

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

**– 59th Meeting –
– Ordinary Session –**

**Tuesday 25 October 2023, 15:00 — 19:15
Wednesday 26 October 2023, 09:00 — 16:00**

**ACER
– ARERA premises, Piazza Cavour 5, Milan – Italy –**

MINUTES

I. LIST OF ATTENDEES

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

<i>Mr Michel THIOLLIÈRE,</i>	<i>Chair</i>	<i>Ms Edit HERCZOG,</i>	<i>Vice-Chair</i>
<i>Dr Romana JORDAN,</i>	<i>Member</i>	<i>Dr Jurijs SPIRIDONOVs,</i>	<i>Member</i>
<i>Mr Bogdan CHIRIȚOIU,</i>	<i>Member</i>	<i>Ms Karin LUNNING,</i>	<i>Member</i>
<i>Mr Václav BARTUŠKA,</i>	<i>Member</i>	<i>Ms Anne MONTAGNON,</i>	<i>Member</i>
<i>Ms Britta THOMSEN</i>	<i>Alternate</i>		

Ms Anne MONTAGNON submitted proxy by Ms Ditte JUUL-JØRGENSEN for both days (25 and 26 October 2023).

Mr Christian Pilgaard ZINGLERSEN (ACER Director) and Ms Clara POLETTI (Chair of the Board of Regulators) were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 25 October 2023.

Mr Juan-Ignacio DE DIOS MORALES and Mr Michael SCHUETZ (both European Commission) were present acting as advisors (Mr de Dios Morales in person, Mr Schuetz online).

The Secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 59th MEETING OF THE ADMINISTRATIVE BOARD

At the 59th meeting, the Administrative Board:

- (1) appreciated a very insightful information session provided by ARERA, Italian regulatory authority, on its role and functioning within the ACER Board of Regulators;
- (2) took note of the activities of the Board of Regulators, still impacted by the context of the crisis;
- (3) expressed support for all feasible actions that would foster cooperation between Ukrainian energy regulator (NEURC) and ACER and for a close work with the Energy Community Secretariat;
- (4) approved the process and deadlines related to the elections of the new Administrative Board Chair and Vice-Chair for the next two years (January 2024 - January 2026). The elections would take place at the next/60th Administrative Board session on 13 December 2023;
- (5) was provided with the latest energy markets and regulatory developments, including with the negotiations on the REMIT Regulation revision that would increase the ACER powers;
- (6) appreciated the information on the planned reorganisation of the Agency;
- (7) assessed the Agency's draft Strategy on Communications 2024 - 2026 and its Dissemination plan as a very well prepared and comprehensive document, addressing the relevant communication goals and principles;
- (8) was informed of outstanding budgetary challenges the Agency is facing in 2023 and 2024. It agreed that the Agency should seek to negotiate a longer-term repayment plan with the Commission to cover the pension employer contributions for staff under the REMIT fee framework for the period 2021-2023, acknowledging this obligation has to be paid onwards as part of the regular REMIT part of the Agency budget. However, the issue of accommodating legal costs in case of lost legal cases in unusual years with high spikes remains a structural challenge;
- (9) took note of the potential direct impact of the unexpected costs and: i) emphasized the principle of budgetary balance between revenue and expenditure in all annual budgets; ii) emphasized the balance between allocated tasks according to the (ACER and REMIT) Regulations; iii) asked for a mitigation plan by the December meeting
- (10) asked to be informed of the budgetary transfers below the 10% transfer threshold adopted by the Director; this via easily accessible information complied towards the regular meetings of the Board;
- (11) was informed about the very preliminary findings of the alleged IT security incident and about the Agency's immediate mitigation actions. The Administrative Board called on the Agency to budget adequate investments in the Agency's IT hardening;
- (12) reconfirmed strong support for the Agency's efforts to improve the situation of European School Ljubljana and welcomed the recent efforts of the Administrative Board rapporteur to increase engagement of the Slovene authorities. It also expressed support for any further actions that would improve the situation of the European School for the benefit of the Agency and its growth trajectory;

- (13) took note of the update of the draft Programming Document 2024-2026 in order to address the Commission’s opinion and pointed to the need of aligning the Programming Document content with legal and budgetary framework;
- (14) adopted by unanimity the Model Decision on Working Time and Hybrid Working via its Decision 11/2023 of 26 October 2023;
- (15) adopted by unanimity the 2023 budget amendment by adopting Decision 12/2023 on amending Decision No 20/2022 on the adoption of the budget and the establishment plan of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2023;
- (16) was informed about the state of play of the 2023 conflict of interest assessment procedure of its members and alternates and about the correspondence with the Council on that matter.

III. MINUTES

SECTION I – OPENING

The first session of the 59th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators (ACER) was convened, in ordinary session, on 25 October 2023. The meeting started at 15h00 and finished by 19h15.

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

Approval of the Agenda

The agenda of the first session of the 59th meeting of the Administrative Board was approved as follows:

<p>OPENING 15:00 - 15:10</p>	<p>Opening of the 59th meeting <i>Adoption of the agenda and declaration of interests</i></p>
<p>FOR INFORMATION 15:10 - 15:45</p>	<p>ARERA information session - Independent regulation in Europe: from voluntary cooperation to the institution of ACER <i>Presentation by Ms C. POLETTI, Chair of the Board of Regulators</i> <i>Roundtable discussion</i></p>
<p>FOR INFORMATION 15:45 - 16:20</p>	<p>ARERA information session - The role of NRAs in the BoR: working methods, current activities and perspectives in the timeframe of the cooperation with other relevant bodies in energy regulation <i>Presentation by Mr F. CARIELLO, ARERA, Head of European Regulation Special office</i> <i>Roundtable discussion</i></p>

FOR INFORMATION 16:20 - 16:55	ARERA information session - The role of ARERA in European and national regulation: activities and strategic planning <i>Presentation by Mr M. RICCI, ARERA, Head of Energy Division</i> <i>Roundtable discussion</i>
FOR INFORMATION 17:10 - 17:30	Board of Regulators – Progress Report <i>Presentation by Ms C. POLETTI, Chair of the Board of Regulators</i> <i>Roundtable discussion</i>
FOR INFORMATION 17:30 - 18:00	Ukraine’s NRA (NEURC) visit to ACER – October 2023 – insights and main take-aways <i>Presentation by Mr C. ZINGLERSEN, ACER Director</i> <i>Roundtable discussion</i>
18:00 - 18:45	Closed Session – Administrative Board Discussion (Members only)

SECTION II – DISCUSSION AND DECISION-MAKING

ARERA information session

The 59th Administrative Board meeting was held in Milano at the headquarters of the Italian Regulatory Authority for Energy, Networks and Environment (ARERA) upon the invitation of Ms C. Poletti, the Chair of the Board of Regulators, the other Agency’s governing body. Ms Poletti invited the Administrative Board at its 58th meeting to organise an information session on the role and functioning of a National Regulatory Authority (NRA) within the EU. The Administrative Board responded positively to the invitation as it considered such a joint session as relevant for its understanding of the institutional set-up of the Agency, the Board of Regulators’ mandate and hence, broader context in which the Agency works.

The representatives of the Italian regulatory authority ARERA delivered three presentations: on the evolution of independent energy regulation in Europe; on the role and mandate of NRA in a national context as well as in the ACER Board of Regulators, which represents the decision-making at the EU level. According to the Administrative Board members and alternate, the sessions were very informative and insightful given the fact that the Administrative Board members do not have experience in working within the NRA (this is prevented by the provisions of the founding Regulation).

In the subsequent discussion, the ARERA representatives underlined the added value of the ACER in fostering cooperation of the NRAs within the Board of Regulators by providing a forum where divergent views can be settled and where a lot of informal dialogue takes place (e.g., on REMIT), and in this way it contributes to the integration of energy market. The latter was described as a major asset also for the construction of Europe, as confirmed by the war in Ukraine, though sometimes regulation has not been perceived as something of crucial importance. Ms Poletti pointed also to many challenges faced by the sector and its regulatory community like ensuring well-functioning integrated EU energy markets while supporting the decarbonisation process, developing market-based mechanism to support investment on flexibility assets, managing uncertainty while supporting innovation.

Conclusion: (1) The Administrative Board appreciated a very insightful information session provided by ARERA, Italian regulatory authority, on its role and functioning within the ACER Board of Regulators.

2) Progress Report – Board of Regulators

Ms Clara Poletti, the Chair of the Board of Regulators, provided an update on the most important deliberations and decisions taken by the Board of Regulators at the three meetings (July, September and October) that took place since the last Administrative Board meeting.

All these meetings were focused on the ongoing negotiations on the electricity market design adjustments and REMIT revisions as well as on infrastructure delays, especially in integrating new renewables, that could have been witnessed in many EU countries. At the meetings in autumn, the European Commission had presented its Wind Power Package and the State of the Union speech delivered by the European Commission President, the report on emergency measures as well as the EU joint gas purchasing platform and its potential relevance to NRAs.

Ms Poletti also informed that at the October meeting, the Board of Regulators discussed the draft ACER Communications Strategy 2024-2026 and dissemination plan. Members supported the key elements and goals emphasising the increasing need for coordinating common messaging between ACER and NRAs as well as sharing impartial and transparent evidence/data showcasing the benefits of the internal energy market, on the energy crisis and on the crucial role of regulators whilst respecting political sensitivities. In that respect, the Board of Regulators considered the ACER proposal of creating a network of national press officers as useful for strengthening such cooperation. Members of the Board of Regulators were invited to provide within next two weeks written feedback on the draft strategy, which will be then shared with the Administrative Board in time for the discussion and Strategy's adoption at the December Administrative Board meeting.

The Chair announced the next steps on the election of the Board of Regulators Chair and Vice-Chair which will take place at the 13 December (120th) Board of Regulators meeting.

Conclusion: (1) The Administrative Board took note of the activities of the Board of Regulators, still impacted by the context of the crisis.

3) Ukraine's NRA (NEURC) visit to ACER – October 2023 – insights and main take-aways

The ACER Director informed the Administrative Board about the recent visit of the representatives of the Ukrainian NRA (NEURC) to ACER (12-13 October 2023). While the Ukrainian energy system has been under immense pressure due to the Russian aggression, the regulator has been already outlining the post-war energy sector reconstruction. The latter is considered as crucial for the country's economic recovery and in the EU accession trajectory (implementation of EU acquis, market integration, and decarbonisation goals). To tackle current high market concentration in the energy sector, the recently adopted national legislation tasked NEURC with full REMIT implementation by 2025. Thus, during the visit the NEURC representatives expressed interest in working directly with ACER on various issues (capacity building, data systems, surveillance practices, and knowledge sharing) to reach that goal. While ACER offered some concrete support (e.g., technical workshops, select training opportunities), it was stressed that NEURC's efforts should be primarily embedded within the Energy Community framework as well as with select relevant NRA. The role of competition law and of relevant energy market reforms were underlined also as crucial to address market concentration.

The Administrative Board welcomed the debrief of the visit and expressed all forms of feasible support that could be offered by ACER to the Ukrainian regulator.

Conclusion: (1) The Administrative Board expressed support for all feasible actions that would foster cooperation between Ukrainian energy regulator (NEURC) and ACER and for a close work with the Energy Community Secretariat.

4) Administrative Board Discussion – Closed session (Members only)

SESSION II

SECTION II – OPENING

The second session of the 59th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 26 October 2023. The meeting started at 9h00.

Upon invitation of the Chair none of present Members and Alternates declared any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda.

Approval of the Agenda

The agenda of the 59th meeting of the Administrative Board was approved as follows:

OPENING <i>09:00 - 09:05</i>	Opening of the 59th Meeting of the Administrative Board - Session 2 <i>Adoption of the agenda and declaration of interests</i> <i>Report on conclusions of closed session</i>
FOR INFORMATION <i>09:15 - 10:00</i>	Progress Report – Energy Market and Regulatory Developments - recent ACER actions, efforts, perspectives and reflections <i>Presentation by Mr C. ZINGLERSEN, ACER Director and B. VEREECKE, Director’s Office - Strategy Delivery and Communication, Team Leader; Mr A. SANTOS, Market Surveillance and Conduct Department, Tam Leader</i> <i>Roundtable discussion</i>
FOR INFORMATION <i>10:00 - 10:45</i>	Broader perspectives for ACER going forward <i>Presentation by Mr C. ZINGLERSEN, ACER Director</i> <i>Roundtable discussion</i>
FOR INFORMATION	The Agency’s draft Strategy on Communications 2024-2026 and Dissemination plan

11:00 - 11:45 *Presentation by Mr B. VEREECKE and Ms U. SHORTALL, both from Director's Office - Strategy Delivery and Communications*
Roundtable discussion

FOR INFORMATION
11:45 - 12:45 **Organisational Developments (Budget & Procurement Implementation, an overview of 2023 and 2024 budget challenges, Human Resource Management - Recruitment trajectory; update on the European School in Ljubljana, update on the Building project)**
Presentation by Mr C. ZINGLERSEN, ACER Director, Ms O. BORISSOVA, Head of Corporate Services
Roundtable discussion

FOR INFORMATION
14:15 - 15:00 **Draft Single Programming Document for the years 2024-2026 – feedback on comments provided by the European Commission**
Presentation by Mr C. ZINGLERSEN, ACER Director, Ms O. BORISSOVA, Head of Corporate Services and Mr V. ILIĆ, Quality Management Assistant
Roundtable discussion

FOR ADOPTION
14:45 - 15:00 **Follow up to the December 2022 decision on the working time rules: Adoption of Model Decision by decentralised agencies and joint undertakings of implementing provisions on working time and hybrid working**
Presentation by Ms S. MANESSI, Human Resources Management, Team Leader
Roundtable discussion and adoption

FOR ADOPTION
15:00 - 15:25 **Adoption of a downward amendment of the 2023 budget due to lower than expected generated REMIT fees**
Presentation by Ms O. BORISSOVA, Head of Corporate Services and Ms R. MANDROC, Budget, Finance and Procurement- Team Leader
Roundtable discussion and adoption

FOR INFORMATION
15:25 - 15:45 **Follow-up on the 2023 conflict of interest procedure**
Presentation by the AB Secretariat
Roundtable discussion

CLOSURE
15:45-16:00 **AOB and Closure of the 59th Meeting**

REPORT ON CONCLUSIONS OF CLOSED SESSION

The Chair summarised the discussions of the closed session. The main topic was the timeline and procedure for the elections of the Administrative Board Chair and Vice-Chair as the mandates of the current Chair and Vice-Chair expire on 27 January 2024. The Secretariat explained the procedure and the timeline as well as the expected tasks and responsibility of these two positions. In line with Article 18(3) of Regulation (EU) No 2019/942, the Administrative Board shall appoint a Chair and a Vice-Chair only from among its Members. The candidate is elected if s/he receives a two-thirds majority of favourable votes of the Administrative Board members. It was confirmed that the elections would be held by secret ballot.

Members who are interested in standing for these two positions were asked to submit via e-mail their candidacies to the Secretariat by 1 December 2023. After that the Secretariat would publish the expressed candidacies. The elections would take place at the closed session of the 60th Administrative Board meeting on 13 December 2023. It was agreed that the elections would take place through the ePlatform (elections module) given the hybrid mode of the meeting.

The Board also adopted the provisional calendar of the meetings in 2024, which for now stand as: 24-25 January, 11-12 June, 23-24 October, 11-12 December. In addition, it was suggested to have a placeholder for a possible meeting in March if there is a need for it given the new chairmanship of the Board. 20 March was booked for that purpose. Moreover, it was suggested that one of the meetings could be virtually only.

The Secretariat also informed the Board that it was asked to submit the estimate of the 2025 budget line of the Administrative Board. The Secretariat informed that it would provide estimate of costs for the meetings and for the maintenance of the ePlatform. The Board was asked to inform as soon as possible the Secretariat about any other need having financial implications so that it can be factored in the 2025 budget in time.

Conclusion: (1) The Administrative Board approved the process and deadlines related to the elections of the new Administrative Board Chair and Vice-Chair for the next two years (January 2024- January 2026). The elections would take place at the next/60th Administrative Board session on 13 December 2023.

5) Agency's Progress Report - Energy Markets and Regulatory Developments – recent ACER efforts, perspectives and reflections

Upon invitation of the Chair, the Director Christian Zinglensen and Bart Vereecke, Team Leader of Strategy Delivery and Communications, presented the overview of the current energy market situation.

Europe's integrated electricity market proved resilient during the crisis, bringing multiple benefits – e.g. ensuring security of supply, mitigating price volatility, enabling renewables and providing flexibility. Transmission capacity and cross-border trading importantly helped to soften the blow of the crisis. However, the crisis still required considerable fiscal interventions, mainly through indirect measures, to protect from price shocks. Most of those support measures aimed at ensuring affordability of energy to consumers. It was however important that the emergency measures did not lead to any export or import restrictions.

The crisis had taught valuable lessons. An important lesson from 2022 is the need to further target support measures if the latter are needed. If that is the case, the measures have to be temporary and tailored in order not to distort the market and should incentivise cutting energy consumption; protect vulnerable consumers and remove their vulnerability going forward. The second lesson learnt had been that the integration of markets should continue. In that context, it was stressed that while grid operators are required to make 70% of interconnection capacity available for electricity trade with neighbours, the ACER's monitoring finds that the 70% target (mandatory for all by 2026) is still far off. Delivering on the agreed minimum 70% target of interconnection capacity is namely crucial to achieving the ambitious political objectives set for renewable generation and consequently for providing key flexibility to the market.

In addition, it was noted that during the crisis the costs of capacity mechanisms (renumerations to power plants to be available at any moment) kept rising by largely supporting fossil fuel power plants. Hence, in cooperation with the NRA's, ACER had been recommending the Member States to analyse the risk of locking-in dependence on high-carbon technologies, potentially also hindering the transition to a low-carbon economy.

Many support measures were taken also on the gas markets, as the Russian supply shock prompted a major rebalancing of the EU energy market. While gas storage has become Europe's 'first line of defence' to secure mid-term supply and meet large seasonal consumption swings, in parallel the rebalancing led to a higher EU dependence on LNG supply. Due to this increased reliance on LNG supply, it is expected that the EU gas prices would be in near-term more exposed to global competition. This is relevant as expected gas price volatility would have knock-on effects on electricity prices.

The ACER representatives underlined that these lessons learnt from the crisis were relevant for the governments heading to the energy transition and to the future energy system. As coal and then conventional gas plants were to be phased out, flexibility portfolios will transform, gradually relying more on cross-border exchanges, storage, demand-side response, and low-carbon technologies. It has become evident that further strengthening of the energy market across the EU required investments in infrastructure, rules, institutions, and governance. Importantly, it also required political investment in the 'comfort levels' of being more (inter-)dependent on other Member States for one's energy needs. The recently published joint report from ACER and the European Environment Agency (EEA) "on future flexibility needs and solutions" showed that to keep up with the growth of variable renewable electricity sources the flexibility in the EU power system needs to almost double by 2030, compared to today's levels. Enhanced electricity interconnection and demand response are key parts of the solution. In particular, the report points to the value in greater collaboration amongst Member States both for shorter time scale flexibility needs (e.g., via enhanced demand response) and longer time scales (e.g., via enhanced interconnections). The Director announced that ACER would issue in December a new assessment of barriers to demand response. Moreover, it was emphasised that also the grids played a critical role in the energy transition. Consequently, the Board of Regulators had been discussing a lot of issues like risk handling, infrastructure efficiency, flexibility needs, project management and cost sharing approaches.

Following the ACER presentation, rapporteur Mr Bartuška provided a debrief on the energy related discussions in the Council. In the context of current rather favourable energy market developments and with the emergence of other burning issues at the EU and global level (e.g., migration, new geopolitical tensions), the energy crisis is no longer topping the EU political agenda.

In addition, per the Administrative Board request, the Agency provided the Administrative Board also a state of play in the current negotiations on the REMIT revision. Mr A. Santos briefed that the political considerations between the Council and the European Parliament were focused on three articles, the most outstanding for the Agency being the article on the scope of ACER powers in investigations. It was reminded that the European Commission identified the problem of jurisdictional challenges for the enforcement of complex cross-border market abuse cases and thus put forward in its draft legislation such a proposal of tasking ACER in that cases. It is expected that the negotiations on the recast of these regulation would have been concluded still this year. It is however not expected that the ongoing negotiations would further increase human resources and budgetary support the Agency would get for its implementation.

The Administrative Board underlined the importance of REMIT for the trust of stakeholders and NRAs in the market and called for a good cooperation with the NRAs. Ms C. Poletti, the Chair of the Board of Regulators, confirmed REMIT is a complex tool which enabled some NRAs to ask for support from ACER and rely on it, while allowing other NRAs to commit to resolve the cases on their own by working together. The Administrative Board expressed a concern if this important new task would not be supported with relevant budgetary and human resources means, as it could lead to ACER being powerless and inefficient.

All in all, the Administrative Board thanked the Agency for providing a broad and relevant presentation of the current developments and for pointing to Agency's recent and current priority areas.

Conclusion: (1) The Administrative Board was provided with the latest energy markets and regulatory developments, including with the negotiations on the REMIT revision that would increase the ACER's powers.

6) Broader perspectives for ACER going forward

The ACER Director informed the Board about his plans for a reorganisation of the Agency, coming into force around 1 February of next year. In his opinion, the current and anticipated growth of the Agency, its newly assigned tasks, and the evolving context in which the Agency operates, with knock-on effects on the energy regulatory community more broadly, would benefit from a number of organisational adjustments. The latter should lead towards better interplay between departments, including for tasks that increasingly span across sectors (electricity and gas, in the future possibly also hydrogen), and in further enhancing cross-organisational collaboration as well as improving planning across the Agency, whether operational, budgetary, legal or for IT and data enhancements relevant for the Agency's effective and secure operations. The Director outlined the broad contours of the envisaged structure, his interactions so far with the Agency's senior management team and the initial, preliminary interaction with the Staff Committee he had earlier in the week. Based on this, it was the Director's assessment that they were all broadly comfortable with the reorganisation plans.

The Administrative Board welcomed the information, including being informed in advance so as to be kept in the loop on various strands of the Agency's developments; this whilst acknowledging that it remains the Director's prerogative to (re)organise the Agency and therefore also his responsibility how the effort turns out. Overall, the presented outline struck Board members as reasonable given the overall growth in staff and in Agency tasks and that it takes into account the evolving context in which the Agency operates, whilst still retaining a clear focus on the Agency's core tasks. It was suggested to keep the Board informed of how the effort proceeds, including by sharing the views of the Staff Committee.

Some in the Board also pointed out that a growing organisation might lead to an increase in more administrative tasks, though not necessarily 1:1. As such, whilst the Director's focus on decreasing bureaucracy, despite the normal 'expansive automaticity' of this once an organisation expands in size, was welcomed, it might well be necessary to look at reinforcing some horizontal tasks further down the line. Finally, the Director was reminded of the importance of using future recruitments to also improve the gender balance across ACER's managerial functions.

Conclusion: (1) The Administrative Board appreciated the information on the planned reorganisation of the Agency.

7) The Agency's draft Strategy on Communications 2024-2026 and Dissemination plan

Upon invitation of the Chair, Bart Vereecke, Team Leader of Strategy Delivery and Communications, and Una Shortall from the same department, presented the ACER draft Strategy on Communications for the 2024-2026 period and its draft Dissemination plan. The presentation aimed at getting feedback on the draft text from the Administrative Board to make any further adjustments ahead of the planned strategy's adoption at the next/60th Administrative Board meeting. In parallel, the draft communication strategy was presented and submitted for a view to the Board of Regulators at its October meeting.

Mr Vereecke reported about the discussions on that topic held at the Board of Regulators. The NRAs welcomed the change of communication during the crisis. The Board of Regulators commended on the importance of defending the European energy markets and ACER's continued efforts to offer insights to decision-makers grounded in data and analysis.

Ms Shortall presented the outline of 2024-26 strategy, which builds on objectives of the previous strategy (2021-2023) and defines for the first time overarching communication principles. The strategy sets out as its four main goals 1) to consolidate external communications by providing broader context and promotion of new tasks; 2) to engage effectively with the stakeholders, 3) to focus on data and digital transformations to make ACER a more forward-looking and data-driven organisation; and 4) to mainstream changes into corporate culture via internal communication. Ms Shortall thanked the Administrative Board rapporteur on communications Ms Karin Lunning for her inspiration to define the seven accompanying communication principles. The latter should stay the same over time as they reflect the Agency's role, whilst strategy and its priorities might change.

Ms Shortall stressed that the combination of the four communication goals and of seven communication principles underpins the following strategy's main strengths: to showcase ACER's added value (data and insights) in the broader EU picture, to focus on key audiences, to further facilitate internal cooperation among staff and ACER bodies and to invest in being a data-driven & forward-looking Agency.

An important novelty is to put much more focus on boosting the recruitments campaigns in order to support the work of the HR department in promoting and spreading around the information on the vacancies. This is especially relevant in the current period of Agency's growth. The second novelty is the proposal to set up a network of the NRA press officers in order to foster mutual cooperation and to have peer-to-peer exchanges on an ad hoc basis among the press officers in NRAs (e.g. on how to communicate in a crisis or on a REMIT case).

Both Mr Vereecke and Ms Shortall pointed to the need of bigger investments for the communication projects like Extranet. However, given the 2024 budgetary outlook it was indicated that some investments might be postponed to 2025 and 2026.

The Communications rapporteur Ms Lunning congratulated the Agency and its communication team for all the work done and for developing such a good communications strategy. She considered the four goals as accurate and in line with the changing environment. She stressed the importance of targeting key audiences with the right/tailored messages. Ms Lunning assessed as very positive the potential of creating the NRA press officers' network, to boost the recruitments campaigns by targeting the potential staff, to increase data visualization and ensure access to data for evidence and policy-making purposes. Moreover, she welcomed the reinforcement of internal communications as this provides staff with relevant skills and reinforces the communication culture and togetherness of staff in disseminating messages externally.

The Administrative Board thanked for a very good preparation and presentation of the communication's strategy. The Board congratulated the Agency for excellent communication work and for tangible progress achieved since 2021. Among others, it had managed to brand the Agency and its value added for Europe. The Board stressed the communication goals as appropriate. It inquired on the planned actions to provide Agency's visibility in the country of location (Slovenia) given the fact that mandate of decentralized agencies was also the promotion of the European idea in the Member States. The Director explained that the cooperation with the host country was established and probably even bigger than before, however more via energy experts and the government (and its engagement on the ongoing legislative packages and issues of common interest). It was explained that given the human resources limitations, the engagement with citizens was not a priority for the Agency. The Board inquired also on the previous practice of organisation of an annual event for stakeholders in the country. Ms Shortall explained that the Agency decided to shift from annual conference to the organisation of webinars, which ensure greater outreach in entire Europe (up to 11.000 reached participants compared to 200-300 participants attending a conference in Slovenia). While it was acknowledged that some IT-infrastructure projects would have been welcomed, the Board indicated that 2024 budget situation might not enable it.

The Board was given the opportunity to provide any further comment in writing after the meeting. The final strategy would be aligned with any Board of Regulators comments (if received in writing within the next two weeks) and then submitted for the approval to the Administrative Board at the December meeting.

Conclusion: (1) The Administrative Board assessed the Agency's draft Strategy on Communications 2024 - 2026 and its Dissemination plan as a very well prepared and comprehensive document, addressing the relevant communication goals and principles.

8) Organisational Developments (Budget & Procurement Implementation, an overview of 2023 and 2024 budget challenges, Human Resource Management - Recruitment trajectory; update on the European School in Ljubljana, update on the building project)

Ms Olga Borissova, head of the Corporate Service Department, provided the Board with the current implementation rate of the 2023 budget. Overall, it seems to be on track. Compared to similar period in 2022, commitment level and absorption of carryover funds are well above the last year's absorption, while payments level remains slightly lower. Similarly, the implementation rate of procurement procedures which this year has increased in absolute terms was at comparable level to the last year. It was notified that only 1.4m EUR out of the 11.5m EUR planned procurement procedures were left to be proceeded.

Furthermore, Ms Borissova and the Director pointed to some developments which have important implications for the Agency's budgets in 2023 and 2024 and beyond.

The first is the employer pension contribution towards staff whose salary is covered by REMIT fees. This had been newly discovered/announced as an obligation of the Agency (as opposed to the wider EU budget) to be paid from the REMIT fees' budget. As this had not been done so far (including from the time of the introduction of REMIT fees in 2021), the ask towards the Agency in terms of non-payments was to honour an accumulated debt of 857k EUR (this for the years 2021, 2022 and half of 2023).

Ms Borissova explained that payment of such debt in its entirety in 2023 was highly challenging due (a) to the unexpected nature of such a high amount, and (b) the rather late period of the annual budgetary cycle when this had come to the Agency's attention. The Agency has been in contact with DG ENER and DG BUDG with the aim to establish a long-term 'REMIT Fee pension debt' repayment plan. However, insofar as future pension contribution commitments are concerned, this would need to be structurally addressed in the Agency's view and thus accommodated under a revised REMIT fee decision. While it is expected that next year's REMIT fee model revision will bring the necessary structural response from 2025 onwards, the Agency would need to secure approximately 600k EUR for that obligation in its 2024 budget as regards the REMIT part.

The second structural challenge for the Agency's budget is the issue of potential legal costs to be paid in case of lost cases before the European Court of Justice. The challenge has been how to budget such low-predictable and in certain years highly spiked/volatile costs in an annuality-oriented EU budget cycle which makes it difficult to mitigate volatility via e.g. having a multi-year savings plan (like one would do in an organisation not constrained by such an annuality principle).

This was not a new issue per se; it had been discussed at the previous (58th) Administrative Board meeting where the Agency, following the Board's conclusions at that meeting, had been in further contact with the European Commission on possible solutions and had sought out the experiences of other Agencies which might or might not provide inspiration for ACER. The Commission has so far considered the absorption of such legal costs to be borne within the normal yearly budget; an approach which the Agency acknowledges in more normal years but which for 2024 may prove impossible in the Agency's views given the unusually high number of appeals likely to be decided by the ECJ in the so-called redispach cost-sharing decisions of the Agency (with different appeals going in different directions from each other). As regards other EU agencies, the research so far showed that some benefit from provisions in their founding regulation enable them to either a) recognise fees as assigned revenue with a reserve fund that can be tapped in particular situations or b) charge a fee for appeals submitted to Board of Appeal, typically returned in case the appeal is accepted but kept in case of the appeal's dismissal/withdrawal.

The Director was of the view that the latter solution should be considered for possible introduction into the ACER Regulation per the upcoming evaluation of the Regulation due by the summer of next year. That would be even more relevant in the Director's view should the Agency, per the likely soon-to-be concluded REMIT reform, be faced with an increase in legal appeals once it starts pursuing its new investigatory powers.

Still, even if this is pursued as a structural solution coming into effect, from 2025 onwards, this did not solve the challenges for 2023 and especially for 2024 budget should the Agency find itself with a significant number of cases lost before the ECJ leading to very high legal costs to be paid in one and the same year. As regards 2023, the Agency is currently negotiating downwards the legal costs to be paid following the loss of two cases before the ECJ (the current estimation is that ACER could manage to lower the legal costs asked for by half, i.e. towards around half a million euros). To cover this amount, ACER is currently exploring with DG ENER an exceptional one-off transfer.

The Director emphasised that there remained a potentially much higher challenge for 2024. In case of losing more or less all of the current redispach cost-sharing cases (7 appeals in total), the recoverable costs to be paid to successful appellants could amount to 2-3 million EUR (theoretically, it might even be more), which in his view would be impossible to accommodate in a yearly budget the size of ACER's. The Agency has checked with the ECJ which was not in a position to indicate the likely time of the rendering of judgments (whether e.g. earlier in the year or late in the year) which makes planning even more difficult.

All in all, in view of these additional costs likely/probably to incur, the Director informed the Board that the Agency was currently revisiting the draft 2024 budget, considering deprioritisation of some planned projects; this alongside pursuing different options for the particular challenge of accommodating the impact of the legal appeals once adjudicated by the ECJ. For this purpose, a special Budget Taskforce had been set up internally. Based on detailed analysis of each project and by taking into consideration a broader context, the Budget Taskforce would propose to the Agency's senior management proposals for savings in the coming weeks.

In subsequent discussion, the Administrative Board considered the REMIT fee pension employer contribution as an irregularity that needs to be addressed – both retroactively (the 'pension debt') and to be regularly budgeted from 2024 onwards. It agreed that the Agency should discuss with the relevant Commission services on the repayment of debt in several instalments over a longer period of time. The Commission confirmed that the upcoming REMIT fee model revision would be a relevant opportunity to see how the issue could be addressed structurally from 2025 onwards.

On legal costs, this remains a difficult structural issue in the view of the Board. Some members expressed that it seemed 'mission impossible' to deal with such extraordinary cost spikes in one single year and that such a structural challenge had to be addressed differently, encouraging the Agency to continue to explore options with the Commission. The Commission recommended to put a share of the potential costs in the 2024 budget and then make regular adjustments to the budget during the year. Since from the MFF perspective, 2024 is a particularly difficult year for the EU budget, in case of the worst-case scenario, the Commission might be able help with a kind of a loan to the Agency, whereas a one-off budget transfer seemed less likely.

Related to budgetary issues, the Board requested to be regularly informed of various reprioritisation shifts among the budget lines in the form of a budget transfers below 10% threshold. It was agreed that from now on such information should be made available on a quarterly basis and approached as input (compiled in a brief, easily accessible way) towards the typically four Board meetings held across the year.

Moreover, the Board pointed to the high number of planned 2023 procurement procedures. Given a limited staff doing procurement, it suggested to make an internal analysis if the prioritization of procedures was sufficient. Ms Borissova explained that the Agency was starting a decentralization and simplification effort of the procurement procedures which should enable the procurement team to focus on more complex, higher value processes and thus alleviate them from lower value ones. This should also help in meeting the yearly budget targets as the 'big files' would be given priority.

The Agency representatives reported also about the very preliminary findings of the alleged IT security incident and the Agency's mitigation actions that were taken since its notification. Once more information is provided, the Agency would keep the Board informed about it. The Administrative Board took note of the information provided and called on the Agency to budget adequate investments in the Agency's IT hardening, as this was also in line with the goals of the security union.

Regarding the recruitments, it was reported that the procedures for 2023 were on track and all vacant positions were planned to be filled in by 31 December 2023.

On the European School Ljubljana, Ms Borissova provided an overview of recent stepped-up activities of the Agency with different interlocutors. Since beginning of summer they were co-organized with the Board's Rapporteur Ms Romana Jordan aiming to explore solutions for the challenges the school has been facing (e.g., lack of adequate premises and quality of teaching). Rapporteur Ms Jordan informed the Board that following these meetings there seemed to be further developments within the government in appointing new contact persons at the relevant ministries (MFA and Ministry of Education) that are asked to coordinate on this dossier. Out of several options for a new building for the school, the most feasible so far seems to be the one built in cooperation with the municipality of Ljubljana, but for that also the national budget would need to chip in. Ms Jordan warned the Board that devastating floods that hit the country in August had serious financial implications leading to reshuffling of budget to the reconstruction needs and deprioritizing many non-linked/non-urgent projects. Hence, in order to keep the current momentum, it was advised that the ACER should transmit the importance of the European School for the Agency and its staff at the highest political level (e.g., at the margins of a meeting of ACER Director with the Prime Minister). The Director expressed readiness to engage at that level and asked the rapporteur for the advice on appropriate timing for its organisation.

The Administrative Board welcomed the information on the recent activities related to the European School in Ljubljana and thanked the rapporteur for her engagement. It also expressed support for any actions that would improve the situation for the benefit of the Agency and its growth trajectory.

Ms Borissova also updated the Board with the building project, which currently focused on the staffing needs in the existing premises. After the end of the first, so called "squeeze" phase that guaranteed enough workstations for current growth trajectory, in the second phase the Agency is about to engage a consultancy to accommodate the growth in the next 2-3 years (up to 250 people) and to create a new, hybrid working model along with changing the organisation culture. By mid-2024, piloting of the Workplace Strategy on the current premises is to be launched. Ms Borissova also informed the Board that in parallel, building project for the acquisition of new premises is on-going.

- Conclusions: (1) The Administrative Board was informed of outstanding budgetary challenges the Agency is facing in 2023 and 2024. It agreed that the Agency should seek to negotiate a longer-term repayment plan with the Commission to cover the pension employer contributions for staff under the REMIT fee framework for the period 2021-2023, acknowledging this obligation has to be paid onwards as part of the regular REMIT part of the Agency budget. However, the issue of accommodating legal costs in case of lost legal cases in unusual years with high spikes remains a structural challenge.
- (2) The Administrative Board took note of the potential direct impact of the unexpected costs and: i) emphasized the principle of budgetary balance between revenue and expenditure in all annual budgets; ii) emphasized the balance between allocated tasks according to the (ACER and REMIT) Regulations; iii) asked for a mitigation plan by the December meeting.
- (3) The Administrative Board asked to be informed of the budgetary transfers below the 10% transfer threshold adopted by the Director; this via easily accessible information complied towards the regular meetings of the Board.
- (4) The Administrative Board was informed about the very preliminary findings of the alleged IT security incident and the Agency's immediate mitigation actions. The Administrative called on the Agency to budget adequate investments in the Agency's IT hardening.

- (5) The Administrative Board reconfirmed strong support for the Agency's efforts to improve the situation of European School Ljubljana and welcomed the recent efforts of the rapporteur to increase engagement of the Slovene authorities. It also expressed support for any further actions that would improve the situation of the European School for the benefit of the Agency and its growth trajectory.

9) Draft Single Programming Document for the years 2024-2026 – feedback on comments provided by the European Commission

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, and Mr Valter Ilić, Quality Management Assistant, informed the Administrative Board that the Agency received on 10 October the Commission's Opinion on its draft Programming Document 2024-2026. The Agency addressed the comments contained in the Opinion and had provided them to the Board, with the aim of informing the Administrative Board on developments concerning the document already now and thus facilitating the document's adoption process in December. These amendments to the document had been considered as of low-impact nature as they concerned some factual corrections and integration of Commission's Opinion. Mr Ilić stated that, in light of the developments that had been already announced at the meeting (e.g., planned reorganisation, budgetary challenges for 2024) some potential high-impact amendments to the draft Single Programming Document would still need to be done in the coming weeks.

The Administrative Board inquired if the planned changes were to be budget neutral. The Director explained that there was no aim for a higher overall budget, but that some IT hardening would have to be accommodated and thus some other projects revisited, deprioritised or streamlined.

The Commission pointed again to the need to factor in the 2024 budget the pension employer contributions for staff under the REMIT fee framework. Moreover, regarding the delayed adoption of the Methane and Decarbonised Gas market packages it pointed to the fact that since the package would not be adopted in 2023, the planned 2023 expenditure for staff under this package would need to be decreased.

Conclusion: (1) The Administrative Board took note of the update of the draft Programming Document 2024-2026 in order to address the Commission's opinion and pointed to the need of aligning the Programming Document content with legal and budgetary framework.

10) Follow up to the December 2022 decision on the working time rules: Adoption of Model Decision by decentralised agencies and joint undertakings of implementing provisions on working time and hybrid working

Ms Silvia Manessi, Team Leader for Human Resources Management (HR), informed the Administrative Board that the European Commission sent over the summer to those agencies which like ACER have formally opted out of the Commission's new rules on working time and hybrid working the text of the new Model Decision on working time and hybrid working. The final text of the Model Decision reflects several rounds of consultations, both internally within the Commission and with EU agencies, recognising the value in further adjusting the European Commission's rules so as to take account of various differences relevant for the functioning of agencies.

Ms Manessi recalled past discussions of the matter in previous meetings of the Board, including the need for both staff recruitment and staff retention purposes of not “rocking the boat” vis-à-vis current approaches, and that the Model Decision could accommodate this. Over the past months, the Agency’s HR team had held several meetings and info-sessions on the topic, also with the Staff Committee. Internal guidelines are being drafted, to guide better staff on the new provisions, preserving business continuity.

Without any subsequent discussion, the Administrative Board adopted by the unanimity Model Decision on Working Time and Hybrid Working.

Conclusion: (1) The Administrative Board adopted by unanimity the Model Decision on Working Time and Hybrid Working via its Decision 11/2023 of 26 October 2023.

11) Adoption of a downward amendment of the 2023 budget due to lower than expected generated REMIT fees

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, and Rodica Mandroc, Team Leader of Budget, Finance and Procurement, informed the Administrative Board of the need to adjust the 2023 budget with lowering revenue side due to a lower generated REMIT fees.

Namely in January 2023, the Agency established the amount of fees due to the Agency by applying the approved fees collection model on the number of records reported by the Registered Reporting Mechanism (RRM) for the financial year 2022. The amount of fees envisaged for the financial year 2023 at the time of the budget adoption was EUR 11 276 866. On the other hand, the total amount of debit notes issued 30 September 2023 amounted to EUR 10 164 368. This is a decrease in appropriations of EUR 1 109 498.

Moreover, the Agency’s budget for the financial year 2023 adopted under Decision No 20/2022 of the Administrative Board was erroneously including an extra amount of EUR 36.415 for the EFTA contribution that should not have been applied to the new legislative initiatives, and therefore, the budget of the Agency must be adjusted accordingly.

In line with the above, the total revenue of the Agency for the financial year 2023 needed to be reduced by the difference between the initially planned revenue and the revenue actually established, i.e. EUR 1 145 913. The reduction had been absorbed by de-prioritising the outsourcing of the data analytics (EUR 1 109 498) and from the savings within the appropriations allocated for the costs of temporary workers (EUR 36 415).

Ms Mandroc pointed to the need to revise the REMIT fee model in 2024 as it turned out that the revenue that the Agency was able to collect with the current model failed to meet the eligible costs of the REMIT system.

Ms Mandroc announced that the Administrative Board would need to adopt one more amendment to the 2023 budget by the end of the year as a consequence of the fact that the Methane and Decarbonized Gas market packages would not be adopted by the end of 2023 as was also confirmed at the meeting by the European Commission. Thus, it would be needed to remove the allocated funds and the additional posts from the Agency’s budget.

Conclusion: (1) The Administrative Board adopted by unanimity the 2023 budget amendment by adopting Decision 12/2023 on amending Decision No 20/2022 on the adoption of the budget and the establishment plan of the European Union Agency for the Cooperation of Energy Regulators for the financial year 2023.

12) The up-date of the 2023 conflict of interest procedure

Upon the invitation of the Chair, Ms Tina Vončina, the Administrative Board Secretariat, informed the Board about the developments on the annual assessment of the conflict of interest process since the 58th Administrative Board meeting where the Board decided to suspend the three alternates due to the conflict of interest. At that point the Board reconfirmed the risk level 3 for those three members and gave them 2 months to provide the Board further observations and clarifications. Since none responded, the three alternates had been suspended from the Board since 23 August (including by blocking their access to Extranet, exclusion from the receipt of information or documents; suspension published on website). The Administrative Board Chair sent a letter to the Council informing it about those suspensions and requesting to look into their assessment of the conflict of interest. The Secretariat had been informed that the Council Legal Service was looking into the matter, but no formal correspondence had been received so far.

In the meantime, one of these three alternates Mr Pawel Pikus submitted a resignation on 22 September 2023. The Chair of the Administrative Board notified the Council (as Mr Pikus Appointing Authority) about the resignation via the letter and asked for appointing a new alternate.

Mr Stankov, another alternate appointed by the Council, who was suspended since April 2023 due to the failure to submit 2023 conflict of interest documents, contacted on 17 October the Secretariat with the expression to assess his 2023 conflict of interest situation. He was informed that it was mandatory to submit the relevant documents through the tool ePlatform and that only then the Review Panel would be invited to assess his situation. Up to then, Mr Stankov did not provide the requested documents.

In parallel - given the upcoming appointments of new members and alternates -, the Secretariat contacted again in early autumn the Council and the European Parliament on the importance of respecting the conflict of interest guidelines in appointing procedures. According to the opinion of Ms Vončina, both Appointing Authorities had made an effort in making the provisions more relevant during the appointment procedure, though conflict of interest assessment had not been yet an integral part of the appointment process.

The Secretariat also informed the Board that in mid-October it was invited to the workshop organised by the European Commission "Ethics in decentralised agencies and Joint Undertaking". Ms Vončina delivered a presentation on the management of the conflict of interest policy in the ACER governing boards, especially in the Administrative Board. Based on the subsequent discussion and feedback received, ACER has been considered as a frontrunner in the conflict of interest policy, having in place a very comprehensive policy and through analysis. The participants expressed high interest also in the ACER's ePlatform that has been supporting the annual assessment process.

The Secretariat also announced the launch of the next annual cycle of the conflict of interest. According to the rules, the Secretariat it will launch the 2024 exercise on 1 December. However, the relevant information could be uploaded by the Boards' members and alternates in the E-platform only from 1 January 2024, as it is a yearly cycle and there could be changes still in December that have to be captured and assessed in the system. Per provisions of the Guidelines, the members and alternates would have to submit the three relevant documents (updated CV, Declaration of interest and Declaration of commitment) by 31 January 2024.

Conclusion: (1) The Administrative Board was informed about the state of play of the 2023 conflict of interest assessment procedure of its members and alternates and about the correspondence with the Council on that matter.

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In order to launch the looming appointment procedure of Agency's Director in time, the Administrative Board asked the current Director if he was interested in being reappointed so that the Board knew which procedure to follow. The Director expressed – in current circumstances – his inclination to be reappointed. Following this, the Commission was asked to prepare for the next/60th Administrative Board meeting information and timeline of the subsequent steps to be followed, especially if there was a need to take into consideration any other factor given the upcoming EU elections and possible institutional changes. The Commission explained that in principle the procedure was to be followed within the Director's yearly appraisal process, where additional assessment would be undertaken.

CONCLUSION

The Chair Mr Thiollière invited the Administrative Board to the 60th ordinary meeting that will take place on 13 and 14 December 2023 in Ljubljana at the ACER headquarters.

The meeting closed at 16h00.