

ADMINISTRATIVE ARRANGEMENT

BETWEEN

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

AND

THE ENERGY COMMUNITY SECRETARIAT

ON WORKING MODALITIES IN THE AREAS OF GAS AND ELECTRICITY

The **AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**, hereinafter referred to as “the Agency”, of the one part,

and

the **ENERGY COMMUNITY SECRETARIAT**, hereinafter referred to as “the EnC Secretariat”, of the other part,

hereinafter individually or jointly referred to as “Party” or “Parties”,

Whereas:

- (1) The participation of the National Regulatory Authority ('NRA') of an Energy Community's Contracting Party (hereinafter 'EnC CP') in the Agency's Working Groups ('AWGs') is subject to the EnC CP having made satisfactory progress towards meeting the criteria laid down in Article 31 of Regulation (EC) No 713/2009.
- (2) The participation of the EnC Secretariat in the Agency Working Groups could be beneficial with regard to enhanced cooperation, also with NRAs of EnC CPs, as it can encourage mutual knowledge sharing, emulation of good practices and transfer of regulatory and monitoring experience.
- (3) The participation of NRAs of EnC CPs in the Agency Working Groups will be subject to separate, bilateral arrangements, setting out the terms and conditions of such participation.

HAVE THE FOLLOWING UNDERSTANDING:

Section 1
Objective

1. By this Administrative Arrangement the Parties agree on certain working modalities in the areas of gas and electricity. The Parties, within the framework of this Administrative Arrangement, intend to cooperate in good faith.
2. With this Administrative Arrangement, the Parties do not, nor intend to, create any binding or legal obligations under domestic or international law.

Section 2
Participation in Agency Working Groups and their substructures

1. Staff members of the EnC Secretariat may attend, as observers, the meetings of the Agency's Electricity Working Group ('AEWG'), Gas Working Group ('AGWG') and Implementation, Monitoring and Procedures Working Group ('AIMPWG') and their substructures and participate in the discussions held therein, provided they comply with the requirements of this Section and Section 3. If appropriate, the chairpersons of the AWGs or the conveners of their substructures may determine that the meetings, deliberations and the work of their groups, or part thereof, should be confidential or secret and may decide not to allow participation of staff members of the EnC Secretariat in such meetings, deliberations and work.
2. The EnC Secretariat should ensure that its staff members acting as observers comply with the provisions laid down in Director Decision No 2012-06 of 6 February 2012 on the Rules for the Functioning of the Agency's Working Groups, as attached in the Annex to the present Administrative Arrangement. The condition for EnC Secretariat staff members for participating as observers in the AWGs and their substructures should be the submission to the Agency of the Compliance Commitment pursuant to paragraph 3.5 of the aforementioned Rules for the Functioning of the Agency's Working Groups.
3. Changes in the Rules for the Functioning of the Agency's Working Groups should be notified by the Agency to the EnC Secretariat within one week from the date of their adoption. If the EnC Secretariat does not object to the changes within four weeks from the notification, they should be considered as changing the Annex to the present Administrative Arrangement. In case the changes are not accepted within four weeks from the notification, the participation of EnC Secretariat staff as observers in the AWGs and their substructures will be terminated automatically with immediate effect.

Section 3
Confidentiality

1. The EnC Secretariat and its staff members should take all lawful measures to prevent the unauthorised disclosure of information which becomes available through the participation of the EnC Secretariat's staff members in the AWGs and their substructures, unless such information has already been made public in a lawful manner.

2. The EnC Secretariat should ensure that its staff members participating as observers in the AWGs and their substructures pursuant to Section 2 do not provide access to the work of the AWGs or their substructures to other persons, including staff members or other representatives of NRAs of EnC CPs not participating themselves in the AWGs, and refrain from any action that may lead to direct or indirect disclosure of any related information or work. Staff members of the EnC Secretariat participating as observers in the AWGs and their substructures can share information on the work of the AWGs or their substructures with other staff members of the EnC Secretariat, provided that the latter is subject to and respect the same confidentiality requirements as provided for in this Administrative Arrangement or requirements having an equivalent effect. The EnC Secretariat and its staff members should continue to respect the confidentiality requirements set out in this paragraph, also when they stop participating in the aforementioned AWGs or substructures.
3. In the event that the EnC Secretariat or its staff members are required to disclose or to transfer information received from their participation in an AWG or substructure in order to comply with their obligation under national law or by a court order, they should provide written notice to the Agency at least fifteen working days prior to the disclosure or transfer, stating why they are required to disclose or to transfer the information. If the Agency objects to the disclosure or transfer of such information, the EnC Secretariat or its staff members should exercise their best endeavours to prevent the disclosure or transfer of the information in question.

Section 4

Sharing of information on evaluation of EnC CP progress

The EnC Secretariat is best placed to assist the Agency in assessing the progress of EnC CPs in the transposition and actual implementation of the European Union law in the field of energy (energy *acquis*). Therefore, in evaluating an application for the participation of an NRA of an EnC CP in the AWG or their substructures, the Agency may request the EnC Secretariat to share with the Agency its assessment and related evidence regarding the extent of the EnC CP's transposition and actual implementation of the energy *acquis*. This should include, but not be restricted to:

- a) the adoption by the EnC CP of all measures necessary for the transposition, as well as their practical implementation;
- b) the degree of actual independence and the competences of its NRA, taking into consideration, *inter alia*, the provisions of Articles 35 to 38 of Directive 2009/72/EC and Articles 39 to 42 of Directive 2009/73/EC and the guidance and interpretative notes developed by the European Commission.

Section 5

Training and exchange of best practice

The staff members of the EnC Secretariat participating as observers in the AWGs or their substructures may participate in joint training activities, courses, seminars, conferences, study visits, training tools, and other similar initiatives organised by the Agency.

Section 6

Sharing of information and best practices in the area of market monitoring

1. The Parties should use their best endeavours to develop their co-operation in the area of market monitoring as defined in Article 11 of Regulation (EC) No 713/2009.
2. In this respect, the Agency should make available to the NRAs of the EnC CPs, through the EnC Secretariat, the specification of the data and information required for market monitoring purposes, including requirements on confidentiality of data. The EnC Secretariat should support the NRAs of the EnC CPs in collecting and validating the data and information required for market monitoring purposes in the meaning of paragraph 1.
3. Should the Agency deem it necessary within the scope of its tasks, it may request support of the EnC Secretariat in collecting and receiving the market data and information related to the EnC CP.

Section 7

Expenses

The Parties should bear their own expenses that may arise in the course of the implementation of the present Administrative Arrangement.

Section 8

Settlement of disputes

All disputes that may emerge in connection with the interpretation or application of the present Administrative Arrangement should be settled by means of consultations and negotiations between the Parties.

Section 9

Amendments

1. This Administrative Arrangement may be amended by mutual consent between the Parties in written form at any time. Such amendment should come into effect the day after it has been signed by both Parties.
2. Both Parties should enter into consultation with respect to possible amendments to this Administrative Arrangement at the request of either Party.
3. For changes of the Annex to the present Administrative Arrangement, the special procedures laid down in Section 2, paragraph 3, should apply.

Section 10

Termination

1. This Administrative Arrangement is concluded for an unlimited period of time.
2. This Administrative Arrangement may be terminated by any of the Parties at any time by giving, at least, 90 days prior written notice to each other, with effect on the date of receipt of the notification.

3. In the event of termination, information obtained under this Administrative Arrangement should continue to be treated confidentially.

Section 11
Entry into effect

1. This Administrative Arrangement should come into effect on the day after it has been signed by both Parties.
2. This Administrative Arrangement is signed in two original copies in the English language.

Done in Bratislava on 2 November 2016

For the Agency

For the EnC Secretariat

Signed

signed

Alberto Pototschnig
Director

Janez Kopač
Director

ANNEX: Director Decision 2012-06 of 6 February 2012