



**ADMINISTRATIVE BOARD  
OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

***– 34<sup>th</sup> Meeting –  
– Extraordinary Session –***

**Tuesday, 6 February 2018, 09:00 – 14:30  
Trg Republike 3, Ljubljana - Slovenia**

***MINUTES***

## I. LIST OF ATTENDEES

The following Members and Alternates of the Administrative Board were present at the meeting:

Dr Romana JORDAN,	<i>Chair</i>	Ms Edit HERCZOG,	<i>Member</i>
Prof Uwe LEPRICH, (without voting right)	<i>Alternate</i>	Ms Britta THOMSEN, (without voting right)	<i>Alternate</i>
Mr Jurijs SPIRIDONOVŠ,	<i>Member</i>	Dr Jochen PENKER,	<i>Member</i>
Mr Diego VAZQUEZ TEIJEIRA,	<i>Alternate</i>	Mr Pal KOVACS,	<i>Alternate</i>
Mr Pawel PIKUS,	<i>Alternate</i>	Ms Anne MONTAGNON, <i>proxy of Mr Dominique RISTORI</i>	<i>Alternate</i>

Mr Alberto Pototshnig (*Director*) and Mr Garret Blaney (*BoR Chair*) were present at the meeting, acting as observers.

Ms Anne-Cecile Swinnen, acting as adviser, was present at the meeting.

Ms Olga Borissiva (*Head of Administration*), acting as adviser, was present for the discussion of Items 6, 7.1 and 15 of the Agenda.

Mr Volker Zuleger (*Head of MIT Department*), acting as adviser, was present for the discussion of Items 12, 13, and 14 of the Agenda.

Mr Martin Godfried (*Head of MSC Department*) and Mr Thomas Vižintin (*Team Leader, Market Surveillance I*), acting as advisers, were present for the discussion of Item 14.

The secretariat was provided by the Agency.

## II. SUMMARY OF CONCLUSIONS OF THE 34th MEETING OF THE ADMINISTRATIVE BOARD

- (1) The Administrative Board appointed, by unanimity and acclamation, Dr Penker as Vice-Chair. The Term of office will be two years.
- (2) The Chair invited the Director to instruct the legal services of the Agency to propose a solution in line with Regulation (EC) No 713/2009 concerning the determination of the role of Alternates at times of substituting Members. The Director was invited to report at the 35<sup>th</sup> Administrative Board meeting.
- (3) The Administrative Board adopted, by unanimity, Decision No. 1/2018 on the request to opt-out from the Commission Decision governing the conditions of employment of contract staff.
- (4) The Administrative Board adopted, by unanimity, Decision No. 2/2018 on the appointment of No. 2 Members as Reporting Officers for the annual appraisal of the performance of the Director.
- (5) The Administrative Board endorsed the Revised Programming Document for the period 2018 – 2020.
- (6) The Administrative Board reiterated its concern for the limited financial and human resources with which the Agency has been provided.
- (7) The Administrative Board decided, by unanimity, to appoint Ms Kazmierczak and Mr Spiridonovs to serve as assessors for the review of Conflict of Interests declarations.
- (8) The Administrative Board took note of the measures to address the constraints of the Multi-annual budget for REMIT IT.
- (9) The Administrative Board took note of the strategy for REMIT implementation and operations in the face of the limited resources foreseen for the year 2018.
- (10) The Administrative Board took note of the implications of the absence of a Disaster Recovery site for the operational reliability of REMIT.
- (11) The Administrative Board took note of the Audit Report of the Internal Audit Service on the Agency's Human Resources Management function and invited the Director to report on the action plan submitted by the Agency to the Internal Audit Service at the 35<sup>th</sup> Administrative Board Meeting.
- (12) The Administrative Board invited the Board of Appeal Chair to appear at the 36<sup>th</sup> meeting of the Administrative Board to provide additional details on the requests of the Board of Appeal for financial support.  
The Administrative Board invited the Director further to assess the request of the Board of Appeal from both a legal and financial perspective and report to the Administrative Board at its 36<sup>th</sup> meeting.
- (13) The Administrative Board will be convened in the year 2018 in ordinary session on 15-16 March, 7-8 June, 20 September, and 13 December.

### III. MINUTES

#### SECTION I – OPENING

The 34<sup>th</sup> meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened on 6 February 2018 and started at 9 hours and 10 minutes.

The Chair invited the present Members and Alternates of the Administrative Board to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda. No relevant interest was declared.

#### (1) Approval of the Agenda

The Agenda of the 34<sup>th</sup> meeting of the Administrative Board was approved as follows:

Agenda Topics		Accompanying Documents	Rapporteur
<b>Welcome Coffee</b>			
<b>Opening 09:00</b>			
(1)	Approval of the Agenda	Doc. 1.2 <i>for approval</i> Doc. 1.1 <i>for information</i> Doc. 1 <i>for information</i>	AB Chair
(2)	Minutes of the 33 <sup>rd</sup> meeting	Doc. 2 <i>for approval</i> Doc. 2.1 <i>for information</i>	AB Chair
<b>Reporting 09:30</b>			
(3)	Appointment Decisions of the new Members of the Administrative Board	Doc. 3.1 <i>for information</i> Doc. 3.2	AB Chair
(4)	Report on the activities of the Agency, future developments and budget implementation	- <i>oral update</i>	Agency Director BoR Chair
(5)	Report on the written procedures	- <i>oral update</i>	Agency Director
<b>Items for adoption 10:15</b>			
(6)	Staff Regulations Implementing Rules - Decision to opt-out from the Commission Decision governing the conditions of employment of contract staff.	Doc. 4 <i>for adoption</i> Doc. 4.1 <i>for information</i>	Agency Director
(7)	Decision on the appointment of No. 2 Members as Reporting Officers for the annual appraisal of the performance of the Director	Doc. 5 <i>for decision</i> Doc. 5.1 <i>for information</i>	AB Chair
(7.1)	Decision on the Revised Programming Document for the period 2018 - 2020	Doc. 12 <i>for adoption</i>	Agency Director
<b>Items for decision 10:45</b>			
(8)	Appointment of the Vice-Chair	- <i>oral decision</i>	AB Chair

(9)	Appointment of No. 2 assessor for the review of Conflict of Interests declarations – Administrative Board	-	<i>oral decision</i>	AB Chair
(10)	Replacement of Ms Saša Borko as teller in the selection procedure for the appointment of the Director of the Agency	-	<i>oral decision</i>	AB Chair
<b>Items for discussion 11:15 to 13:15</b>				
(11)	Briefing on the procedure and practical arrangements for the appointment of the Director of the Agency	Doc. 6 Doc. 6.1	<i>for information</i>	AB Chair
(12)	Multi-annual budget for REMIT	Doc. 7	<i>for information</i>	Agency Director
(13)	A strategy for REMIT	Doc. 8	<i>for information</i>	Agency Director
(14)	REMIT Disaster Recovery Site	Doc. 9	<i>for information</i>	Agency Director
<b>Break 13:15 to 13:45</b>				
<b>Items for Information 13:45</b>				
(15)	IAS HR report	Doc. 10	<i>for information</i>	Agency Director
(16)	Presentation on the working of REMIT alerts	-	<i>for information</i>	Agency Director
(17)	Board of Appeal – technical and financial support	Doc. 11.1 Doc. 11.2	<i>for information</i>	Agency Director
<b>AOB 14:20 to 14:30</b>				
(18)	Confirmation of the dates for the AB meetings for the year 2018	-	<i>oral update</i>	AB Chair

## **(2) Approval of the Minutes of the 33<sup>rd</sup> Meeting of the Administrative Board**

The Chair went through the conclusions of the 33<sup>rd</sup> Meeting of the Administrative Board, confirming the achievement of the outstanding actions and proposed to move the discussion on the format and level of details of the minutes to the 35<sup>th</sup> meeting of the Administrative Board.

With regards to the minutes of the 33<sup>rd</sup> Meeting, the Chair reported that by the closing date for comments, 24 January 2018, the Agency received textual comments from a European Commission-appointed Member (Ms Kazmierczak). The comments were included in the final version of the minutes submitted to the Administrative Board for approval.

**Conclusion:**

- (1) The 33<sup>rd</sup> AB meeting minutes were approved by unanimity.
- (2) The format and level of detail of the minutes will be discussed at the 35<sup>th</sup> meeting of the Administrative Board.

## **SECTION II - REPORTING**

### **(3) Appointment Decisions of the new Members and Alternates of the Administrative Board**

The Chair reported on the recent decisions of the European Parliament and of the Council on the appointment of the new Members and Alternates of the Administrative Board.

The Chair recalled that the term of office of one Member and one Alternate appointed by the European Parliament expired on 21.01.2018. Similarly, the mandate of two Members and three Alternates appointed by the Council expired on 28.01.2018. Two Members and one Alternate, appointed by the Council, resigned on 25.09.2017, 25.10.2017 and 13.11.2017 respectively. The positions remained vacant.

On 19.12.2018, the European Parliament informed the Agency about the appointment of Ms Herczog as Member of the Administrative Board and of Ms Thomsen as Alternate. In both instances, their term of office will last until 21.01.2022.

On 23.01.2018, the Council adopted the following decision on the appointment of Members and Alternates of the Administrative Board. Mr Spiridonovs and Dr Penker have been appointed as Members. Mr Kovacs, Mr Vazquez Teixeira and Mr Pikus have been appointed as Alternates. In all these instances, their term of office will last until 28.01.2022. Mr Thiolliere and Mr Hansen have been appointed as Members. Mr Shammass and Mr Kuchta have been appointed as Alternate. In all these instances, their term of office will last until 28.01.2020.

The Chair welcomed the new Members and Alternates of the Administrative Board and wished them a successful term of office.

Upon proposal from one of the representatives of the Council (Mr Kovacs), the Administrative Board discussed the possibility to further clarify the attribution of voting rights to Alternates as it appeared that the Council did not specifically attribute Alternates to specific Member. Another Council-appointed Member (Dr Penker) invited the Administrative Board to seek the legal opinion of the Legal Services of the Council on this point. The Director intervened suggesting the involvement of the Legal Services of the Agency, in light of the possible delays coming from the establishment of an inter-service consultation.

*Conclusion:*

- (1) The Administrative Board took note of the appointment of the new Members and Alternates.
- (2) The Chair invited the Director to instruct the legal services of the Agency to propose a solution in line with Regulation (EC) No 713/2009 concerning the determination of the role of Alternates at times of substituting Members. The Director was invited to report at the 35<sup>th</sup> Administrative Board meeting.

#### ***(4) Report on the activities of the Agency, future developments and budget implementation***

##### ***4.1 Overview on the Agency portfolio and institutional framework***

The Director provided an overview of the Agency's institutional framework, highlighting its mandate, organisational structure, decision-making process, and deliverables. The Director provided details on his role and the role of each Board (Administrative Board, Board of Regulators and Board of Appeal) as well as the interaction among the different bodies of the Agency involved in the decision-making process.

The Director further focused on the changes that the Climate Energy Package would bring about with particular regard to the reinforcement of the powers and independence of the Agency. In this context, the Chair of the Board of Regulators ('BoR Chair') stressed the importance of maintaining the current successful balanced relationship between the Board of Regulators and the Director of the Agency at the time of adopting deliverables of regulatory nature, when specifically foreseen by the Agency's funding Regulation. He warned about the risks of changing a delicate balance that proved to be efficient and successful with approximately 160 acts adopted by the Agency since its inception, the vast majority of which requiring a favourable opinion by the Board of Regulators. Of these, in only one instance, the Board of Regulators withheld its favourable opinion.

The Director further provided the Administrative Board with a state of play of the activities of the Agency both at administrative and regulatory level, and with details related to budget implementation.

## **4.2 Progress Report**

### **4.2.1 Human Resources**

As regards human resources, the Director presented the statistics and reported on the shortage of human resources that the Agency is suffering. He stressed that the Agency has attempted to address, although partially, this shortage with the employment of i) a Union-wide traineeship programme and ii) interim workers. As regards statistics, the Agency, fully implementing an equal opportunities policy, employs at the moment a slightly higher percentage of men over women (61% over 39%). This difference is mainly due to the specificities of the energy sector. As regards the number of nationalities present in the Staff, this is slightly decreasing due to natural staff turnover.

Upon request from a Council-appointed Member (Dr Penker), the Director further explained that the employment of Seconded National Experts decreased over time due to the difficulties of national regulators, also facing resource limitations, to second staff. As a result of the lower interest in secondment to the Agency, the latter has converted SNEs positions into contract staff. The BoR Chair confirmed that, although very useful in terms of experience building, long-term secondment is prevented by budgetary constraints at national level and the need of NRAs to ensure the performance of their tasks.

The Director further reported on the recently adopted implementing provisions of the Staff Regulations. In particular, he briefly reported on the adoption of decisions concerning the appraisal of temporary and contract staff and the determination of reporting officers. In this respect, the Director reported that until the end of the year 2017, the Agency guaranteed that the performance appraisal was undertaken as close as possible to the level of staff members, identifying team leaders as reporting officers. However, this was considered not to be in line with the new General Implementing provisions. As a result, Heads of Departments will now act as reporting officer for all the members of the staff under their administrative supervision.

The Director briefed the Administrative Board on the future decisions to be adopted at the 35<sup>th</sup> meeting, namely i) the model decision on Learning and Development; ii) the model decision on the Temporary Occupation of Management Post; and iii) the general implementing provision on the Guide for Missions.

Finally, the Director reported that the Agency is organising a staff engagement survey which will take place in Q1 2018 and for which the Agency contracted the Faculty of social science of the University of Ljubljana.

### **4.2.2 Annual Adjustment of Salaries of Staff - Correction Coefficient**

The Director raised the attention of the Administrative Board on the annual adjustment of salaries due to the update of the Correction Coefficient for Slovenia. EUROSTAT published the final report on the 2017 annual update of remunerations. The Director reported that, despite the annual update brings a 0.8% increase from 80.7% to 81.5% as of 1st July 2017, this still does not reflect the costs of living in Ljubljana – costs which are different from those of living in Slovenia.

#### **4.2.3 European School**

As regards the establishment of a European School in Ljubljana, the Director reported that, on 18 January 2018, the Government of the Republic of Slovenia adopted the decision to establish the European School at the School Centre Ljubljana.

This decision provides the legal basis for the implementation of the establishment plan: (i) the Minister will adopt a decision on the enrolment procedure, fees and some other elements that are urgently needed; (ii) the School will soon launch the website with basic information; and (iii) the call for enrolment will be announced as soon as the procedure and fees are adopted.

The Director reported about the following milestones:

- 1) the School is in the process of recruiting the Headmaster (planned start date 1 February 2018). The call for teachers is envisaged in April 2018;
- 2) the financial agreement with the European Commission should be signed in the course of spring 2019. This depends upon the signature of the Accreditation Agreement, which depends on the site visit and the Audit Report of the team of inspectors envisaged in fall 2018.
- 3) the enrolment is envisaged during the month of February. In the course of the month of February this year, the School will organise an information day for parents.

Upon request from a Council-appointed Member (Mr Spiridonovs), the Director reported that the Agency's staff is well accepting the establishment of the European School. The Director further clarified that the European School will first establish the primary school only and gradually expand. He further stressed the importance of closely monitoring the implementation of the establishment of the School with particular regard to i) the employment of teachers of the highest quality and ii) the possibility to guarantee a sufficient number of languages.

#### **4.2.4 IAS HR Report**

The Director reported that the final Internal Audit Service Report on the HRM audit was received on 15 December 2017. The Report contained a limited number of recommendations – five in total (one critical, two very important and two important). The Agency, while disagreeing with some of the conclusions drawn by the Internal Audit Service, accepted the recommendations and submitted an Action plan to address them.

Upon request for clarification, the Director reported that the critical recommendation contained in the Report concerned the lack of guidelines on the involvement of OLAF. The Director further clarified that the Agency disagrees with the IAS on the interpretation of an event that according to the latter would have triggered the involvement of OLAF for investigation. In any case, the Agency is working on the adoption of guidelines that would remove room for interpretation in seeking the support of OLAF when circumstances require so.

#### **4.2.5 Budget Implementation**

As regards the Budget Implementation for the year 2017, the Director reported on the C1 appropriations, highlighting that commitments reached 98.72% (target 95%) and payments 75.81% (target 75%). As regards the C8 appropriations, payments reached 97.79% (target 95%).



As regards the Budget Implementation for the year 2018, the Director reported on the C1 appropriations, highlighting that, at the end of January, commitments reached 69.02% and payments 4.33% (target 75%). As regards the C8 appropriations, payments reached 9.67% with a RAL (*reste à liquider*) of EUR 2,745,874.34 (out of which EUR 1,544,688.99 are for payments of REMIT-related procurement procedures).

A Council-appointed Member (Mr Spiridonovs) proposed to ensure more detailed budgetary forecasts and reports showing an adequate level of expenditures, which in turn would better justify the attributed budget.

The European Commission-appointed Alternate expressed concerns regarding the Agency's budgetary system and the limitations of not employing a system with differentiated appropriations. She, therefore, called for a open reflexion change in this respect. In particular, she recalled that differentiated appropriations are meant to finance multiannual operations. They consist of separate commitment appropriations and payment appropriations, and allow for the payment appropriations to be scheduled over several years in order to follow actual implementation. Non-differentiated appropriations instead are for operations of an annual nature (e.g. all the administrative sections of the budget) which do not require implementation over several years. Since instead all appropriations at the Agency are non-differentiated, there is an inherent difficulty in reconciling the appropriations with the multi-annual nature of some of the Agency's activities, all the more so as these activities have increasing importance.

The Director reported in this regard that there is a different approach as regards differentiated and non-differentiated appropriations. The *reste à liquider* ('RAL') is considered at the level of the Agency as the % that need to be paid. In particular, the Director explained that, in his view, under the non-differentiated appropriation approach, the payments appropriation from the open commitments at end of year N (expressed through the RAL at the end of year N) can be carried forward and used up to the end of year N+1. He further reported that the Agency is considering implementing the approach suggested by the European Commission.

A Parliament-appointed Member (Ms Herczog) commented that, in her view, the Agency's approach was part of the inter-institutional agreement for agencies. In addition, she reported that the Court of Auditors has changed its approach and the committed carryover is no longer considered a financial error<sup>1</sup>.

#### **4.2.6 Overview on Regulatory Activities**

As regards the activities of the Agency, the Director provided the detailed outlook of the terms and conditions or methodologies ('TCM') envisaged for the implementation of the Capacity Allocation and Congestion Management ('CACM') and the Forward Capacity Allocation ('FCA') guidelines. He underlined that, only considering the implementation of CACM Guideline, 140 decisions need to be adopted. Those decisions are to be taken by all National Regulatory Authorities ('NRAs'), or in case of regional TCM, by the NRAs of the concerned region. However, if these NRAs do not agree, or upon their joint proposal, the Agency is called to decide.

The Director stressed that the increase of tasks attributed to the Agency in the context of the implementation of the network codes and guidelines has not been mirrored in the level of budgetary appropriations and human resources required to perform those tasks. In this respect, the Director further stressed that should the Agency replace NRAs in taking decisions concerning the implementation of the CACM/FCA guidelines, it should issue those decisions in all official languages of the Union.

<sup>1</sup> Report on discharge in respect of the implementation of the budget of the Agency for the Cooperation of Energy Regulators for the financial year 2015 (2016/2189(DEC)), 31 March 2017, A8-0147/2017, at 8.

In this case, the Agency would not have sufficient budgetary resources to respect this fundamental right. The Director reported that, in order to mitigate the adverse budgetary consequences of issuing decisions in all the official languages of the Union, the Agency has so far been working with language waivers. However, since the language waiver requires the withdrawal of individual rights, the result is unpredictable and sub-optimal at the time of guaranteeing fundamental rights.

The European Commission-appointed Alternate, while understanding the difficulties related to the language regime, recalled the legal and political sensitivity of this issue, and that this represents an obligation that all Agencies have to respect.

The Director and the BoR Chair clarified that the need to guarantee a translation in all the official languages of the Union only concerns the binding decisions of the Agency. A European Parliament-appointed Member (Ms Herczog), further stressed the importance to guarantee the respect of this fundamental right.

The Director concluded by further reporting on the judicial proceedings pending before the Court of Justice. The proceedings relate to the Decision of the Board of Appeal confirming the Agency's decision on the proposal on the Capacity Calculation Regions. The Director warned about the potential adverse effects on the budget of an increase of judicial proceedings. For instance, the Agency's decision on the proposal on the Capacity Calculation Regions has determined a significant increase of judicial proceedings (five for a single act). Given the potential for additional decisions to be taken by the Agency in the near future in the context of the implementation of the CACM/FCA guidelines, the number of judicial proceedings and therefore resources devoted to each appeal could dramatically increase.

#### **4.2.6 International Cooperation**

As regards the international cooperation, the Director recalled that the Agency is open to the participation of third countries in the activities of the Board of Regulators. This participation is subject to a decision of the European Commission on the basis of compliance with the *acquis communautaire*. Meanwhile, the Agency allows for participation at technical level of experts from NRAs of third countries which have made steadily progress in implementing the Third Energy Package. Within this framework, as of January 2018, experts from the NRA of the Republic of Montenegro are allowed to participate in the Agency's Working Groups. Similarly, as of January 2016, experts from the Swiss Federal Electricity Commission ('ECom') have been participating in the Agency's Electricity Working Group and, as of June 2016, experts from the Norwegian Water Resources and Energy Directorate ('NVE') have been participating in the Agency's Working Groups and in the REMIT CG. The Director clarified that participation is subject to the signature of Administrative Arrangements.

The Director further stressed the importance of the ongoing cooperation with the Federal Energy Regulatory Commission ('FERC'), the federal agency of the United States that regulates electricity and natural gas inter-state transmission and wholesale market in the United States.

Finally, the Director reported about the efforts of the Agency in increasing cooperation with neighbouring countries and sharing best practices. In this context, following the positive experience of last year with study visits of delegations from FYROM, Ukraine and Japan, the Agency hosted study visits of delegations from Norway and Georgia.

#### **4.2.7 REMIT**

The Director provided the key figures on the performance of the REMIT Information System (ARIS). Data collection (ARIS tier 1&2), data sharing (ARIS tier 4) are very stable. The market surveillance solution SMARTS (ARIS tier 3) is work in progress. 2 NRAs (OFGEM and EI) have sublicensed SMARTS. 13,008 Market Participants registered so far in the European Register of Market Participants. The number of Market Participants for which data has been reported amounts to 12,482.

Approved RRM amounts nowadays total 118 (49 Third party RRM, 56 TSO/LSO/SSO and 13 other MPs). As regards the number of records of transactions, including orders to trade, that have been reported in the year 2017, there were 1.3 million orders, 250,000 trades and 16,000 contract records reported per day.

The Director reported also about the need to improve the quality of data submitted to the Agency as this impacts upon the quality of the monitoring activities of the Agency.

The Director briefly reported on the change of outsourcing strategy for the data centre and the risks brought about by the budgetary limitations that the Agency is facing. In particular, he recalled that the Agency bought the currently used equipment from the previous hosting provider and now hosts ARIS in-house with the support of IT consultants mainly from joined European Commission FWCs from DG DIGIT. The ARIS Primary and Disaster Recovery sites have been migrated to the internal ACER Data Centre and the environments of the previous two sites have been integrated into one to optimise and enhance performance and address increasing storage space requirements. For budgetary reasons, the previous Disaster Recovery site had to be abandoned which is increasing the risk of unavailability of ARIS. Business continuity of ARIS operations (market participant registration, data collection and sharing, market monitoring, case management) is therefore put at severe risk and the Agency is not in a position to overcome such a situation without an increase of budget.

In this respect, the Director stressed that, although the budget for the year 2018 needed to ensure the full functioning of the REMIT IT operation was estimated EUR 2.8 million, the Agency has been provided with only EUR 1.5 million. Under this shortage of financial resources, the Agency will not be able to ensure operations and it will be forced to compromise on operational reliability.

Finally, the Director reported on the increase of number of potential breaches of REMIT notified to or by the Agency. He drew the attention of the Administrative Board to the fact that this increase of reporting has not been mirrored with an increase of human resources to perform the monitoring and surveillance tasks assigned to the Agency. As a result of this situation, the backlog of cases, mainly concerning potential market manipulation, is increasing.

Upon request from the European Commission-appointed Alternate, the Director and the BoR Chair further clarified the split of competence between the Agency and NRAs in the context of REMIT. While the Agency is entrusted with market monitoring and preliminary assessments, NRAs are mandated to enforce REMIT – at times under the supervision of the Agency, which may establish cross-border investigatory groups. Data on follow-up enforcement by NRAs, concerning aggregated data on cases closed or pending at national level, are provided in the Agency's Annual Activity reports.

While the European Commission-appointed Alternate stressed the inevitability of prioritising, as this is inherent to the availability of resources and the budget structure, a European Parliament-appointed Member (Ms Herczog) invited the Agency to increase awareness of the Council on the implications of the current budgetary situation in terms of ability of the Agency to ensure a proper monitoring of the wholesale energy markets.

#### ***4.2.8 Progress Report from the Board of Regulators***

The BoR Chair reported on the contribution of NRAs in the activities performed by the Agency, through i) their participation at technical level in the Agency's working groups and expert's groups, and ii) the programme of secondment to the Agency. The BoR Chair stressed the adverse effects that the Agency's budget situation has on NRAs. In particular, the BoR Chair clarified that, as regards REMIT enforcement, the current budget limitations which are impacting upon business continuity and market monitoring, have a significant impact on enforcement at national level and, as a consequence, on consumers. The BoR Chair stressed that the inability to enforce REMIT may ultimately have an impact on perceived deterrence in so far as enforcement becomes less effective and timely. As a result, the likelihood of REMIT breaches may increase, in turn increasing the overall loss of welfare at Union level.

As regards the ongoing negotiations on the Clean Energy Package, the BoR Chair further stressed the currently contentious issue concerning the treatment of cross border trade (Article 13 and 14 of the draft recast Electricity Regulation). The BoR Chair further explained the intent of NRAs to discuss more closely digitalisation and decarbonisation. For this purpose, workshops have been organised at the side of the meetings of the BoR.

The BoR Chair finally drew the attention of the Administrative Board to the conclusions that can be gathered from the US experience in terms of the higher human and financial resources that have been allocated to FERC to exercise similar tasks to those that the Agency performs under REMIT.

Conclusion: The Administrative Board took note of the progress report on the activities of the Agency and future development delivered by the Director and the BoR Chair.

## **(5) Report on written procedures**

The Director reported on the written procedures that took place since the 33<sup>rd</sup> meeting of the Administrative Board. The only decision adopted via written procedure concerned the endorsement of the Single Programming Document 2019-2021 for the Agency for the Cooperation of Energy Regulators, as previously endorsed by the Board of Regulators. The procedure concluded with no objections raised by the deadline. The Agency, therefore, communicated the Single Programming Document 2019-2021 to the European Institutions. The Director reported that the Agency was proposing additional 19 FTE and hinted to the need of requesting additional resources for the Winter Package. He also noted that following preliminary discussion with SRD, and since the Winter Package will be part of a separate *fiche financière*, the Agency subsequently restrained the Single Programming Document to the proposal of the additional 31 TA posts required effectively to implement the current mandate.

The Director took the opportunity to reiterate that the Agency budget was determined on the basis of the 2013 Commission Communication on the Programming of human and financial resources for decentralised agencies 2014-2020, and that there has not been an upgrade in light of the changes in the role of the Agency in the energy sector since then. This situation would become even more critical with the implementation of the Clean Energy Package if the Agency were to be allocated only the additional resources proposed by the European Commission, which it considers insufficient in relation with the significant increase of tasks to be performed by the Agency. In particular, the Director noted that the European Commission's proposal envisages an increase of statutory staff of only 4 TAs, the rest being CAs. In this regard, the Director highlighted how the additional tasks with which the Agency might be entrusted would require the recruitment of staff with high expertise and questioned that the provision of CAs would suffice to recruit adequate staff.

The European Commission-appointed Alternate welcomed the Agency's approach to limit the scope of the Single Programming Document as regards the year 2019. She also took note of the justifications provided by the Agency for the implementation of REMIT which are helpful in substantiating the request for additional resources.

A European Parliament-appointed Member (Ms Herczog) reminded that the European Parliament is currently reviewing the petition on the working conditions submitted by CAs as well the assessment of the European Ombudsman on the traineeship programmes of the European Institutions, and other bodies and agencies. She therefore invited the Agency to consider also these aspects. The Director reassured that the traineeship programme at the Agency is employed for vocational training purposes only and the call foresees an adequate reimbursement of expenses for the selected candidates.

Conclusion: The Administrative Board took note of the Director's oral report on the written procedures since the 33<sup>rd</sup> meeting of the Administrative Board.

### **SECTION III – ITEMS FOR ADOPTION**

#### **(6) *Staff Regulations Implementing Rules - Decision to opt-out from the Commission Decision governing the conditions of employment of contract staff***

The Chair and the Director invited Ms Borissova to attend the discussion of this item.

The Director reported that on 20 October 2017, the European Commission informed the Agency that on 16 October 2017 the European Commission adopted the Decision C(2017)6760 on the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union, governing the conditions of employment of contract staff employed by the European Commission under the terms of Articles 3a and 3b thereof. This Decision entered into force on 1 November 2017.

The Director reminded that pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to above, shall apply by analogy to agencies either nine months after their entry into force at the European Commission or nine months after the date on which the European Commission informed the agencies of the adoption these rules, whichever is later, unless an agency requests to opt-out.

The Director informed the Administrative Board that the Standing Working Party further informed the Agency that it is in the process of developing a model decision from the implementing rules referred to above and recommended agencies to request an opt-out as the Decision of the European Commission regulates the engagement of Contract Staff in the European Commission services, where the selection practices and the typology of contracts in use significantly differ from the ones implemented in the decentralised agencies.

The Director finally reported that the Staff Committee, consulted on 15 December 2017, gave its favourable opinion to the opting-out on 9 January 2018.

Conclusion: The Administrative Board took note of the report of the Director and adopted, by unanimity, Decision No. 1/2018 on the request to opt-out from the Commission Decision governing the conditions of employment of contract staff.

#### **(7) *Decision on the appointment of No. 2 Members as Reporting Officers for the annual appraisal of the performance of the Director***

The Chair recalled that an annual appraisal exercise is organised at the beginning of each calendar year to assess the performance of the Director in terms of his efficiency, competencies and conduct. In light of this, the Administrative Board is called to designate at least two reporting officers from its Members with the mandate to assess the annual performance of the Director. One of the two Members should be selected among the Members appointed by the European Commission. The Chair reported that she is excluded from the designation as she will be acting as appeal assessor.

The Chair invited Members and Alternates, which were closely following the activities of the Agency and of the Director during the reference period (1.01-31.12.2017) to make themselves available to be appointed as reporting officers.

The European Commission-appointed Alternate reported that Mr Ristori would be available to act as reporting officer. Similarly, Dr Penker declared his availability.

Conclusion: The Administrative Board took note of the report of the Chair and thanked Mr Ristori and Dr Penker for their availability. The Administrative Board adopted, by unanimity, Decision No. 2/2018 on the appointment of No. 2 Members as Reporting Officers for the annual appraisal of the performance of the Director.

### ***(7.1) Decision on the Revised Programming Document for the period 2018 – 2020***

The Chair and the Director invited Ms Borissova to attend the discussion of this item.

The Director recalled that it is practice to adopt the Programming Document based on the assumption of the provision of all the resources that the Agency would need effectively to deliver on its mission, and this irrespective of the budgetary procedure. However, at the finalisation of the budgetary procedure, the Agency revises and reprioritises the planned activities on the basis of the resources eventually granted.

At its 32<sup>nd</sup> meeting of 21 September 2017, the Administrative Board adopted the Programming Document 2018-2020. The limitations in the 2018 Budget provided to the Agency has called for a revision of the Programming Document. In particular, the level of resources assigned to the Agency, with only a modest increase in the budget (3.4%) and a reduction of one post compared to 2017, is significantly lower than it has been foresaw by the Administrative Board and on the basis of which the 2018 Work Programme was prepared – i.e. 30 additional posts and a corresponding 25% increase in the budget.

In light of the above and in order to bring the Programming Document in line with the available resources, a number of activities are proposed for deprioritisation and limitation in scope. In particular, the Director noted that tasks have been reassessed in the light of the following priority levels: critical, important, and relevant.

The Director reported that, as a result of the reassessment, the majority of the resources have been allocated to critical tasks and to a lesser extent to important tasks. Relevant tasks will be significantly de-scoped and performed to the minimum extent so as to comply with the legislative mandate. In addition, the Market Monitoring Report will be shortened in scope and the Agency will no longer issue the REMIT annual report, replaced by quarterly updates.

The Director further reported that the Board of Regulators approved the revised Programming Document 2018 – 2020 in its last meeting of 24 January 2018. The BoR, at this stage, reiterated its concerns about the budgetary constraints that the Agency is facing.

The Director highlighted the inconsistencies between the Programming Document for the years 2018 and 2020 and the update of the Single Programming Document 2019-2021, as reported above in the course of the discussion of Item 5 of the Agenda. He explained that this inconsistency is limited in so far as it concerns the year 2018 only.

The European Commission-appointed Alternate confirmed that the programming document constitutes the financing decision and expressed support for the approach taken in the revised Programming Document 2018-2020 to ensure the respect of the legal responsibilities of the Agency.

A European Parliament-appointed Member (Ms Herczog) and her Alternate (Ms Thomsen) remarked the importance of ensuring that, in the next MFF, the Agency encloses a proper evaluation of its tasks also in terms of European added value, out of monetary evaluations. In this respect, they invited the Agency to stress the relevance of the tasks of the Agency in the completion and strengthening of the internal energy market. The European Commission-appointed Alternate and a European Parliament-appointed Member (Ms Herczog) encouraged the Agency to consider structuring this assessment employing counterfactuals (non-EU scenarios) and highlighting the non-monetary features of this assessment.

The Director reported that for the Programming Document for the years 2019-2021 the Agency has already adopted this approach and recalls that this assessment was realised at the time of the adoption of the Third Energy Package and subsequent Regulations expanding the portfolio of the

Agency. He, therefore, concluded by stressing how the full-functioning of the Agency goes at the very heart of the existence of the Union and of the European construction.

Conclusion: The Administrative Board took note of the detailed report of the Director and adopted the Revised Programming Document for the period 2018 – 2020 and reiterated its concern for the limited financial and human resources with which the Agency has been provided.

#### **SECTION IV – ITEMS FOR DECISION**

##### **(8) *Appointment of the Vice-Chair of the Administrative Board***

The Chair reported that, at the last Administrative Board meeting of 14.12.2017, she was confirmed, by unanimity and acclamation, in her office of Chair until 21.01.2020. The Administrative Board decided also to delay the appointment of the new Vice-Chair to the first meeting of the year 2018.

The Chair also indicated that the term of office of Vice-Chair will have effect as of 7.02.2018 for a duration of two years (end of office 6 February 2020). The Chair further recalled the procedure for the election of the Chair and Vice-Chair. In particular, according to the Rules of procedure, nominations shall be submitted either by the candidates themselves or by other members of the Administrative Board. The elections shall be by secret ballot unless the Administrative Board decides otherwise by unanimity. In case of a secret ballot, a teller shall be designated amongst the members to assist in the counting of the vote. The voting will take place through a series of rounds. After each round, the candidate with the lowest number of votes shall be withdrawn. Voting shall continue until one candidate receives the two-thirds majority of favourable votes of the Administrative Board members.

The Chair reported that she received the nomination of Dr Penker and invited Members and Alternates to submit their nominations. No additional nomination was submitted.

Conclusion: The Administrative Board decided, by unanimity and acclamation, to appoint Dr Penker as Vice-Chair with a term of office of two years.

##### **(9) *Appointment of No. 2 assessor for the review of Conflict of Interests declarations – Administrative Board***

The Chair reported that in the implementation of Decision No 02/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 31 January 2015 laying down a policy for the prevention and management of conflicts of interest, the Agency collects from the Members and Alternates of the Administrative Board their individual declarations of interests and commitment. Curriculum Vitae are also requested in so far as a change in the professional career of the Member or Alternates has occurred.

The Chair further explained that the declarations of interests are to be reviewed by a review panel which, after having assessed the existence of potential conflicts of interests, assigns a risk level to each Member and Alternate of the Administrative Board. The review panel changes composition depending on the Member of the Administrative Board whose declaration of interests is assessed. The different compositions are outlined as follows:

- *for the Members and Alternates of the Administrative Board:* the review panel shall consist of the Chair, the Vice-Chair and a European Commission representative in the Administrative Board
- *for the European Commission-appointed Member of the Administrative Board who is part of the review panel:* the review panel shall consist of the Chair, the Vice-Chair and a European Commission official acting as Alternate;

- *for the Chair*: the review panel shall consist of the Vice-Chair, one appointed Board Member and a European Commission representative in the Administrative Board;
- *for the Vice-Chair*: the review panel shall consist of the Chair, one appointed Board Member and a European Commission representative in the Administrative Board.

The review panel, composed as above, will be called to review the declarations of interests of the Members and Alternates of the Administrative Board, at the 35<sup>th</sup> meeting of the Administrative Board. A report on the assessment will be provided at the 36<sup>th</sup> meeting of the Administrative Board.

After having reported on the procedure, the Chair took note that few Members and Alternates had not yet submitted their Declarations of Interests and Declarations of Commitment and recalled the importance to submit the declarations as this affects directly the credibility of the Board itself.

The European Commission-appointed Alternate reported that Ms Kazmierczak would be available to act as panellist. Mr Spiridonovs declared his availability.

**Conclusion:** The Administrative Board decided, by unanimity, to appoint Ms Kazmierczak and Mr Spiridonovs to serve in the panel for the review of Conflict of Interests declarations. The Administrative Board invited the Review Panel to take place in the margin of the 35<sup>th</sup> meeting of the Administrative Board.

#### ***(10) Replacement of Ms Saša Borko as teller in the selection procedure for the appointment of the Director of the Agency***

The Chair recalled that the term of office of the Director of the Agency is due to expire in fall 2018. Decision No. 2/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 22 March 2012 establishes the procedure and practical arrangements for the appointment of the Director.

On the basis of this Decision, the Administrative Board agreed, at the 33<sup>rd</sup> meeting, on the practical arrangements for the appointment of the next Director. In particular, the Administrative Board nominated:

- (i) the Chair as observer at the technical briefings before the Board of Regulators of the Agency; and
- (ii) Ms Borko Grgič, in her capacity of secretary to the Administrative Board, as teller and note-taker at the selection procedure before the Administrative Board.

Ms Borko Grgič has been replaced in the duties of secretary of the Administrative Board by Mr Vaona, legal advisor at the Agency in the office of the Director.

Upon invitation of the Chair, Mr Vaona made himself available to replace Ms Borko Grgič in her role of teller and note taker.

**Conclusion:** The Administrative Board decided, by unanimity, to appoint Mr Vaona, in his capacity of secretary to the Administrative Board, as teller and note-taker at the selection procedure before the Administrative Board.

### **SECTION V – ITEMS FOR DISCUSSION**

#### ***(11) Briefing on the procedure and practical arrangements for the appointment of the Director of the Agency***



In light of the recent entry into service of new Members and Alternates of the Administrative Board, the Chair recalled the milestones of the procedure for the selection and appointment of the Director of the Agency. She recalled that the European Commission proposes a short list of pre-selected candidates and that the Administrative Board acts as the appointing authority following a favourable opinion of the Board of Regulators. .

The Chair further stressed the need to ensure the entry into service of the new Director on 16 September 2018. In this context, the European Commission-appointed Alternate reassured that the short list of the candidates will be submitted to the attention of the Administrative Board in due course.

A European Parliament-appointed Member (Ms Herczog), supported by a Council-appointed Member (Mr Spiridonovs), proposed to hold a preparatory meeting, before the interviews

Conclusion: The Administrative Board decided, by unanimity, to hold a preparatory meeting on the day of the interviews.

## **(12) *Multi-annual budget for REMIT***

The Chair and the Director invited Mr Zuleger to attend the discussion of this item.

The Director first reported about the financial repercussions on REMIT operations of the recent cut of the Agency's budget for the year 2018. He explained that, just to ensure the maintenance of the current IT functions of ARIS (the REMIT information security system) for the years 2018-2020, the Agency estimated appropriations of EUR2.8 million for the year 2018. However, as only EUR 1.5 million have been made available for this year, there would be an increased budgetary requirement for 2019, at EUR 3.5 million. For 2020, the basic EUR 2.80 million will be required. The baseline estimate of EUR 2.80 million was confirmed by DG ENER expert review of 15 December 2016.

The Director further noticed that, in order to ensure the accomplishment of the mandate of the Agency, the revised Programming Document 2018-2020 postpones several activities initially planned for 2018 to 2019 and 2020. The Director warned about the implications of the budget cuts for the year 2018 on all aspects of REMIT operations.

The Director, first, pointed that the budget cuts on infrastructure, hardware licenses, deployment, service desk and operations – features that allow for the proper data collection, data sharing solutions, and further monitoring – will force the Agency to i) downscale its hosting capacity and ii) postpone the renewal of its hosting equipment. As a result, business continuity, and therefore the accomplishment of the mandate of the Agency, is put at serious risk. This risk is amplified also in light of the fact that, due to the absence of financial resources, the Agency is no longer provided with a disaster recovery system.

Under this part, Mr Zuleger contributed by adding that data reporting brings challenges also in terms of available storage. Due to the budget limitations, the Agency will not be in a position to expand its current storage availabilities, putting business continuity at risk. In this respect, and with particular regard to the replacement of deteriorating equipment, Mr Zuleger stressed the operational risks that the Agency is facing in terms of reliability. He invited therefore to consider carefully the risks that the Agency is willing to take in this respect.

The Director, secondly, warned that the reduction of appropriations for software maintenance, development, testing and software licenses, will entail a descaling of software development so as to ensure a mere maintenance of the current state of the art. He highlighted how the lack of enhancement of ARIS would hamper the ability of the Agency to perform its wholesale energy market oversight activities.

The Director, thirdly, reported that the budget cuts will not allow the Agency to further develop the market monitoring solutions and additional BI tools for data quality analysis. The Agency would aim to resume those activities in 2019, provided the availability of budget to finance this operation. In this regard, the Director warned that the delays in developing those features hamper the ability of the Agency to ensure an adequate oversight of wholesale energy markets.

The Director, finally, concluded by reporting that the budgetary shortage does also not allow to finance IT consultancy studies on information security, coordination and technical writing. As a result, the Agency will not be in a position to i) further ensure operational reliability and compliance with common standards for information security, and ii) increase the measures to guarantee the confidentiality, integrity and protection of the information and data received by the Agency. As a result, the ability of the Agency to guarantee operational reliability is put at risk.

Against this background, the BoR Chair stressed the importance to finance ARIS enhancement and warned about the implications of the current budgetary situation. In particular, he highlighted how market abuses are becoming increasingly complex and therefore outdated IT systems will not allow for a proper market oversight, ultimately reducing overall deterrence.

The BoR Chair also called the Administrative Board to consider that ESMA, that is performing market oversight activities similar to those of the Agency, received a higher budget for the year 2018. While this seems justified in terms of size of the financial markets, energy market abuses may have an impact as big as in financial markets. It is, therefore, essential, in the view of the BoR Chair, to guarantee business continuity and developments.

In this respect, Mr Zuleger, first, highlighted, that looking at data collection experiences in the Union, the Agency scored second after the UK financial market authority in terms of data volumes. In addition, he pointed that, looking at financial markets, ESMA has a budget significantly higher compared to the Agency. In particular, he clarified that the difference in budget can be explained by the possibility for ESMA to raise fees and receive contributions from National Financial Authorities. He concluded that the ongoing recast of ESMA Regulation will entail a significant increase in staff and budget through fees. To this point, the BoR Chair commented that such a set-up for ESMA could be explained also in light of the past market failures of the financial sector and, therefore awareness should be raised on potential implications in the energy sectors for the future should sufficient resources not be provided.

Upon enquiry of a European Parliament-appointed Member (Ms Herczog), Mr Zuleger reported that the Agency has attempted to establish synergies with DG ENER and DG DIGIT to overcome the budgetary constraints. However, the attempts with DG DIGIT proved not to be successful. As a result the Agency established its own solution and, nowadays, the Agency is looking at possible ways to establish synergies with other Agencies (e.g. ENISA).

The Director reported that in the course of the negotiations related to the Clean Energy Package, the attribution to the Agency of fee rising prerogatives is under discussion. In this respect, the ENTSOs highlighted their concern if fee would be raised from TSOs.

The European Commission-appointed Alternate invited the Agency to further develop a phasing-in plan providing details on tranches and projects and instalments for replacements of equipment so as to justify an increase of the budget for the year 2019 up to EUR 3.5 million.

Conclusion: The Administrative Board took note of the measures to address the constraints of the Multi-annual budget for REMIT IT.

### **(13) A strategy for REMIT**

Being present Mr Zuleger, the Director recalled that the 2018 EU budget, as adopted by the Budgetary Authority, does not accommodate the Agency's requested REMIT IT budget needs of EUR 2.8 million. Instead, it only foresees a REMIT IT budget of EUR 1.5 million in 2018. He further recalled that the request for additional human resources for the Agency's REMIT tasks (as well as for other legally-mandated activities of the Agency) has been disregarded. In this context, the Director highlighted that the Agency will have to cut one post in 2018 due to the 5+5% staff reduction over five years applying to all agencies.

He stressed how the above reported reduced budget and human resources severely impact the REMIT operational reliability and market monitoring activities of the Agency.

As discussed in relation to the previous agenda Item and with particular regard to budget, the Director stressed how the limited REMIT IT resources create operational risks for the REMIT IT operations, risks which cannot be mitigated given the limited resources

As regards human resources, the Director further stressed his concerns about the very limited human resources with whom the Agency has been provided. In particular, he recalled that the available human resources for market surveillance tasks are insufficient to fulfil the mandate of the Agency. As a result, the market monitoring activities will necessarily be descaled to what can be provided with the resources available. He, therefore, concluded that a key risk is that collected trade data remains inadequately screened and hence that market abuse goes undetected with implications in terms of consumer welfare.

Given the above-mentioned hurdles, the Director informed the Administrative Board that the Agency will reduce its activities. In the first place, the Agency will be focusing its activities on cross-border trading aspects only. This focus of the Agency's operation is justified on the principle of subsidiarity, leaving NRAs to perform monitoring activities in their jurisdictions, while allowing the Agency to focus on the EU-wide vision of wholesale energy trading (an aspect that is out of reach for NRAs). Furthermore, the Agency plans to descale the development of additional "bespoke alerts", which are used in the Agency surveillance software (SMARTS) to screen the EU wholesale markets and detect anomalous instances of trading behaviour.

Mr Zuleger reported that, in practice, the above mentioned descaling and refocusing would allow the Agency to focus on Data Security only. To the contrary, business continuity and market surveillance will suffer more from the current budgetary constraints. In particular, as far as business continuity is concerned, this could be impaired due to the postponing of the replacement of the aging equipment. Similarly, as regards market surveillance, in light of the fact that the Agency does not have expertise and resources to develop further alerts for the assessment of suspicious trading on wholesale energy markets, the initial target to reach 20 alerts will not be met.

Mr Zuleger further pointed out that other aspects, such as the improvement of data quality and the establishment of mechanisms for data sharing with other authorities, will not be addressed due to the insufficient resources.

Upon enquiry of the Chair on potential ways to address the highlighted issues in time for an adequate contribution to the draft budget 2019, the European Commission-appointed Alternate, invited the Agency to further highlight the synergies and estimate the savings produced by the activities of the Agency. The European Commission-appointed Alternate further highlighted that the years of plenty were over and that the Agency needed to show restraint in regards to its financial and human resources. In addition, the Agency has been granted with 15 additional resources in 2016 as an exceptional additional dotation. She welcomed the effort of the Agency in reducing the vacancy rate and in budget/financial handling, which are helpful elements to build a solid case for budget requests.

A European Parliament-appointed Member (Ms Herczog) invited the Agency to be more vocal in the MMF process and in the course of the decision-making process for the adoption of the budget.

Conclusion: The Administrative Board took note of the strategy for REMIT implementation and operations in the face of the limited resources foreseen for the year 2018.

#### **(14) REMIT Disaster Recovery Site**

Being present Mr Zuleger, the Director first recalled that the purpose of REMIT IT Systems (CEREMP, ARIS, CMT, NP, SMARTS, REMIT Portal) is to provide the necessary IT infrastructure for the implementation and operation of REMIT. He also highlighted that the REMIT IT Systems are used by a variety of internal and external stakeholders, including the Agency, National Regulatory Authorities (NRAs), Registered Reporting Mechanisms ('RRMs'), Market Participants and the general public.

The Director reported that at the time of setting up the REMIT data collection and data sharing scheme, the Agency referred to the best practices of national financial regulators and ESMA in setting up transaction reporting schemes and mechanism for data sharing at EU level. Following these best practices, the REMIT IT infrastructure included an out-of-site disaster recovery site. This disaster recovery site was fully operational until mid-2017 and guaranteed the preservation of data and IT services. In the course of the year 2017, the disaster recovery site was integrated with the existing primary data centre at the Agency's premises.

In particular, the Director recalled that at the time in which the Agency's disaster recovery site was fully operational, the Agency was able to ensure that the REMIT IT Systems would have been available to all stakeholders also in case of critical incidents (e.g. fire, natural disaster, major disruptions in power supply or internet connectivity, human error etc.). In particular, it guaranteed the complete availability of the secondary datacentre within 48 hours from the critical incident resulting in the unavailability of the primary site. It also guaranteed that the potential loss of (already collected and processed) data would have not exceed the timeframe of 24 hours prior to the occurrence of the critical incident.

The Director indicated that the Agency has been looking at the possibility to re-establish a disaster recovery site either through synergies with other Agencies, such as EUIPO, or by employing existing Framework Contract(s). However, the budgetary limitations did not allow to establish those mechanisms and the Agency had to discontinue its disaster recovery solution.

Mr Zuleger intervened and highlighted how the absence of a disaster recovery solution undermines the possibility to guarantee i) the complete availability of ARIS within 48 hours from the critical incident resulting in the unavailability of the primary site and ii) the reduction of the potential loss of (already collected and processed) to 24 hours prior to the occurrence of the critical incident. As a result, the Director and Mr Zuleger stressed the impossibility to ensure business continuity of REMIT operations. In fact, the absence of a disaster recovery site is a source of risk to operational reliability according to Article 12(1) of REMIT and adversely affects NRAs and market participants. In particular, Mr Zuleger highlighted how NRAs rely on the Agency's platforms and servers for registrations of market participants and that market participants cannot trade without being registered.

In light of the above, the BoR Chair intervened and suggested the Administrative Board to proceed with a risk assessment to understand the implications of the budget cuts on the operational reliability of REMIT IT operations. In this respect, Mr Zuleger reported that the first unplanned unavailability of the system took place at the beginning of this year for a human error. The Director further highlighted his concerns about the risks of critical incidents affecting the ability of the Agency to recover all the backlog of information. He stressed that this would represent a high reputational damage for the Agency and for the European Institutions.

A Council-appointed Member (Dr Penker) proposed to raise awareness at the level of the Council and in the energy working groups.

This suggestion was further supported by a European Parliament-appointed Member (Ms Herczog) proposing the establishment of an action-plan to address this issue with the European Institutions.

Conclusion: The Administrative Board took note of the implications of the absence of a Disaster Recovery site for the operational reliability of REMIT.

## **SECTION VI – ITEMS FOR INFORMATION**

### **(15) IAS HR report**

The Chair and the Director invited Mr Borissova to attend the discussion of this item.

The Director reported that in the course of the year 2017, the Internal Audit Service performed an audit on the Human Resources Management (HRM) function of the Agency, in line with the Strategic Audit Plan for the period 2017-2019. The audit was conducted in accordance with the Mutual Expectations Paper, which also summarises the key milestones of the audit process.

The objective of the audit was to assess the adequacy of the design and the effectiveness of the internal control system related to Human Resources Management in the Agency.

The Director explained that report contains 5 (five) recommendations: one critical, two very important and two important, which have been accepted by the Agency.

The Director further reported that the Agency has prepared a Draft Action Plan for the implementation of the recommendations. The Draft Action Plan describes in appropriate details the actions to be implemented to mitigate the risks, highlighted in the Final Audit Report. The Draft Action Plan indicates who is responsible for each action and provides an expected implementation deadline. The Agency submitted the Draft Action Plan to the IAS on 23 January 2018. Some of the actions have been already undertaken by the HRM Team. The IAS shall confirm, within ten days of the submission of the Draft Action Plan, if it considers the submitted Plan to be satisfactory in terms of actions and deadlines. The Agency is still waiting for a final reply from the IAS. The European Commission-appointed Alternate pointed to the critical recommendation regarding HR recruitment processes and conflict of interest and explained such a critical recommendation must be addressed in DG ENER Annual Activity Report, as the Commission parent-DG.

Upon request of a Council-appointed Member (Dr Penker), Ms Borissova reported on the state of play of the Document-Management policy. She reported that the Agency, as of last year, established a Document Management Inter-departmental group with the external support of CEDEFOP. The Master filing plan has been finalised. Since the Agency did not have the possibility to launch simultaneously SYSPER 2 – HR management tool employed at the European Commission – and ARES – Document Management tool employed at the European Commission –, the Agency, while implementing SYSPER 2, is proceeding with an alternative solution for document management by updating its Records Repository Tool so as to bring it as close as possible to ARES. As regards the archiving system, Ms Borissova informed the Administrative Board that the Agency is inviting expert archivists from another European agency to identify the categories of documents that should be archived in the future.

Conclusion: The Administrative Board took note of the Audit Report of the Internal Audit Service on the Agency's Human Resources Management function and invited the Director to report on the action plan submitted by the Agency to the Internal Audit Service at the 35<sup>th</sup> Administrative Board Meeting.

### **(16) Presentation on the working of REMIT alerts**

A presentation was provided on the “Alert Dashboard”, which is an overview of alerts triggered in SMARTS software for a specified time interval. It depicts surveillance process statistics. An alert is a set of conditions coded in the alert logic that define the trading behaviour. If these conditions are met, the alert is triggered.

The purpose of presentation on the Alert Dashboard was to inform the Administrative Board on the progress of surveillance work, resources and surveillance coverage. The Alert Dashboard project will be updated on a regular basis and reports will be shared with the Administrative Board. The Members and the Alternates of the Administrative Board had questions which were answered.

Conclusion: The Administrative Board took note of the working of REMIT alerts.

### **(17) Board of Appeal – technical and financial support**

The Director recalled that pursuant to Article 19 of Regulation (EC) No 713/2009, binding acts issued by the Agency can be appealed before an internal Board of Appeal. The Board of Appeal, comprising experts in the energy sector, is called to decide upon appeals within two months of the lodging of the appeal. In the course of last year, the Board received four appeals and is being involved in several cases before the Court of Justice.

In light of the significant increase of workload of the Board of Appeal, which proved to be time intensive, and the absence of technical economic support in the handling of appeals, the Chair of the Board of Appeal wrote to the Director suggesting that the following actions be considered in support of the Board:

- (i) a four-year framework contract to support the Board of Appeal in carrying out technical reviews as part of the appeal decisions alongside the current framework contract for legal support;
- (ii) the establishment of a system for indemnity payments for the members of the Board of Appeal handling appeals to address the time intensive nature of the activities performed; and
- (iii) the establishment of a system of further involvement of the alternates, to compensate for the lack of technical economic support, translated into a request for additional meetings.

The Director highlighted that the current financial constraints that the Agency is facing appear not to allow for the possibility to meet all the requests of the Board of Appeal. As regards the provision of indemnity to Board of Appeal members, while in principle he considered this to be fair, he also stressed the fact that the current members applied for this position being fully aware of its honorary nature. As regards the request for technical support, while he acknowledged the need to guarantee the respect of the two months period for the Board of Appeal to issue a decision, he considered necessary to discuss the scope of the review of the Board of Appeal.

The European Commission-appointed Alternate commented that the possibility to grant indemnity may arise only under exceptional circumstances (e.g. in case of lack of other revenues). She also noted that the call for expression of interests for the Board of Appeal contained a clear reference to the unpaid honorary nature of the office.

The Chair, supported by the BoR Chair, invited the Administrative Board to consider the developments of the energy sector and the high chance of an increase in the number of appeals before the Board of Appeal, which in turn would result in additional workload. The BoR Chair invited the Administrative Board to consider the need to guarantee a well-functioning and effective Board of Appeal in light of the future challenges that the Agency will be facing with the current increase of its responsibilities. A European Parliament-appointed Member (Ms Herczog) stated the importance to guarantee the reputation of the institution and avoid unnecessary delays in addressing the requests of the Board of Appeal.

A Council-appointed Member (Mr Spiridonovs) noted the difficulty in addressing the requests of the Board of Appeal in light of the difficulties in granting the basic financial needs of the Agency. He further pointed to the difficulty in changing the conditions of engagement of Board of Appeal members in the course of their mandate. He concluded by emphasising that, in case of appeals to Courts, the need for financial support will be still faced by the Agency and not by the Board of Appeal.

The Chair proposed to reschedule the discussion at the 36<sup>th</sup> meeting in June to gather additional information on this request and to invite the Chair of the Board of Appeal for such a discussion.

- Conclusion:
- (1) The Administrative Board invited the Board of Appeal Chair to appear at the 36<sup>th</sup> meeting of the Administrative Board meeting to provide additional details on the requests of the Board of Appeal. A further discussion on this issue will then take place.
  - (2) The Administrative Board invited the Director to further assess the request of the Board of Appeal from both a legal and financial perspective and report to the Administrative Board at its 36<sup>th</sup> meeting.

## ***SECTION VII – AOB***

### ***(18) Confirmation of AB meeting dates in 2018***

The Chair informed the Members and Alternates about the dates for the Administrative Board meetings in 2018: 15-16 March, 7-8 June, 20 September, and 13 December.

Conclusion: Members and Alternates of the Administrative Board took note of the dates of the ordinary sessions of the Administrative Board for year 2018.

## ***CLOSING***

In the absence of any other business to be treated, the Chair closed the 34<sup>th</sup> meeting at 13.45.