

Decision no 01/2011 of the Board of Regulators of the Agency for the Cooperation of Energy Regulators on publication of background documents, agendas and minutes of the meetings of the Board

The Board of Regulators of the Agency for the Cooperation of Energy Regulators (BoR):

Having regard to Regulation (EC) No 713/2009, of the European Parliament and of the Council establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as “ACER Regulation” and the “Agency”, respectively) and, in particular, Article 10(4),

Having regard to Regulation (EC) No 1049/2001, of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents,

Having regard to the Decision of the Administrative Board (AB) No 08/2010 on Procedures and Practical Measures for applying Regulation (EC) No 1049/2001 on access to documents by the Agency,

Having regard to the Rules of Procedure of the Board of Regulators of the Agency (A10-BoR-01-03), Article 6,

Whereas Decision AB No 08/2010, Article 3(1) (e) (f) (g), provides that the following documents shall be made directly accessible to the public by publication on the Agency’s website unless the Board has determined that they should not be published pursuant to Article 4 of Regulation (EC) No 1049/2001: the agenda of the meetings of the BoR and the background documents related to the items of the agenda; the decisions of the BoR, and the minutes of the meetings of the BoR.

Whereas Decision AB No 08/2010, Article 3(4), provides that, notwithstanding paragraph 1 (f) of Article 3:

(i) the opinions provided by the BoR pursuant to Article 15(1) and (2) of the ACER Regulation are published only if and as acknowledged in the opinions, recommendations and decisions adopted by the Agency to which they refer;

(ii) the decision of the BoR on the approval of the work programme of the Agency, pursuant to Article 15(3) of the ACER Regulation and (iii) the decision of the BoR on the approval of the independent section on regulatory activities of the annual report, pursuant to Article 15(4) of the ACER Regulation are published only if and as acknowledged in the decisions on the adoption of the work programme and the annual report by the Administrative Board.

Whereas Decision AB No 08/2010, Article 3(5), provides that documents referred to in paragraph 1 of Article 3 are published on the Agency's website within a reasonable time after they have been adopted or issued.

HAS DECIDED, pursuant to Article 6 of the Board of Regulators' Rules of Procedure:

Article 1 - Scope

This Decision defines the practical measures for applying Regulation (EC) No 1049/2001, Article 10 of Regulation (EC) No 713/2009, and Decision AB No 08/2010 on Procedures and Practical Measures for applying Regulation (EC) No 1049/2001 on access to documents by the Agency, notably its Article 3(1) (e), (f) and (g), Article 3(4) and Article 3(5), with regard to the publication on the Agency's website of the background documents, minutes, agendas and decisions of the BoR.

Article 2 – Publication of background documents of the BoR

(1) Background documents of the Board of Regulators shall be published after their adoption by the Board of Regulators, unless the Board has determined that they should not be published pursuant to Article 4 of the Regulation (EC) No 1049/2001.

(2) Without prejudice to paragraph 1, background documents related to formal opinions provided by the BoR pursuant to Article 15(1) and (2) of the ACER Regulation; background documents related to the decision of the BoR on the approval of the work programme of the Agency, pursuant to Article 15(3) of the ACER Regulation; and background documents related to the decision of the BoR on the approval of the independent section on regulatory activities of the annual report, pursuant to Article 15(4) of the ACER Regulation, shall in any case be published only after the opinions, recommendations, decisions, work programme and annual report to which they refer have been adopted by the Agency.

Article 3 - Requests for access to background documents addressed to individual NRAs

Where individual BoR members receive a request addressed to their National Regulatory Authority for access to a BoR background document which has not been published, that BoR member shall inform the Director and the BoR of such request and shall make a recommendation on how to address it. The relevant background documents which have not been published shall not be released unless the BoR has taken a decision on a proposal from the Director to permit access.

Article 4 - Agenda of the meetings of the BoR

The agenda of each BoR meeting will be published following its approval at that BoR meeting.

Article 5 - Minutes of the meetings of the BoR

The minutes of the BoR meetings will be published following their approval at the BoR meeting succeeding the meeting to which they refer.

Done at Ljubljana on 4 May 2011