



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 12 June 2009
(OR. en)

2007/0197 (COD)

PE-CONS 3650/09

ENER 172
CODEC 703

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL establishing an Agency for the Cooperation of Energy
Regulators

In accordance with Article 251(3) of the EC Treaty,
this document will not be the subject of approval by the Council;
it is intended solely for the information of delegates

**REGULATION (EC) No .../2009 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of

establishing an Agency for the Cooperation of Energy Regulators

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Economic and Social Committee¹,

Having regard to the Opinion of the Committee of the Regions²,

Acting in accordance with the procedure laid down in Article 251 of the Treaty³,

¹ OJ C 211, 19.8.2008, p. 23.

² OJ C 172, 5.7.2008, p. 55.

³ Opinion of the European Parliament of 18 June 2008 (not yet published in the Official Journal), Council Common Position of 9 January 2009 (OJ C 75E, 31.3.2009, p. 1) and Position of the European Parliament of 22 April 2009.

Whereas:

- (1) 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.
- (2) 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/EC¹ 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 electricity² 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 gas³.

¹ OJ L 296, 14.11.2003, p. 34.

² OJ L 176, 15.7.2003, p. 37.

³ OJ L 176, 15.7.2003, p. 57.

- (3) 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.
- (4) 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.
- (5) 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 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 Agency for the Cooperation of Energy Regulators (the Agency) should be established in order to fill the regulatory gap at Community level and to contribute towards the effective functioning of the internal markets in electricity and natural gas. The Agency should also enable national regulatory authorities to enhance their cooperation at Community level and participate, on a mutual basis, in the exercise of Community-related functions.

- (6) The Agency should ensure that regulatory functions performed by the national regulatory authorities in accordance with Directive 2009/.../EC of the European Parliament and of the Council of ... concerning common rules for the internal market in electricity¹⁺ and Directive 2009/.../EC of the European Parliament and of the Council of ... concerning common rules for the internal market in natural gas²⁺⁺ are properly coordinated and, where necessary, completed at the Community 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 law, its technical and regulatory capacities and its transparency, amenability to democratic control and efficiency.
- (7) 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 involvement of the Agency is essential in order to ensure that the cooperation between transmission system operators proceeds in an efficient and transparent way for the benefit of the internal markets in electricity and natural gas.

¹ OJ L ...

⁺ OJ: Please insert the number and date of the directive contained in document 3648/09.

² OJ L ...

⁺⁺ OJ: Please insert the number and date of the directive contained in document 3649/09.

- (8) 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.
- (9) The Agency has an important role in developing framework guidelines which are non-binding by nature (framework guidelines) with which network codes must be in line. It is also considered appropriate for the Agency, and consistent with its purpose, to have a role in reviewing network codes (both when created and upon modification) to ensure that they are in line with the framework guidelines, before it may recommend them to the Commission for adoption.
- (10) It is appropriate to provide an integrated framework within which national regulatory authorities are able to participate and cooperate. That framework should facilitate the uniform application of the legislation on the internal markets in electricity and natural gas throughout the Community. As regards situations concerning more than one Member State, the Agency should be granted the power to adopt individual decisions. That power should under certain conditions cover technical issues, the regulatory regime for 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.

- (11) Since the Agency has an overview of the national regulatory authorities, it should have an advisory role towards the Commission, other Community 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.
- (12) The Agency should also be able to make recommendations to assist regulatory authorities and market players in sharing good practices.
- (13) 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.

- (14) The Agency should contribute to the implementation of the guidelines on trans-European energy networks as laid down in Decision No 1364/2006/EC of the European Parliament and of the Council of 6 September 2006 laying down guidelines for trans-European energy networks¹, in particular when providing its opinion on the non-binding Community-wide ten-year network development plans (Community-wide network development plans) in accordance with Article 6(3) of this Regulation.
- (15) The Agency should contribute to the efforts of enhancing energy security.
- (16) 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.
- (17) 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.

¹ OJ L 262, 22.9.2006, p. 1.

- (18) 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 the Commission or another public or private entity. The decisions of the Board of Regulators should, at the same time, comply with Community 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 institutions.
- (19) 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 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 may be subject to appeal before the Court of Justice of the European Communities.

- (20) 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 level should continue to be available to the Agency. The Community 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 the Court of Auditors in accordance with Article 91 of 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 Communities¹.
- (21) After the establishment of the Agency, its 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.

¹ OJ L 357, 31.12.2002, p. 72.

- (22) 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 259/68¹ and the rules adopted jointly by the European Community 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 the necessary implementing measures.
- (23) The Agency should apply the general rules regarding public access to documents held by Community bodies. The Administrative Board should establish the practical measures to protect commercially sensitive data and personal data.
- (24) The Agency should be accountable to the European Parliament, the Council and the Commission, where appropriate.
- (25) Countries which are not members of the Community should be able to participate in the work of the Agency in accordance with appropriate agreements to be concluded by the Community.
- (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 Commission².

¹ OJ L 56, 4.3.1968, p. 1.

² OJ L 184, 17.7.1999, p. 23.

- (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.
- (28) 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.
- (29) Since the objectives of this Regulation, namely the participation and cooperation of national regulatory authorities at Community level, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

Establishment and legal status

Article 1

Subject matter

1. This Regulation establishes an 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 35 of Directive 2009/.../EC of the European Parliament and of the Council of ... concerning common rules for the internal market in electricity¹⁺ and Article 39 of Directive 2009/.../EC of the European Parliament and of the Council of ... concerning common rules for the internal market in natural gas²⁺⁺ in exercising, at 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.

¹ OJ L ...

⁺ OJ: Please insert the number and date of the directive contained in 3648/09.

² OJ L ...

⁺⁺ OJ: Please insert the number and date of the directive contained in 3649/09.

Article 2
Legal status

1. The Agency shall be a Community 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.

Article 3
Composition

The Agency shall comprise:

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

Article 4
Type of acts the Agency of

The Agency shall:

- (a) issue opinions and recommendations addressed to transmission system operators;
- (b) issue opinions and recommendations addressed to regulatory authorities;
- (c) issue opinions and recommendations addressed to the European Parliament, the Council, or the Commission;
- (d) take individual decisions in the specific cases referred to in Articles 7, 8 and 9; and
- (e) submit to the Commission non-binding framework guidelines (framework guidelines) in accordance with Article 6 of Regulation (EC) No .../2009 of the European Parliament and of the Council of ... on conditions for access to the network for cross-border exchanges in electricity¹⁺ and Article 6 of Regulation (EC) No .../2009 of the European Parliament and of the Council of ... on conditions for access to the natural gas transmission networks²⁺⁺.

¹ OJ L ...

⁺ OJ: Please insert the number and date of the regulation contained in 3651/09.

² OJ L ...

⁺⁺ OJ: Please insert the number and date of the regulation contained in 3652/09.

CHAPTER II

Tasks

Article 5

General tasks

The Agency may, upon a request of the European Parliament, the Council or the Commission, or on its own initiative, provide an opinion or a recommendation to the European Parliament, the Council and the Commission on any of the issues relating to the purpose for which it has been established.

Article 6

Tasks as regards the cooperation of transmission system operators

1. The Agency shall provide an opinion to the Commission on the draft statutes, list of members and draft rules of procedure of the ENTSO for Electricity in accordance with Article 5(2) of Regulation (EC) No .../2009⁺ and on those of the ENTSO for Gas in accordance with Article 5(2) of Regulation (EC) No .../2009⁺⁺.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

2. The Agency shall monitor the execution of the tasks of the ENTSO for Electricity in accordance with Article 9 of Regulation (EC) No .../2009⁺ and of the ENTSO for Gas in accordance with Article 9 of Regulation (EC) No .../2009⁺⁺.
3. The Agency shall provide an opinion:
 - (a) to the ENTSO for Electricity in accordance with Article 8(2) of Regulation (EC) No .../2009⁺ and to the ENTSO for Gas in accordance with Article 8(2) of Regulation (EC) No .../2009⁺⁺ on the network codes; and
 - (b) to the ENTSO for Electricity in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No .../2009⁺, and to the ENTSO for Gas in accordance with the first subparagraph of Article 9(2) of Regulation (EC) No .../2009⁺⁺ on the draft annual work programme, the draft Community-wide network development plan and other relevant documents referred to in Article 8(3) of Regulation (EC) No .../2009⁺ and Article 8(3) of Regulation (EC) No .../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.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

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

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

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

⁺⁺⁺ OJ: Please insert the number of the directive contained in 3648/09.

⁺⁺⁺⁺ OJ: Please insert the number of the directive contained in 3649/09.

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

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

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

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

5. The Agency shall provide a duly reasoned opinion to the Commission, in accordance with Article 9(1) of Regulation (EC) No .../2009⁺ or Article 9(1) of Regulation (EC) No .../2009⁺⁺, where the ENTSO for Electricity or the ENTSO for Gas has failed to implement a network code elaborated under Article 8(2) of Regulation (EC) No .../2009⁺ or Article 8(2) of Regulation (EC) No .../2009⁺⁺ or a network code which has been established in accordance with Article 6(1) to (10) of those Regulations but which has not been adopted by the Commission under Article 6(11) of those Regulations.
6. The Agency shall monitor and analyse the implementation of the network codes and the Guidelines adopted by the Commission in accordance with Article 6(11) of Regulation (EC) No .../2009⁺ and in Article 6(11) of Regulation (EC) No .../2009⁺⁺, and their effect on the harmonisation of applicable rules aimed at facilitating market integration as well as on non-discrimination, effective competition and the efficient functioning of the market, and report to the Commission.
7. The Agency shall monitor progress as regards the implementation of projects to create new interconnector capacity.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

8. The Agency shall monitor the implementation of the Community-wide network-development plans. If it identifies inconsistencies between such a plan and its implementation, it shall investigate the reasons for those inconsistencies and make recommendations to the transmission system operators, national regulatory authorities or other competent bodies concerned with a view to implementing the investments in accordance with the Community-wide network-development plans.
9. The Agency shall monitor the regional cooperation of transmission system operators referred to in Article 12 of Regulation (EC) No .../2009⁺ and Article 12 of Regulation (EC) No .../2009⁺⁺, and take due account of the outcome of that cooperation when formulating its opinions, recommendations and decisions.

Article 7

Tasks as regards the national regulatory authorities

1. The Agency shall adopt individual decisions on technical issues where those decisions are provided for in Directive 2009/...EC^{*}, Directive 2009/...EC^{**}, Regulation (EC) No .../2009⁺ or Regulation (EC) No .../2009⁺⁺.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

^{*} OJ: Please insert the number and date of the directive contained in 3648/09.

^{**} OJ: Please insert the number and date of the directive contained in 3649/09.

2. The Agency may, in accordance with its work programme or at the request of the Commission, make recommendations to assist regulatory authorities and market players in sharing good practices.
3. The Agency shall provide a framework within which national regulatory authorities can cooperate. It shall promote cooperation between the national regulatory authorities and between regulatory authorities at regional and Community level, and shall take due account of the outcome of such cooperation when formulating its opinions, recommendations and decisions. Where the Agency considers that binding rules on such cooperation are required, it shall make the appropriate recommendations to the Commission.
4. The Agency shall provide an opinion, based on matters of fact, at the request of a regulatory authority or of the Commission, on whether a decision taken by a regulatory authority complies with the Guidelines referred to in Directive 2009/...EC[♣], Directive 2009/...EC^{♣♣}, Regulation (EC) No .../2009⁺ or Regulation (EC) No .../2009⁺⁺ or with other relevant provisions of those Directives or Regulations.

[♣] OJ: Please insert the number and date of the directive contained in 3648/09.

^{♣♣} OJ: Please insert the number and date of the directive contained in 3649/09.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

5. Where a national regulatory authority does not comply with the opinion of the Agency as referred to in paragraph 4 within four months from the day of receipt, the Agency shall inform the Commission and the Member State concerned accordingly.
6. When a national regulatory authority encounters, in a specific case, difficulties with the application of Guidelines referred to in Directive 2009/...EC[♦], Directive 2009/...EC^{♦♦♦} Regulation (EC) No .../2009⁺ or Regulation (EC) No .../2009⁺⁺, it may request the Agency for an opinion. The Agency shall deliver its opinion, after consulting the Commission, within three months of receiving such request.
7. The Agency shall decide on the terms and conditions for access to and operational security of electricity and gas infrastructure connecting or that might connect at least two Member States (cross-border infrastructure), in accordance with Article 8.

♦ OJ: Please insert the number and date of the directive contained in 3648/09.

♦♦ OJ: Please insert the number and date of the directive contained in 3649/09.

+ OJ: Please insert the number of the regulation contained in 3651/09.

++ OJ: Please insert the number of the regulation contained in 3652/09.

Article 8

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

1. For cross-border infrastructure, the Agency shall decide upon those regulatory issues that fall within the competence of national regulatory authorities, which may include the terms and conditions for access and operational security, only:
 - (a) where the competent national regulatory authorities have not been able to reach an agreement within a period of six months from when the case was referred to the last of those regulatory authorities; or
 - (b) upon a joint request from the competent national regulatory authorities.

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

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

2. The terms and conditions for access to cross-border infrastructure shall include:
 - (a) a procedure for capacity allocation;
 - (b) a time frame for allocation;
 - (c) shared congestion revenues; and
 - (d) the levying of charges on the users of the infrastructure referred to in Article 17(1)(d) of Regulation (EC) No .../2009⁺ or Article 36(1)(d) of Directive 2009/...EC[♣].

3. Where a case has been referred to the Agency under paragraph 1, the Agency:
 - (a) shall provide its decision within a period of 6 months from the day of referral; and
 - (b) may, if necessary, provide an interim decision to ensure that security of supply or operational security of the infrastructure in question is protected.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

[♣] OJ: Please insert the number and date of the directive contained in 3649/09.

4. The Commission may adopt Guidelines on the situations in which the Agency becomes competent to decide upon the terms and conditions for access to and operational security of cross-border infrastructure. Those measures, designed to amend non-essential elements of this Regulation by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 32(2) of this Regulation.
5. Where the regulatory issues referred to in paragraph 1 include exemptions within the meaning of Article 17 of Regulation (EC) No .../2009⁺ or Article 36 of Directive 2009/...EC[♣], the deadlines provided for in this Regulation shall not be cumulated with the deadlines provided for in those provisions.

Article 9

Other tasks

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

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

[♣] OJ: Please insert the number and date of the directive contained in 3649/09.

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 .../2009⁺ or the second subparagraph of Article 3(1) of Regulation (EC) No .../2009⁺⁺, on decisions of national regulatory authorities on certification.

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

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

Article 10
Consultations and transparency

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

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

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

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

3. Before adopting framework guidelines in accordance with Article 6 of Regulation (EC) No .../2009⁺ or Article 6 of Regulation (EC) No .../2009⁺⁺, or proposing amendments to network codes under Article 7 of either of those Regulations, the Agency shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed.
4. The Agency shall make public, on its own website, at least the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board, of the Board of Regulators and of the Board of Appeal.

Article 11

Monitoring and reporting on the electricity and natural gas sectors

1. The Agency, in close cooperation with the Commission, the Member States and the relevant national authorities including the national regulatory authorities and without prejudice to the competences of competition authorities, shall monitor the internal markets in electricity and natural gas, in particular the retail prices of electricity and natural gas, access to the network including access of electricity produced from renewable energy sources, and compliance with the consumer rights laid down in Directive 2009/.../EC* and Directive 2009/.../EC**.

⁺ OJ: Please insert the number of the regulation contained in 3651/09.

⁺⁺ OJ: Please insert the number of the regulation contained in 3652/09.

* OJ: Please insert the number of the directive contained in 3648/09.

** OJ: Please insert the number of the directive contained in 3649/09.

2. The Agency shall make public an annual report on the results of the monitoring provided for in paragraph 1. In that report, it shall identify any barriers to the completion of the internal markets in electricity and natural gas.
3. When making public its annual report, the Agency may submit to the European Parliament and to the Commission an opinion on the measures that could be taken to remove the barriers referred to in paragraph 2.

CHAPTER III

Organisation

Article 12

Administrative Board

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

2. The Administrative Board shall appoint its Chairman and its Vice-Chairman from among its members. The Vice-Chairman shall automatically replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two years, renewable once. The term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Administrative Board.
3. The meetings of the Administrative Board shall be convened by its Chairman. The Chairman of the Board of Regulators, or the nominee of the Board of Regulators, and the Director shall participate, without the right to vote, in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Administrative Board shall meet at least twice a year in ordinary session. It shall also meet at the initiative of its Chairman, at the request of the Commission or at the request of at least a third of its members. The Administrative Board may invite any person who may have a relevant opinion to attend its meetings in the capacity of an observer. The members of the Administrative Board may, subject to its rules of procedure, be assisted by advisers or experts. The Administrative Board's secretarial services shall be provided by the Agency.
4. Decisions of the Administrative Board shall be adopted on the basis of a two-thirds majority of the members present, unless provided otherwise in this Regulation. Each member of the Administrative Board or alternate shall have one vote.

5. The rules of procedure shall set out in greater detail:
 - (a) the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums; and
 - (b) the arrangements governing the rotation applicable to the renewal of the members of the Administrative Board who are appointed by the Council so as to ensure a balanced participation of Member States over time.
6. A member of the Administrative Board shall not be a member of the Board of Regulators
7. The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to his independence or any direct or indirect interest which might be considered prejudicial to his independence. Those declarations shall be made public annually.

Article 13

Tasks of the Administrative Board

1. The Administrative Board shall, after having consulted the Board of Regulators and obtained its favourable opinion in accordance with Article 15(2), appoint the Director in accordance with Article 16(2).
2. The Administrative Board shall formally appoint the members of the Board of Regulators in accordance with Article 14(1).
3. The Administrative Board shall formally appoint the members of the Board of Appeal in accordance with Article 18(1) and (2).
4. The Administrative Board shall ensure that the Agency carries out its mission and performs the tasks assigned to it in accordance with this Regulation.
5. The Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators in accordance with Article 15(3), the work programme of the Agency for the coming year and shall transmit it to the European Parliament, the Council and the Commission. The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

6. The Administrative Board shall adopt and, if necessary, revise a multi-annual programme. That revision shall be based on an evaluation report, made by an independent external expert at the request of the Administrative Board. Those documents shall be made public.
7. The Administrative Board shall exercise its budgetary powers in accordance with Articles 21 to 24.
8. The Administrative Board shall decide, after having obtained the agreement of the Commission, whether to accept any legacies, donations or grants from other Community sources or any voluntary contribution from the Member States or from the regulatory authorities. The opinion that the Administrative Board shall deliver pursuant to Article 24(5) shall explicitly address the sources of funding set out in this paragraph.
9. The Administrative Board, in consultation with the Board of Regulators, shall exercise disciplinary authority over the Director.
10. The Administrative Board shall, where necessary, draw up the Agency's implementing rules for giving effect to the Staff Regulations pursuant to Article 28(2).
11. The Administrative Board shall adopt practical measures regarding the right of access to the documents of the Agency, in accordance with Article 30.

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

Article 14

Board of Regulators

1. The Board of Regulators shall comprise:
 - (a) senior representatives of the regulatory authorities, in accordance with Article 35(1) of Directive 2009/...EC^{*} and Article 39(1) of Directive 2009/...EC^{**}, and one alternate per Member State from the current senior staff of those authorities;
 - (b) one non-voting representative of the Commission.

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

^{*} OJ: Please insert the number and date of the directive contained in 3648/09.

^{**} OJ: Please insert the number and date of the directive contained in 3649/09.

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

2. The Board of Regulators shall elect a Chairman and a Vice-Chairman from among its members. The Vice-Chairman shall replace the Chairman if the latter is not in a position to perform his duties. The term of office of the Chairman and of the Vice-Chairman shall be two-and-a-half years and shall be renewable. In any event, however, the term of office of the Chairman and that of the Vice-Chairman shall expire when they cease to be members of the Board of Regulators.
3. The Board of Regulators shall act by a two-thirds majority of its members present. Each member or alternate shall have one vote.
4. The Board of Regulators shall adopt and publish its Rules of procedure, which shall set out in greater detail the arrangements governing voting, in particular the conditions on the basis of which one member may act on behalf of another and also, where appropriate, the rules governing quorums. The rules of procedure may provide for specific working methods for the consideration of issues arising in the context of regional cooperation initiatives.
5. When carrying out the tasks conferred upon it by this Regulation and without prejudice to its members acting on behalf of their respective regulatory authority, the Board of Regulators shall act independently and shall not seek or take instructions from any government of a Member State, from the Commission, or from another public or private entity.

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

Article 15

Tasks of the Board of Regulators

1. The Board of Regulators shall provide opinions to the Director on the opinions, recommendations and decisions referred to in Articles 5, 6, 7, 8 and 9 that are considered for adoption. In addition, the Board of Regulators, within its field of competence, shall provide guidance to the Director in the execution of his tasks.
2. The Board of Regulators shall deliver an opinion to the Administrative Board on the candidate to be appointed as Director in accordance with Article 13(1) and Article 16(2). The Board of Regulators shall reach that decision on the basis of a three-quarters majority of its members.
3. The Board of Regulators shall, in accordance with Article 13(5) and Article 17(6) and in line with the preliminary draft budget established in accordance with Article 23(1), approve the work programme of the Agency for the coming year and present it by 1 September of each year for adoption by the Administrative Board.
4. The Board of Regulators shall approve the independent section on regulatory activities of the annual report, in accordance with Article 13(12) and Article 17(8).
5. The European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by the members of that committee.

Article 16

Director

1. The Agency shall be managed by its Director, who shall act in accordance with the guidance referred to in the second sentence of Article 15(1) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor accept any instruction from any government, from the Commission, or from any other public or private entity.
2. The Director shall be appointed by the Administrative Board following a favourable opinion of the Board of Regulators, on the basis of merit as well as skills and experience relevant to the energy sector, from a list of at least three candidates proposed by the Commission, following a public call for expression of interest. Before appointment, the candidate selected by the Administrative Board may be invited to make a statement before the competent committee of the European Parliament and to answer questions put by its members.
3. The Director's term of office shall be five years. In the course of the nine months preceding the end of that period, the Commission shall undertake an assessment. In the assessment, the Commission shall examine in particular:
 - (a) the performance of the Director;
 - (b) the Agency's duties and requirements in the coming years.

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

4. The Administrative Board, acting on a proposal from the Commission, after having consulted and given the utmost consideration to the assessment and the opinion of the Board of Regulators on that assessment and only in those cases where it can be justified by the duties and requirements of the Agency, may extend once the term of office of the Director by no more than three years.
5. The Administrative Board shall inform the European Parliament of its intention to extend the Director's term of office. Within one month before the extension of his term of office, the Director may be invited to make a statement before the competent committee of the Parliament and to answer questions put by the members of that committee.
6. If his term of office is not extended, the Director shall remain in office until the appointment of his successor.
7. The Director may be removed from office only upon a decision of the Administrative Board, after having obtained a favourable opinion of the Board of Regulators. The Administrative Board shall reach that decision on the basis of a three-quarters majority of its members.
8. The European Parliament and the Council may call upon the Director to submit a report on the performance of his duties. The European Parliament may also invite the Director to make a statement before its competent committee and answer questions put by the members of that committee.

Article 17
Tasks of the Director

1. The Director shall be responsible for representing the Agency and shall be in charge of its management.
2. The Director shall prepare the work of the Administrative Board. He shall participate, without having the right to vote, in the work of the Administrative Board.
3. The Director shall adopt and publish the opinions, recommendations and decisions referred to in Articles 5, 6, 7, 8 and 9, that have received a favourable opinion of the Board of Regulators.
4. The Director shall be responsible for implementing the annual work programme of the Agency under the guidance of the Board of Regulators and under the administrative control of the Administrative Board.
5. The Director shall take the necessary measures, notably as regards adopting internal administrative instructions and publishing notices, to ensure the functioning of the Agency in accordance with this Regulation.
6. Each year the Director shall prepare a draft work programme of the Agency for the following year, and shall submit it to the Board of Regulators, to the European Parliament and to the Commission by 30 June of that year.

7. The Director shall draw up a preliminary draft budget of the Agency pursuant to Article 23(1) and shall implement the budget of the Agency pursuant to Article 24.
8. Each year the Director shall prepare a draft annual report with an independent section on the regulatory activities of the Agency and a section on financial and administrative matters.
9. With regard to the staff of the Agency, the Director shall exercise the powers provided for in Article 28(3).

Article 18

Board of Appeal

1. The Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector. The Board of Appeal shall designate its Chairman. The decisions of the Board of Appeal shall be adopted on the basis of a qualified majority of at least four of its six members. The Board of Appeal shall be convened when necessary.
2. The members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

3. The term of office of the members of the Board of Appeal shall be five years. That term shall be renewable. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators. A member of the Board of Appeal shall not be removed during his term of office, unless he has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to that effect.
4. Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
5. A member of the Board of Appeal shall inform the Board in the event that he, for one of the reasons referred to in paragraph 4 or for any other reason, considers that a fellow member should not take part in any appeal proceedings. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraph 4, or if suspected of bias. Such an objection shall be inadmissible if it is based on the nationality of a member or if, while being aware of a reason for objecting, the objecting party to the appeal proceedings has taken a procedural step in the appeal proceedings other than objecting to the composition of the Board of Appeal.

6. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 4 and 5 without the participation of the member concerned. For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. If the alternate finds himself in a similar situation to that of the member, the Chairman shall designate a replacement from among the available alternates.
7. The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.

Article 19

Appeals

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

2. The appeal, together with the statement of grounds, shall be filed in writing at the Agency within two months of the day of notification of the decision to the person concerned, or, in the absence thereof, within two months of the day on which the Agency published its decision. The Board of Appeal shall decide upon the appeal within two months of the lodging of the appeal.
3. An appeal lodged pursuant to paragraph 1 shall not have suspensory effect. The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.
4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties as often as necessary to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make 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. The Board of Appeal shall adopt and publish its rules of procedure.
7. The decisions taken by the Board of Appeal shall be published by the Agency.

Article 20
Actions before the Court of First Instance
and the Court of Justice

1. An action may be brought before the Court of First Instance or the Court of Justice, in accordance with Article 230 of the Treaty, contesting a decision taken by the Board of Appeal or, in cases where no right lies before the Board of Appeal, by the Agency.
2. In the event that the Agency fails to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.
3. The Agency shall be required to take the necessary measures to comply with the judgment of the Court of First Instance or the Court of Justice.

CHAPTER IV
Financial provisions

Article 21
Budget of the Agency

1. The revenues of the Agency shall comprise, in particular:
 - (a) a subsidy from the Community, entered in the general budget of the European Union (Commission Section);

- (b) fees paid to the Agency pursuant to Article 22;
 - (c) voluntary contributions from the Member States or from the regulatory authorities, under Article 13(8); and
 - (d) legacies, donations or grants under Article 13(8).
2. The Agency's expenditure shall cover staff, administrative, infrastructure, and operational expenses.
 3. The Agency's revenue and expenditure shall be in balance.
 4. All Agency revenue and expenditure shall be the subject of forecasts for each financial year, coinciding with the calendar year, and shall be entered in its budget.

Article 22

Fees

1. Fees shall be due to the Agency for requesting an exemption decision pursuant to Article 9(1).
2. The fees referred to in paragraph 1 shall be set by the Commission.

Article 23

Establishment of the budget

1. By 15 February each year, the Director shall draw up a preliminary draft budget covering the operational expenditure and the programme of work anticipated for the following financial year, and shall forward that preliminary draft budget to the Administrative Board, together with a list of provisional posts. Each year, the Administrative Board shall, on the basis of the preliminary draft budget prepared by the Director, make an estimate of revenue and expenditure of the Agency for the following financial year. That estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 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.
2. The estimate referred to in paragraph 1 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.
3. On the basis of the estimate, the Commission shall enter into the preliminary draft general budget of the European Union the 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 272 of the Treaty.
4. The budgetary authority shall adopt the establishment plan for the Agency.

5. The budget of the Agency shall be 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.
6. 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 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 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 Communities¹ (the Financial Regulation).
3. By 31 March 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 management 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 in accordance with the provisions of Article 129 of the Financial Regulation, the Director, acting on his own responsibility, shall draw up the final accounts of the Agency and transmit them, for opinion, to the Administrative Board.
5. The Administrative Board shall deliver an opinion on the final accounts of the Agency.

¹ OJ L 248, 16.9.2002, p. 1.

6. The Director shall transmit the final accounts, accompanied by the opinion of the Administrative Board, by 1 July 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.
8. The Director shall send the Court of Auditors a reply to the latter's observations by 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 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
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 25

Financial rules

The financial rules applicable to the Agency shall be drawn up by the Administrative Board after consulting the Commission. Those rules may deviate from 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)¹ 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)² 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.

¹ OJ L 136, 31.5.1999, p. 1.

² OJ L 136, 31.5.1999, p. 15.

CHAPTER V

General provisions

Article 27

Privileges and immunities

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

Article 28

Staff

1. The Staff Regulations, the Conditions of Employment and the rules adopted jointly by the European Community institutions for the purpose of applying the Staff Regulations and the Conditions of Employment shall apply to 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.

Article 29

Liability of the Agency

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. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.
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.

Article 30

Access to documents

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 documents¹ shall apply to documents held by the Agency.

¹ OJ L 145, 31.5.2001, p. 43.

2. The Administrative Board shall adopt practical measures for applying Regulation (EC) No 1049/2001 by ...*.
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 195 and 230 of the Treaty respectively.

Article 31

Participation of third countries

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

* OJ: Please insert the date six months from the date of entry into force of this Regulation.

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.

Article 33
Language arrangements

1. The provisions of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community¹ 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.

¹ OJ 17, 6.10.1958, p. 385.

CHAPTER VI

Final provisions

Article 34

Evaluation

1. The Commission, with the assistance of an independent external expert, shall carry out an evaluation 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.
2. The Commission shall submit the evaluation referred to in paragraph 1 to the Agency's Board of Regulators. 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.
3. 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 an evaluation at least every four years.

Article 35

Entry into force and transitory measures

1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
2. Articles 5 to 11 shall apply from ... *

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

Done at,

For the European Parliament

For the Council

The President

The President

* OJ: Please insert the date 18 months after entry into force of this Regulation.