



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

**– 49th Meeting –
– Ordinary Session –**

Wednesday, 16 June 2021 2020, 09:00 – 15:00

**Trg Republike 3, Ljubljana – Slovenia
- ONLINE MEETING -**

MINUTES

I. LIST OF ATTENDEES

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

Dr Jochen PENKER,	<i>Member</i>	Dr Jurijs SPIRIDONOVS,	<i>Vice-Chair</i>
Dr Romana JORDAN,	<i>Member</i>	Ms Edit HERCZOG,	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Karin LUNNING	<i>Member</i>
Mr Michel THIOLLIERE,	<i>Member</i>	Mr Florian ERMACORA,	<i>Alternate</i>
Mr Pal KOVÁCS,	<i>Alternate</i>	Mr Vaclav BARTUŠKA,	<i>Alternate</i>
Ms Britta THOMSEN,	<i>Alternate</i>	Mr Zhecho STANKOV,	<i>Alternate</i>

Mr Florian ERMACORA submitted proxies by Ms Ditte JUUL JØRGENSEN and Ms Anne MONTAGNON.

Mr Christian Pilgaard ZINGLERSEN (*Director*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Mr Juan-Ignacio DE DIOS MORALES, acting as advisors, was present at the meeting.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 49th MEETING OF THE ADMINISTRATIVE BOARD

At the 49th meeting, the Administrative Board:

- (1) congratulated the staff, the management and the Director for ensuring continuity of service during the pandemic and supported the plans of the management to review the measures in place for a partial return to the office;
- (2) Took note of the implementation of the communications and dissemination plans and welcomed the Agency's efforts to enhance internal and external communications;
- (3) welcomed the continuous professional development initiatives, the culture of openness and feedback, as well as the attempt to address the results of the Staff Engagement Survey in an inclusive and efficient manner;
- (4) welcomed the Agency's efforts to enhance inclusiveness and cohesion with NRAs, contributing to a culture of openness, accessibility, transparency, as well as the willingness to improve and receive feedback and invited the Agency to explore additional collaboration tools vis-à-vis NRAs;
- (5) adopted Decision No. 9/2021 on the reimbursement of travel and subsistence expenses incurred by the Members and Alternate Members of the Board of Appeal and the recognition of indemnities for the participation in appeal cases;
- (6) Adopted ACER Consolidated Annual Activity Report for the year 2020;
- (7) adopted Opinion No. 1/2021 on the Final Accounts of the Agency for the financial year 2020.

III. MINUTES

SESSION I

SECTION I – OPENING

The 49th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 16 June 2021. The meeting started at 09h00.

The Chair of the Administrative Board welcomed Ms CUADRA-GARCIA from the Commission as a new Alternate, appointed by the European Commission and congratulated her for her recent appointment as Head of Unit for budget and financial management in the Shared Resourced Directorate – MOVE/ENER.

Upon invitation of the Chair to 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 actual or potential interest was declared nor reported.

The Chair pointed out that since the last meeting, the item regarding the Agency's adoption of standard operating procedures in relation to the internal-decision making process of appealable acts is still outstanding. He explained that this item will be postponed to provide the Agency with the time needed to finalise the activities of the internal working group responsible for it.

(1) Approval of the Agenda

The Agenda of the 49th meeting of the Administrative Board was approved as follows:

<i>OPENING</i> 09:00 - 09:05	Opening of the 49th Meeting of the Administrative Board <i>Adoption of the Agenda and Declaration of Interests</i>
<i>STRATEGIC DISCUSSION</i> 09:05 - 09:30	Agency functioning and Covid-19: current status, reflections and likely next phase <i>Presentation by the Director</i> <i>Roundtable Discussion</i>
09:30-10:00	Budget 2022 & beyond: The Commission's budget proposal & ACER considerations <i>Presentation by the Director</i> <i>Roundtable Discussion</i>
10:10-10:30	Report on the implementation of the communication and dissemination plans <i>Presentation by Strategy Delivery and Communication Team</i> <i>Roundtable Discussion</i>

10:30 -11:20

ACER – Human Resources Management and Internal and External Engagement

*Presentation by the NL Research Institute on a survey of the feedback culture at ACER
(introduction by the Director)*

*Presentation by the Inter-Agency Working Group on the action plan following the Staff
Engagement Survey*

Roundtable Discussion

Presentation by the Strategy Delivery and Communication Team on the NRA engagement

Roundtable Discussion

REPORTING,
INFORMATION
, AND
INTERNAL FU
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OF THE
AGENCY
11:30-12:30

Report on the activities of the Board of Regulators

Presentation by the Chair of the Board of Regulators

Report on the Selection Procedure of the Board of Appeal

Presentation by the Legal Services Team

Adoption of the decision on the remuneration of the Board of Appeal

Consolidated Annual Activity Report – Year 2020

Presentation by the Head of the Corporate Services Department

Adoption of the Annual Activity Report for the year 2020

Opinion on the Final Accounts of the Agency for the financial year 2020

Presentation by the Head of the Corporate Services Department

Adoption of the Opinion of the final accounts – year 2020

CLOSURE
12:30-12:35

Invitation to the 50th Meeting of the Administrative Board

AoB

SECTION II – STRATEGIC DISCUSSION

(2) Agency functioning and Covid 19: current status, reflections and likely next phase

The Chair of the Administrative Board explained that during the course of the last year, the Agency regularly informed the Administrative Board on the actions undertaken to ensure continuity of service. He recalled that at the last October meeting, the Administrative Board invited the Agency to look into the opportunities arising from the pandemic in terms of more flexible and sustainable working arrangements and the potential benefits on budget expenditure.

Upon invitation of the, the Director and Mr HESSELING, Head of the Gas Department presented the lessons learnt in this context and future opportunities.

The Chair thanked the Director and Mr HESSELING for their respective presentations.

Conclusion: (1) The Administrative Board congratulated the staff, the management and the Director for ensuring continuity of service during the pandemic.

- (2) The Administrative Board supported the initiative to start transitioning, after the summer, to a more long-term working model, drawing lessons from the positive and the negative aspects during the pandemic-induced teleworking time; in this regard, he invited the Agency to report on the status of this long-term working model at the next October meeting.

(3) Budget 2022 & beyond: the Commission's budget proposal and ACER considerations

The Chair recalled that the European Commission has recently proposed an annual EU budget of €167.8 billion for 2022, to be complemented by an estimated €143.5 billion in grants under NextGenerationEU. In the context of budget negotiations, he explained that the Administrative Board has traditionally offered its support and expressed the will to support the efforts of the Agency, also in light of the incoming Slovenian Presidency of the Council.

Upon invitation of the Chair, the Commission to provide an update on the 2022 budget proposal for the Agency. The Director further provided the Agency's views in light of the fall efforts.

Conclusion: (1) The Administrative Board thanked the Director and the Commission for their efforts in supporting the Agency.

- (2) The Administrative Board expressed its will to support the Director in the course of the incoming negotiations, in particular for the ones directed to treasuries/budget ministries.

(4) Report on the implementation of the communication and dissemination plans

The Chair of Administrative Board explained that the Administrative Board has formally adopted the Communication Strategy and the Communication and Dissemination Plans and the Agency has put significant efforts in implementing them, although that meant stretching current resources.

In this regard, the Director invited Ms SHORTALL, Information and Communication Officer in the Strategy Delivery and Communication Team to present the actions undertaken by the Agency to implement the Communication Plans. She first reported about the measures undertaken to foster internal communication and the enhanced outreach activities performed by the Agency with the EU institutions and stakeholders, facilitating dialogue on key issues. In addition, she explained the effort put in external communication, linking ACER expertise with EU agenda to act also as multiplier of messages.

The Administrative Board stressed the importance of highlighting the EU impact of the Agency's core deliverables and the contribution of ACER activities to key EU debates on evolving forward-looking issues.

Conclusion: (1) The Administrative Board expressed its support to the Agency for all the efforts in enhancing internal communication, communication to NRAs and broader external communication by showing the Agency added value.

- (2) The Administrative Board acknowledged the improvements achieved in making the interaction with the Agency more user-friendly, with upgraded functionalities such as the calendar of upcoming events and public consultation, making it easier for stakeholders to contribute to the work of the Agency.

(5) ACER – Human Resources Management and Internal and External Engagement

The Chair of the Administrative Board explained that the senior management team at the Agency wishes to promote a feedback culture, in order to enhance performance, ensure learning and development and promote team orientation and culture. He explained that this priority links clearly to some of the challenges identified also in the Staff Engagement Survey, although going into significant more detail.

He also mentioned that the NL Research Institute has run a survey throughout the Agency to understand the current approaches and culture and invited the Director to introduce the topic, followed by the NL Research Institute.

After the presentation of the results of the survey performed by the NL Research Institute the Director stressed the importance of improving the culture of providing feedbacks as a tool for fostering staff professional development.

The Chair of the Administrative Board welcomed the Staff Committee representatives, Mr SAVVIDES, and Ms BELLACCI. He recalled that at the last October meeting, the Agency presented the results of the Staff Engagement Survey and was invited to report on the actions undertaken to address them. Therefore, upon invitation of the Chair Mr GODFRIED, Head of the Market Surveillance and Conduct Department, provided an update on the state of play of the follow-up to the survey, providing an overview of the work done by an ad-hoc Working Group (WG), established in March 2021 and involving representatives from the departments, with the mandate to propose a limited number of actionable recommendations following up the Staff Engagement Survey (SES). He also recalled that the staff was invited to submit their views by contacting the Staff Committee directly. Further He explained that the working group was condensing the 77 action points stemming from the SES to 10-12 by: (i) prioritising the action points collected as appreciated by staff; (ii) assessing whether the suggestions are actionable according to whether enough level of definition and detail was provided by staff; (iii) sub-grouping to favour the identification of reoccurring themes such as: a) professional development; b) cross-departmental collaboration & mobility; c) cooperation and knowledge-sharing; and d) staff involvement. Mr GODFRIED, explained that the WG will further recommend on performance indicators, complexity assessment of the implementation of an action point and team(s) to be responsible. He concluded by giving an overview of the timeline for the definition of the action plan and its implementation with performance indicators to check the progress during a time span of 1.5 years

Following the presentation and before opening the discussion, the Chair informed the Administrative Board that the Agency has run a survey throughout NRAs on their perceptions and considerations about the Agency, which complements the earlier external stakeholder survey. Upon invitation of the Chair, Ms BELLACCI, Information and Communication Assistant from the Strategy Delivery and Communication Team, provided an overview of the results and the main takeaways.

Conclusion: (1) Following discussion, the Administrative Board welcomed the efforts of the Agency to ensure continuous professional development and contributing to a culture of openness and willingness to improve feedback.

- (2) The Administrative Board noted the many links to overall culture and atmosphere in the Agency, which are also closely linked to the follow-up to the latest Staff Engagement Survey and invited the Agency to report on the future actions to be envisaged in that direction.
- (3) The Administrative Board welcomed the efforts of the Agency in attempting to address the concerning results of the Staff Engagement Survey in such an inclusive and efficient manner, while recalling also the positive results, as well as the need to maintain the engagement of the Agency staff. Hence, it invited the Agency and the Staff Committee to report regularly on the actions undertaken in this respect.
- (4) The Administrative Board welcomed the efforts of the Agency in seeking additional ways to ensure inclusiveness and cohesion with NRAs, contributing to a culture of openness, accessibility, transparency, as well as willingness to improve and receive feedback. It also invited the Agency to explore additional collaboration tools vis-à-vis the NRAs.

SECTION III – REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY

(6) Report on the Activities of the Board of Regulators

Upon invitation of the Chair, Ms POLETTI, the Chair of the Board of Regulators ('the BoR Chair') provided a brief report on the activities of the Board of Regulators.

Conclusion: The Administrative Board took note of the report of the Chair of the Board of Regulators and moved to the next item of the agenda.

(7) Report on the selection procedure of the Board of Appeal

The Chair recalled that at the October, December and January meetings, the Administrative Board had the possibility to discuss at length the process to appoint the new members and alternates of the Board of Appeal and the challenges coming from the significant increase of appeals in 2020 against the Agency's decisions. He added that on the past 11th of March, the European Commission published a call for expression of interest and on the 7th of May, the call was extended. The Chair invited Mr VAONA, Legal Officer in the Director's Office Department, to provide an update on the selection process.

Mr VAONA recalled the Aquind ruling¹ and the fact that the Board of Appeal is now required to perform a full assessment of the decision of the Agency (instead of adopting the manifest error of assessment test), as well as the need to increase the level of indemnities of the Board of Appeal; on the latter, he recalled that the legal department looked into the practice and the financial mechanisms applied by different Boards of Appeals, with the aim to understand what should be the right level of indemnities for the future.

Mr VAONA mentioned that the call for expression of interest launched by the Commission has been extended and it is still pending. He also informed the Administrative Board about the status of the selection procedures and the mechanisms put in place to ensure the involvement of the Administrative Board in the process.

¹ Judgment of the General Court (Second Chamber) of 18 November 2020, Aquind Ltd v European Union Agency for the Cooperation of Energy Regulators, Case T-735/18.

Mr VAONA explained that the Administrative Board is now called to set the right amount of indemnities for the Board of Appeal; once the Commission has finalized its proposal on the selected candidates (expected by the summer), the Administrative Board will also be called to formally appoint the members and alternates of the Board of Appeal, following a consultation with the Board of Regulators.

As far as the indemnities are concerned, following a research into the practice and financial schemes applied by different agencies, Mr VAONA reported that the range of daily indemnities for members of the Board of Appeal varied from 400 euros to a maximum of 800 euros, while indemnities for one case varied from 4000 to 8000 euros. In this respect, he highlighted that the figures currently applied at the Agency are significantly lower.

Mr VAONA informed that after the call for the expression of interest was launched, potentially interested candidates pointed out that the level of indemnities provided would have been impacted significantly after taxation; he explained that the Agency considered the need to raise up the level of indemnities, and presented to the Administrative Board the Agency's proposal for the increased level of indemnities for members, Rapporteur and Chairperson of the Board of Appeal.

In particular, upon invitation of the Administrative Board, Mr VAONA explained that indemnities are subject to national tax law and because members and alternates are not staff members, they are not subject to the privileges and immunities of the European Union. He also informed that the level of indemnities afforded by other Boards of Appeals across different European Agencies are all referring to amounts before taxation; hence, the Agency took the same approach.

Furthermore, Mr VAONA pointed out that the raise of the indemnities figures led to a significant amount of additional applications.

- Conclusion:*
- (1) The Administrative Board thanked the Commission for the valuable cooperation with Agency.
 - (2) The Administrative Board stressed the importance of ensuring that the Board of Appeal can perform its tasks especially, after the Aquind ruling.
 - (3) The Administrative Board adopted Decision No. 9/2021 on the reimbursement of travel and subsistence expenses incurred by the Members and Alternate Members of the Board of Appeal and the recognition of indemnities for the participation in appeal cases.

(8) Consolidated Annual Activity Report – Year 2020

The Chair of the Administrative Board invited Ms BORISSOVA, Head of Corporate Services, and Mr BELOGLAVEC, Team Leader in Planning, Reporting and Horizontal Policies, to present the Annual Activity Report for the year 2020.

Mr BORISSOVA explained that the Consolidated Annual Activity Report for the year 2020 includes the Agency's regulatory activities and financial matters, as well as the observations from the European Court of Auditors and actions taken to overcome or mitigate those observations. She informed that the Court of Auditors has already checked the document, to ensure the accuracy of its representations; comments from the Commission have also been taken into account and will be reflected in the final version.

Mr BELOGLAVEC clarified that the Report is divided in two sections: i) regulatory activities, approved independently by the Board of Regulators on the last 1st of June; ii) Consolidated Report, which includes also administrative matters (that the Administrative Board is called to approve). He

highlighted that the Consolidated Report will be sent to EU institutions and to the Court of Auditors by the end of June 2021 and it is strictly in line with the Commission template.

On the regulatory activities, Mr BELOGLAVEC reported important decisions, including balancing and resource adequacy decisions, redispatching and bidding zone methodologies, as well as the first monitoring report on 70% cross-zonal target implementation status within each Member State. With regard to gas regulatory activities, Mr BELOGLAVEC mentioned two White Papers, which provide an input on the regulatory aspects of pure hydrogen networks and power-to-gas facilities, as well as work stream on infrastructure regulation and network code implementation. He further added that the market monitoring reports for retail markets and consumer protection have been integrated into a single Retail-Consumer Protection volume of the ACER-CEER Market Monitoring Report.

In relation to REMIT, Mr BELOGLAVEC highlighted an increase in data collection from 3 million records per day in 2019 to 6.8 million records in 2020, and the consequent challenge for the REMIT information system ARIS, as well as for officers monitoring the market. He mentioned that despite the resource constrain in this area, the team has focused on strict priorities like cross-border trading; on the other hand, there were persistent data availability issues which caused a 6 month delay of automated market surveillance screening. He then added that the number of suspicious transactions has also increased and mentioned the ACER Guidance provided to NRAs on insider trading.

With regard to the administrative highlights, Mr BELOGLAVEC informed that the Agency met all the budget implementation targets and mentioned that a major challenge was the preparation for the collection of REMIT fees. In relation to payments, he pointed out the European Court of Auditors' qualified opinion, which found a 6.3% of irregular payments made by the Agency in 2019. He explained that the issue concerned the approach to IT procurement contracts, whereby the threshold to be taken into account should have been annual, rather than for the duration of the contract. Mr BELOGLAVEC stressed that the Agency is currently applying mitigating actions and is improving its internal controls to avoid future reoccurrences. On the other hand, he mentioned that when the irregularity was raised, a number of contracts were already signed, and therefore, the same issue will likely reappear in the next report.

Mr BELOGLAVEC pointed out that one of the major challenges from an administrative point of view was the increasing number of appeals against the Agency's decision, which caused additional strain on resources. On the other hand, Covid-19 required the establishment of a Continuity Management Group and a quick readjustment of the business continuity plan, as well as a readjustment of working arrangements and safety measures.

In addition, Mr BELOGLAVEC reported that with the arrival of the new Director, a partial reorganizations and new working methods were implemented, including enhanced outreach towards stakeholders, institutions and the general public, as well as greater cooperation by creating clusters and across internal departments, while adapting working methodologies to the difficult pandemic circumstances.

Overall, Mr BELOGLAVEC stressed that the Agency has proved to be resilient, despite the expanded mandate, the budget constraints and the enduring pandemic, still delivering its Work Programme.

- Conclusion:*
- (1) The Administrative Board congratulated the Director and the Agency for having ensured business continuity and for having maintained high productivity, despite the difficult circumstances in 2020;
 - (2) The Administrative Board adopted the Consolidated Annual Activity Report for the year 2020.

(9) Opinion on the Final Accounts of the Agency for the financial year 2020

The Chair of the Administrative Board invited Ms BORISSOVA, Head of Corporate Services, to present the last item on the agenda.

Ms BORISSOVA began by informing that, as of 1st of October 2017, the Agency has appointed the Accounting Officer of the Commission as Accounting Officer of the Agency. She explained that the Accounting Officer has clearly stated that the annual accounts of the Agency have been prepared in accordance with the Financial Regulation and the applicable Accounting Rules for the public sector.

Ms BORISSOVA clarified that the annual accounts of the Agency include the financial statements (prepared on an accrual accounting basis) and the reports on the implementation of the budget (prepared using a cash accounting basis). She compared the balance sheet of 2020 with the Balance Sheet of 2019 and pointed out that the difference in the total assets was mainly due to receivables related to the payments made for operating licenses and European school fees. In terms of financial performance, she recalled that in 2020 the Agency was fully subsidized by the EU general budget and there was also an increase in EU subsidies.

With regard to the 2020 Budget Implementation Reports to be presented in the annual accounts, Ms BORISSOVA explained that the Agency has achieved 99% from the total subsidies to be committed (to be presented as commitment appropriations), while the target was 95%. In terms of payment appropriations, she informed that the average is 83%, while the target was 75%, and the difference was carried forward to 2021 to honour the outstanding obligations of the Agency.

Ms BORISSOVA reported that following the adoption of the annual accounts by the Administrative Board, the Agency will need to communicate the approved 2020 annual accounts to the European Parliament, European Council and the European Court of Auditors by the 1st of July 2021. She added that by the 15th of November 2021, the 2020 annual accounts will need to be published on the website of the Agency (with a link to the EU Official Journal).

Conclusion: In light of the information provided, the Administrative Board adopted Opinion No. 1/2021 on the Final Accounts of the Agency for the financial year 2020.

CONCLUSION

The Chair of the Administrative Board informed that the Secretariat is working on an improved extranet for the Administrative Board and invited Mr VAONA to provide more details on the matter.

Mr VAONA explained that the new extranet will include individual platforms for each member of the Administrative Board; it will be user friendly and will simplify written procedures and the submissions of the Declaration of Interests. He mentioned that, despite the delays encountered due to the lack of fulfilment of the time-schedule by the contractor, the platform should be tested before July and it should be finished in the summer to enable the collection of the Declaration of Interests and Commitments, reason of the delay of the early exercise. He stressed that the new extranet will significantly help the secretariat of the Administrative Board, already overloaded in other areas of activities. The Administrative Board took note of the report and granted unanimously the secretariat with the necessary time to enable the use of the extranet for the conclusion of the conflict of interest review for the year 2021.

Absent any other item, the Chair invited the Administrative Board to the 50th Meeting, taking place on the 7th of October 2021 in Vienna. He also mentioned that the next scheduled meeting will take place on the 16th of December in Ljubljana.

In the absence of any other business to be treated, the Chair closed the 49th meeting at 14h30.