Agency ~~⇐~~ in accordance with ~~⇐~~ pursuant to Article ~~34 and 3524~~ .:
- (h) ~~8. Each year the Director shall~~ prepare ~~⇐~~ each year ~~⇐~~ ~~⇒~~ and submit to the Administrative Board ~~⇐~~ a draft annual report ~~⇐~~ including ~~⇐~~ 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 ~~3928~~(3).:~~

↓ new

- (i) prepare an action plan following-up conclusions of internal or external audit reports and evaluations, as well as investigations by the European Anti-fraud Office (OLAF) and report on progress twice a year to the Commission and regularly to the Administrative Board;

- (j) be responsible for deciding whether it is necessary for the purpose of carrying out the Agency's tasks in an efficient and effective manner to locate one or more staff in one or more Member States ~~for the purpose of carrying out the Agency's tasks in an efficient and effective manner~~. The decision to establish a local office requires the prior consent of the Commission, the Administrative Board and the Member State or Member States concerned. The decision shall specify the scope of the activities to be carried out at that local office in a manner that avoids unnecessary costs and duplication of administrative functions of the Agency.
-

↓ 713/2009 (adapted)

Article 26 ~~18~~

⊠ Creation and composition of the ⊠ Board of Appeal

↓ new

1. The Agency shall establish a Board of Appeal.

↓ 713/2009 (adapted)

⇒ new

2. ~~1.~~ The Board of Appeal shall ~~comprise~~ ☒ be composed of ☒ 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~~ ☒ Union ☒ 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 ☒ consulting ☒ ~~consultation of~~ the Board of Regulators.

3. ~~6.~~ ☒ The Board of Appeal shall adopt and publish its rules of procedure. ☒ ⇒ Those rules shall set out in detail the arrangements governing the organisation and functioning of the Board of Appeal and the rules applicable to appeals before the Board, pursuant to Article 29. The Board of Appeal shall submit to the Commission its draft rules of procedure. The Commission shall deliver an opinion on the draft rules of procedure within three months from the date of receipt of the rules. The Board of Appeal shall adopt and publish its rules of procedure within two months after receipt of the Commission's opinion. Any subsequent substantial changes to the rules of procedure shall be notified to the Commission. The Commission shall subsequently deliver an opinion on those changes.

The budget of the Agency shall comprise a separate budget line for the financing of the functioning of the registry for the Board of Appeal. ⇐

4. ☒ 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. ☒

Article 27

☒ **Members of the Board of Appeal** ☒

1. ~~3.~~ The term of office of the members of the Board of Appeal shall be five years. That term shall be renewable ⇒ once ⇐.
2. 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 ⇒ or in any of its Working Groups. ⇐ 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.

Article 28

☒ **Exclusion and objection in the Board of Appeal** ☒

1. ~~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.

2. ~~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~~1 or for any other reason, ~~considers~~ ☒ he 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 ~~1~~4, or ☒ in case of ☒ ~~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.
3. ~~6.~~ The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs ~~1 and 24~~1 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 ~~is~~ ☒ finds himself ☒ in a similar situation to that of the member, the Chairman shall designate a replacement from among the available alternates.
4. ~~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.

↓ 713/2009 (adapted)

⇒ new

Article ~~29~~ ~~49~~

~~Appeals~~ ☒ Decisions subject to appeal ☒

1. Any natural or legal person, including national regulatory authorities, may appeal against a decision referred to in Articles ~~4 to 14~~ ~~7, 8 or 9~~ ⇒ of this Regulation and in Article 12(6) of Regulation (EU) No 347/2013 of the European Parliament and of the Council as well as in Article 9(11) of Commission Regulation (EU) 2015/1222 ⇐ 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~~ ☒ including ☒ the statement of ☒ the ☒ grounds ☒ for appeal ☒, shall be filed in writing at the Agency within two months ~~of~~ ☒ from ☒ the ~~day~~ ~~of~~ notification of the decision to the person concerned, or, in the absence thereof, within two months ☒ from ☒ ~~of~~ the day on which the Agency published its decision. The Board of Appeal shall decide upon the appeal within ~~two~~ ⇒ four ⇐ 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 an 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. ~~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.~~

↓ new

Article 30

Working groups

1. Where justified and in particular to support the regulatory work of the Director and of the Board of Regulators on regulatory issues, the Administrative Board may establish working groups.
2. The working groups shall be composed of experts from the staff of the Agency, from national regulatory authorities and from the Commission, as necessary. The Agency shall not be responsible for the costs of the participation of experts from the staff of national regulatory authorities in the Agency working groups.
3. The Administrative Board shall adopt and publish internal rules of procedure for the functioning of the working groups.

CHAPTER ~~IV~~ III

~~FINANCIAL PROVISIONS~~ ☒ ESTABLISHMENT AND STRUCTURE OF THE BUDGET ☒

Article ~~31~~ 21

☒ Structure of the ☒ ~~B~~udget of the Agency

1. ☒ Without prejudice to other resources ☒ ~~The~~ revenues of the Agency shall ☒ be made up of ☒ ~~comprise, in particular:~~
 - (a) a ~~subsidy~~ ☒ contribution ☒ from the ☒ Union ☒ ~~Community, entered in the general budget of the European Union (Commission Section);~~
 - (b) fees paid to the Agency pursuant to Article ~~32~~ 22 ;
 - (c) ☒ any ☒ voluntary contributions from the Member States or from the regulatory authorities, under Article ~~20(1)(g)~~ 13(8); and
 - (d) legacies, donations or grants under Article ~~20(1)(g)~~ 13(8).

2. The ~~Agency's~~ expenditure shall ~~cover~~ include staff, administrative, infrastructure, and operational expenses.
3. The revenue and expenditure of the ~~Agency's revenue and expenditure~~ shall be in balance.
4. All ~~Agency~~ revenue and expenditure of the Agency shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

↓ 713/2009

Article ~~32~~

Fees

↓ 347/2013 Art. 20

1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article ~~119(1)~~ and for decisions on cross border cost allocation provided by the Agency pursuant to Article 12 of Regulation (EU) No 347/2013 ~~of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure~~²⁵.

²⁵ OJ L 115, 25.4.2013, p. 39.

2. The fees referred to in paragraph 1 shall be set by the Commission.

Article ~~33~~²³

Establishment of the budget

1. ~~By 15 February~~ Each year, the Director shall draw up a ☒ provisional draft estimate ☒
~~preliminary draft budget~~ covering the operational expenditure and the programme of work
anticipated for the following financial year, and shall forward that ☒ provisional draft
estimate ☒ ~~preliminary draft budget~~ to the Administrative Board, together with a list of
provisional posts.
2. Each year, the Administrative Board shall, on the basis of the ☒ provisional draft
estimate ☒ ~~preliminary draft budget~~ prepared by the Director, ~~make and~~ ☒ adopt a
provisional draft ☒ estimate of revenue and expenditure of the Agency for the following
financial year.
3. ~~That~~ ☒ The provisional draft ☒ estimate, including a draft establishment plan, shall be
transmitted by the Administrative Board to the Commission by ☒ 31 January each year ☒
~~31 March~~. Prior to adoption of the estimate, the draft prepared by the Director shall be
transmitted to the Board of Regulators, which may deliver a reasoned opinion on the draft.

4. The estimate referred to in paragraph ~~21~~ shall be transmitted by the Commission to the European Parliament and to the Council ~~(the budgetary authority)~~, together with the ~~preliminary~~ draft general budget of the ~~European~~ Union.
5. On the basis of the ☒ draft ☒ estimate, the Commission shall enter into the ~~preliminary~~ draft general budget of the ~~European~~ Union the ☒ estimates ☒ ~~forecasts~~ it considers necessary in respect of the establishment plan and the amount of the grant to be charged to the general budget of the ~~European~~ Union in accordance with Article ☒ 313 and following ☒ ~~272~~ of the Treaty.
6. The ☒ **Council in its** ☒ budgetary authority ☒ **role** ☒ shall adopt the establishment plan for the Agency.
7. The budget of the Agency shall be ☒ adopted ☒ ~~drawn up~~ by the Administrative Board. It shall become final after the final adoption of the general budget of the ~~European~~ Union. Where necessary, it shall be adjusted accordingly.
8. ☒ **Any modification to the budget, including the establishment plan, shall follow the same procedure.** ☒
9. ~~8.~~ The Administrative Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of the budget of the Agency, in particular any project relating to property ~~such as the rental or purchase of buildings~~. The Administrative Board shall also inform the Commission of its intention. If either branch of the budgetary authority intends to issue an opinion, it shall, within two weeks of receipt of the information on the project, notify the Agency of its intention thereof. In the absence of a reply, the Agency may proceed with the planned project.

Article ~~34~~²⁴

Implementation and control of the budget

1. The Director shall act as authorising officer and shall implement the Agency's budget.
2. By 1 March following the completion of each financial year, the Agency accounting officer shall forward to the Commission's accounting officer and the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management over the financial year. The Agency's accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year. The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance ☒ with ☐ Article 147
~~128~~ of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council²⁶ ~~Article 128 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002~~
~~on the Financial Regulation applicable to the general budget of the European Communities~~²⁷
("the Financial Regulation").

Article 35

☒ Presentation of accounts and discharge ☐

1. ☒ The Agency's accounting officer shall send the provisional accounts for the financial year (year N) to the Commission's Accounting Officer and to the Court of Auditors by 1 March of the following financial year (year N+1) ☐

²⁶ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

²⁷ ~~OJ L 248, 16.9.2002, p. 1~~

2. ☒ The Agency shall send a report on the budgetary and financial management for year N to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of year N+1. ☒
- ~~3. By 31 March ☒ of year N+1 ☒ following the completion of each financial year,~~ the Commission's accounting officer shall forward the provisional accounts of the Agency, ~~accompanied by the report on budgetary and financial over the financial year,~~ to the Court of Auditors. The report on budgetary and financial management over the financial year shall also be forwarded to the European Parliament and the Council.
4. After receiving the observations of the Court of Auditors on the provisional accounts of the Agency ☒ for year N ☒ in accordance with the provisions of Article ~~129 ☒~~ 148 ☒ of the Financial Regulation, the ☒ accounting officer ☒ ~~Director~~, acting on his own responsibility, shall draw up the final accounts of the Agency ☒ for that year. The Director shall ☒ ~~and~~ transmit them, for opinion, to the Administrative Board.
5. The Administrative Board shall deliver an opinion on the final accounts of the Agency ☒ for year N ☒.
6. The ~~Director~~ ☒ Agency's accounting officer ☒ shall transmit the final accounts ☒ for year N ☒, accompanied by the opinion of the Administrative Board, by 1 July ☒ of year N+1 ☒ ~~following the completion of the financial year,~~ to the European Parliament, the Council, the Commission and the Court of Auditors.
7. The final accounts shall be published ☒ in the *Official Journal of the European Union* by 15 November of year N+1 ☒.

8. The Director shall send ☒ to ☒ the Court of Auditors a reply to the latter's observations by ☒ 30 September of year N+1 ☒ ~~15 October~~. He shall also send a copy of that reply to the Administrative Board and the Commission.
9. The Director shall submit to the European Parliament, at the latter's request ~~and as provided for in Article 165-146(3) of the Financial Regulation~~, any information necessary for the smooth application of the discharge procedure for ☒ year N ☒ ~~the financial year in question~~ ☒ in accordance with Article 109(3) of Commission Delegated Regulation (EU) No 1271/2013 ☒.
10. The European Parliament, following a recommendation by the Council, acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Director for the implementation of the budget for the financial year N.

Article ~~36~~²⁵

Financial rules

The financial rules applicable to the Agency shall be ☒ adopted ☒ ~~drawn up~~ by the Administrative Board after consulting the Commission. Those rules may deviate from Commission Delegated Regulation (EU) No 1271/2013 ~~Regulation (EC, Euratom) No 2343/2002~~ if the specific operational needs for the functioning of the Agency so require and only with the prior agreement of the Commission.

~~Article 26~~

~~Anti-fraud measures~~

- ~~1. For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)²⁸ shall apply to the Agency without any restriction.~~
- ~~2. The Agency shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF)²⁹ and shall immediately adopt appropriate provisions for all staff of the Agency.~~
- ~~3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on the spot checks on the beneficiaries of monies disbursed by the Agency as well as on the staff responsible for allocating those monies.~~

~~²⁸ OJ L 136, 31.5.1999, p. 1.~~

~~²⁹ OJ L 136, 31.5.1999, p. 15.~~

Article 37

Combating fraud

1. In order to facilitate combating fraud, corruption and other unlawful activities under Regulation (EC) No 883/2013, within six months from the day the Agency becomes operational, it shall accede to the Interinstitutional Agreement of 25 May 1999 concerning internal investigations by OLAF and adopt appropriate provisions applicable to all employees of the Agency using the template set out in the Annex to that Agreement.
2. The European Court of Auditors shall have the power to carry out an on-the-spot audit, as well as auditing on the basis of documents, over all grant beneficiaries, contractors and subcontractors who have received Union funds from the Agency.
3. OLAF may carry out investigations, including on-the-spot checks and inspections with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Union in connection with a grant or a contract funded by the Agency, in accordance with the provisions and procedures laid down in Regulation (EC) No 1073/1999 and Regulation (Euratom, EC) No 2185/96.
4. Without prejudice to paragraphs 1, 2 and 3, cooperation agreements with third countries and international organisations, contracts, grant agreements and grant decisions of the Agency shall contain provisions expressly empowering the European Court of Auditors and OLAF to conduct the audits and investigations referred to in this Article, according to their respective competences.

↓ 713/2009 (adapted)

⇒ new

CHAPTER V

GENERAL ☒ AND FINAL ☒ PROVISIONS

Article ~~38~~²⁷

Privileges and immunities ⇒ and Headquarters' Agreement ⇐

1. The Protocol on Privileges and Immunities of the European Communities shall apply to the Agency.

↓ new

2. The necessary arrangements concerning the accommodation to be provided for the Agency in the host Member State and the facilities to be made available by that Member State together with the specific rules applicable in the host Member State to the Director, members of the Administrative Board, Agency staff and members of their families shall be laid down in a Headquarters' Agreement between the Agency and the Member State where the seat is located. That agreement shall be concluded after obtaining the approval of the Administrative Board.

Article 39~~28~~

Staff

1. The Staff Regulations ☒ of Officials of the European Union ("the Staff Regulations") and ☒, the Conditions of Employment ☒ of Other Servants of the European Union ("the Conditions of Employment") ☒ and the rules adopted jointly by the ~~European~~ ☒ Union ☒ ~~Community~~ institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to ☒ all ☒ the staff of the Agency, including its Director.
2. The Administrative Board, in agreement with the Commission, shall adopt appropriate implementing rules, in accordance with Article 110 of the Staff Regulations.
3. In respect of its staff, the Agency shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment.
4. The Administrative Board may adopt provisions to allow national experts from Member States to be employed on secondment at the Agency.

Liability of the Agency

↓ new

1. The Agency's contractual liability shall be governed by the law applicable to the contract in questions.

Any arbitration clause contained in a contract concluded by the Agency shall be subject to the jurisdiction of the Court of Justice of the European Union.

↓ 713/2009 (adapted)

2. ~~1.~~ In the case of non-contractual liability, the Agency shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties.
3. The Court of Justice ☒ of the European Union ☒ shall have jurisdiction in ~~any dispute~~ ☒ disputes ☒ over ~~the remedying of such~~ ☒ compensation for damages referred to in paragraph 2. ☒ .
4. ~~2.~~ The personal financial liability and disciplinary liability of Agency staff towards the Agency shall be governed by the relevant provisions applying to the staff of the Agency.

~~Access to documents~~ ☒ Transparency and communication ☒

1. Regulation (EC) No 1049/2001 of the European Parliament and of the Council ~~of 30 May 2001 regarding public access to European Parliament, Council and Commission documents~~³⁰ shall apply to documents held by the Agency.
2. The Administrative Board shall adopt practical measures for applying Regulation (EC) No 1049/2001 ~~by 3 March 2010~~.
3. Decisions taken by the Agency pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice, in accordance with the conditions laid down in Articles ☒ 228 ☒ ~~195~~ and ☒ 263 ☒ ~~230~~ of the Treaty respectively.

³⁰ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

4. The processing of personal data by the Agency shall be subject to the Regulation (EC) No 45/2001³¹. The Administrative Board shall establish measures for the application of Regulation (EC) No.45/2001 by the Agency, including those concerning the appointment of the Data Protection Officer of the Agency. Those measures shall be established after consultation of the European Data Protection Supervisor.
5. The Agency may engage in communication activities on its own initiative within its field of competence. The allocation of resources to communication activities shall not be detrimental to the effective exercise of the tasks referred to in Article 3 to 14. Communication activities shall be carried out in accordance with relevant communication and dissemination plans adopted by the Administrative Board.

³¹ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

Article 42

Protection of classified and sensitive non-classified information

1. The Agency shall adopt its own security rules equivalent to the Commission's security rules for protecting European Union Classified Information ("EUCI") and sensitive non-classified information, inter alia, provisions for the exchange, processing and storage of such information, as set out in the Commission Decisions (EU, Euratom) 2015/443³² and 2015/444³³.
2. The Agency may also decide to apply mutatis mutandis the Commission's decisions referred to in paragraph 1. The security rules of the Agency shall cover, inter alia, provisions for the exchange, processing and storage of EUCI and sensitive non-classified information.

↓ 713/2009 (adapted)

Article ~~43~~⁴¹

~~Participation of third countries~~ ☒ Cooperation agreements ☒

1. The Agency shall be open to the participation of third countries which have concluded agreements with the ☒ Union ☒ ~~Community whereby they~~ ☒ and which ☒ have adopted and are applying ☒ Union ☒ ~~Community~~ law in the field of energy and, ~~if relevant,~~ in the fields of environment and competition.

³² Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41)

³³ Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information (OJ L 72, 17.3.2015, p. 53).

2. Under the relevant provisions of those agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of those countries in the work of the Agency, including provisions relating to financial contributions and to staff.

↓ new

3. The Administrative Board shall adopt a strategy for relations with third countries or international organisations for which the Agency is competent. The Commission shall ensure that the Agency operates within its mandate and the existing institutional framework by concluding an appropriate working arrangement with the Agency's Director.

~~Article 32~~

~~Committee~~

- ~~1. The Commission shall be assisted by a committee.~~
- ~~2. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.~~

↓ 713/2009 (adapted)

⇒ new

Article ~~4433~~

Language arrangements

1. The provisions of Council Regulation No 1 ~~of 15 April 1958 determining the languages to be used by the European Economic Community~~³⁴ shall apply to the Agency.
2. The Administrative Board shall decide on the internal language arrangements for the Agency.
3. The translation services required for the functioning of the Agency shall be provided by the Translation Centre for the Bodies of the European Union.

³⁴ Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ 17, 6.10.1958, p. 385).

~~CHAPTER VI~~

~~FINAL PROVISIONS~~

Article ~~45~~³⁴

Evaluation

1. ~~⇒ No later than five years after the entry into force of the present Regulation, and every five years thereafter, ⇐ t~~The Commission, with the assistance of an independent external expert, shall carry out an evaluation ~~⇒ to assess the Agency's performance in relation to its objectives, mandate and tasks. The evaluation shall in particular address the possible need to modify the mandate of the Agency, and the financial implications of any such modification ⇐ of the activities of the Agency. That evaluation shall cover the results achieved by the Agency and its working methods, in relation with its objective, mandate and tasks defined in this Regulation and in its annual work programmes. The evaluation shall be based on extensive consultation in accordance with Article 10.~~
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↓ new

2. Where the Commission considers that the continuation of the Agency is no longer justified with regard to its assigned objectives, mandate and tasks, it may propose that this Regulation be amended accordingly or repealed.

↓ 713/2009 (adapted)

⇒ new

3. ~~2.~~ The Commission shall submit the evaluation ☒ findings ☒ referred to in paragraph 1 ~~to~~ ☒ together with its conclusions to the European Parliament, the Council and to ☒ the Agency's Board of Regulators. ⇒ The findings of the evaluation should be made public. ⇐ ~~The Board of Regulators shall issue recommendations regarding changes to this Regulation, the Agency and its working methods to the Commission, which may forward those recommendations, together with its own opinion as well as any appropriate proposal, to the European Parliament and the Council.~~
4. ~~The first evaluation shall be presented by the Commission to the European Parliament and the Council by three years after the first Director has taken up his duties.~~ The Commission shall ~~subsequently~~ present ☒ to the European Parliament and the Council ☒ an evaluation at least every ~~four~~ ⇒ five ⇐ years.

↓ new

Article 46

Repeal

Regulation (EC) No 713/2009 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in Annex II.

↓ 713/2009 (adapted)

Article ~~47~~³⁵

Entry into force ~~and transitory measures~~

~~1.~~ This Regulation shall enter into force on the ☒ twentieth ☒ ~~20th~~ day following that of its publication in the *Official Journal of the European Union*.

~~2. Articles 5 to 11 shall apply from 3 March 2011.~~

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President