

Board of Appeal

MINUTES

Board of Appeal meeting

Thursday, 17 November 2016, 9.00 – 16.30

Ljubljana

Present:

Member	Walter Boltz
Member	Yvonne Fredriksson
Member	Jean-Yves Ollier
Member	Andris Piebalgs
Member	Mariusz Swora
Member	Michael Thomadakis
Alternate	Viorel Alicus
Alternate	Miltos Aslanoglou
Alternate	Nadia Horstmann (via teleconference, also with the proxy vote of Mariano Bacigalupo Saggese)
Alternate	Erik Rakhou
Alternate	Dominique Woitrin
ACER Director	Alberto Pototschnig (only in the open part of the meeting)
Invited guest	Herbert Ungerer (only in the open part of the meeting)
Registrar	Andras Szalay

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1. **Mr Alberto Pototschnig**, Director of the Agency, welcomed the Board of Appeal and wished successful work for its members and alternates.

Mr Herbert Ungerer, former Chairman of the Board of Appeal, summarized the past achievements of the first Board of Appeal and answered to the questions raised by the new members and alternates.

2. The meeting continued as a closed session.

The Board of Appeal approved the Agenda as follows:

Agenda items	BoA decision
1. Designation of the Chairman and the Vice Chairman	yes
2. Modification of the Rules of Procedure	yes
3. Conflict of interest policy of the ACER and the Board of Appeal – discussion on preparation to the next year’s exercise	yes
4. Approval of the committee’s members participating in tender evaluation for legal support to the BoA (end of closed session)	yes
5. Introductory presentation on the BoA procedures by the registrar	no
6. Any other business	no

3. Discussion of the items of the Agenda

Agenda item n° 1. – Designation of the Chairman and the Vice Chairman

Pursuant to Article 1.2 of the Rules of Procedure, the Chairman and the Vice Chairman is designated upon a secret ballot.

The Board of Appeal designated Mr Dominique Woitrin as teller to assist in the counting of the vote.

Following a secret ballot and after counting the votes by the teller, the Board of Appeal reached its decision:

BoA Decision 1./17.11.2016

The Board of Appeal designates Mr Andris Piebalgs as Chairman of the Board of Appeal for a renewable period of two and a half years.

Subsequently, the Board of Appeal selected *mutatis mutandis* its Vice Chairman and reached the following decision:

BoA Decision 2./17.11.2016

The Board of Appeal designates Mr Jean-Yves Ollier as Vice Chairman of the Board of Appeal for a renewable period of two and a half years.

Agenda item n° 2. – Modification of the Rules of Procedure

The Board of Appeal overviewed the situation aroused from the Administrative Board decision on the appointment of the members and alternates of the BoA (Decision AB n° 18/2016). The relevant AB decision did not couple the members and the alternates

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of the BoA and, therefore, it is not clear how to replace a member with an alternate in the event of necessity.

The Board of Appeal concluded that the Rules of Procedure is not to be modified to fill this regulation gap but decided to turn to the Administrative Board for further clarification and to inform the AB concerning the Board of Appeal's viewpoint on the present situation. In this respect, the Board of Appeal reached the following decision:

BoA Decision 3./17.11.2016

The Board of Appeal gives a mandate to the Chairman to invite the Administrative Board to clarify the question of replacement of the BoA members as well as to inform the Administrative Board that the BoA, for the period until the Administrative Board would provide clarification, interprets the AB Decision in line with the previous one and applies, if necessary, the rules for replacement in alphabetical order.

Agenda item n° 3. – Conflict of interest policy of the ACER and the Board of Appeal – discussion on preparation to the next year's exercise

The Board of Appeal received a short introduction on the (general) conflict of interest rules apply to the BoA members and alternates. The Registrar will circulate the related documents to be filled and the guidelines to facilitate the usage of these forms.

Then, the Board of Appeal reached the following decision:

BoA Decision 4./17.11.2016

The Board of Appeal appoints Mr Walter Boltz to act, along with the Chairman and the Vice Chairman, as a member of the panel in assessing the potential conflict

of interests in the declarations submitted by the members and alternates of the Board of Appeal.

Agenda item n° 4. – Approval of the committee’s members participating in tender evaluation for legal support to the BoA

In accordance with the Administrative arrangement concluded by and between the Agency and the Board of Appeal, the Agency launched an open call for procurement tender with a view to provide legal services to the BoA in appeal proceedings, under the number ACER/OP/ADMIN/08/2016.

In line with the relevant rules of the Administrative arrangement, the Chairman of the BoA or another designated member replacing him and the Registrar participates in the evaluation of the tenders.

Pursuant to the relevant rules, the Board of Appeal reached the following decision:

BoA Decision 5./17.11.2016

The Board of Appeal acknowledges and encourages the participation of the Chairman and the Registrar in the tender evaluation committee to assess the tenders against the award criteria set up in the tender specifications.

Subsequently, the closed session of the meeting ended and the Board of Appeal continued its work with a presentation.

Agenda item n° 5. – Introductory presentation on the BoA procedures by the Registrar

The Registrar, in his presentation, provided some further information about the appeal workflows as well as about the tools and resources available to the Board of Appeal.

Agenda item n° 6. – Any other business

The Board of Appeal discussed further technical and procedural issues relevant to its future work.

Then the meeting was adjourned.

For the Board of Appeal:

Andris Piebalgs

Chairman