

# THE CROATIAN PARLIAMENT

2584

Pursuant to Article 89 of the Constitution of the Republic of Croatia, I hereby issue the

## DECISION

### PROMULGATING THE ACT ON THE REGULATION OF ENERGY ACTIVITIES

I hereby promulgate the Act on the Regulation of Energy Activities passed by the Croatian Parliament at its session on 19 October 2012.

Class: 011-01/12-01/131  
Reg. No: 71-05-03/1-12-2  
Zagreb, 25 October 2012

The President of the  
Republic of Croatia

Ivo Josipović, m.p.

## ACT

### ON THE REGULATION OF ENERGY ACTIVITIES

#### I BASIC PROVISIONS

##### Article 1

This Act regulates the establishment and implementation of the system for the regulation of energy activities, the procedure for establishing the energy regulatory body and other matters of importance for the regulation of energy activities.

##### Article 2

This Act transposes into the legislation of the Republic of Croatia the *acquis communautaire* in the field of regulation of energy activities, in particular:

1. Directive 2009/72/EC of the European Parliament and of the Council concerning common rules for the internal market in electricity (OJ L 211, 14.8.2009),
2. Directive 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas (OJ L 211, 14.8.2009).

##### Article 3

(1) The terms used in this Act have the meanings laid down in the act governing the energy sector as well as in acts regulating individual energy markets.

(2) For the purposes of this Act, other terms used in this Act have the following meanings:

1. Agency for the Cooperation of Energy Regulators (hereinafter: the ACER) – an agency established pursuant to 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,

2. Energy Community – under the Act on Ratification of the Treaty establishing the Energy Community (Official Gazette – International Agreements 6/06), a community of the European Union and of the Contracting Parties from South-East Europe,

3. ENTSO-E – the association “European Network of Transmission System Operators for Electricity”,

4. ENTSO-G – the association “European Network of Transmission System Operators for Natural Gas”,

5. Commission – the European Commission, an executive body established by the Founding Treaties, competent for drafting proposals and implementation of European legislation,

6. ITO – is an independent transmission/transport operator, established as an independent company separate from a vertically integrated undertaking, which may be owned by that undertaking, but has to be equipped with all financial, physical and human resources necessary for carrying out its activity,

7. ISO – is an independent operator of a transmission/transport system, established as an independent company that carries out the activities of a transmission/transport system operator, whereas the facilities of a transmission/transport network remain in the ownership of a vertically integrated undertaking,

8. TSO – is a transmission/transport system operator, established as a company that carries out the activities of a transmission/transport system operator and is the owner of the facilities of a transmission/transport network, which includes legal and functional unbundling of transmission/transport activities from electricity or natural gas production and supply activities,

9. regulation of energy activities – a system of measures and rules regulating the operation of energy undertakings for the purpose of meeting the regulation goals specified in this Act.

#### Article 4

Regulation of energy activities shall be established in order to implement a system of regulated operation of energy undertakings in the carrying out of energy activities, especially those energy activities which are performed as public services and are in the public interest on the one hand, and in order to establish and regulate the energy market on the other hand, all pursuant to the provisions of the act governing the energy sector and other acts regulating individual energy markets.

## Article 5

(1) The basic goals of the regulation of energy activities are as follows:

- to ensure objectivity, transparency and non-discrimination in the carrying out of energy activities,
- to look after the implementation of the principle of regulated access to the network/system,
- to adopt methodologies for determining tariff items of tariff systems,
- to establish an efficient energy market and market competition,
- to protect energy customers and energy undertakings.

(2) Regulation of energy activities shall promote the following:

- efficient and rational use of energy,
- entrepreneurship in the energy sector,
- investment in the energy sector,
- environmental protection.

## Article 6

(1) Regulation of energy activities shall be conducted with respect to regulated energy activities and with respect to market energy activities.

(2) Regulated energy activities and energy activities which are performed as public services shall be regulated according to the principles of objectivity, transparency and non-discrimination.

(3) Market energy activities shall be regulated according to the principles of market competition and promotion of entrepreneurship in the energy market.

## II ENERGY REGULATORY AGENCY

### Article 7

(1) The Croatian Energy Regulatory Agency (hereinafter referred to as: the Agency) is an autonomous, independent and non-profit legal person with public authority for the regulation of energy activities.

(2) The seat of the Agency is in Zagreb.

(3) The work of the Agency is public.

(4) The Statute of the Agency shall regulate the internal organisation, representation, work and operations, supervisory bodies, establishment and scope of work of advisory and professional bodies, competence and method of decision-making, general acts, confidentiality of data, public nature of operation, and other matters of importance for the operation of the Agency.

(5) The Statute of the Agency shall be adopted by the Steering Council of the Agency subject to prior approval of the Government of the Republic of Croatia.

#### Article 8

(1) The founder of the Agency shall be the Republic of Croatia and the founding rights shall be exercised by the Government of the Republic of Croatia.

(2) The Agency shall report to the Croatian Parliament.

#### Article 9

The duties of the Agency are of interest for the Republic of Croatia and the Agency shall perform them on the basis of public authority.

#### Article 10

The duties, powers and responsibilities of the Agency shall be laid down by this Act, the act governing the energy sector and other acts regulating individual energy markets.

#### Article 11

(1) The principal duties of the Agency are as follows:

1. issuing, renewal and transfer of licences for the carrying out of energy activities and temporary or permanent cancellation of the licences,
2. supervising energy undertakings in the carrying out of energy activities,
3. supervising the implementation of the provisions related to unbundling in accordance with the act governing the energy sector and acts regulating the carrying out of individual energy activities,
4. supervising the keeping of separate accounts, as prescribed by the act governing the energy sector and other acts regulating individual energy markets,
5. supervising compliance with the prohibition of cross-subsiding between energy activities in accordance with the acts regulating individual energy markets,
6. supervising compliance with the principles of transparency, objectivity and non-discrimination in the operation of energy market operators,
7. approving general acts for organising the electricity market and general acts for organising the natural gas market,

8. issuing decisions on acquiring the status of eligible producer and temporary and permanent revoking of the status of eligible producer,
9. adopting methodologies or tariff systems in accordance with this Act, the act governing the energy sector and other acts regulating individual energy markets,
10. adopting or approving prices, amounts of tariff items and fees in accordance with methodologies or tariff systems referred to in item 9 of this paragraph,
11. approving plans for investment, development and construction of systems in accordance with the acts regulating individual energy markets,
12. supervising compliance of investment, development and construction plans of transmission system operators and transport system operators with development plans of ENTSO-E and ENTSO-G,
13. supervising the compliance of transmission, transport and distribution system operators, or system owners, other energy undertakings or system users with the obligations prescribed by this Act, the act governing the energy sector and other acts regulating individual energy markets and by Regulation (EC) No 714/2009 of the European Parliament and of the Council on conditions for access to the network for cross-border exchanges in electricity (hereinafter: Regulation 714/2009) and Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (hereinafter: Regulation 715/2009),
14. cooperation with regulatory bodies of the EU Member States and neighbouring countries as well as with the ACER regarding cross-border issues,
15. cooperation with regulatory and other bodies within the Energy Community pursuant to the Act on Ratification of the Treaty establishing the Energy Community,
16. implementing legally binding decisions of the ACER and of the Commission,
17. submitting an annual report to the Croatian Parliament that contains information on performed activities and achieved results relating to the scope of duties referred to in paragraphs 1 to 8 of this Article,
18. reporting to other relevant state authorities, ACER, the Commission and other European Union bodies, and submitting an annual report to the ACER and the European Commission that contains information on performed activities and achieved results relating to the scope of duties referred to in paragraphs 1 to 8 of this Article,
19. adopting rules on the quality of energy supply pursuant to legislation in force regulating the carrying out of individual energy activities,
20. adopting general conditions for energy supply,
21. adoption and supervision of the methodology for determining the fee for connection to the network/system of new and for increase in connected load/capacity of existing energy undertakings and final customers,

22. carrying out a cost-benefit analysis and obtaining the opinion of the representative of the consumer protection body on the introduction of advanced metering devices to final customers,
23. supervising the quality of energy supply pursuant to legislation in force regulating individual energy markets,
24. supervising the transparency of functioning of the energy market,
25. supervising the degree of openness, competition and abuse in the energy market and in the supply of customers,
26. supervising the occurrence of restrictive supply contracts, especially of contracts restricting the number of suppliers and, where appropriate, informing the national competition authority,
27. supervising the contractual freedom with regard to interruptible supply contracts and with regard to long-term contracts provided that they are compatible with the law and policies of the European Union,
28. supervising the time taken by transmission/transport and distribution system operators to make connections and repairs,
29. providing assistance, together with other relevant authorities, in ensuring the implementation of efficient and prescribed consumer protection measures,
30. publishing recommendations, at least annually, in relation to prices for energy supply performed as public service,
31. ensuring that customers have the right to access their own energy consumption data, that is, preparing and providing consumers with an easily understandable format harmonised at national level for presenting consumption data, and laying down the procedure for realising the right of consumers and suppliers to access own energy consumption data, in the manner that consumers are able to give access to own consumption data to any registered suppliers, while the party responsible for management of own consumption data shall be obliged to provide those data to the supplier, whereas the listed services are free of charge for consumers,
32. supervising the confidentiality of customer energy consumption data,
33. monitoring investment in electricity generation capacities with regard to security of supply,
34. certification of transmission/transport system operators in accordance with the provisions of the act governing the electricity market and the act governing the natural gas market,
35. supervising the implementation of the criteria prescribed for access to the gas storage system,

36. monitoring the implementation of measures prescribed by the Government of the Republic of Croatia in case of crisis situations pursuant to the provisions of the act governing the energy sector,

37. contributing to the compatibility of data exchange processes for the most important market processes at the regional level.

(2) In addition to the duties referred to in paragraph 1 of this Article, the Agency shall also have the following duties:

1. adopting methodologies for connection and access to systems and establishing the terms and conditions for connection and access to systems,

2. supervising objective, transparent and non-discriminatory conditions of system access,

3. adopting or approving methodologies for balancing the system and issuing opinions and approvals of general acts related to the provision of auxiliary services and system balancing,

4. approving general acts related to cross-border trade, congestion management and allocation of capacities on cross-border transmission lines or interconnectors and proposing to initiate the procedure for amending those rules,

5. supervising cross-border trade, congestion management and allocation of capacities on cross-border transmission lines or interconnectors.

(3) The Agency shall pass general acts for which it is authorised under this Act, the act governing the energy sector and other acts regulating individual energy markets and shall provide their credible interpretation.

(4) The Agency shall provide opinions on legislative proposals for which it is authorised under this Act, the act governing the energy sector and other acts regulating individual energy markets.

(5) The Agency shall publish the methodologies or tariff systems and terms and conditions related to the duties referred to in paragraphs 1 and 2 of this Article.

(6) The Agency shall also perform other duties prescribed by the act governing the energy sector and other acts regulating individual energy markets.

(7) For matters relating to the carrying out of energy activities on the market, which are not regulated by this Act and which relate to prevention, restriction or distortion of market competition, the Competition Act shall apply, and the Agency shall be obliged to cooperate and provide expert assistance to the Croatian Competition Agency and the agency competent for supervision of financial services.

(8) To initiate misdemeanour proceedings, the Agency shall submit to the competent courts indictment proposals.

## Article 12

If a transmission/transport system operator is organised as an independent system operator (ISO), the Agency shall also perform the following duties:

1. supervising compliance of the transmission system owner and the ISO with their obligations under the acts regulating individual energy markets,
2. supervising relations and communications between the ISO and the transmission/transport system owner in order to ensure compliance of the ISO with its obligations, and in particular approving contracts and acting as a dispute settlement authority between the ISO and the transmission/transport system owner,
3. approving investment plans and multi-annual network development plans presented annually by the ISO within the first ten-year transmission/transport network development plan,
4. ensuring that network access tariffs collected by the ISO include remuneration for the network owner or network owners, which provides for adequate remuneration for using the network and enables new investments in the network, provided that such investments are efficient and economic,
5. carrying out investigations and inspections, both announced and unannounced, at the premises of the transmission/transport system owner and the ISO,
6. supervises the use of congestion charges collected by the ISO in accordance with Regulation 714/2009.

## Article 13

In the case that a transmission/transport system operator is organised as an independent transmission/transport operator (ITO), the Agency shall also perform the following duties:

1. supervising the ITO in order to prevent any discriminatory behaviour in favour of the vertically integrated undertaking,
2. supervising communications between the ITO and the vertically integrated undertaking in order to ensure compliance of the ITO with its obligations,
3. acting as dispute settlement authority between the vertically integrated undertaking and the ITO in respect of any complaint submitted pursuant to Article 20 of this Act,
4. supervising commercial and financial relations including loans between the vertically integrated undertaking and the ITO,
5. approving all commercial and financial agreements between the vertically integrated undertaking and the ITO and checking whether they comply with market conditions,
6. monitoring the occurrence of discriminatory behaviour and, when notified by the person in charge of supervising the implementation of the operator compliance programme, requesting



justification from the vertically integrated undertaking that shall, in particular, include evidence that no discriminatory behaviour in favour of the vertically integrated undertaking has occurred,

7. carrying out investigations and inspections, both announced and unannounced, at the premises of the vertically integrated undertaking and the ITO,

8. assigning all or specific tasks of the transmission/transport system operator to an independent system operator (ISO) determined in accordance with the act governing the electricity market and the act governing the natural gas market in case of a persistent breach by the transmission/transport system operator of its obligations, in particular in case of repeated discriminatory behaviour to the benefit of the vertically integrated undertaking.

#### Article 14

In the performance of its duties, the Agency shall have the following authorities:

1. to issue binding decisions in relation to energy undertakings, within its competence, pursuant to the provisions of this Act, the act governing the energy sector and other acts regulating individual energy markets,

2. to carry out supervision over the functioning of the energy market and to take decisions, as well as to determine necessary and appropriate measures to promote effective competition and ensure the proper functioning of the market,

3. to require any information from energy undertakings, especially those required for the fulfilment of their obligations regarding the carrying out of energy activities, including the justification for any refusal to grant network access, and any information on measures necessary to reinforce the network,

4. to establish facts and give appropriate instructions for dispute settlement with regard to complaints related to the work of the system operator, submitted pursuant to Article 20, paragraph 1 of this Act, as well as complaints to methodology proposals pursuant to Article 20, paragraph 3 of this Act,

5. to make publicly available relevant data on transactions related to the contracts between market participants in the electricity market and the natural gas market and between market participants and system operators, provided that commercially sensitive information and identity of individual market participants is kept confidential,

6. to instigate misdemeanour proceedings due to failure to fulfil the obligations prescribed by this Act and other legally binding decisions of the Agency or the ACER.

#### Article 15

(1) In cross-border issues, the Agency shall consult and closely cooperate with other national regulatory agencies and the ACER. In respect of the information exchanged, the receiving authority shall ensure the same level of confidentiality as that required of the originating authority.

(2) The Agency shall cooperate with other national regulatory agencies for the purpose of:

1. fostering the creation of operational arrangements in order to enable optimum management of the network, promoting joint electricity and natural gas exchanges, allocation of cross-border capacity, and enabling an adequate level of interconnection capacity, within the region and between regions, to allow for development of effective competition and improvement of security of supply, without discriminating between suppliers in different EU Member States and the Energy Community,
2. coordinating the development of all network rules for the relevant transmission/transport system operators and other market participants,
3. coordinating the development of congestion management rules.

(3) The Agency shall have the right to enter into cooperative arrangements with other national regulatory agencies to foster regulatory cooperation.

(4) The actions referred to in paragraph 2 of this Article shall be carried out, as appropriate, in close consultation with other relevant national authorities and in accordance with their specific competences.

#### Article 16

In implementing the system of regulating energy activities performed as public service, the Agency shall take appropriate measures to protect the rights of final customers pursuant to special legislation.

#### Article 17

(1) The Agency shall hold consultations with the public concerned in the procedure for adopting regulations and methodologies passed by the Agency.

(2) In the consultation procedure, the Agency shall provide a period of at least two months for submitting any objections to the proposed methodologies and tariff systems.

(3) The objections referred to in paragraph 2 of this Article shall not postpone the adoption of the methodology and tariff systems.

#### Article 18

The Agency shall cooperate with the ministry competent for the energy sector (hereinafter: the Ministry) in the preparation of energy development plans and monitoring of their implementation, especially in monitoring the status of security of supply and preparation of regulations related to energy markets.

#### Article 19

The Agency shall inform the Commission and the Government of the Republic of Croatia if it establishes that a decision relevant for cross-border trade taken by another regulatory authority does not comply with the requirements of this Act and the European Union

regulations in the energy sector, pursuant to international commitments assumed by the Republic of Croatia.

#### Article 20

(1) A dissatisfied party may submit a complaint to the Agency concerning the actions of the operator of the transmission/transport or distribution system, gas storage or LNG terminal regarding the failure to fulfil the obligations related to carrying out regulated energy activities pursuant to this Act, the act governing the energy sector and other acts regulating individual energy markets.

(2) The complaint referred to in paragraph 1 of this Article may be submitted during the period in which the irregularities in the work of the operator of transmission/transport or distribution system, gas storage system or LNG terminal are ongoing.

(3) In the procedure of adopting methodologies that are passed by the Agency, a dissatisfied party may submit a complaint on the methodology proposal within 60 days from the day of publishing the methodology proposal.

#### Article 21

In addition to the obligations, authorities and responsibilities prescribed by this Act, the Agency shall have the obligations, authorities and responsibilities ensuing from individual provisions of the act governing the energy sector and other acts regulating individual energy markets.

#### Article 22

The Agency shall be independent in taking any organisational and other measures required for the proper carrying out of its functions and fulfilment of obligations in accordance with this Act, the act governing the energy sector and other acts regulating individual energy markets, unless otherwise prescribed by these acts.

#### Article 23

(1) The Agency shall be managed by the Steering Council of the Agency comprising five members, of which one shall be chairperson of the Steering Council and one shall be deputy chairperson.

(2) The chairperson of the Steering Council shall manage the work of the Steering Council.

(3) The chairperson and members of the Steering Council shall be appointed by the Croatian Parliament. The appointment procedure shall start by publishing a public call for the submission of candidate applications which contains the conditions for selection of the chairperson and members of the Steering Council, the time-limit in which applications are to be submitted and the necessary documentation for submitting an application. The collection of applications for the chairperson and members of the Steering Council shall be carried out by the Ministry.

(4) The chairperson and members of the Steering Council shall be appointed for a seven-year term of office, with the possibility of one reappointment.

(5) The selection referred to in paragraph 3 of this Article shall be performed in the manner that a new member is appointed in place of the member of the Steering Council whose term of office is about to expire.

(6) The Steering Council shall be: authorised to decide on all issues related to the regulation of energy activities under the Agency's competence; accountable for the professional work of the Agency; adopt work and development programmes; decide on the financial plan and annual accounts and pass documents necessary for the work and operation of the Agency and oversee their implementation, in accordance with the general goals of the regulation of energy activities referred to in Article 5 of this Act.

(7) The chairperson of the Steering Council shall: represent the Agency; represent the Agency in all proceedings before courts, administrative and other state bodies and legal persons with public authority; undertake all legal actions on behalf and for the Agency; organise and manage operations of the Agency; and be accountable for the legality of the Agency's work.

(8) In their absence, the chairperson of the Steering Council shall be replaced by their deputy who is, at the proposal of the chairperson of the Steering Council, selected by the Steering Council among its members and appointed to the position of the deputy chairperson of the Steering Council.

#### Article 24

(1) At least 30 days prior to the expiry of the term of office of a member of the Steering Council, the Government of the Republic of Croatia shall propose to the Croatian Parliament to relieve the member of the Steering Council whose term of office is about to expire, of his/her duty, and to submit an explained list of candidates, which was previously delivered by the Ministry, for the selection of a new member of the Steering Council.

(2) As regards the position of the member of the Steering Council whose term of office is prematurely terminated, a new member of the Steering Council may be appointed only for the time remaining until the expiry of the full term of office of the member of the Steering Council whose term of office is terminated.

(3) A member of the Steering Council may be any citizen of the Republic of Croatia, domiciled in the Republic of Croatia, with at least an undergraduate and graduate university study programme or an integrated undergraduate and graduate university study programme in a technical, legal or economic profession, and at least ten years of work experience in the field of energy activities or another related field in the energy sector, with a good command of the English language and distinguished in their profession by scientific or professional work in the energy sector, by their public activity and who is worthy of being a member of the Steering Council of the Agency.

(4) In addition to the conditions referred to in paragraph 3 of this Article, the chairperson of the Steering Council shall have at least four years of work experience at leading positions in the field of energy activities or another related field in the energy sector.

(5) A member of the Steering Council may not be a person convicted by a final and effective court ruling for a criminal offence that is persecuted *ex officio*.

(6) A person who holds the position of a representative in the Croatian Parliament or a member of the representative body of a local or regional self-government unit or holds a position in the executive government or in central bodies of political parties, or who is employed in an energy undertaking to which the provisions of this Act apply, shall resign from all their other positions at the moment of accepting the position of a member of the Steering Council.

(7) The function of the chairperson of the Steering Council and of a member of the Steering Council shall be performed as the only employment.

(8) Substantive rights of members of the Steering Council shall be determined by the Statute of the Agency.

(9) The conditions referred to in paragraphs 5, 6 and 8 of this Article prescribed for members of the Steering Council shall also apply to the chairperson of the Steering Council.

#### Article 25

(1) Members of the Steering Council and their immediate family members shall not own or hold shares or stakes in any energy undertaking exceeding 0.5% of the capital stock, or be members of the management board or supervisory board or any other bodies in any energy undertaking, and shall not hold any material interest in the area of energy activities or perform any other work in any energy undertaking to which the provisions of this Act apply, which may lead to a conflict of interest.

(2) A member of the Steering Council may not be:

1. an active member of a political party,
2. perform tasks for energy undertakings or their subsidiaries,
3. perform any other activity that could lead to a conflict of interest.

(3) During a period of one year after discharge from the position of a member of the Steering Council, such a person shall be prohibited from representing, before the Steering Council and the Agency, an energy undertaking that carries out energy activities which are regulated and/or performed as public service or another body under direct or indirect control of such energy undertaking.

(4) While performing their function, members of the Steering Council shall be prohibited from initiating negotiations or participating in negotiations regarding their employment or performance of consulting activities for an energy undertaking that carries out energy activities which are regulated and/or performed as public service or another body under direct or indirect control of such energy undertaking.

(5) An energy undertaking that carries out energy activities which are regulated and/or performed as public service or another body under direct or indirect control of such energy

undertaking shall be prohibited from initiating negotiations or participating in negotiations regarding the employment or performance of consulting activities of the members of the Steering Council.

(6) The provisions of paragraphs 1 to 5 of this Article shall apply appropriately to the chairperson of the Steering Council.

#### Article 26

(1) The term of office of the chairperson and members of the Steering Council shall be terminated by a decision on discharge from duty that is adopted by the Croatian Parliament upon proposal of the Government of the Republic of Croatia:

1. after the expiry of the term of office for which the chairperson or a member of the Steering Council was appointed, or

2. before the expiry of the term of office for which the chairperson or a member of the Steering Council was appointed under the conditions referred to in paragraph 2 of this Article.

(2) The Croatian Parliament shall discharge from duty the chairperson or a member of the Steering Council before the expiry of the term of office for which they were appointed, upon proposal of the Government of the Republic of Croatia in the case of:

1. personal request for discharge from duty,

2. serious breach of a duty specified in the Statute of the Agency,

3. inability to perform duties for a period exceeding six months,

4. permanent loss of ability to perform duties,

5. a final and effective court ruling for a criminal offence that is persecuted *ex officio*,

6. occurrence of circumstances specified in Article 25 of this Act.

(3) The Steering Council shall notify the Government of the Republic of Croatia of the existence of reasons for the discharge of the chairperson or a member of the Steering Council before the expiration of the term of office for which they were appointed.

(4) The chairperson or a member of the Steering Council shall be entitled to a compensation equal to the salary they earned as a member of the Steering Council, except in the events of dismissal referred to in paragraph 1, subparagraphs 2, 5, and 6 of this Article, from the date of discharge pursuant to paragraphs 1 and 2 of this Article to the date of entitlement to a salary elsewhere or to a pension under general regulations, but for no longer than one year from the date of discharge.

(5) The Croatian Parliament, upon proposal of the Government of the Republic of Croatia, may discharge the Steering Council if it successively and repeatedly fails to pass decisions within its scope of competence in the manner described in Article 27, paragraph 3 of this Act.

## Article 27

- (1) Decisions by the Steering Council shall be passed during sessions convened by the chairperson of the Steering Council.
- (2) The sessions of the Steering Council shall be public. Exceptionally, the Steering Council may decide that a session or discussion on a particular item should be closed for the public, if that is in the interest of keeping an official or professional secret and if the publicity of the session would be contrary to the legally protected interests of citizens and legal persons.
- (3) The Steering Council shall pass decisions by a majority of votes of all members of the Steering Council. A member of the Steering Council may not abstain from voting.
- (4) The Steering Council shall adopt work and development programmes of the Agency and supervise their execution.
- (5) The Steering Council of the Agency shall pass decisions at the proposal of the technical services of the Agency. Heads of the technical services of the Agency shall take part in the Steering Council's session at the invitation of the chairperson of the Steering Council, without the right to vote.
- (6) In all proceedings before the Agency, initiated under the provisions of this Act, the Agency shall provide opportunity for each party in the proceedings, prior to taking a decision, to state any facts relevant to the case and to submit all necessary documentation or other evidence that the party considers of relevance for the decision.
- (7) If a party fails to comply with the final decision of the Steering Council within the specified period, the Agency may cause or enforce compliance, or initiate misdemeanour proceedings under the Misdemeanours Act.
- (8) Decisions of the Steering Council shall be signed by the chairperson of the Steering Council.
- (9) The regulations passed by the Agency shall be published in the Official Gazette, and individual decisions taken by the Steering Council of the Agency in the exercise of public authority shall be published on the Agency's website.
- (10) Other matters relating to the Agency's work not covered by this Act shall be regulated by the provisions of the General Administrative Procedure Act.

## Article 28

- (1) The Agency shall have technical services which perform professional, administrative and technical tasks to serve the needs of the Agency. The technical services shall be managed by their heads.
- (2) The heads of the technical services of the Agency shall be appointed and relieved from duty by the chairperson of the Steering Council of the Agency, based on a public tender, for a period of four years with the possibility of re-appointment.

(3) The conditions to be met by the heads of technical services and their rights, obligations and responsibilities shall be set by the Statute of the Agency.

(4) The heads and employees of the technical services may not be in conflict of interest, which is determined in accordance with the conditions prescribed in the Statute of the Agency.

#### Article 29

(1) Heads of technical services of the Agency, each in their scope of work, shall manage the operations of technical services of the Agency.

(2) Heads of technical services of the Agency shall also perform other tasks as specified by the Statute of the Agency.

(3) Heads of technical services of the Agency shall be accountable for their work to the chairperson of the Steering Council of the Agency.

#### Article 30

The Steering Council of the Agency may not, without approval from the Government of the Republic of Croatia, acquire, encumber or dispose of any real or other property or enter into any other legal act exceeding one half of the budget of the Agency.

#### Article 31

Central state administration bodies shall request the opinion of the Agency on draft proposals of acts and other regulations relating to carrying out energy activities.

#### Article 32

(1) The Agency shall have its own budget the revenue of which will be compensations for carrying out the regulation of energy activities. The Agency shall be independent in the allocation of its budget for the purpose of performing the function of regulator of energy activities.

(2) The Agency's Steering Council shall adopt the budget for the following year.

(3) The Government of the Republic of Croatia shall take a decision on the amounts of compensations referred to in paragraph 1 of this Article at the proposal of the Steering Council, which has obtained prior opinion from the Ministry.

(4) Assistance and donations to the Agency from European Union bodies and funds for improving the professional and technical level of operations shall be allocated to the budget of the Agency.

(5) The budget, financial transactions and financial reporting of the Agency shall be subject to the regulations governing financial reporting and accounting of non-profit organisations.



### Article 33

(1) The Agency shall submit a report once a year on its work to the Croatian Parliament, in particular:

- results of supervising compliance of energy undertakings with the obligations prescribed in this Act, the act governing the energy sector as well as other acts regulating individual energy markets,
- budget performance of the Agency in the previous year,
- analysis of the energy sector,
- observations that are of importance to the development of the energy market and public services in the energy sector,
- implementation of legally binding decisions of the ACER and the Commission.

(2) The report referred to in paragraph 1 of this Article shall be submitted by 30 June for the previous year.

(3) At the request of the Government of the Republic of Croatia, the Agency shall submit reports on its professional and financial operations, and reports on specific issues from its scope of work also for periods shorter than one year.

(4) The Agency's financial reports shall be subject to an annual audit performed by a certified independent auditor.

(5) After acceptance of the reports referred to in paragraph 1 of this Article, the Agency shall publish such reports in the Agency's bulletin or on the Agency's website in the Croatian language and in English translation.

### Article 34

(1) Expert tasks within the scope of work and operations of the Agency shall be performed by the Agency's employees under the coordination of the Steering Council.

(2) The rights and obligations of the Agency's employees deriving from employment and related to employment shall be governed by general labour regulations.

(3) The members of the Steering Council, the heads of technical services of the Agency and other employees of the Agency shall act conscientiously and in accordance with the rules of the profession.

### Article 35

(1) The Agency shall be authorised to request from energy undertakings any data, reports and other documents necessary for carrying out the tasks under the Agency's competence on the basis of this Act, the act governing the energy sector and other acts regulating individual energy markets, including financial and other data designated as business or official secret.

(2) Official secrets of the Agency shall include everything designated as an official secret by special regulations and general acts of the Agency or designated as a business secret by the general act of an energy undertaking, pursuant to the Act on the Protection of Data Secrecy, and it shall include data submitted to the Agency.

(3) Energy undertakings shall respond within the prescribed period to the Agency's request and supply the data, reports or other documentation in accordance with the Agency's request referred to in paragraph 1 of this Article.

(4) The Agency shall respond within 15 days to a written request from the energy undertaking concerning matters under the Agency's competence.

### III SUPERVISION OF THE AGENCY'S WORK

#### Article 36

(1) Supervision over the legality of the Agency's work and of its general and individual acts shall be performed by the Ministry.

(2) Financial transactions of the Agency shall be supervised by the competent central state administration body, or the legal person with public authority to do so.

### IV MISDEMEANOUR PROVISIONS

#### Article 37

(1) An energy undertaking shall be fined for a misdemeanour in the amount of HRK 10,000.00 to 500,000.00 if it:

1. fails to submit the required data and documentation at the Agency's request,
2. fails to proceed according to the Agency's decision,
3. fails to prepare transmission/transport or distribution network development plans,
4. publishes rules the adoption of which is under its competence without prior approval from the Agency,
5. publishes prices and fees for activities it performs without prior approval from the Agency, if such approval is prescribed,
6. performs an energy activity without a licence from the Agency,
7. fails to prepare and submit reports to the Agency.

(2) A cash fine in the amount of HRK 3,000.00 to 50,000.00 shall be imposed on the responsible person of the energy undertaking for the misdemeanour referred to in paragraph 1 of this Article.

(3) In addition to a cash fine, in case of committing several misdemeanours or repeating within one year misdemeanours referred to in paragraph 1 of this Article, the energy undertaking may be sanctioned by suspension from carrying out the energy activities for up to one year, and the energy undertaking's responsible person may be barred from carrying out the same activities for a period of up to one year.

#### Article 38

(1) A cash fine in the amount of up to ten percent of its total revenue realised in the previous year shall be imposed on the transmission/transport system operator or the distribution system operator for a misdemeanour if it:

1. intentionally or due to extreme negligence distorts market competition, prevents market operations or discriminates system users,
2. prevents the operator's person authorised for monitoring compliance in the performance of his/her duties,
3. refuses connection to the electricity network or natural gas network with an explanation that does not correspond to actual circumstances,
4. fails to meet its obligation regarding the provision of information pursuant to Regulation 714/2009 and Regulation 715/2009,
5. fails to proceed in accordance with the Agency's decisions, including in particular decisions of the ACER pursuant to international commitments assumed by the Republic of Croatia based on Regulation 714/2009 and Regulation 715/2009.

(2) A cash fine in the amount of up to ten percent of its total revenue realised in the previous year shall be imposed on the vertically integrated undertaking in case of discriminatory behaviour of the transmission/transport system operator or the distribution system operator to the benefit of the vertically integrated undertaking.

### V TRANSITIONAL AND FINAL PROVISIONS

#### Article 39

The Croatian Energy Regulatory Agency established pursuant to the Act on the Regulation of Energy Activities (Official Gazette 177/04 and 76/07) shall continue its operations pursuant to the provisions of this Act.

#### Article 40

(1) The Agency shall adopt or align regulations from this Act within six months from the date of entry into force of this Act.

(2) Until the entry into force of the regulations referred to in paragraph 1 of this Article, regulations that govern certain relational issues shall apply as long as they are not contrary to the provisions of this Act.

#### Article 41

By virtue of the entry into force of this Act, the chairperson and members of the Steering Council shall continue to perform their duties until the expiry of their term of office.

#### Article 42

The Steering Council of the Agency shall harmonise the Statute of the Agency with the provisions of this Act and shall request its approval from the Government of the Republic of Croatia no later than within six months from the entry into force of this Act.

#### Article 43

On the date of entry into force of this Act, the Act on the Regulation of Energy Activities (Official Gazette 177/04 and 76/07) shall cease to have effect.

#### Article 44

This Act shall enter into force on the eighth day after the day of its publication in the Official Gazette, with the exception of the provisions of Article 11, paragraph 1, items 12, 13, 14, 15 and 16, item 18 in the part relating to the ACER and the Commission, Article 14, item 6, Article 15 in the part related to the ACER, Article 19 in the part related to the Commission, Article 33 in the part related to the ACER and the Commission, Article 38, paragraph 1, items 4 and 5 of this Act which shall enter into force on the date of accession of the Republic of Croatia to the European Union.

Class: 310-02/12-01/06

Zagreb, 19 October 2012

THE CROATIAN PARLIAMENT

President of the Croatian Parliament

**Josip Leko, m.p.**