

MINUTES

27th ACER Administrative Board meeting
Thursday, 22 September 2016, 9.00 – 16.00
Ljubljana, Trg republike 3, 6th floor BIG meeting room

Present:

Dr Romana Jordan, Chair, Member,

Mr Jochen Penker, Vice-Chair, Member,

Mr Edmund Hosker, Member,

Mr Georgios Shamas, Member,

Mr Piotr Woźniak, Member,

Mr Rene Tammist, Member,

Ms Aba Garrote, Alternate, with proxy from Mr Dominique Ristori,

Mr Pál Kovács, Alternate Member, with voting right,

Mr Uwe Leprich, Alternate Member, without voting right,

Mr Alberto Pototschnig, Director of ACER, Observer,

Lord John Mogg, Chair of the Board of Regulators, Observer, attended agenda points 1-9 via audio conference.

Ms Marie-Christine Jalabert, Adviser.

Main conclusions of the meeting

1.) The Board concluded that the Agency representatives will inform the Energy Working Party and the Contact group of the ITRE Committee (EP) about the situation regarding the 2017 budget. The Board encouraged the

<p>Agency to reinforce its contacts with the Commission services, especially with DG BUDG and DG HR, at the Head of Department level. The Administrative board will discuss the Agency's critical risks at its December meeting.</p>
<p>2.) The Administrative Board adopted the 2017 Programming Document/Work Programme. The Commission appointed member (with 2 votes) abstained.</p>
<p>3.) The Board postponed the decision on the appointment of the Board of Appeal members and decided that the CV and motivation letters be circulated to members. The Chair declared the urgency and called for an extraordinary meeting to take place on 18 October in Brussels.</p>
<p>4.) On the conflict of interest policy, the Chair informed the Board that she is going to notify the EU Council about the current position of the concerned AB member, which entails the risk level III according to the Agency's Col policy.</p>
<p>5.) With regard to the Agency's working environment, including HR requirements, in view of the Agency's role in the European Energy Union, the Board took note of the gap in resources.</p>
<p>6.) The Board adopted the presented 2016 indicative procurement plan for operational tasks (ANNEX 1).</p>
<p>7.) The Board decided that the Agency will strive to improve the IAS assessment.</p>
<p>8.) The Board took note of the 2015 audit report on procurement in ACER.</p>
<p>9.) The Board decided to adjourn the building file item until more clarity is given on staff numbers.</p>
<p>10.) The Board adopted the Decision setting up a staff committee- model decision (ANNEX 2).</p>
<p>11.) The Board adopted the Decision on the non-application of the Commission's Decision on the maximum duration for the recourse to non-permanent staff in the Commission services (7 year rule) – model decision (ANNEX 3).</p>
<p>12.) The Board approved the Agency's requests to opt-out from the Commission decision of 24.6.2016 on the implementation of the learning and development strategy of the European Commission - C(2016)3828, Commission Decision of 24.6.2016 repealing existing rules on learning and development - C(2016)3827, Commission Decision of 24.6.2016 on training on the own initiative of the member of staff - C(2016)3855, Commission Decision of 15.6.2016 on middle management staff - C(2016)3288, and Commission Decision of 7.6.2016 concerning the function of adviser - C(2016)3214. The Board authorised the Director to request the Commission's agreement on the non-application of the above rules. The Board decided that it will revert to discussing the new rules in the above areas, as soon as the Commission prepares new model decisions.</p>

Opening

1. Approval of the Agenda

The following agenda of the 27th ACER Administrative Board meeting was approved:



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DRAFT AGENDA V3

Agenda Topics	Accompanying documents	Rapporteur
Opening		
1. Approval of the agenda	Doc 1 for approval	AB Chair
2. Minutes of the 26 th ACER Administrative Board	Doc 2.1 for approval Doc 2.2 Commission's comments for information	AB Chair
Reporting on developments		
3. Report on the written procedures	Oral update	ACER Director
4. Report on ACER developments and on the activities of the Board of Regulators	Oral Update	ACER Director BoR Chair
5. Budgetary developments 2017	Doc 5.1 and 5.2 for information	ACER Director
General ACER work		
6. Work Programme 2017	Doc 6 for adoption Doc 6.1, 6.2, 6.3 for	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
	information	
7. Appointment of BoA members	For decision Doc 7.1, 7.2, 7.3, 7.4 and 7.5 for information	AB Chair
8. Declarations of Interest of the AB members	Doc 8 and 8.1 for consideration	AB Chair
9. Discussion on the Agency's working environment, including HR requirements, in view of the Agency's role in the European Energy Union	Doc 9 for consideration	AB Chair BoR Chair Director Commission
10. Revised 2016 Indicative Procurement Plan for operational tasks (Annex VII of Work Programme 2016)	Doc 10 for adoption	ACER Director
Administrative Work		
11. IAS Strategic Internal Audit Plan 2017- 2019	Doc 11 for consideration	ACER Director
12. Audit on Procurement Process in ACER	Doc 12 for information	ACER Director
13. Building file	Doc 13 and 13.1 for discussion	ACER Director
14. Decision setting up a Staff Committee- model decision	Doc 14 for adoption	ACER Director
15. Decision on the non-application of the Commission's Decision on the maximum duration for the recourse to non-permanent staff in the Commission services (7 year rule) – model decision	Doc 15 for adoption	ACER Director
16. Commission Decision of 24.6.2016 on the implementation of the learning and development strategy of the European Commission - C(2016)3828	For approval of the AB that the Agency requests opt-out from the Commission decision (Doc 16) and	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
	authorisation to the Director to request the Commission's agreement to its non-application	
17. Commission Decision of 24.6.2016 repealing existing rules on learning and development - C(2016)3827	For approval of the AB that the Agency requests opt-out from the Commission decision (Doc 17) and authorisation to the Director to request the Commission's agreement to its non-application	ACER Director
18. Commission Decision of 24.6.2016 on training on the own initiative of the member of staff - C(2016)3855	For approval of the AB that the Agency requests opt-out from the Commission decision (Doc 18) and authorisation to the Director to request the Commission's agreement to its non-application	ACER Director
19. Commission Decision of 15.6.2016 on middle management staff - C(2016)3288	For approval of the AB that the Agency requests opt-out from the Commission decision (Doc 19) and authorisation to the Director to request the Commission's agreement to its non-application	ACER Director
20. Commission Decision of 7.6.2016 concerning the function of adviser - C(2016)3214	For approval of the AB that the Agency requests opt-out from the Commission decision (Doc 20) and authorisation to the Director to request the Commission's agreement to its non-application	ACER Director
AOB		
21. Calendar of 2017 meetings	Doc 21 for information	AB Chair

Following a proposal from Lord Mogg, the BoR representative, the Chair agreed to revert to the discussion on the permission to the Director regarding his participation in the CEER's Training Academy Advisory Board at a future AB meeting.

2. Minutes of the 26th ACER Administrative Board

The Chair reported that by the deadline for receiving comments, ACER has received comments from the Commission, which were fully taken on board in the final document submitted to the Board for approval.

The Chair listed the conclusions from the 26th meeting of the Administrative Board and pointed out that conclusions under point 4 and 5 were not yet implemented.

On point 4 she has requested the Commission's representative to report on any solution regarding the financial compensation for the AB and BoA members. The demanding situation of the AB members was discussed. However, no financial compensation is currently foreseen. The Commission reported that they are still internally looking for solutions to address this issue for the AB, as well as for the Board of Appeal members. An option could be making provisions when the Agency's founding regulation would be reopened.

As for point 5 the Chair said that a written procedure was initially planned to be launched during the summer. However, in the meantime she has received a letter from the BoR Chair.

The Director commented that the new founding regulation will not come into place until 2019 and the solution for the financial compensation may be found therein. However, the solution to compensate the BoA members is even more pressing as the Agency is already involved in two appeals and other appeals may be forthcoming. He suggested to approach the appointing institutions for financial compensation of AB members. The Commission appointed AB member confirmed that they would approach the appointing institutions and come back to the Director and the AB in writing.

Conclusion: The Administrative Board adopted the minutes of the 26th ACER Administrative Board.

3. Report on the written procedures

The Director reported that two written procedures had taken place since the last AB meeting:

- 1.) On 24 June the Board adopted the ACER Annual Activity Report for 2015; and
- 2.) On 12 August 2016 the Board adopted the Decision 13/2016 on the adoption of transfers of appropriations in the budget of the Agency for the Cooperation of Energy Regulators for the financial year 2016.

Conclusion: The Administrative Board noted the report on the written procedures.

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

The Director presented the statistics on ACER staffing for the period 2016-2017, clarifying the different types of staff working at the Agency.

He explained that in the past ACER had the possibility to convert the seconded national expert positions into contract agent positions. ACER has converted 12 SNE positions so far. He underlined that even if trainees, interims and experts are not EU staff, the Agency needs to consider them when planning for office space.

He presented the staff allocation by function. There are currently 22 nationalities at ACER. He underlined that Slovenians are the most represented at the Agency, however there are other EU agencies that have an even greater proportion of local staff. Only 4 SNEs work at the Agency.

The Board was updated on the status of the Implementing Rules.

On Framework guidelines/network codes, he stressed that the work is almost complete, which is a great achievement. In electricity, the last grid connection network code (on High-Voltage Direct Current) has entered into force.

The Capacity Allocation and Congestion Management (CACM) Guideline has resulted in a number of implementing decisions. They are first to be taken by all NRAs; if NRAs cannot reach an agreement, the responsibility for the decision passes to the Agency. The first submission by all NRAs to the Agency took place on 17.5.2016; the Agency will need to take a decision by 17.11.2016. Further submissions are expected. In gas, the only network code missing is on Harmonised Transmission Tariffs Rules.

He presented other regulatory activities and informed the Board about the state of play of the two ongoing appeals.

On REMIT, he reported that the implementation phase was completed in July. Several documents were published and a number of MoUs were signed. Since 7 October 2015 the Agency was able to receive data from market participants. More than 11,000 market participants are registered with NRAs and included in the Central European Register held by the Agency. They report data through the registered reporting mechanism (RRMs), 107 of which have been approved. There are still 1,429 RRMs in the pipeline to be registered and the Agency is currently unable to support them. He announced that the Agency will encourage any self-reporting party to report through the RRMs. He reported that the data collection is now stable, previous issues with receipts were sorted out with data processing ARIS tier 2.

On cases concerning a potential breach of REMIT, the Agency is currently analysing those reported to it. There were 33 cases reported to the Agency both in 2014 and in 2015. So far, there were 20 cases reported in 2016, some have been closed, two cases resulted in fines.

On the infrastructure package, in June 2016 the Agency published the Annual consolidated report on progress of PCIs (E&G) and a Position paper on improving the efficiency of the European framework for energy infrastructure development.

Lord Mogg, the BoR representative, commented that the Agency continues to function remarkably well under significant resource constraints. He underlined there is a similar pressure on the NRAs as regards the staffing limitations, which makes the operations on the EU level more difficult. He informed that the CEER is active in training, and maintains the effort to externalise the Union's effort to the European Neighbourhood Policy countries. For the latter, CEER is also expecting funding from the European Investment Bank. He underlined the importance of the Board of Appeal, which may need to play a vital role in possible appeals on the Agency decisions emanating from the implementation of the network codes (especially the CACM). Another important aspect is cyber security. He congratulated the Commission for facilitating the adoption of the network codes in comitology. The NRAs and the Agency have also been involved.

The second point is the forthcoming legislative package (Market design), which will be proposed by the Commission in the next few months. The BoR established a Committee to try to get the NRAs collective legislative response to influence the institutional debates and to make sure that the comprehensive regulatory approach is reflected in the Commission's proposal. He informed the Board of the proposal to host a joint ACER-CEER conference that is currently being planned in late January to discuss the key issues and regulatory challenges emerging from the new context set by the EC's proposals on the new energy market design.

The Director and Lord Mogg reported to the Board on the different interpretation of the Agency and the NRAs on articles 15(1) and 17(3) of the founding Regulation as regards the requirement for a favourable opinion of the BoR on certain types of documents. The issue is likely to be referred to the Commission for legal interpretation.

Members asked about the impact and significance of ACER's resource constraints on the wholesale market monitoring in the future, as well as if the Agency had investigative powers. He also asked about the cybersecurity risks.

The Director replied that ACER is unable to carry out proper market monitoring with the current resources. If the current resources were cut, the situation would be even worse. The current situation presents a reputational risk for Europe. He explained that the Agency does not have investigative powers. It does the initial assessment establishing whether there is a case. The Agency is however assisting and, to the extent necessary, coordinating the investigative effort at the national level. As for the cyber security, the Agency has a very good security officer who is involved in the work at EU level. No issues have been detected so far.

The BoR Chair added to the reply by saying that some larger NRAs carry out monitoring at national level (Ofgem, CRE). Special attention should be given to cyber-attacks, which are occurring continually, the recovery is often difficult.

One member asked about the process of the network codes implementation.

The Director explained that one of the main instruments for the implementation of the network codes in electricity are stakeholders' committees. The Agency is supporting the monitoring of the implementation of the network codes by chairing the stakeholders' committees, and by monitoring the process. There is now an emphasis on the regional dimension, the contribution to which is very resource intensive for the Agency. The regional initiatives continue their work in gas and the Agency ensures the monitoring.

5. Budgetary developments 2017

The Director reported that the Agency's request for its 2017 budget, communicated to the Commission through the Administrative Board's decision 02/2016 on the estimate of revenue and expenditure, including the establishment plan (amounting to €19,114,138 and 102 posts) has not been supported by the Commission. Instead, the Commission's draft budget proposed a budget of 12,520,160 EUR and 68 posts, which is 17.44% lower than the budget approved for 2016 and one post cut from the establishment plan. The proposed budget is identical to the amount forecasted for 2017 in the 2014-2020 financial framework, adjusted with the salaries of the 15 additional posts approved for 2016.

The budget reduction and the cut of one post have also been agreed by the Council in their position on the 2017 budget for the Agency. The Agency filed (through the EU Network of Agencies) a budgetary amendment by MEP Jens Geier, requesting the reinstatement of one post (cut by the Council), because in 2016 the Agency has already achieved the 5% total cut.

The member appointed by the Commission explained the 5 percent cut by saying that the EU regulatory agencies are required to reduce their numbers by 1% percent every year for 5 years. There is also an additional reduction of 1% of establishment plan posts, which goes to the pool in order to cover the necessary resource needs of some agencies (e.g. migration issues). For ACER, the 2018 budget will be important. Contacts with Commission services at the level of the Head of Department should be improved and intensified when preparing the Agency budget. Resource requests need to be clarified in a simple manner and explained at Head of Department level to the working level Commission services (and not at the level of the Director and the Director-General). She suggested that the process for the preparation of the 2018 budget starts already.

She also underlined that despite the weighty letter from the Chair of the ITRE Committee to the Commission on the need for additional human resources for ACER, the ITRE Committee has not tabled any proposal for a budgetary amendment. Only MEP Geier tabled a proposal to reinstate one post that was cut by the Council. The BUDG Committee of the European Parliament will vote on this proposal on 26-27 September.

Lord Mogg, the BoR representative, agreed with the comments from the Commission appointed AB member, but stressed it was important not to lose sight (importance of REMIT for the energy market). The political message needed to be continued.

An AB member commented that the Agency needs to be very clear and communicate at political level on what the risk is, as otherwise the Director could be criticised, apart from the resources not being sufficiently available to the Agency.

The Director explained that REMIT is identified as a critical risk in the Agency's risk register. He has consistently pressed for sufficient staff for REMIT. There are great expectations that the Commission's winter package would sort things out, but any beneficial impact will not likely materialise until 2020. He will explain the issue at the Energy Working Party of the EU Council on 11 October.

Conclusion: The Board concluded that the Agency representatives will inform the Energy Working Party and the Contact group of the ITRE Committee (EP) about the situation regarding the 2017 budget. The Agency will reinforce its contacts with the Commission services, especially with DG BUDG and DG HR, at the Head of department level. The Administrative board will discuss the critical risks at its December meeting.

6. Work Programme 2017/Single programming document

The Director reported that the Agency's Annual Work Programme (AWP) 2017 constitutes an integral part of the Agency's Programming Document (PD) 2017. Starting from the 2017 exercise, the Draft Programming Document, in line with the Commission's Communication on the guidelines for programming document for decentralised agencies of December 2014 and the Framework Financial Regulation (FFR) adopted in 2013, is to be sent to the Commission no later than 31 January of the preceding year.

The Agency thus submitted its PD (AWP) 2017 to the Commission on 29 January 2016. The Commission's Opinion on the AWP 2017, which, according to ACER's Founding Regulation is a prerequisite for the approval of the AWP by the BoR and its adoption by the AB, was adopted on 24 June and sent to the Agency on 30 June.

The Agency's position on the specific points raised in the Commission's Opinion is presented in a separate document (PD 2017 – ACER comments on COM opinion). On the content, the Agency took note and made an effort to accommodate most of the Commission's requests, however it has not aligned the AWP to the levels of human and financial resources proposed by the Commission's draft budget 2017. The Agency recalls that within last year's budgetary procedure the Agency was allocated additional resources in excess of those foreseen in the Commission's draft budget. While these additional resources represent a much welcome step forward, they still fall short of what the Agency considers necessary to fully implement its mandate, particularly as concerns REMIT.

The allocation of staff in the AWP (PD) 2017 as amended after the Commission's opinion is thus still based on the assumption that the Agency will be assigned the resources required to effectively deliver on its mission, which were the basis of the estimate of revenue and expenditure for the financial year 2017, adopted by the Administrative Board on 27 January 2016. Should the additional resources not be assigned to the Agency, the 2017 Work Programme (PD) will have to be revised in line with the level of resources actually available, as has been the case also in the past.

The BoR endorsed in principle the AWP 2017 (as laid out in the PD) in December 2015, subject to the Commission's Opinion, and is to endorse again the new version of the PD 2018 prepared by the Agency following the Commission's Opinion.

In line with ACER's Founding Regulation, the AWP (PD) is to be approved by the BoR and adopted by the AB by 30 September and sent for submission to the EP, Council and Commission.

The AB Member appointed by the Commission could not support the current Programming Document proposal as the Commission disagrees that the Agency is lacking resources. Given that the final budget has not yet been adopted, the Commission (with two votes) decided to abstain. In addition, they had some minor editing comments (staff numbers).

One AB Member was particularly surprised that the Commission did not share the opinion of the Agency that it does not dispose of adequate resources for fulfilling its tasks under REMIT and TEN E. While it was clarified that the phrasing could be improved, the Commission said that their Opinion is consistent with the draft budget of the Commission.

The AB Member also asked about the Activity Based Budgeting, which could be helpful for the debate on resources. The Director replied that the Agency is moving towards Activity Based Budgeting and has as a first step introduced staff time recording. However, the full Activity Based Budgeting will be implemented by 2019. He admitted this is not the Agency's immediate priority.

One AB member asked about the possibility to improve reporting. The Director replied that hopefully the Winter package presented by the Commission at the end of the year would ensure that the Agency is not required to provide an opinion on documents where there is no substantial opinion to be given. He also said that any efficiency gains in the area of market monitoring would adversely impact on the transparency of the market. The Commission pointed out to some possible efficiency gains, including opting for a shorter Market Monitoring Report and reducing the number of MoUs with different stakeholders.

Conclusion: The Administrative Board adopted the 2017 Programming Document/Work Programme. The Commission appointed member (with 2 votes) abstained.

7. Appointment of BoA members

After some introductory words by the Chair, the Commission and the BoR Chair, it quickly became clear that some of the key background documents were missing for the AB to reach a decision.

Conclusion: The AB postponed the decision and decided that the CVs and motivation letters of the proposed BoA members will be circulated. The Chair declared the urgency and called for an extraordinary meeting to take place on 18 October in Brussels.

8. Declarations of Interest of the AB members

The Chair reported on the Review Panel meeting, which took place on 7 June 2016 and informed about the specific case of one AB member. The Chair stated that the review Panel considered that the current position of the concerned AB member entails the risk level III according to the Agency's Col policy. She wrote to the AB member, however he did not present any additional facts. The AB Chair has therefore decided to follow the procedure envisaged in the Agency's Col policy.

Conclusion: The Chair informed the Board that she is going to notify the EU Council about the current position of the concerned AB member, which entails the risk level III according to the Agency's Col policy.

9. Discussion on the Agency's working environment, including HR requirements, in view of the Agency's role in the European Energy Union

The Chair reminded the members that at the January AB meeting some members requested that the Board holds a strategic discussion on the future role of the Agency. The Chair agreed to have such a discussion, on human resources aspects, at its meeting in September.

The Director presented a slide on the human resources (FTEs) allocated to the Agency, the Agency's staffing requests for next year, as well as the Commission's proposal in the EU draft budget. He underlined that the "Winter Package" may propose a new role for the Agency in the future.

The Commission appointed AB member commented on the slide by saying that they would prefer a vision from the Director on the implementation of REMIT and on the PCIs, including a strategy on how he intends to allocate resources. She said that DG BUDG and DG HR went strongly against the Agency's position to mitigate the issue of the establishment plan, as well as the contract agents.

The Director recalled that at the meeting in Bucharest in March 2015 he informed the AB that he was going to recruit 7-9 additional contract agents. If DG BUDG kept its position, the Agency would need to redeploy 14 contract agents. The Director clarified that this would inevitably lead to a significant deprioritisation of activities and asked guidance from the AB.

One AB member was sympathetic to the issues that were raised, and asked how they can support the Agency vis-a vis the Commission's view on the contract agents. The Director explained that until recently the contract agents were not fixed in the budget and the Commission was more flexible on their use by the EU decentralised agencies, as long as adequate appropriations were available. However, this has changed in the 2017 budgetary procedure, and hence this issue has now surfaced.

The Commission appointed AB member opposed the Director's view and said that the Board in Bucharest was presented with the view that the extra contract agents would be employed for a period of only a few months to overcome some immediate staff shortages. Instead, the Agency was continuously adding extra staff employed for longer term. Moreover, the Agency benefitted from the pool of resources with 15 extra staff, to which other agencies contributed. She said that the Commission cannot support the Agency's request for 2017 and that the Council has also expressed its opinion (to cut 1 staff member).

The Commission repeated that they were expecting the vision of the Agency, not the chart on resources. The Chair said that the AB would like to get to know the Agency's vision as well. The Director clarified that the vision of the Agency is to fulfil its legislative mandate and this is well documented in the Agency's Work Programme, which also includes an indication of the resources allocated to each task/activity. Unfortunately, the Agency is unable to perform any tasks outside the regulations in force. In fact, very soon the Agency may be forced to deprioritise activities included in its legislative mandate.

One AB Member asked about the status of the setting up of the European School, given that this agenda item is about the working environment.

The Director replied that the bill recognising the international schools in Slovenia has passed. The government is now carrying out an assessment study, but it is taking its time. Furthermore, the General Secretary of the European School visited the Agency in June 2016.

Conclusion: The Board took note of the existing gap in resources.

10. Revised 2016 Indicative Procurement Plan for operational tasks (Annex VII of Work Programme 2016)

The Director reported that following the audit on procurement, the IAS issued a recommendation n°2 "Improve the procurement planning and monitoring, requiring the Agency to ensure consistency between the indicative procurement plan included in the AWP and the detailed procurement plan in terms of number of procurement procedures and estimated budget".

The Action Plan, proposed by the Agency and approved by IAS, envisages that:

"The Agency will revise the AWP 2016 and amend the indicative procurement plan for 2016. Further details, in line with ACER Financial Regulation and Implementing Rules, will be included in the indicative procurement plans in future AWPs."

In order to comply with the IAS recommendation, the detailed indicative procurement plan has been revised in line with the IAS requirements (information on the type of contract and method of implementation of each procurement procedure was included). The Director asked the Board to adopt the proposed indicative procurement plan.

The Commission proposed to adopt the presented indicative procurement plan for operational tasks. However, they believe that in the future such adoptions are required for major changes in the procurement plans (more than 20 percent of change) only.

Conclusion: The Board adopted the presented indicative procurement plan for operational tasks (annex VII of the Work Programme 2016) (ANNEX 1).

11. IAS Strategic Internal Audit Plan 2017- 2019

The Director reported that the Internal Audit Service (IAS) carried out a full risk assessment in February 2016, covering ACER's major processes, both operational and administrative, in view to establish the Strategic Audit Plan for the Agency for the period of 2017-2019.

A short list of audit topics was established to support the planning of the IAS audits for ACER during the next three years: human resources management, information security, implementation of REMIT, and decision-making process under the EU infrastructure regulations. The topics may be adjusted in the future, depending on the results of risk assessment updates, which the IAS performs on an annual basis. The Strategic Audit Plan was presented to the Administrative Board for consideration. The Director recalled that previously this plan was presented to the AB by the IAS representative.

The Commission asked why the audit on IT did not take place. The Director explained that the timing of the proposed audit was clashed with the REMIT go-live and was therefore postponed.

One member asked why the Agency would be unable to address the IAS recommendations regarding the document management policy before 2017. The Director replied that this policy, led by the Agency's Administration department, is in view of other immediate issues, currently not considered a top priority.

Another AB member commented that information security, which includes cybersecurity, has been put in the red zone of risk identified by the IAS. He would prefer an indication of

importance of the identified planned audits for an easier judgement. The Director briefly explained the MARCI chart.

Conclusion: The Board recommended that the Agency strives to improve the IAS assessments.

12. Audit on Procurement Process in ACER

The Director reported that the IAS carried out an audit on the Agency's procurement process in January 2016. The objective of the audit was to assess the adequacy of the design and the efficiency and effectiveness of the management and internal control system put in place by the Agency for managing the procurement process.

The report summarises the results from the audit and the recommendations made by the IAS. Main recommendations:

1. Clarify roles and responsibilities and perform an ad-hoc workload analysis;
2. Improve procurement planning and monitoring;
3. Complete and adopt procurement guidelines and enhance procurement training delivered to Project Managers;
4. Improve procurement implementation and address the situations of non-compliance with applicable rules and regulations;
5. Harmonise information on procurement from the Agency's programming and reporting documents and enhance the reporting on delays/backlogs;
6. Strengthen the internal controls related to procurement and enhance the awareness on procurement risks.

The report was presented to the Administrative Board for information.

The Director underlined that the Agency never encountered any legality issue of procedures. The audit resulted in suggesting improvements in the processes.

One AB member said that a procurement manual and an in-depth training of operational staff on public procurement was needed.

The Director agreed that procurement training for operational staff was indeed necessary and will be provided. He also confirmed that the procurement experts take part in every procedure. He however pointed out that processes will need to be reviewed and HR requirements in procurement reassessed.

The Commission agreed that no failures were made in procurement, but said that an action plan, as well as a follow-up to recommendations was necessary.

Conclusion: The Board took note of the audit report on procurement in ACER.

13. Building file

The Director reported that the Agency's current rental contract includes an option to expand the rented office space and a renewal option for an additional period of up to five (5) years. The increased staff numbers (estimated 134 statutory and non-statutory staff, according to the Agency's estimate for the end of 2016) and other developments result in the need for a larger office space. The building file (the detailed dossier on the expansion of the office premises) has been submitted on 17 May 2016 to DG ENER and DG BUDG for review and approval. It has ultimately been established that the file will not be submitted to the Budgetary Authorities, as it falls below the threshold established in article 88 of the Framework Financial Regulation (FFR). At its June meeting, the Administrative Board decided to hold an in-depth discussion on this point at its meeting in September.

The Director asked to reajourn this point until more clarity is given on staff numbers.

Conclusion: The Board decided to adjourn the building file item until more clarity is given on staff numbers.

14. Decision setting up a Staff Committee- model decision

The Director presented the draft AB decision and explained that article 9 of the Staff Regulations provides that a Staff Committee should be set up within each institution. Due to the specific situation of the EU decentralised agencies, such as the nature and/or number of their staff, the Commission, with the assistance of the Standing Working Party, has drafted a model decision on setting up a staff committee (tailored to the specific needs and structure of the EU decentralised agencies) for adoption by the agencies. Pursuant to article 110(2) of the Staff Regulations, the Commission has given an ex-ante agreement to the decentralised agencies and joint undertakings to adopt the model decision (C(2016) 3323).

He underlined that the model decision in terms of composition, election rules and tasks/role of the staff Committee does not introduce changes in the current procedure established at the Agency. The draft decision was presented to the Administrative Board for adoption.

Members asked about the composition of their current Staff Committee and adopted the decision.

Conclusion: The Board adopted the decision setting up a staff committee- model decision (ANNEX 2).

15. Decision on the non-application of the Commission's Decision on the maximum duration for the recourse to non-permanent staff in the Commission services (7 year rule) – model decision

The Director presented the item and explained that the Commission adopted the Decision C(2013)9028 of 16 December 2013 amending the Commission Decision of 28 April 2004 on

the maximum duration for the recourse to non-permanent staff in the Commission services, which in line with Article 110 of the Staff Regulations applies by analogy to the EU decentralised agencies.

In the Agency, the temporary agents referred to in article 2(a) of the CEOS is exclusively the Director. The majority of temporary staff in the Agency, namely those referred to in article 2(f) of the CEOS, do not fall under the scope of Commission Decision C(2013)9028. The same applies to the unique category of contract staff employed in the Agency, referred to in article 3(a) of the CEOS. The Commission Decision C(2013)9028 is therefore not adapted to the Agency's reality.

In May 2016, the Commission has given its ex-ante agreement to the non-application of Decision C(2013)9028 to the agencies (C(2016) 2421).

The decision (model decision drafted by the Commission) is presented to the Administrative Board for adoption.

Conclusion: The Board adopted the Decision on the non-application of the Commission's Decision on the maximum duration for the recourse to non-permanent staff in the Commission services (7 year rule) – model decision (ANNEX 3).

16. Commission Decision of 24.6.2016 on the implementation of the learning and development strategy of the European Commission - C(2016)3828

17. Commission Decision of 24.6.2016 repealing existing rules on learning and development - C(2016)3827

18. Commission Decision of 24.6.2016 on training on the own initiative of the member of staff - C(2016)3855

19. Commission Decision of 15.6.2016 on middle management staff - C(2016)3288

20. Commission Decision of 7.6.2016 concerning the function of adviser - C(2016)3214

The Director presented the documents under items 16-20 in block and explained that in June 2016 the Commission adopted the new implementing rules on the following three areas:

1) Learning and Development:

- C(2016)3828 on the implementation of the learning strategy;
- C(2016)3855 on training on the own initiative of the staff;
- C(2016)3827 repealing the rules on learning and development;

2) Middle Management C(2016)3288;

3) Function of Adviser C(2016)3214.

On 8 July 2016 the Commission notified the Agency on these documents officially, which triggered the nine months period referred to in Article 110 of the Staff Regulations (entry into force by analogy).

The Standing Working Party informed the Agency that it is in the process of developing model decisions for the these three areas and recommended that the Agencies consider requesting an opt-out as soon as possible, as the above rules are not suitable for the reality in the EU decentralised agencies.

In this respect, the Director said that the Agency would like to request opt-out form the above Commission rules and to consider the model decisions for the agencies developed by the Standing Working Party.

The Commission appointed AB member said that DG HR agrees with this request, however they demand that as soon as the model decisions are ready, the Agency puts in place new rules, following the adoption by the AB.

Conclusion: The Board approved the Agency's requests for opt-out from the Commission decision of 24.6.2016 on the implementation of the learning and development strategy of the European Commission - C(2016)3828, Commission Decision of 24.6.2016 repealing existing rules on learning and development - C(2016)3827, Commission Decision of 24.6.2016 on training on the own initiative of the member of staff - C(2016)3855, Commission Decision of 15.6.2016 on middle management staff - C(2016)3288, and Commission Decision of 7.6.2016 concerning the function of adviser - C(2016)3214. The Board authorised the Director to request the Commission's agreement on the non-application of the above rules. The Board decided that it will revert to discussing the new rules in the above areas, as soon as the Commission prepares new model decisions.

21. Calendar of 2017 meetings

The Chair proposed to hold 4 meetings on the following dates in 2017: 16 March, 8 June, 21 September, and 14 December. Moreover, an additional meeting will probably take place in January 2017.

She recalled that the extraordinary AB meeting will take place on 18 October 2016 in Brussels.

Done at Ljubljana on 15 December 2016.

For the Administrative Board:

SIGNED

Dr. Romanja Jordan

Chairman of the Administrative Board

ANNEX 1

ANNEX VII OF THE WORK PROGRAMME 2016: 2016 INDICATIVE PROCUREMENT PLAN FOR OPERATIONAL TASKS

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ¹	Indicative number of contracts envisaged ²	Estimated value in EUR ³	Estimated value in EUR ⁴
Web application development, software maintenance and remote support to stakeholder services	service	specific contracts based on an existing framework contract	Q1, Q4	2	990,000	
IT infrastructure hosting services for the Agency	service	specific contracts based on an existing framework contract	Q3-Q4	3	163,000	
IT hosting services for the Agency	service	new framework contract	Q3	1		6,000,000
IT hosting services for the Agency	service	specific contracts based on an existing framework contract	Q4	1	1,837,000	
IT consultancy services for the implementation of the Agency's REMIT Information System (ARIS)	service	specific contracts based on an existing framework contract	Q2	1	750,000	

¹ Indicative timeframe for launching new procurement procedure or for signing specific contracts/order forms under the existing framework contracts.

² Order forms throughout the year are counted as one contract.

³ Estimated commitments 2016.

⁴ Estimated value for procurement procedures for new framework contracts.

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ¹	Indicative number of contracts envisaged ²	Estimated value in EUR ³	Estimated value in EUR ⁴
Market monitoring system for the Agency's REMIT information system (ARIS)	service	specific contracts based on an existing framework contract	Q3	2	850,000	
Oracle software licences and associated services	service	specific contracts based on an existing framework contract	Q1-Q4	2	350,000	
Provision of legal assistance in the field of energy regulation for the Agency	service	specific contracts based on an existing framework contract	Q1	1	25,000	
Provision of economic assistance in the field of energy regulation for the Agency	service	specific contracts based on an existing framework contract	Q2	1	42,000	
Provision of catering services for the Agency's events	service	order forms based on an existing framework contract	Q1-Q4	1	60,000	
Provision of conference room facilities and catering services in Brussels for the Agency's events	service	order forms based on an existing framework contract	Q1	1	1,500	
Provision of printing services for the Agency	service	order forms based on an existing framework contract	Q1-Q4	1	15,000	
Legal support services to the Agency's Board of Appeal	service	new framework contract	Q3	1		200,000
Legal support services to the Agency's Board of Appeal	service	specific contracts based on an existing framework contract	Q4	1	50,000	

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ¹	Indicative number of contracts envisaged ²	Estimated value in EUR ³	Estimated value in EUR ⁴
Agency's website set-up and maintenance services	service	specific contracts based on an existing framework contract	Q3	1	59,500	
Provision of design services for the Agency	service	order forms based on an existing framework contract	Q1-Q4	1	20,000	
Legal support in litigation before the EU Courts	service	new framework contract	Q3	1		200,000
General legal support services in the field of Slovenian law, including litigation before Slovenian courts	service	new framework contract	Q3	1		60,000
Legal advice services for the staff of the Agency	service	specific contracts based on an existing framework contract	Q3	1		60,000
Legal advice services for the staff of the Agency	service	specific contracts based on an existing framework contract	Q4	1	15,000	
Provision of maintenance and development services for the IT applications	service	new framework contract	Q3	2		1,560,000
Maintenance, support and development services for the SharePoint applications	service	specific contracts based on an existing framework contract	Q4	1	100,000	
Maintenance, support and development services for the Java/PHP applications	service	specific contracts based on an existing framework contract	Q4	2	90,000	
Electricity Wholesales Market Monitoring	service	direct contract	Q3	1	55,000	

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ¹	Indicative number of contracts envisaged ²	Estimated value in EUR ³	Estimated value in EUR ⁴
Database						
Consultancy in the field of security and business continuity	service	new framework contract	Q4	1		450,000
Purchase of software for load flow calculation	supply	direct contract	Q3	1	20,000	
TOTAL PLANNED PROCUREMENT 2016				33	5,493,000⁵	8,530,000⁶

⁵ The global budgetary envelope reserved for procurement during the year 2016.

⁶ Total estimated value for procurement procedures for new framework contracts to be launched in the course of 2016.

ANNEX 2

DECISION AB n° 16/2016

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

of 22 September 2016
setting up a Staff Committee

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

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS') laid down by Council Regulation (EEC, Euratom, ECSC) No 259/687, and in particular Articles 9, 10a and 110(2) thereof, Article 1 of Annex II to the Staff Regulations and Article 7 of the CEOS,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators⁸ (hereinafter 'the Agency'), and, in particular, Article 28(2) thereof,

Having regard to Communication C(2014) 6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to Decision AB n° 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure of the Administrative Board, and, in particular, Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2016) 3323 final of 27 May 2016,

After consulting the Staff Committee,

Whereas:

⁷ OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

⁸ OJ L 211, 14.8.2009, p.1.

1. The Agency for the cooperation of energy regulators ('the Agency') should set up a Staff Committee which should represent the interests of the staff vis-à-vis the Agency.

2. A Staff Committee should perform the functions assigned to it by the Staff Regulations, in particular by Articles 9(3) and 110(2) thereof.

3. The Agency should determine the composition and procedure of the Staff Committee in accordance with the provisions of Annex II to the Staff Regulations while, according to Article 9(2) of the Staff Regulations, a derogation regarding membership is possible to take into account the composition of the Agency's staff.

4. In the interest of clarity and legal certainty, Decision AB n° 27/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 22 September 2011 on setting up a Staff Committee should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1 — Scope

1. A Staff Committee (hereinafter 'the Committee') is hereby created.
2. This Decision governs the composition and functioning of the Committee within the Agency.
3. The Committee represents staff covered by the Staff Regulations and the CEOS. These staff comprise temporary staff, contract staff and other categories of staff, if any, referred to in Article 1 of the CEOS. Collectively, these staff are hereinafter referred to as 'the staff', unless otherwise specified.

Article 2 — Tasks

1. The Committee shall represent the interests of the staff vis-à-vis the Agency and maintain continuous contact between the Agency and its staff.
2. The Committee shall contribute to the smooth running of the Agency by providing a channel for the expression of opinion by the staff.
3. The Committee shall bring any difficulty that has general implications concerning the interpretation and application of the Staff Regulations and the CEOS to the notice of:
 - the head of the Agency as referred to in the act establishing the Agency ('the Director'); or
 - other persons designated by the Director; or, exceptionally,

- in specific, duly justified cases, the Administrative Board or the equivalent body referred to in the act establishing the Agency.

The Committee may be consulted on any difficulty of this kind.

4. The Committee shall submit to the Director suggestions concerning the organisation and operation of Agency's services and proposals for the improvement of staff working conditions or general living conditions.
5. The Committee shall participate in the management and supervision of social welfare bodies set up by the Agency in the interests of its staff. It may, with the consent of the Director, set up such welfare bodies.
6. The Committee shall be consulted on implementing rules giving effect to the Staff Regulations and to the CEOS before the Administrative Board or the equivalent body referred to in the act(s) establishing the Agency decide on their application within the Agency.
7. The Committee shall exercise any other role provided for in the Staff Regulations, in implementing measures to the Staff Regulations/CEOS and in any act adopted by the Agency.

Article 3 — Composition

1. The composition of the Committee, as set out below, shall, as far as possible, reflect the composition of the Agency's staff, in particular as regards the categories of staff⁹.
2. The Committee shall consist of three full members.
3. If there are enough candidates, there may be up to an equivalent number of alternates. The alternate member shall replace a full member in the latter's absence.

Article 4 — Terms of office

1. The term of office of the Committee shall be three years.
2. In the event of the Committee collectively resigning or a motion of no-confidence in it being passed, new elections shall be organised within one month.

⁹ Temporary staff in function group AD;
Temporary staff in function group AST;
Temporary staff in function group AST/SC;
Contract staff; and other types of staff mentioned in Article 1 of the CEOS, if any.

3. If the Committee's term of office expires before a new Committee has been elected, the sitting members shall remain in office until replaced by the newly elected members. This period shall not be longer than six months.

Article 5 — Membership

1. The duties undertaken by members of the Committee shall be deemed to be part of their normal service in the Agency. The fact of performing such duties shall in no way be prejudicial to the person concerned.
2. The term of office of a member of the Committee shall cease upon death, resignation from the Committee, or termination of employment with the Agency.
3. Membership of the Committee does not constitute special grounds for extending a time-limited employment contract.
4. A member of the Committee who changes function group or category of staff during his or her term of office shall remain in office until the term of the Committee expires.
5. Should the term of a full member of the Committee end prematurely, his or her office shall be attributed to the alternate member with the highest number of votes at the last election.

Article 6 — Functioning

1. The Committee shall elect a Chair by a majority of its full members.
2. The Committee shall adopt its own rules of procedure, which shall be notified to the Director and to the staff. It may also determine the distribution of duties among its members.
3. The Committee shall meet at least four times a year.
4. The Committee and the Director shall meet at least two times a year and at the request of the Committee or the Director, at any time on any urgent matter.
5. The Committee shall convene a general meeting of staff at least once during its term of office in order to present a report on its activities and propose its future action plans.
6. Meetings of the Committee shall be competent to transact business only where at least the majority of its full members are present or represented by alternates. If the quorum is not reached, the meeting shall be reconvened by means of a letter or an email sent to all full members and alternates in accordance with the rules of procedure.

7. Decisions shall be taken by a majority of full members present or represented by alternates.

Article 7 — Consultation

1. If consulted, the Committee shall have a minimum period of 15 working days to declare its position on relevant matters.
2. If no opinion is delivered within the period prescribed, the Agency shall take its decision.

Article 8 — Facilities at the Committee's disposal

1. Subject to the agreement of the Director, the Committee shall be entitled to make use of the Agency's facilities in order to perform its duties and inform staff.
2. Missions carried out by members of the Committee, in the exercise of their duties, shall be reimbursed according to the standard rules applied by the Agency, including budgetary limitations.

Article 9 — Electoral rules

1. The conditions for electing the Committee shall be laid down as rules of electoral procedure at a general meeting of the staff of the Agency. These conditions shall ensure, to the extent possible, that staff of all categories are represented in the Committee.
2. The members of the Committee shall be elected by a secret ballot of:
 - staff members covered by the CEOS whose contracts are for an indefinite period or for one year or more; and
 - staff members covered by the CEOS whose contracts are for less than one year, provided they have been employed by the Agency for at least six months.
3. A staff member, covered by the CEOS, with an indefinite contract or whose contract is for one year or more shall be entitled to stand for election to the Committee.
4. Elections shall be valid only if two thirds of those entitled to vote take part in the voting. If this proportion is not attained, the second vote shall be valid if the majority of those entitled to vote take part in the voting. The second vote shall be organised immediately after the first one.
5. The list of the Committee's members shall be brought to the attention of all the Agency's staff in a suitable form.

Article 10 — Final provisions

1. Decision AB n° 27/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 22 September 2011 on setting up a Staff Committee is hereby repealed.
2. This Decision shall take effect as from the first election after adoption of the present Decision.

Done at Ljubljana, on 22 September 2016

For the Administrative Board:

Dr. Romana Jordan
Chair of the Administrative Board

DECISION AB n° 16/2016

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

of 22 September 2016

**on the non-application of the Commission Decision on the maximum duration for the
recourse to non-permanent staff in the Commission services**

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

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union ('Staff
Regulations') and the Conditions of Employment of Other Servants of the European Union
(‘CEOS’), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹⁰,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators
(‘the Agency’), and, in particular, Article 28(2) thereof,

Having regard to Communication C(2014)6543 final of 26 September 2014 from Vice-
President Šefčovič to the Commission on the guidelines on the implementation of Article
110(2) of the Staff Regulations with regard to the implementing rules applicable in the
agencies, and in particular Point 2.B thereof,

Having regard to Decision AB n° 03/2010 of the Administrative Board of the Agency for the
Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure of the
Administrative Board, and, in particular, Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of
the Staff Regulations C(2016) 2421 final of 26 May 2016,

After consulting the Staff Committee,

Whereas:

- 1) On 17 December 2013, the Commission informed the Agency for the Cooperation of
Energy Regulators that it adopted Decision C(2013)9028 of 16 December 2013

¹⁰ OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament
and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

amending the Commission Decision of 28 April 2004¹¹ on the maximum duration for the recourse to non-permanent staff in the Commission services, hereinafter ‘Commission Decision C(2013)9028’.

- 2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to the Agency for the Cooperation of Energy Regulators. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules.
- 3) In the Agency for the Cooperation of Energy Regulators, all temporary staff other than those referred to in Article 2(a) of the CEOS are those referred to in Article 2(f) of the CEOS and all contract staff are the ones referred to in Article 3(a) of the CEOS.
- 4) In the Agency for the Cooperation of Energy Regulators, temporary agents referred to in Article 2(a) of the CEOS is exclusively the head of the Agency. As regards the majority of temporary staff in the Agency, namely those referred to in Article 2(f) of the CEOS, they do not fall under the scope of Commission Decision C(2013)9028. The same applies to the unique category of contract staff employed in the Agency, namely those referred to in Article 3(a) of the CEOS. Commission Decision C(2013)9028 is therefore not adapted to the Agency for the Cooperation of Energy Regulators' reality.
- 5) Taking into account the way the Agency for the Cooperation of Energy Regulators operates, it is not appropriate to set a maximum duration of recourse to non-permanent staff, because such a rule could be detrimental to the functioning of the Agency.
- 6) The Commission has given its ex ante agreement to the non-application of Decision C(2013)9028 to the Agency for the Cooperation of Energy Regulators.
- 7) Commission Decision C(2013)9028 should not therefore apply to the Agency for the Cooperation of Energy Regulators,

HAS DECIDED AS FOLLOWS:

Article 1

Commission Decision C(2013)9028 of 16 December 2013 amending Commission Decision of 28 April 2004¹² on the maximum duration for the recourse to non-permanent staff in the Commission services shall not apply to the Agency for the Cooperation of Energy Regulators.

Article 2

This Decision shall take effect on the day of its adoption.

¹¹ Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, as amended by Commission Decision C(2011)7071 of 5 October 2011.

¹² See footnote 2.

Done at Ljubljana, on 22 September 2016

For the Administrative Board:

Dr. Romana Jordan

Chair of the Administrative Board