



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

***– 48th Meeting –
– Ordinary Session –***

Thursday, 28 January 2021, 09:00 – 13:00

**Trg Republike 3, Ljubljana – Slovenia
- ONLINE MEETING -**

MINUTES

I. LIST OF ATTENDEES

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

Dr Jochen PENKER,	<i>Member</i>	Dr Jurijs SPIRIDONOVŠ,	<i>Vice-Chair</i>
Mr Michel THIOLLIÈRE,	<i>Member</i>	Ms Karin LUNNING	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Anne MONTAGNON,	<i>Member</i>
Ms Edit HERCZOG,	<i>Member</i>	Mr Eberhard HOLSTEIN,	<i>Alternate</i>
Mr Pal KOVÁCS,	<i>Alternate</i>	Mr Vaclav BARTUŠKA,	<i>Alternate</i>
Ms Britta THOMSEN,	<i>Alternate</i>	Mr Pawel PIKUS,	<i>Alternate</i>
Mr Diego VAZQUEZ,	<i>Alternate</i>		

Ms Anne MONTAGNON submitted proxies by Ms Ditte JUUL JØRGENSEN.

Mr Eberhard HOLSTEIN, alternate of Dr Romana JORDAN, was granted with voting rights pursuant to Article 1 of Decision No. 10/2018¹.

Mr Christian Pilgaard ZINGLERSEN (*Director*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Mr Michael SCHUETZ and Mr Juan-Ignacio DE DIOS MORALES, acting as advisor, was present at the meeting.

The secretariat was provided by the Agency.

¹ Decision No. 10/2018 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 September 2018 on the participation of the Alternates in the meetings of the Administrative Board of the Agency for the Cooperation of Energy Regulators and the attribution of voting rights.

II. SUMMARY OF CONCLUSIONS OF THE 48th MEETING OF THE ADMINISTRATIVE BOARD

At the 48th meeting, the Administrative Board:

- (1) discussed the endorsement of the Draft Programming Document 2022-2024 focusing on the objectives and the resource programme, as well as on the strategic planning in light of the difficult circumstances resulting from BREXIT and the pandemic;
- (2) discussed the Communications Strategy and Dissemination Plan 2021-2023, suggesting to give more relevance to sustainability;
- (3) adopted the decision on: i) the amendment of the Internal Rules of Procedure for the Functioning of the Working Groups and on ii) the establishment of the Retail Working Group of the Agency;
- (4) appointed Ms JUUL-JORGENSEN and Dr JORDAN as the reporting officer responsible for the Director's annual performance assessment;

III. MINUTES

SESSION I

SECTION I – OPENING

The 48th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 28 January 2021. The meeting started at 09h00.

Upon invitation of the Chair to the present Members and Alternates of the Administrative Board to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda, no actual or potential interest was declared nor reported.

(1) *Approval of the Agenda*

The Agenda of the 48th meeting of the Administrative Board was approved as follows:

OPENING **Opening of the 48th Meeting of the Administrative Board**
09:00 -
09:05 *Adoption of the Agenda and Declaration of Interests*

STRATEGIC DISCUSSION **The Agency’s multiannual outlook, priorities and opportunities**
09:05 -
10:45 *Presentation by the Director*
Roundtable Discussion
Endorsement of the Draft Programming Document 2022-2024
Endorsement of the Communication and Dissemination Plan 2021-2023

The Board of Appeal – the way forward
Presentation by the Agency
11:00-11:30 *Roundtable Discussion*

REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY **Report on the activities of the Agency**
Presentation on selected topics related to the operational and horizontal activities of the Agency

Report on the activities of the Board of Regulators
11:30-12:50 *Presentation by Chair of the Board of Regulators*

The internal functioning of the Agency – the Working Groups

Presentation by the Agency

Adoption of the Decisions on: i) the amendment of the Internal Rules of Procedure for the functioning of the Working Groups and ii) on the establishment of the Retail Working Group of the Agency

Setting the framework for the evaluation of the Director

Appointment of two reporting officers for the appraisal of Mr ZINGLERSEN

Ensuring the independence of the Administrative Board

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

CLOSURE

11:50-13:00

Invitation to the 49th Meeting of the Administrative Board

AoB

SECTION II – STRATEGIC DISCUSSION

(2) The Agency’s multiannual outlook, priorities and opportunities

The Chair of the Administrative Board introduced the first item of the Agenda, the multiannual programming of the Agency for the years 2022-2024, explaining that the Agency prepared two proposals: 1) a proposal setting out the overall strategic programming, including objectives, expected results and performance indicators; 2) a proposal for resource programming, including the multi-annual budget and staff. Both proposals are included in the DRAFT Programming Documents 2022-2024. The Chair further explained that the Administrative Board should adopt these proposals and transmit it to European Institutions in the course of the normal budgetary cycle and multi-annual programming.

The Chair expressed that, within this context, it is important to define the communication and dissemination plans of the Agency for the years 2021-2023, to ensure consistency in the approaches; he recalled that at the last October meeting, the Agency presented a first draft of the Communication Strategy, while the Administrative Board provided feedbacks and invited the Agency to define an action plan. The strategy was presented also to the Board of Regulators.

The Chair invited the Director to present the Programming Document and the Communication Strategy and Dissemination Plan, highlighting that the feedbacks provided have been taken into account.

The Director explained the structure and planning logic employed for the Draft Single Programming Document. In particular, he explained that the Draft Single Programming Document was built around broad objectives guiding the actions and priorities of the Agency, which can be divided in 1) high level strategic opportunities and 2) broader operational objectives. He also mentioned that in terms of divisional principles, the Agency is divided into 6 operational activities and 3 horizontal activities and highlighted a new prioritization system for tasks.

On the resource side, the Director listed some of the lessons learnt from his first year of office: 1) the Agency plays a crucial role for a number of key objectives; 2) resources are under strain and there are limited options internally to move resources across; 3) the resources strain is on the rise. The Director added that the REMIT fee model will have a significant impact for financial resources, but not for human resources; on the other hand, the Commission has a key role in assessing the financial and human resources available to the Agency and the Agency is keen to collaborate with them in this respect.

The Director further clarified that the Agency's request for resources will be gradual, realistic (taking into account the current challenging circumstances) and backed by a compelling case. In more details, he mentioned that the request in the Draft Programming Document 2022-2024 will include 13 full-time staff additions in total, of which 4 are seconded national experts (there are currently other four SNE at the Agency). He explained that there is a strong case to assign four fee-financed posts to the Market Conduct and Surveillance department, while other two posts and one SNE will be assigned to Market Information and Transparency; legal services will also be assigned two temporary agents, giving the strain of the upcoming appeals.

The Director focused then on EU subsidy-financed posts and recalled that the Agency is tasked with developing draft network codes and a draft framework guideline on cybersecurity; however, at the moment there is only one expert involved, reason why the Agency is demanding one additional SNE. He also explained that the demand side flexibility network code is a new area and it requires the support of a further SNE.

Furthermore, the Director explained that Brexit has brought a number of tasks related to electricity trade across interconnectors between UK and Europe and administrative arrangements to be negotiated between the Agency and Ofgem, which can potentially lead to a significant resource strain. He stressed that, at the moment, there is an assumption of low workload, reason why the Agency has requested only one additional SNE. The Director added that the Draft Programming Document includes also one temporary agent for infrastructure activities, in light of the TEN-E proposal recently issued by the Commission (although this may require up to three temporary agents in the future).

Ms SHORTALL, Information and Communication Officer at the Agency, presented the Communication Strategy and Dissemination Plan 2021-2023. She explained that the document is grounded on three main principles: 1) efficiency (focus on resources, priorities and targeting key audiences); 2) accessibility (especially by key stakeholders); 3) impact (useful and meaningful content for the target audience).

She added that the Communication Strategy and Dissemination Plan 2021-2023 is also grounded on six main themes, namely: 1) visual identity (new logo); 2) an upgraded website (more responsive and more user friendly); 3) social media (to maximize the impact of the Agency by reaching a broader audience); 4) external communications material (for example podcasts, video and generally better information visualization to improve communication); 5) stakeholder management; 6) internal communications. She further pointed out three critical success factors: leadership buy-in, the Agency-wide engagement and good quality content.

Ms SHORTALL recalled the Administrative Board's comments on the importance to identify targets of engagement and explained that the Agency is focusing on stakeholders' identification, with the help of a mapping exercise for each particular deliverable, while applying different tools, like public consultations or expert groups; it is also developing support tools like calendars showing upcoming public consultations. She argued that an indicator of the Agency's 'well-being' is actually the type of relationships and the connections created with stakeholders, and this will be assessed throughout the year.

Mr VEREECKE, Strategy, Delivery and Communication Team Leader, pointed out that the Communication Strategy and Dissemination Plan 2021-2023 was amended according to comments provided during the 46th meeting of the Administrative Board. He also clarified that, with regard to sustainability, the Agency has already started its greening process and there are new developments coming up which will be communicated soon.

The Commission thanked the Agency for addressing the comments of the Administrative Board and explained that the Commission and DG Energy supports and understand the resources issue, recalling the difficult budgetary circumstances of the last years.

The Administrative Board asked the Director to what extent the Covid situation has been impacting regulations, the work of NRAs and the Agency, as well as energy supply in Europe; it also enquired about the Brexit situation and the impact on markets and whether this is still a pending problem for the Agency.

With regard to the collaboration with NRAs, the Director reported that the collaboration functioned well, despite different working arrangements; on energy supply, he argued that in 2020, the market functioned well, despite the decrease in demand. He explained that in many parts of Europe, tight supply resulted in significant price fix and tighter margins, but this was due to weather conditions and cannot be linked to a bad functioning of the market. In terms of Brexit, he mentioned some impacts, for example a decrease in trading efficiency between interconnector, although some of these inefficiencies should improve once the Brexit Deal is put into action.

The Administrative Board asked the Director what may be the consequence of a continuous lack of resource and what specific tasks is the Agency planning in relation to the Trade and Cooperation Agreement. The Administrative Board also suggested highlighting the EU strategy priorities in the broad strategy objectives of the Agency.

On the human resources question, the Director explained that this will result in the Agency underperforming, especially in relation to market surveillance and conduct activities and a continuous unwillingness to finance this department, may force the Agency to consider adjusting its mandate. With regard to the tasks linked to the Brexit deal, the Director explained that there will be operational and structural tasks; the Agency will ensure that the terms of the Trade and Cooperation Agreement are met, while negotiating administrative arrangements to liaise with Ofgem, with the aim to enact a fruitful bilateral relationship. The Director also agreed to emphasise the EU strategies priorities, like the green deal, decarbonisation objectives, and competitiveness, and added that the Agency is also involved in digitalisation and cybersecurity. Furthermore, the Director reflected on the Agency limited resources and the limited ability to engage outside Europe.

The Administrative Board reflected on the Slovenian presidency of the Council, which will take place in the second semester of 2021, and reflected on how to approach it, in light of the budget needs of the Agency for 2022. In this regard, the Director explained that the Agency has already reached out to the Energy Ministry and the State Secretary, emphasising the willingness to collaborate on energy matters.

The Administrative Board commented the Communication Strategy and Dissemination Plan 2021-2023 and encouraged the inclusion of the other EU objectives in in the plan, and in particular digitalization. The Administrative Board welcomed the idea of attaching a specific greening action plan to the Communication Strategy and Dissemination Plan 2021-2023, emphasising the importance of reducing the carbon footprint.

The Administrative Board invited the Agency to give relevance to sustainability as one of the Agency's priority and address sustainability in a more structured way, also by including it in the document. In addition, it suggested that there are some Slovenian cities interested in becoming climate-neutral/smart cities, including Ljubljana, and invited the Agency to liaise with the mayor of Ljubljana. Furthermore, the Administrative Board suggested that the Agency should increase participation in public events in general, not just in energy events and invited the Agency to have a more influential approach.

On the greening discussion, Mr VEERECKE informed the Administrative Board that this was not specifically mentioned in the document because the Agency is already working on an action plan on sustainability; nevertheless, he clarified that the aim is still to communicate the sustainable efforts of the Agency, internally and externally, and to set the example.

Ms SHORTALL added that the team is making sure that the Agency has a presence on the right events, and it is working on a system to identify key communications moments and key communication topics, which will be reflected in an external engagement calendar.

Ms BORISSOVA, Head of Corporate Services Department, mentioned that the greening action plan will be presented to the Administrative Board and it will deal with six broad areas, including 20 actions, touching upon building, travel and commuting to work, consumption, management and communication. There is also checklist of greening events to be organised by the Agency, which will complement its greening action plan.

Conclusion: (1) The Administrative Board endorsed the Draft Programming Document 2022-2024 and the Communications and Dissemination Plans 2021-2023, subject to the condition that sustainability will be better addressed. Both documents will be submitted to the Board of Regulators for its Opinion.

(3) *The Board of Appeal – The way forward*

The Chair of the Administrative Board recalled that the term of office of the Board of Appeal of the Agency will expire on 17 October 2021 and the Commission will launch a public call for the appointment of the next members and alternates of the Board of Appeal in 2021.

The Chair also recalled that at the last meeting, the Administrative Board had a chance to discuss the process to appoint the new members and alternates of the Board of Appeal and the challenges coming from the significant increase of appeals against the Agency's decisions in 2020. He recalled that following the discussion, the Commission was encouraged to involve the Administrative Board in the selection of the profiles to minimize the potentials for conflict of interests and ensure high standards.

The Chair explained that the challenge to address is how to provide sufficiently attractive conditions to the Board of Appeal, without affecting significantly the limited resources available. He recalled that after the ruling of the General Court in the case *Aquind v. ACER*², a more structural approach to resources might be needed to support the Board of Appeal, along with a revision of its working methods.

The Legal Team has worked closely with the Commission's services to find an acceptable solution and the Chair invited the Legal Services to shortly present the results.

² Judgment of the General Court (Second Chamber) of 18 November 2020, *Aquind Ltd v European Union Agency for the Cooperation of Energy Regulators*, Case T-735/18.

The Legal services highlighted that following the Recast of the Agency Regulation, the number of the Agency's decisions and consequent appeals has increased significantly (from 2 appeals in 2018 to 12 appeals in 2020). In particular, in 2020, the General Court ruling in the Aquind case has changed significantly the working methods of the Board of Appeal, explaining that the latter is now required to perform a full assessment, rather than adopting the manifest error of assessment test.

In addition, it was explained that the Aquind ruling has an impact on the next call for expression of interests of members and alternates of the Board of Appeal and on the Administrative Board; in fact, defining the right level of compensation for the activities to be performed will have an impact on the attractiveness of the post and on the level of engagement of members and alternates of the Board of Appeal in handling cases. In terms of timeline, it was clarified that the Administrative Board will be asked to adopt a formal decision on the right level of indemnities at the next June meeting; in the meantime, the Commission will launch the call for expression of interest and will perform the selection of candidates, who will be appointed by the Administrative Board.

As regards the definition of indemnities, the legal team has looked into different Board of Appeals of different agencies, reporting that the level of indemnities for the different roles vary significantly (for examples, for the member position, case indemnity can range from 4000 euros up to 8000 euros). The comparison shew that due to the honourable nature of the function assigned to members and alternates of the Board of Appeal, a significant lower level of indemnity is granted in comparison with other Board of Appeals. On the other hand, it was underlined that the Board of Appeal is already receiving significant external legal support and after the Aquind ruling, this will be combined with an increased financial and technical support required to handle cases.

The Legal Team further explained that in the assessment performed by the Agency, it can be seen that the amount spent in legal support in 2020 (without considering the last appeal) shows a significant figure which could potentially be redistributed. Hence, it was argued that in the next call for expression of interest, a possible approach would be setting up a daily indemnity up to a maximum cap per case, while limiting at the same time the use of external consultants. This solution would strike a balance between guaranteeing that posts are attractive, while ensuring that members and alternates of the Board of Appeal are sufficiently experienced to handle the number of increasing appeals faced by the Agency.

The Administrative Board thanked the legal team for the presentation and reflected on the increased number of appeal cases, the in-depth review required by the Court, and the resulting significant financial impact. The Administrative Board while endorsing the overall proposed approach called the Agency to review the level of indemnities attributed to the Board of Appeal on the basis of the evolution of the case-law, using other Board of Appeals' examples as a benchmark.

The Administrative Board supported the Agency's proposal, highlighting the increased transparency, and agreed that the right level of remuneration can be finalised in June..

Conclusion: The Administrative Board supported the proposal of the Agency, establishing that the right level of remuneration will be formalized at the next June meeting.

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

(4) Report on the Activities of the Agency

The Chair recalled that at the last October meeting, the Agency was invited to provide a short update on its regulatory activities and asked the Heads of Electricity and Gas Departments to intervene and provide insights on the latest ACER-CEER Market Monitoring Report 2020.

Mr GENGE-CREUX, Head of the Electricity Department, explained that despite the pandemic, market integration has continued, with important achievements for the integration of renewables and decarbonisation policy. For example, last year the total number of decisions issued was 38 (37 in the electricity sector), which is three times the number of decision of the previous year.

He highlighted that there are three running platforms in the EU electricity market: one platform to allocate long-term transmission rights, one platform to allocate the day-ahead transmission rights and one to allocate the intraday, while other four platforms are under developments for the balancing timeframe (each platform dedicated to one type of reserve).

Mr GENGE-CREUX added that the Agency is facing Important challenges: 1) focusing on the full implementation of network codes; 2) shaping the internal electricity market: the Agency will be involved in the development of cybersecurity network codes for the electricity sector and it may be involved also in demand-side response, although it is not sure whether the Agency will need to develop network codes on the latter; 3) new monitoring areas, including barriers to formation of prices, especially in situation of scarcity, as well as barriers to entry into the market faced by new and small market participants, including demand-response. With regard to the latter point, he emphasised that this is the first time that the Agency is tasked to monitor the details of member states' markets. On the other hand, the Director highlighted that the likelihood to face some politically contentious and sensitive items is now higher, and the Agency should pay particular attention on the way it engages and communicates with stakeholders.

Mr HESSELING, Head of the Gas Department, explained that the main topic for this year is decarbonisation. In this respect, he pointed out that the gas sector is far behind the electricity sector and there is new legislation coming up to drive the gas industry in the same direction. Mr HESSELING explained that one of the main tasks along the year will be to engage with the co-legislator and support with technical advice. In addition, he mentioned the upcoming gas decarbonisation package, which will cover topics such as regulation of the hydrogen market. He also mentioned the current finalization of two white papers, one on hydrogen and one on power-to-gas, already submitted to the Board of Regulators.

Furthermore, Mr HESSELING informed that other tasks will include monitoring the implementation of network codes; on the infrastructure side, there will be a move from monitoring and advising on classical natural gas infrastructure assets to new categories such as hydrogen, power-to-gas and smart gas grids.

The Administrative Board congratulated both Mr HESSELING and Mr GENGE-CREUX for the results achieved during these difficult times; it then enquired on the status of the investigation of the January incident and the Agency's role in such investigation.

Mr GENGE-CREUX explained that due to the severity of the incident, both the Agency and NRAs were involved in the investigation: TSOs are currently collecting all the relevant data (until the end of February) and in parallel, they will start an expert panel investigation to have a first factual report by April, while a final report will be issued by the end of June. The Director emphasised the importance of taking the necessary time to carry out the investigation.

Conclusion: The Administrative Board thanked both the Head of Electricity Department and the Head of the Gas Department for the report.

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

The Chair invited Ms POLETTI, Chair of the Board of Regulators, to provide a report on the activities of the Board of Regulators and to comment on the January incident.

Ms POLETTI explained that it is too early to take a position on the matter and informed the Administrative Board that the Board of Regulators has organised a meeting with ENTSO-E to understand the reasons behind the incident.

Ms POLETTI added that on the gas side, the Board of Regulators is working on the approval of two white papers on hydrogen and power-to-gas, while coordinating the work on green deals and strategic issues regarding new gas package, the methane emissions and offshore wind, which will be at the centre of the EU Agenda. With regard to monitoring of national markets, she emphasised the importance of coordinating the efforts with NRAs to make sure that the data used are the same and there is a shared understanding of how national markets work. With regard to the Communication and Dissemination Plan, she informed that there is a General support of the Board of Regulators, which will soon provide its Opinion.

Conclusion: (1) The Administrative Board thanked Ms POLETTI for the report provided.

(6) The internal functioning of the Agency – the Working Groups

The Chair recalled that at the 47th meeting, the Administrative Board endorsed two proposals: a) the proposal of the Director concerning the amendments of the internal rules of procedure for the functioning of the working groups; and b) the joint proposal submitted by the Director and the Board of Regulators concerning the establishment of the Retail Working Group. The Chair explained that the proposals received the Favourable Opinion of the Board of Regulators and the Administrative Board is now called to adopt the final decisions on i) the amendment of the Internal Rules of Procedure for the Functioning of the Working Groups and on ii) the establishment of the Retail Working Group of the Agency.

The Director briefly recalled the reasons behind the adoptions of the two respective decisions, already discussed at the 47th meeting.

Conclusion: (1) The Administrative Board adopted the final decisions on: i) the amendment of the Internal Rules of Procedure for the Functioning of the Working Groups and on ii) the establishment of the Retail Working Group of the Agency.

(7) Setting the framework for the evaluation of the Director

The Chair explained that the Administrative Board is called to set the framework for the evaluation of the Director and to appoint the reporting officer responsible for his annual performance assessment. The Chair explained that the General Director of DG Energy would remain the reporting officer for the assessment which relates to the year 2020. Since the performance assessment relates to the year 2020 and this largely overlaps with the Director's probationary period, Dr JORDAN expressed her availability.

Conclusion: (1) The Administrative Board adopted the decision to appoint Ms JUUL-JORGENSEN and Dr JORDAN as the reporting officer responsible for the Director's annual performance assessment, unless there will be a change concerning the appointment.

(8) Ensuring the independence of the Administrative Board

The Chair explained that ensuring the independence of the Administrative Board as a whole and maintaining the trust of stakeholders and citizens in the Agency's integrity is paramount; he recalled that the Administrative Board has put measures in place to a) prevent and manage conflict of interests

at all levels of the Agency's decision-making process and b) ensure adequate transparency vis-à-vis the general public.

The Chair explained that in order to complete the review panel for the yearly assessment of the conflict of interest declarations, the Administrative Board needs to designate one person among the members and alternates of the Administrative Board. The Chair informed that Mr THIOILLIERE expressed his availability.

Conclusion: (1) The Administrative Board appointed Mr THIOILLIERE for the assessment of the conflict of interest declarations.

CLOSING

The Chair informed about the dates of the next meetings, which are 16 June 2021 (extraordinary meeting), 7 October 2021 and 16 December 2021, explaining that the date of December is currently provisional and may be subject to changes.

In the absence of any other business to be treated, the Chair closed the 48th meeting at 14h30.