



MINUTES
18th ACER Administrative Board meeting
Tuesday, 18 September 2014, 9.00 – 13.00
Italian Regulatory Authority for Electricity and Gas, Via dei
Crociferi 19, Rome

Present:

Mr Razvan Nicolescu, Chair, Member

Mr Piotr Woźniak, Vice-Chair, Member

Mr Jochen Penker, Member

Mr Guy Lentz, Member

Mr Alfonso González Finat, Alternate, with voting right, replacing Mr Guido Bortoni

Mr Pál Kovács, Alternate, no voting right

Ms Agnieszka Kazmierczak, Member, with proxy from Mr Dominique Ristori

Mr Rene Tammist, Member

Mr Luis Martin-Oar, Member

Lord John Mogg, Chair of the Board of Regulators, Observer

Mr Alberto Pototschnig, Director of ACER, Observer

Ms Marie-Christine Jalabert, Adviser

Main conclusions of the meeting

1.) The Board mandated the Chairman to send a letter, together with the BoR Chair, to the Council, asking for a presentation of REMIT at the Energy Working Party. A similar letter was going to be sent to the EP. The Board invited both Chairs and the Director to take contact with the forthcoming Commissioner in charge of Energy, as well as with the Vice-President responsible for the Energy Union.

2.) As the Work Programme for 2015 could not be adopted due to the non-

	availability of the Commission's Opinion, the Board asked the Director to prepare a draft letter informing the EC, Council and the EP about the reasons why ACER was unable to meet the deadline (30 September) to submit its Work Programme to the EU institutions.
3.)	The Board took note of the report on Bridge to 2025 and discussed about the implications of the Common Approach.
4.)	The Board approved the ACER Communication Strategy.
5.)	The Board took note of the Exchange of Letters between DG Energy and ACER regarding an agreement on the working arrangements for the handling of the international activities by the Agency.
6.)	The Board took note of the list of Implementing Rules of the amended Staff Regulations, which will enter into force by analogy as of 1 October 2014.
7.)	The Board adopted the decision No 10-2014 amending Decision AB No 01-2011 on the support granted to ACER staff members in respect to kindergarten and school fees (ANNEX1).
8.)	The following dates of the Board meetings in 2015 were agreed: 26 March, 11 June, 17 September, and 17 December.

Opening

1. Approval of the Agenda

The following agenda of the 18th ACER Administrative Board meeting was approved:

18th ACER Administrative Board meeting

Thursday, 18 September 2014, 9.00 – 13.00

Italian Regulatory Authority for Electricity and Gas, in Via dei Crociferi 19, Rome

DRAFT AGENDA V4

Agenda Topics

Accompanying documents

Rapporteur

Agenda Topics	Accompanying documents	Rapporteur
<p>Opening</p> <p>1.) Approval of the agenda</p> <p>2.) Minutes of the 17th Administrative Board meeting</p>	<p>Doc 1 for approval</p> <p>Doc 2.1 for approval</p> <p>Doc 2.2 for information</p>	<p>AB Chair</p> <p>AB Chair</p>
<p>Reporting on developments</p> <p>3.) Report on ACER developments and on the activities of the Board of Regulators</p> <p>4.) Presentation of the Bridge conclusions paper</p> <p>5.) Commission Evaluation under Article 16 (3) of the (EC) Regulation 713/2009</p>	<p>Oral update</p> <p>Oral presentation</p> <p>Oral update</p>	<p>ACER Director</p> <p>BoR Chair</p> <p>ACER Director</p> <p>BoR Chair</p> <p>Commission</p>
<p>General ACER work</p> <p>6.) Work Programme 2015</p>	<p>Doc 6.1 for adoption</p> <p>Doc 6.2 for information*</p>	<p>ACER Director</p> <p>Commission</p>
<p>7.) ACER Policy for the prevention and management of conflicts of interest</p>	<p>Oral update</p>	<p>ACER Director</p>
<p>8.) Communication Strategy</p>	<p>Doc 8.1 for approval</p>	<p>ACER Director</p>
<p>9.) Exchange of Letters between DG Energy and ACER regarding an agreement on the working arrangements for the handling of the international activities by the Agency</p>	<p>Doc 9.1 for information</p>	<p>ACER Director</p> <p>Commission</p>
<p>Administrative work</p> <p>10.) The list of Implementing Rules of the amended Staff Regulations, which will enter into force by analogy as of 1 October 2014</p>	<p>Doc 10.1 for information</p>	<p>ACER Director</p>
<p>11.) Decision AB no. [...] – 2014 amending Decision AB No 01/2011 on the support granted to ACER staff members in respect to kindergarten and school fees</p>	<p>Doc 11.1 for adoption</p>	<p>ACER Director</p>

Agenda Topics	Accompanying documents	Rapporteur
12.) 2014 AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010	Doc 12.1 for information Doc 12.2 for information Doc 12.3 for information (decisions since the last AB meeting only)	AB Chair
AOB AB Meetings in 2015	Doc AOB for information	AB Chair

*Subject to the Agency receiving the document in time

2. Minutes of the 17th Administrative Board meeting

All comments received were included in the final draft. The Minutes of the 17th Administrative Board meeting were approved.

3. Report on ACER developments and on the activities of the Board of Regulators

The Director reported on the developments in the Agency since the last meeting. On staffing issues, ACER has still been recruiting for a number of vacancies. ACER turned 4 positions of SNEs into contract agents. He underlined the difficulty to attract staff to Ljubljana, partly due to the location of the Agency and partly due to the reduction of the correction coefficient in Slovenia.

The number of nationalities employed fell from 24 to 23 due to an SNE with Estonian nationality leaving. The Director also updated the Board on the traineeship programme that was launched last year. Each traineeship period lasted for five or six months, with some of the costs covered by the Agency. The first two trainees were taken on in the autumn of last year. With two cycles a year, the Agency was now into their third round and five trainees have so far completed their programme. The programme has been very successful, so that six positions were now available in each cycle. It gave an opportunity for graduates to get the work experience in an EU institution.

He provided an overview of FGs and NCs and other regulatory activities. FGs were completed on all 8 areas last year and progress has been made on opinions on NCs. As of May there was market coupling in the electricity day-ahead market, with a single pricing algorithm, covering a large part of Europe. Italy and Slovenia would join early next year. In terms of rules, the Agency has fulfilled almost everything it was expected to deliver.

Lord Mogg raised the issue that the Commission has now decided to change the NC on Capacity Allocation and Congestion Management in electricity into guidelines. Now that the definition on the guidelines has been provided, he hopes that the comitology would proceed more rapidly. The guidelines were supposed to have the same legal status as the NCs.

One AB member asked about the early Gas supply outlook in the context of the ongoing stress tests. The Director said that he wrote to ENTSOG asking if it could provide an early report.

The Director updated on the status of the Market Monitoring Report. For the third year the report has been prepared together with CEER and it would be co-branded. It focused on the progress in completing the IEM, barriers for the functioning of IEM, and it would entail a single retail chapter for gas and electricity. Finally, the retail chapter has benefitted from the cooperation with BEUC, which strengthened the section on "switching". The report was in the final stage of preparations and its presentation was scheduled for 22 October at a public event. This was one month earlier than previous years. The report would also be presented at an exchange of views with the ITRE Committee in November.

The Chair underlined that a joint report was acceptable as long as there were no compromising conclusions, which would result from a consensus reached by all NRAs. He also said that the report could be prepared even earlier. The Director clarified that ACER was holding the pen and had the last word on the text of the report. However, the report could not be prepared earlier as some NRAs could not provide their data earlier.

On infrastructure, the Director reported that on 11 August ACER adopted a decision on the allocation of costs for the Gas Interconnection Poland Lithuania project. On 1 May the investment request was referred to ACER (under Art. 12(6) TEN-E Regulation). Between May-July consultations with NRAs and project promoters were held and on 11 August the Decision No 01/2014 was adopted and notified to parties concerned. The Decision was published on 29 August. This was the first individual binding ACER decision and therefore represented an important milestone.

The Director briefly updated on REMIT. The final stage of REMIT depended on the adoption of the implementing acts. They were likely to enter into force in December 2014, the registration would start in March 2015, the go live in June 2015.

A number but not all NRAs have already been given access to the central registration (CEREMP) platform. When the implementing acts were to be adopted, ACER could test and start with reporting on standardised contracts within 6 months. A discussion took place on the next steps, especially on the prospects for the Agency to get the required additional human resources.

The Member appointed by the Commission illustrated the context of budgetary affairs from the Commission perspective.

Lord Mogg, the representative of BoR, said that NRAs and ACER have been cooperating very effectively in the implementation of REMIT. He was pleased with the way the process has progressed for the registration of market participants. However, he underlined that some NRAs are still at an early stage of REMIT implementation, while others have implemented many of the REMIT provisions and set up the infrastructure. The analysis of the NRAs readiness to take on REMIT tasks pointed to a real concern. He alerted the Board on how serious the situation was. The CEER has started a training programme for the REMIT specialists and also for the beginners.

Action: The Board mandated the Chairman to send a letter, together with the BoR Chair, to the Council, asking for a presentation of REMIT at the Energy Working Party. A similar letter would be sent to the EP. The Board invited both Chairs and the Director to take contact with the forthcoming Commissioner in charge of Energy, as well as with the Vice-President responsible for the Energy Union.

4. Presentation of the Bridge conclusions paper

Lord Mogg informed the Board members about the Bridge to 2025 which would be adopted as an ACER Recommendation and on which the Board of Regulators gave its favourable opinion the day before. He underlined that the paper was consumer-centric as it argued strongly on consumer empowerment. An important part of the paper focused on governance. The conclusions paper would be presented at an event taking place on 23 September in Brussels. The main ideas of the paper were the need for checks and balances of the ENTSOs, the reaching out to the Energy Community and its involvement in CEER training, and Norway could become formally observer in the Agency. The Commission was kept informed of the development of the paper. The document did not mention the Energy Union, but might become helpful to the Commission when elaborating its ideas on the Energy Community. The Director clarified that the Bridge to 2025 paper would be issued in the form of a recommendation of the Agency to the three EU institutions on its own initiative.

The Member appointed by the Commission underlined that in case of a revision of the ACER Regulation the Common Approach would probably be applied, including the part on the governance.

Both the Chairman and Lord Mogg replied by saying there was no need to impose Common Approach obligations on all agencies, but rather taking a case-by-case approach, as ACER was special in governance, which has worked well. Moreover, the independence of the regulators should not be put into question. Finally, the Common Approach would need to be reconfirmed by the new Commission and the EP. One AB member concurred and said that the Common Approach was not legally binding.

A discussion took place on the links between the Bridge to 2025 and the Work Programme. Lord Mogg said that most of the issues were already included in ACER 2015 Work Programme. Some adaptations would be made with the review of the Work Programme. The Bridge to 2025 was accompanied by three more documents - the executive summary, the action plan, and the evaluation of the Evaluation of comments to the Bridge consultation.

The Board took note of the report on the Bridge to 2025 and discussed about the implications of the Common Approach.

5. Commission Evaluation under Article 16 (3) of the (EC) Regulation 713/2009

The Member appointed by the Commission said that an independent evaluation of the Agency was launched. The Commission's external contractor is PwC. The report of the PwC was not yet made available, but she was able to present the main conclusions, which were very positive. The Commission would present its report to the Administrative Board by the end of the year.

6. Work Programme 2015

The Director recalled the process, whereby a draft was prepared by 30 June, while the final version should be adopted by the Administrative Board before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators.

The Board of Regulators could not approve the Work Programme on 17 September, as the formal Commission opinion was not available. The Opinion was still pending. The Work Programme was based on the Agency having 118 staff next year, and its projected budgetary needs. The Work Programme might be revised early next year to take into account the final budgetary situation and Bridge specific actions might be included at that time.

The Member appointed by the Commission presented some key elements of the draft Commission Opinion on the 2015 Work Programme. She explained that the delay in the Commission's Opinion was due to some urgent issues that have arisen in the energy sector. The draft Opinion was undergoing inter-service consultation. It should be provided in October.

The AB Chair stressed that it was not acceptable to be put in a position in which the deadline for submitting the Work Programme could not be met. He asked that the Commission proceeded as fast as possible.

Action: The Board decided that the Chair would send a draft letter informing the Commission, Council and the EP about the reasons why ACER was unable to meet the deadline (30 September) to submit its Work Programme to the EU institutions.

7. ACER Policy for the prevention and management of conflicts of interest

The Director informed the Board that the Agency was in the process of preparing its policy for the prevention and management of conflicts of interest. The document was not yet ready to be discussed at the September Board meeting. Currently the Agency was also working on the policy on prevention of fraud and on the policy on whistleblowing. He underlined that the policy on the conflict of interest was top priority for the Agency. The Member appointed by the Commission expressed readiness to share experience on all three policies. She underlined that data protection issues should also be taken into account when establishing the policy.

The Director also clarified that in 2014 the Agency had sent two different forms for declaring interests, the old one, which was agreed in the AB Rules of procedure, and a new one prepared hastily as a reply to the comments of the budgetary authority in the discharge procedure. The latter, which was used for the Board of Regulators, was however too detailed. The new forms will be applicable as of 2015, when the Conflict of Interest policy would already have been confirmed.

Lord Mogg said that NRAs already submitted their national declarations of interest. Initially there was reluctance at the NRA level to submit also ACER's declarations of interest, but they have understood that ACER needed to reply to the discharge authority and have accepted it. However, careful consideration to privacy issues needed to be made.

The AB Chair suggested that a discussion is held in the Board of Regulators on how they establish the policy on conflicts of interest. He supported strict rules, but the rules should not hinder the participation of competent people in both Boards. Some remuneration for participation in the Boards could be considered.

8. Communication Strategy

The Director presented ACER's draft communication strategy, which was submitted for approval. He informed the Board that this was the Agency's first formal strategy, which aimed to establish how the Agency should communicate 'what we do and how we do it'. The document reflected the practices applied since the Agency was formed, and also introduced new practices, including e-surveys, collection of stakeholder reactions on documents and the use of social media to communicate Agency's messages. The paper also suggested smart qualitative key performance indicators to allow for the evaluation of the effectiveness and quality of the Agency's communication activities and deliverables and thereby enhance its accountability.

One AB member commented that the strategy could stress more cooperation between ACER and the NRAs. He thought the strategy was also very ambitious given the limited resources in charge of communication at the Agency. He considered it important to increase the visibility of the Agency. Even if the experts knew the Agency, the general public was not well aware of it, communication would need to be strongly improved.

The Member appointed by the Commission said that raising the communication profile of ACER was also one of the Commission's own recommendations. She considered ACER needed to reach out to the public. Other EU decentralised agencies have had similar problems. It was a general problem of an entity at the EU level. She was expecting more from ACER in the years to come, but was able to endorse the strategy at this stage. She invited ACER to work with DG ENER's communication officers.

The Director replied that the work that ACER performs was not of immediate relevance to the citizens and therefore an extra effort to explain to them the value of this work. However, ACER was lacking resources in communication as well as in other areas.

The AB Chair stressed that the Director should reflect on the reactions of AB members and take it as a signal to adopt innovative approaches.

Action: The Board approved the ACER Communication strategy.

9. Exchange of Letters between DG Energy and ACER regarding an agreement on the working arrangements for the handling of the international activities by the Agency

The Director reported that the Agency received a letter from Mr Ristori suggesting modes of cooperation on international activities, especially focusing on the exchange of information in this area. Before the letters are exchanged he wanted to bring this issue to attention of the Board. The Director did not find any problem with the approach of the letter.

Lord Mogg said that the arrangements should not hinder some of the contacts in a way that they would need to be approved. In any case, the working arrangements have foreseen a two-ways exchange on contacts.

The Member appointed by the Commission underlined that the Agency, given that it did not have legal personality, should never commit the EU outside its borders. The Commission was now proposing working arrangement at the level of the Director-General, whereas in the past such arrangements had been signed via a MoU at the Commissioner level. The exchange of letters included some standard provisions applicable to each Agency. The Commission was now waiting for the reply from the Director. The Commission was willing to provide general guidelines on contacts. They wanted to avoid creating new bureaucracy with these arrangements, however the Agencies were part of the European family and they should be prudent in international cooperation.

Lord Mogg agreed with the approach and said that the Agency would like to receive guidance on contacts with third countries in the context of G20. He was expecting that on informal contacts, a simple email would be exchanged.

The AB Chair concluded by saying how important it was to speak with one voice.

Action: The Board took note of the Exchange of Letters between DG Energy and ACER regarding an agreement on the working arrangements for the handling of the international activities by the Agency.

10. The list of Implementing Rules of the amended Staff Regulations, which will enter into force by analogy as of 1 October 2014

The Director briefly presented the list of Implementing Rules, which were going to be applicable to ACER as of 1 October. The list was presented to the Board for information. There were no comments.

Action: The Board took note of the list.

11. Decision AB no. [...] - 2014 amending Decision AB No 01/2011 on the support granted to ACER staff members in respect to kindergarten and school fees

The Director presented the draft amendment decision on the support granted to ACER staff members in respect to kindergarten and school fees. He explained that there was no European school in Ljubljana, even if it has been foreseen by the Seat Agreement with the Slovenian government. Agency staff in Ljubljana needed to pay the international schools. Until that moment ACER contributed to the fees, but the fees have gone up substantially. This was particularly burdensome for staff at lower grades (majority at ACER), therefore he proposed that ACER payed the full fees until the European school was established in Ljubljana. Ljubljana already brought enough challenges for staff (spouses' jobs, correction coefficient etc).

The AB representative appointed by the Commission agreed with this approach and said that paying the school fees directly to the schools was their preferred option.

Action: The Board adopted the decision amending Decision AB No 01/2011 on the support granted to ACER staff members in respect to kindergarten and school fees (ANNEX1).

12. 2014 AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010

The AB Chair informed the Board that since the last AB meeting in June he took three appointment decisions on Board of Regulators' members or alternates, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010.

AOB

AB Meetings in 2015

The Director explained that according to the AB Rules of procedure, a minimum of two AB regular meetings needed to take place every year. However, the practice has been to hold four meetings a year. Therefore, he proposed some dates that were identified to reflect the AB involvement in some formal activities of the Agency.

A discussion on the location of those meetings took place, whereby some members preferred to have more meetings in Brussels. The Member appointed by the Commission preferred that the Board met in Ljubljana, where the Members could also meet with staff. She pointed out to the sensitivity of the place of the Agency meetings for the host government.

The Board decided on the following dates and location of the meetings of the Administrative Board in 2015:

Number of the meeting	Date (s)	Timing	Location
20 th meeting	26 March, Thursday	9.00-13.00	Bucharest (tbc)
21 th meeting	11 June, Thursday	9.00-13.00	Ljubljana (tbc)
22 th meeting	17 September, Thursday	9.00-13.00	Brussels (tbc)
23 th meeting	17 December, Thursday	9.00-13.00	Ljubljana (tbc)

For the Administrative Board

SIGNED

Razvan Eugen Nicolescu

Chairman of the Administrative Board

ANNEX 1

DECISION AB n° 10/2014

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

of 18 September 2014

On the support granted to ACER staff members in respect to kindergarten and school fees and repealing Decision AB No 01/2011

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 13(4) thereof,

HAVING REGARD to the Staff Regulations of Officials of the European Communities (hereinafter referred to as “Staff Regulations”) and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as “CEOS”), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968², and, in particular, Article 1 e) of the Staff Regulations and Article 10 of CEOS,

HAVING REGARD to Decision AB No 01/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 11 February 2011 on the support granted to ACER staff members in respect to kindergarten and school fees,

HAVING REGARD to Decision AB No 02/2014 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 13 February 2014, amending Decision AB No 01/2011 on the support granted to ACER staff members in respect to kindergarten and school fees, and, in particular, Article 1 thereof,

HAVING REGARD to Decision AB No 3/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 adopting the Rules of Procedure of the Administrative Board of the Agency for the Cooperation of Energy Regulators, and, in particular, Article 9 thereof,

WHEREAS:

¹ OJ L211, 14.8.2009, p.1.

² OJ L 56, 4.3.1969, p.1.

- (1) The Agency for the Cooperation of Energy Regulators (hereinafter referred to as “Agency”) needs to attract, employ and retain staff of the highest standards of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of EU Member States.
- (2) Staff members of EU institutions, including agencies, enjoy free access to European Schools under the condition that they have a contract of at least one year.
- (3) No European School has yet been established in Ljubljana, despite the undertaking expressed in Article 13 of the Seat Agreement between the Agency for the Cooperation of Energy Regulators and the Government of the Republic of Slovenia, signed in Ljubljana on 26 November 2010³. Agency staff members thus have no alternative but to register their children in the existing international schools established in Ljubljana offering education in English or French.
- (4) In the absence of a European School in Ljubljana, and given the high school fees charged by the international schools in Ljubljana, there is a need to address the unequal working conditions to which the staff of the Agency is subject compared to staff working for other European institutions where European Schools are available.
- (5) In order to better reconcile working life with family life, it is appropriate that the Agency provides, as a social measure until a European School is established in Ljubljana, financial support to staff members whose children are attending schools and kindergartens in the Ljubljana area.
- (6) While Decision AB No 01/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 11 February 2011 (hereinafter referred to as “Decision AB No 01/2011”) acknowledged this financial support to the staff members for the international schooling of their children, it is appropriate to make the payments directly to the school, subject to the prior conclusion of a tuition services agreement with the school concerned.
- (7) It is appropriate that the level of such support covers fully kindergarten and school fees for the children of Agency staff members in Ljubljana,

HAS ADOPTED THIS DECISION:

**Article 1
Scope**

This Decision defines the financial support afforded by the Agency towards kindergarten and school fees for the children of Agency staff members.

**Article 2
Eligibility**

³ Official Journal of the Republic of Slovenia, number 22 (109) of 30 December 2010.

1. All temporary and contract agents of the Agency with a contract of at least one year of duration shall have access to the support granted by this Decision.
2. In order to be eligible for the support granted by this Decision, children of Agency staff members must be considered as dependent children within the meaning of Article 2(2) of Annex VII of the Staff Regulations.
3. The support granted by this Decision is available only in respect to children attending schools and kindergarten in the Ljubljana area.

Article 3
Level and provisions for the financial contribution

1. The Agency fully covers kindergarten and school costs exceeding the sum of allowance received by staff members under the provisions of the Staff Regulations.
2. The financial contribution as provided in this article is subject to the Agency having concluded a tuition services agreement with the school and kindergarten concerned.

Article 4
Applicability of the Staff Regulations

Agency's staff members will continue to receive the education (pre-school and school) allowance, as defined by the Staff Regulations in Article 3 of Annex VII and determined by the European Commission's Office for the Administration and Payment of Individual Entitlements (PMO), in accordance with the Commission Decision on general implementing provisions for the grant of educational allowance (C(2013)8971 of 16 December 2013).

Article 5
Entry into force, duration and implementation

1. This Decision shall enter into force on the day following that of its adoption, with effect from school year 2014-2015. It shall be communicated to the staff and published on the intranet of the Agency.
2. The support granted by this Decision will be maintained until a European School is established in Ljubljana, Slovenia.
3. The Director shall implement this Decision, pursuant to Article 17(5) of Regulation (EC) 713/2009 and shall define provisions of financial contribution, as defined in Article 3.
4. Decision AB No 01/2011 as amended by Decision AB No 02/2014 is repealed.

Done at Rome on 18 September 2014.

For the Administrative Board

Razvan Eugen Nicolescu
Chairman of the Administrative Board