

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

***– 52nd Meeting –
– Ordinary Session –***

Thursday, 27 January 2022, 10:00 – 14:00

**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>Chair</i>	Dr Jurijs SPIRIDONOVS,	<i>Vice-Chair</i>
Mr Michel THIOLLIERE,	<i>Member</i>	Ms Edit HERCZOG,	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Karin LUNNING	<i>Member</i>
Mr Vaclav BARTUSKA,	<i>Alternate</i>	Ms Romana JORDAN	<i>Member</i>
Mr Pal KOVÁCS,	<i>Alternate</i>	Ms Anne MONTAGNON	<i>Member</i>
Ms Britta THOMSEN,	<i>Alternate</i>	Mr Diego VAZQUEZ	<i>Alternate</i>
Mr Pawel PIKUS	<i>Alternate</i>		

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 and Mr Michael SCHUETZ, acting as advisors, were present at the meeting.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 52th MEETING OF THE ADMINISTRATIVE BOARD

At the 52nd meeting, the Administrative Board:

- (1) took note of the Agency's activities to improve organizational development, such as the recent 360 feedback report to staff members, the intention of the Agency to improve the Appraisal exercise and to create an 'Acer Academy' to enhance professional development in a more structural way;
- (2) took note of the new BoA Registry model and considered the Agency's key priorities and main challenges, such as the future teleworking regime and likely implications, as well as the future of the Agency's premises and possible solutions, and invited the Agency to continue to inform the Administrative Board on these matters and related risks;
- (3) reflected on issues with budget implementation and the reasons behind it, such as the inaugural year of REMIT fees and the conservative approach adopted by the Agency, and requested the Agency to present a quarterly report on budgeting, highlighting any risks which require further discussion;
- (4) invited the Agency to provide a detailed IT plan with measurement of risks;
- (5) welcomed the Agency proposal of having a strategic debate on the Programming Document already in fall of each year;
- (6) invited the Agency to structure the content of presentations to address different topics more efficiently and to enable more time for discussions during meetings;
- (7) took note of the content of the Draft Programming Document 2023-2025, its similarities with the Programming Document for 2022 and the better visibility and planning on resources; it also took note that the budgetary forecast includes 5 posts for the Gas Package, although these are not yet included in the FTE breakdown;
- (8) observed that the Programming Document is focusing on implementation tasks, but compliance related work seem to be left aside and this may constitute a risk for future budget implementation; on the other hand, it noted that the Agency is nevertheless complying with all compliance related requirements and it is taking into account the increasing requirements and costs for cybersecurity, which will be laid down concretely as soon as there is clear visibility on them;
- (9) adopted the Draft Programming Document 2023-2025 and the draft estimate of revenue and expenditures for the year 2022, including the proposed Establishment Plan, which will be transmitted to EU institutions;
- (10) took note of the outlook on REMIT activities and of the overview of the Board of Regulators' activities;
- (11) appointed Ms LUNNING as member of the Review Panel for the yearly assessment of conflict of interests of the Administrative Board of the Agency, while Ms MONTAGNON was appointed as the Commission member of the Review Panel;
- (12) welcomed the implementation of the E-Declaration Platform to facilitate the submission of the required documents for the yearly assessment of conflict of interests.

III. MINUTES

SESSION I

SECTION I – OPENING

The 52st meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 27 January 2022. The meeting started at 10h00.

Before adopting the Agenda, the Chair informed that Mr THIOILLIERE and Ms HERCZOV have been nominated respectively as the new Chair and Vice-Chair of the Administrative Board and congratulated both of them.

Upon invitation of the Chair to the present Members and Alternates of the Administrative Board to declare any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda, no actual or potential interest was declared or reported.

The Chair pointed out that the documents submitted in preparation for this meeting did not fully comply with the timeline established in the Rules of Procedure, as they were submitted with a minor delay. In light of the past delays in the submission of the background documents, the Chair maintained the need to ensure the respect of the Rules of Procedure of the Administrative Board.

(1) *Approval of the Agenda*

The Agenda of the 52nd meeting of the Administrative Board was approved as follows:

<i>OPENING</i> 10:00 -10:05	Opening of the 52st Meeting of the Administrative Board <i>Adoption of the Agenda and Declaration of Interests</i>
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<i>REPORTING, INFORMATION , AND INTERNAL FUNCTIONING OF THE AGENCY</i> 10:05-13:20	Director’s Overview: Priorities, Opportunities and Lessons Learnt <i>Report on Key Priorities, Organizational Development, 2022 and 2023 outlook, and follow up to the Board of Appeal Registry</i> <i>Roundtable discussion</i> Draft Programming Document 2023-2025 and the provisional draft estimate of revenue and expenditure of ACER for the financial year 2023 including a draft Establishment Plan <i>Presentation by the Agency</i> <i>Adoption of Draft Programming Document 2023-2025</i> Report on the activities of the Agency <i>Presentation on REMIT Outlook – Enhancing trust in wholesale energy markets</i>

Report on the activities of the Board of Regulators

Presentation by the Chair of the Board of Regulators

Implementation of ACER Conflict of Interests Policy

Appointment of two assessors for the review of conflict of interests declarations

CLOSURE

13:20-13:30

Invitation to the 53rd Meeting of the Administrative Board

AoB

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

(2) Director’s Overview: Priorities, Opportunities and Lessons Learnt

The Chair of the Administrative Board invited the Director of the Agency to present the topic, including reporting on the agreed solution for the BoA Registry, and on the Agency’s activities and budget developments.

The Director informed that, following the request to have a more regularised and accessible formatting on the budget overview, the Agency has created a short Budget Implementation Report.

With regard to the BoA Registry model, he explained that the Agency has decided to implement a model with three main components: in-house sourcing (senior lawyer), outsourcing to a law firm, and minor legal assistance (a more secretarial part-time type of assistance).

In terms of outlook and key priorities for 2022, the Director highlighted three key priorities for the electricity department: 1) enhancing cross-border capacity available for trade (70% target); 2) a more European approach to resource adequacy assessments; 3) enhancing demand-side flexibility on the power system.

With regard to gas market issues, he commented on the transitional phase experienced by this sector and explained that the Agency aims to contribute to the overall aspects of gas decarbonisation, taking into account existing gas networks and their interplay in a future perspective, as well as new issues like decommissioning.

In relation to infrastructure, the Director reported that the Agency is focusing on increasingly integrated network planning, preparing the implementation of the new tasks for the TEN-E Regulation, as well as on an appropriate incentive regulation for network operators. As per REMIT, the Director informed that the aim is to improve data collection and data quality, which requires both investments and data-analysis competences, and to improve market surveillance coverage.

In addition, the Director provided an overview of the overarching priorities of the Agency, such as: 1) the Market Design Project (which will be delivered in April); 2) improving communication channels and select outreach actions to reach a wider audience; 3) tackling the Covid pandemic and related IT, facility management and HR issues.

Nonetheless, the Director emphasised that the Agency is moving towards a significant growth trajectory, which includes the 2022 budget outcome and the recent ‘Gas Package’ proposal. In this respect, he opined that the Agency needs to be further professionalised in a number of areas (for example, leadership and management, professional development and outreach). He also mentioned

that the Agency needs to be streamlined (more cross-team working and flexibility to adjust across departments); for example, the Agency will implement a cross-departmental cluster on IT Strategy & Planning, bringing IT, budget, procurement and project management staff in close collaboration under a horizontal cluster.

With regard to budget, the Director explained that REMIT fees brought a significant growth, with implications on budget planning and procurement efforts. He added that there will be also a substantial growth in recruitment and the Agency may need to adjust its approaches by being more proactive and targeting specific groups of employees; on boarding efforts should also be enhanced.

In relation to organizational development and culture, the Director reported that the Agency is focusing on enhancing comprehensive and honest feedback to improve performance, and staff members will soon receive a comprehensive 360 feedback report. He also mentioned the intention to adjust the Agency's Appraisal system to make it fit for purpose, with genuine discussions on expectations and performance, while addressing sensitive issues and underperformance. The Director also added that the Agency will enhance professional development in a more structural way (the 'Acer Academy').

On the leadership component, the Director commented that in the 2018 Staff Engagement Survey, there was a perception that managers had an expert type of orientation towards managerial tasks and there was a need to differentiate between skills for expert positions and skills for managerial positions. In this respect, the Director explained that the Agency is working on the 'Leadership Pipeline project', according to which the higher levels of the Agency should move towards more leadership and people orientated approaches, in line with the relative value across the different levels of the Agency. He clarified that the idea is to have a more distinct proposition for each level of the Agency and to address some core issues, while developing a distinct expert career track and a distinct managerial track.

Furthermore, the Director highlighted two main challenges for the Agency. The first one is the future teleworking regime, whereas the Agency is expecting to implement more flexible approaches, but restrictive in relation to the place where staff members will telework from (with an established distance from the Agency headquarter). In this respect, the Director reported that there is a perception that these restrictive conditions on teleworking may have significant implications internally, with a fair share of employees who may wish to resign, as well as on recruitment, with new employees likely to expect flexible teleworking conditions in their employment. The Director explained that the Agency is considering a new value proposition, including targeting specific groups, at the beginning or at the end of their career, to overcome these potential implications. He invited the Administrative Board to discuss the topic again in the future, once the Commission will have decided on the matter. The second future challenge raised by the Director concerned the Agency's growth and the Agency's premises.

The Director then focused on budget implementation, explaining that in 2021, the Agency did not meet the 95% target for commitments, mainly due to a series of factors, such as the implementation of the REMIT fees collection, and reported to the Administrative Board the financial and organizational measures that will be implemented to ensure meeting the target for 2022. He then informed that the main cost drivers of 2022 are linked to additional human resources to be recruited during the second half of the year, while for 2023 very significant cost drivers will be represented by outsourcing consultants for IT and REMIT data analysis.

The Administrative Board enquired how costly and financially sustainable will be the three component approach for the BoA Registry; it also enquired about the risks behind a too proactive communication approach, especially considering the current political scenario. With regard to the missed target for the 2021 budget, the Administrative Board emphasised that it should invest more time on the topic,

to avoid any future implications. On the building premises, the Administrative Board observed that at present, a detailed plan seems to be missing.

In relation to the expenditures for the new BoA Registry model, the Director explained that this is hard to predict, as it will depend on the number of appeals received; however, the Agency estimated around 100,000.00 EUR per year, relative to the other external legal assistance that the Agency may seek. On communication and risks, he further explained that as long as the engagement is done with consideration, there are no significant risks; as per the missed target for the 2021 budget, the Director emphasised that this was due mainly to the inaugural year of REMIT fees collection and a conservative budgeting approach undertaken by the Agency. On the building file, the Director assured that the Agency is not lacking a detailed approach and a consultancy firm is also helping to identify the Agency future needs in terms of modern ways of working.

The Administrative Board commented that the circumstances which led to the missing target of the 2021 budget will be explained to DG BUDG, though it stressed that further information on implementation percentages by title may be needed. On the other hand, the Administrative Board proposed to have quarterly reporting on budget, with no explanations unless specific risks are highlighted, which will be then further addressed by the Administrative Board. In relation to appeals, it suggested to look at the experiences from other relatively new EU agencies.

The Administrative Board proposed also to present an IT plan with all the actions envisaged for the Agency IT system, with deadlines and implementation processes, and a measurement of risks. In addition, the Administrative Board asked the Director to explain further the new Data Science Graduate Programme envisaged by the Agency.

With regard to the building premises, the Administrative Board reflected on the actual space that will be required, especially considering teleworking, and the necessary adaptations in this respect. The Administrative Board further stressed the importance to have a roadmap on this topic and emphasised that buildings are part of the wellbeing of employees. It also requested to clarify the possible challenges faced by the Agency if a decision to telework within Slovenia will be taken and pointed out that it is important to have visibility on the risks connected to remote working environments and HR management.

Furthermore, the Administrative Board stressed that communication at meetings should be adjusted, reducing the time spent on presentations and increasing the time for discussions, especially on risks. It also questioned the actual time available to the Administrative Board to address specific tasks in the Programming Document, before the Opinion of the Board of Regulators.

Regarding the building premises, the Director agreed that there is a staff wellbeing component to take into account, and highlighted that at present, a different layout is needed, moving from a traditional to a more interactive and innovating office layout.

The Director welcomed the proposal of having a quarterly report on budgeting, while in relation to IT, he explained that there are two different types of IT within the organization, internal/business IT (with more internal resources) and REMIT IT (with more outsourcing), with different working models and strategies, and he agreed to share an overview on the planning for both of them. With regard to communication and presentations during meetings, the Director agreed to divide the content of presentations in different agenda items, in order to address the various topics more efficiently.

With regard to the Programming Documents and the interplay with the Board of Regulators, the Director proposed to have a strategic debate already in September, so as to inform the document which will be put forward in December. As per the new teleworking regime, he explained that a future decision on teleworking is likely to have implications also on other agencies and the location of a

specific EU agency may play a role into this; he stressed again that the pandemic experience has created new teleworking expectations on employees.

In relation to the Data Science Graduate programme, the Director explained that this might be something laying between traineeship and core staff, which will provide young graduates with the opportunity to work and learn at the Agency, while contributing to the work of the Agency beyond a traineeship level.

The Director further addressed the risks associated with HR challenges in remote working environments, highlighting the positive learnings over the past two years, as well as the identified limitations, emphasising the Agency' efforts to keep enhancing working ways, while paying attention to personal sensitivities.

- Conclusion:* (1) The Administrative Board thanked the Director for his presentation and agreed to take on board the discussed proposals, including: requesting the Agency to present a detailed IT plan and a quarterly report on budgeting; requesting the Agency to restructure the content of presentation at meetings, to better address different topics and enable more time for discussions.
- (2) The Administrative Board invited the Agency to continue to report on any development with the building file.

(3) *Draft Programming Document 2023-2025 and the provisional draft estimate of revenue and expenditure of ACER for the financial year 2023 including a draft Establishment Plan*

The Chair introduced the topic, explaining that the Agency is called to define a proposal for the Draft Programming Document 2023-2025, setting up the overall strategic programming, including objectives and performance indicators, as well as laying down a proposal for resource programming, including annual budget and staff. He explained that the Administrative Board is called to adopt the draft proposal and to transmit it to EU institutions in the course of the normal budgetary cycle.

The Chair also informed the Administrative Board that the Draft Programming Document 2023-2025 was presented yesterday to the Board of Regulators, which gave its Favourable Opinion, although no discussion was taken place within the Administrative Board prior to submit the draft to the Board of Regulators. The Chair invited the Agency to present the document, explaining the amendments introduced after the first submission.

The Director explained that the Agency became aware of the budget outcome, especially the outcome of the budget negotiations, quite late in the process, reason why the final draft, along with the latest amendments was delayed. Following the Commission's decision to implement a gradual growth trajectory for the Agency, he commented that it will be easier for the Agency to have a greater visibility on the human resources front in the future and to plan accordingly, and it will be possible to have a substantive discussion early in the year, for example during the September meeting.

Mr BELOGLAVEC, Team Leader in the Corporate Services of the Agency, presented the Draft Programming Document 2023-2025, explaining that the background is very similar to the one presented in December (energy systems undergoing massive changes, very high energy prices and changes in the regulatory landscape), while the Agency has now a clearer view on the resources available over the future years.

He added that the specific challenges and tasks are also similar to the ones in 2022: monitoring the implementation of Electricity and Gas Network Codes, REMIT and the infrastructure challenge (TEN-E); he informed that the upcoming GAS Package may possibly be allocated to the Agency, along with a review of the TEN-E Regulation. He clarified that all these elements will have to be reflected in greater details in the final version of the final Programming Document.

With regard to the status of the adoption procedure, Mr BELOGLAVEC stressed that this is a first draft and it will have to be sent to EU institutions by 31 January 2022. He explained that the procedure will resume once the Commission will provide its formal Opinion by the end of June or early autumn, following which any changes will be introduced accordingly, along with factual and strategic updates related to the time in between the finalization of the first draft and the subsequent resuming of the document (including the level of resources adopted by the Budgetary Authority towards the end of November). He then clarified that both the Administrative Board and the Board of Regulators will have the opportunity to further discuss the document before its final adoption by the end of December 2022.

In terms of multiannual strategic objectives, Mr BELOGLAVEC explained that these are updated on a rolling basis: so far they are the same as last year, but they may be adjusted during the course of 2022. In addition, he informed that the Director's Forward will be added to the final version of the documents.

With regard to the subdivision of the activities, Mr BELOGLAVEC reported that these remain the same as 2022, with the exception of the Market Monitoring Report, which is no longer a self-standing activity; instead, its various chapters are subdivided among the Internal Electricity Market and Internal Gas Market, due to internal planning purposes. He then addressed the prioritization system, explaining that it remains the same (the Agency is only slightly changing the labelling). Mr BELOGLAVEC also recalled the Commission proposal for resources for 2023, which includes two fee funded posts for MSC and MIT Departments and two EU-subsidy funded posts, one for Energy Community issues and the other one for Legal Services. He explained that the budgetary forecasts include 5 posts for the Gas Package, although tasks and breakdown were not included in the FTE breakdown, as it still needs to be discussed internally.

Furthermore, Mr BELOGLAVEC informed about the general approach and principles on human resources for 2023 and onwards: multi-year perspective based on priorities; respect for balance between REMIT-fee and non-REMIT fee positions; a flexible approach for SNE positions (depending on interest shown); continuous efforts to increase efficiency and to streamline resources; considering future approaches in line with experiences gained.

The Administrative Board thanked the Director and Mr BELOGLAVEC for the presentation. It then pointed out that this year the Gas Package was adopted on 15 December 2021, following which the Agency had to do last minute adjustments. In relation to the document, the Administrative Board highlighted that the 2023 figures include decarbonisation initiatives (although figures for 2024 and 2025 are not yet updated).

In addition, the Administrative Board expressed the wish to be involved and informed in every stage of the document preparation, and proposed to figure out, along with the Director, a roadmap on how to manage the Programming Document in the future, with a special focus on any amendments and what needs to be discussed for the future. It also proposed to have a step by step guideline and to have information beforehand, to enable the Administrative Board to have a discussion before the draft and adoption of the document. The Director agreed to lay down a timetable in collaboration with the Chair of the Administrative Board, to accelerate some of the substantive discussions and to facilitate the formal procedure.

The Administrative Board invited ACER to include the contribution to the overall strategy of the European Union, especially for priorities clearly agreed between the Commission and the Council (for example on the open strategic autonomy and the huge investment plan under the next generation EU).

The Administrative Board added also that the document is focusing on the implementation tasks, and invited ACER to include also compliance related work, which come with tasks and costs for the Agency, for example on data protection, cybersecurity and the critical infrastructure, which are connected to greening and digitalization. The Administrative Board emphasised that compliance related work is important because it can impact the Agency's operation vis-a-vis the general tasks that the Agency has to deliver, and at present, this is not reflected in the Programming Document. It also stressed that due to inflation and the costs related to compliance work, there is a risk that in 2023-2024 the Agency may find itself with less money for the implementation than the one reported in the current document.

The Administrative Board reflected also on other areas that could potentially be explored and discussed within the framework of the Programming Document, such as international cooperation, also in light of potential additional sources of income, for example in relation to the Green Climate Fund and the Global Environment Facility, where the Agency could cooperate with accredited entities.

The Director explained that it seems difficult to operationalise how the open strategic autonomy and the investment plan under the next generation EU may influence the work of the Agency. As per compliance, he agreed that there are costs related to it, and the Agency is complying with all legal requirements, although it is not clear how the Agency could document the costs associated with it in the Programming Document. He added that the Agency will likely face increasing requirements for cybersecurity, which will have significant costs associated with it, although at this stage, the Agency does not have full visibility on it, but it will plan for it once the requirements will be clearer.

With regard to international cooperation, the Director informed that the Commission is working on an external energy strategy that may be an opportunity for funding sources outside the EU, and the Agency is willing to further discuss these opportunities in the future.

- Conclusion:*
- (1) The Administrative Board formally adopted the Draft Programming Document 2023-2025 and the draft estimate of revenue and expenditures for the year 2022, including the proposed Establishment Plan, which can be transmitted to EU institutions.
 - (2) For the future, the Administrative Board invited the Agency to enable the discussion on the Programming Document before the Board of Regulators' Opinion, and welcomed the Agency's proposal of having a strategic debate already in September.

(4) *Report on the activities of the Agency*

Mr GODFRIED, the Head of Market Surveillance and Conduct Department, provided an outlook on REMIT activities

- Conclusion:*
- (1) The Administrative Board thanked Mr GODFRIED for the presentation and stressed the importance of data collection for the future of European policy.

(5) *Implementation of Conflict of interests Policy*

The Chair introduced the topic underlying its paramount importance to ensure the independence of members and alternates of the Administrative Board, and to maintain the trust of citizens and stakeholders in the integrity of the Agency. He emphasised that the Administrative Board has measures in place to prevent and manage conflict of interests at all levels of the decision-making process and to ensure adequate transparency to the public. He informed that in order to complete the review panel for the assessment of the yearly conflict of interests, the Administrative Board has to designate one member/alternate of the Administrative Board. In this respect, Ms LUNNING has expressed interest to be appointed as a member of the Review Panel.

The Chair also reported that Ms MONTAGNON was appointed as the Commission member of the Review Panel.

In addition, the Chair commented that this year the Agency has implemented an E-Declaration Platform, where members and alternates can submit their Declaration of Interests, Declaration of Commitment and Curriculum Vitae and informed that the documents must be submitted by 28 February 2022. He then invited Mr MEZE, IT Service Officer in the Corporate Services Department, and Ms GONZALEZ DE ANTONIO, Interim Assistant in the Corporate Services Department, to present the functionalities of the E-Declaration Platform to the Administrative Board.

The Administrative Board observed that the European Court of Auditors' future Report for the year 2021 will be focused on management of conflict of interests.

- Conclusion:*
- (1) The Administrative Board appointed Ms LUNNING as member of the Review Panel for the yearly assessment of conflict of interests of the Administrative Board of the Agency, while Ms MONTAGNON was appointed as the Commission member of the Review Panel.
 - (2) The Administrative Board welcomed the implementation of the new E-Declaration Platform.

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

Ms POLETTI, Chair of the Board of Regulators, provided an update on the activities of the Board of Regulators, including the recent discussion and Favourable Opinion on the Draft Programming Document 2023-2025.

CONCLUSION

The Chair invited the Administrative Board to the 53rd Meeting, which will be held by the new Chair; he thanked the members and alternates of Administrative Board for their collaboration and cooperation during his term. The meeting closed at 14h00.