

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

**– 56th Meeting –
– Ordinary Session –**

Wednesday 14 December 2022, 16:30 — 18:30

Thursday 15 December 2022, 08:30 — 13:40

**ACER
– Trg Republike 3, Ljubljana – Slovenia –**

MINUTES

I. LIST OF ATTENDEES

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

Mr Michel THIOLLIÈRE,	<i>Chair</i>	Ms Edit HERCZOG,	<i>Vice-Chair</i>
Dr Jurijs SPIRIDONOVŠ	<i>Member</i>	Ms Romana JORDAN,	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Karin LUNNING,	<i>Member</i>
Ms Anne MONTAGNON,	<i>Member</i>		

Ms Anne MONTAGNON submitted proxy by Ms Ditte JUUL-JØRGENSEN.

Mr Vaclav BARTUSKA submitted proxy to My Michel THIOLLIÈRE.

Mr Christian Pilgaard ZINGLERSEN (*Director*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 14 December 2022.

Mr Juan-Ignacio DE DIOS MORALES and Mr Michael SCHUETZ (*both European Commission*) were present acting as advisor.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 56th MEETING OF THE ADMINISTRATIVE BOARD

At the 56th meeting, the Administrative Board:

- (1) appointed Director-General of European Commission DG ENER and Vice-Chair of the Administrative Board Ms Edit Herczog as reporting officers for the assessment of the annual performance of the Director for the reference period 1 January 2022 to 31 December 2022 and for setting Director's objectives for the following reference period (year 2023);
- (2) appointed Ms Anne Montagnon as the member and Ms Karin Lunning as the alternate member of the 2023 Review panel responsible for the implementation of the conflict of interest policy for the Administrative Board;
- (3) adopted the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators by unanimity;
- (4) invited the Agency to provide at the meeting in January 2023 a presentation on potential examples of conflict of interest stemming from the new Guidelines;
- (5) reminded to inform the respective Appointing Authorities of the adopted Guidelines so that they are taken into consideration when appointing new members or alternates;
- (6) invited member and alternates to submit the relevant documents requested in line with the annual policy of management and prevention of the conflict of interest by 31 January 2023 through the on-line platform;
- (7) was acquainted with the 2022 Administrative Board Review Panel report on the management and prevention of the conflict of interests, which will be published on the Agency's website;
- (8) adopted the Decision on up-dated Internal Control Framework of the Agency by unanimity;
- (9) adopted the amendment to the Agency's Budget 2022 by unanimity;
- (10) got acquainted with current situation in the energy sector, including on the Agency's priorities in 2023, and welcomed the proposal of discussing REMIT at the next meeting;
- (11) took note of the activities of the Board of Regulators in light of the current crisis;
- (12) requested the Agency to prepare a credible action plan on possible premises options, accompanied by the information on costs and timeline, for the January 2023 Administrative Board meeting, and to provide a regular debrief to the Board on this important file;
- (13) might reflect on appointing a rapporteur to follow situation in European school in Ljubljana;
- (14) invited members to submit reimbursement claims linked with the participation at the Administrative Board meetings immediately after the meetings;
- (15) invited the Agency to provide in 2023 an analysis on external and internal communication, and welcomed the Agency's initiative to provide proposals for members' and alternates' engagement in ACER communication on social media;
- (16) invited the Agency to provide in 2023 a more detailed analysis of the BoA appeals;
- (17) adopted Decision No. 19/2022 of 15 December 2022 on the request for non-application by analogy from the Implementing Rules to the Staff Regulations by unanimity;
- (18) adopted the Agency's Single Programming Document 2023-2025 by unanimity;
- (19) adopted the Agency's Budget and Establishment plan for the financial year 2023 by unanimity;
- (20) called on being involved in the process of setting up the budget line defining the Administrative Board's functioning;
- (21) got acquainted with the current functioning of the Board of Appeal;
- (22) endorsed the structural overview of the draft Single Programming Document 2024-2026 by unanimity.

III. MINUTES

SECTION I – OPENING

The I Session of the 56th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 14 December 2022. The meeting started at 16h30 and finished by 18h30.

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

(1) *Approval of the Agenda*

The Agenda of the I Session of the 56th meeting of the Administrative Board was approved as follows:

<i>OPENING</i> 16:30 - 16:35	Opening of the 56th Meeting of the Administrative Board <i>Adoption of the Agenda and Declaration of Interests</i>
<i>DECISION- MAKING</i> 16:35 - 16:45	Appointment of the Reporting Officers for the Director for the year 2022 <i>Presentation by AB Secretariat</i> <i>Roundtable Discussion and Adoption</i>
<i>DECISION- MAKING</i> 16:45 - 17:00	Appointment of the Members of the Review Panel for Conflict of Interests Management in 2023 <i>Presentation by AB Secretariat</i> <i>Roundtable Discussion and Adoption</i>
<i>DECISION- MAKING</i> 17:00 - 17:20	Prevention and management of Conflict of Interests: Report on the year 2022 and consequential actions <i>Presentation by AB Secretariat</i> <i>Roundtable Discussion and Adoption</i>
<i>DECISION- MAKING</i> 17:20 - 17:30	Internal Control Framework of the Agency for the Cooperation of Energy Regulators <i>Presentation by Ms O. BORISSOVA, Head of Corporate Services</i> <i>Roundtable Discussion and Adoption</i>
<i>DECISION- MAKING</i> 17:30 - 17:35	Budget and Establishment Plan of the Agency - Financial Year 2022 <i>Presentation by Ms O. BORISSOVA, Head of Corporate Services</i> <i>Roundtable Discussion and Adoption</i>
17:35 - 18:25	Closed Session – Administrative Board Discussion (Members only)
<i>CLOSURE</i> 18:25-18:25	Invitation to the II Session of the 56th meeting of the Administrative Board

SECTION II – DISCUSSION AND DECISION MAKING

1. Appointment of the Reporting Officers for the Director for the year 2022

The Chair informed that in line with the established Rules of procedure for the annual appraisal of the performance of the Director of the Agency, the Administrative Board has to appoint two of its Members as reporting officers for the assessment of the Director's performance in 2022 and for setting Director's objectives in 2023. The Chair suggested Director-General of European Commission DG ENER and Vice-Chair of the Administrative Board Ms Edit Herczog to be appointed in this role. They both confirmed their availability.

Conclusion: (1) The Administrative Board appointed by Decision No. 15/2022 of 14 December 2022 Director-General of European Commission DG ENER and Vice-Chair of the Administrative Board Ms Edit Herczog as reporting officers for the assessment of the annual performance of the Director for the reference period 1 January 2022 to 31 December 2022 and for setting Director's objectives for the following reference period (year 2023).

2. Appointment of the Members of the Review Panel for Conflict of Interests Management in 2023

The Chair underlined the importance of the process of implementing the management and prevention of conflict of interest policy for ensuring the independence of the Administrative Board as a whole and for maintaining trust of stakeholders and citizens in the Agency's integrity. The Chair announced that the 2023 annual conflict of interest process was about to be launched by the Secretariat through the online platform. In this respect, members and alternates should submit by 31 January 2023 their annual individual declaration indicating any interest with respect to all activities in which member and alternate or his/her close family members are involved or have been involved during the five years preceding the Declaration; a declaration of commitment; and an updated Curriculum Vitae. These documents will be reviewed and assessed by a Review panel. The Chair explained that in order to complete the Review panel for the 2023 yearly assessment of the conflict of interest declarations of the Administrative Board members and alternates, the latter needed to designate one of the European Commission representative as the review panel member. Moreover, one additional person has to be appointed among the remainder of the members to act as alternate. The Chair informed that Ms Anne Montagnon had expressed availability to be appointed as a representative of the European Commission in the Review panel and Ms Karin Lunning as the alternate member of the Review panel.

Conclusion: (1) The Administrative Board appointed by Decision No. 16/2022 of 14 December 2022 Ms Anne Montagnon as the member and Ms Karin Lunning as the alternate member of the 2023 review panel responsible for the implementation of the conflict of interest policy for the Administrative Board.

3. Prevention and management of Conflict of Interests: Report on the year 2022 and consequential actions

The Chair assessed the conflict of interest policy in 2022 was an intense and long process. The review panel was able to conclude the 2022 report on the conflict of interest policy for the Administrative Board only in December 2022 due to a late launch of the process and very late submission of the requested documents by two alternate members of the Administrative Board. In order to improve the process, he invited members of the Board to adopt the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (hereafter the Guidelines). The Secretariat reminded that the Administrative Board endorsed the draft Guidelines already at its previous meeting on 26

October 2022. Since then, the Guidelines were checked also by the Agency's Data Protection Officer and by the Board of Appeal. The received comments were minimal: Data Protection Officer made some wording improvements to align the provision on personal data processing with the Data Protection regulation, while the Board of Appeal provided opinion, which was limited to the improvement of some aspects related to the Board of Appeal only. The members agreed with the additional comments and approved the Guidelines. The Administrative Board stressed the importance of these new Guidelines and its rigorous application for all members and alternates. The Agency was invited to provide at the next meeting some examples of conflict of interest stemming from the new Guidelines. It was underlined that the respective Appointing Authorities should take the adopted Guidelines in full consideration when appointing new members or alternates. The Secretariat of the Administrative Board informed that it will continue to assist the Review panel in the course of the procedure and would provide the Chair with an early information on a potential conflict of interest by a member or alternate regarding a particular agenda item.

The Chair invited Ms Montagnon as the member of the 2022 Review Panel to provide her assessment of the 2022 conflict of interest process. Ms Montagnon considered the final report as balanced and reflecting already the spirit of Guidelines that had just been adopted. She underlined that the Guidelines detailed better process for the Review panel for the assessment of circumstances giving rise to potential conflict of interests; clarified the breach of trust procedure and the consequential actions to be undertaken. According to the Guidelines, the 2022 Review Panel report will be published on the Agency's website in order to ensure transparency towards the public and accountability.

Conclusions:

- (1) The Administrative Board adopted the Decision no. 16/2022 of 14 December 2022 on Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators by unanimity.
- (2) The Administrative Board invited the Agency to provide at the meeting in January 2023 a presentation on potential examples of conflict of interest stemming from the new Guidelines.
- (3) The Administrative Board reminded to inform the respective Appointing Authorities of the adopted Guidelines so that they are taken into consideration when appointing new members or alternates.
- (4) The Administrative Board invited member and alternates to submit the relevant documents requested in line with the annual policy of management and prevention of the conflict of interest by 31 January 2023 through the on-line platform.
- (5) The Administrative Board was acquainted with the 2022 Administrative Board Review panel report on the management and prevention of the conflict of interests, which will be published on the Agency's website.

4. Internal Control Framework of the Agency for the Cooperation of Energy Regulators

The Chair invited Ms Borissova, head of the Corporate Service Department, to present the topic. Ms Borissova explained that the European Commission revised its Internal Control Indicators which were provided to the Agency with the request to revise its existing Internal Control Indicators and align them with the new ones. Ms Borissova explained that new indicators would apply from 2023 onwards and would be reported to the Administrative Board in the 2024 Agency's Annual Activity Report. The Administrative Board commended the Agency for the good work.

Conclusion:

- (1) The Administrative Board adopted the Decision No. 17/2022 of 14 December 2022 on up-dated Internal Control Framework of the Agency by unanimity.

5. Budget and Establishment Plan of the Agency - Financial Year 2022

Ms Borissova recalled that upon the adoption of the ACER Budget 2022 it was pointed out that the budget corresponded to a planned amount based on the Agency's anticipated number of collected fees under REMIT. She explained that according to the applicable provisions, if the revenue arising from the fees was different from the anticipated amount, then an amendment of the Budget 2022 was required. The amount of collected fees envisaged for the financial year 2022 was slightly higher than anticipated. Moreover, the Agency's budget for the financial year 2022 erroneously included an extra amount for the additional post envisaged under the Proposal for a Regulation on Guidelines for trans-European energy infrastructure.

In line with these two facts, the total revenue of the Agency for the financial year 2022 needed to be reduced by the difference between the initially planned revenue and the revenue actually established, i.e. EUR 63 500.00. In order to balance the revenue and expenditure of the Agency, the Administrative Board was invited to amend Decision No 14/2021 of the Administrative Board of the Agency of 16 December 2021.

Conclusion: (1) The Administrative Board adopted the Decision No. 18/2022 of 14 December 2022 on the amendment to the Agency's 2022 Budget by unanimity.

6. Administrative Board Discussion – Closed session (Members only)

SESSION II

SECTION I – OPENING

The Session II of the 56th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 15 December 2022. The meeting started at 8h30.

(1) Approval of the Agenda

The Agenda of the 56th meeting of the Administrative Board was approved as follows:

<i>OPENING</i> 08:30 - 08:40	Opening of the 57th Meeting – Second session <i>Adoption of the Agenda and Declaration of Interests</i> <i>Report on Conclusions of Closed Session</i>
<i>REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY</i> 08:40-10.45	Agency's Progress Report – Part I <i>Regulatory Developments – recent ACER efforts, perspectives and reflections</i> <i>Presentation by Mr C. ZINGLERSEN, ACER Director</i> <i>Discussion</i> Board of Regulators – Progress Report <i>Presentation by Ms C. POLETTI, Chair of the Board of Regulators</i>

Agency's Progress Report – Part II

Organisational Developments (HR, Budget & Procurement Implementation, Communication, Audits)

Presentation by Ms O. BORISSOVA, Head of Corporate Services and B. VEREECKE, Team Leader Strategy Delivery and Communications

*Rapporteurs: Ms E. HERCZOG, Mr J. SPIRIDONOV, Ms K. LUNNING, Ms R. JORDAN
Discussion*

New ways of working and working time: future policy for the Agency

Presentation by Mr C. ZINGLERSEN, ACER Director

Discussion and adoption of Opt-Out Decision from Commission Decision C(2022) 1788 final of 24 March 2022 on working time and hybrid working

*STRATEGIC
DISCUSSION
AND DECISION-
MAKING
10:30-10:55*

Single Programming Document for the years 2023 -2025

Presentation by Ms O. BORISSOVA, Head of Corporate Services

Rapporteur: Mr B. CHIRIȚOIU

Discussion and adoption

*STRATEGIC
DISCUSSION
AND DECISION-
MAKING
10:55-11:15*

ACER's Budget and Establishment Plan for the financial year 2023

Presentation by Ms O. BORISSOVA, Head of Corporate Services

Rapporteurs: Ms E. HERCZOG, Mr J. SPIRIDONOV

Discussion and adoption

*STRATEGIC
DISCUSSION
AND DECISION-
MAKING
11:35-12:05*

Board of Appeal – Report by the Board of Appeal Chair

Presentation by M. PREK, Chair of the Board of Appeal

Discussion

*STRATEGIC
DISCUSSION
12:05-13:05*

Draft Single Programming Document for the years 2024 - 2026

Presentation by Mr C. ZINGLERSEN, ACER Director, and Ms O. BORISSOVA, Head of Corporate Services

Rapporteur: Mr B. CHIRIȚOIU

Discussion

*CLOSURE
13:05-13:15*

AoB

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

REPORT ON CONCLUSIONS OF CLOSED SESSION

The Chair explained that during the closed session, the Administrative Board continued with the discussion on the legal status of the Administrative Board as an independent body of the Agency, while at the same time fully relying on the Agency input, limited staff (provided by the Agency in the form of Secretariat) and no financial means. The level of the responsibility of the Administrative Board (individual or collegial) remains unclear. Therefore, the Board decided to send a letter to the Commission and its Legal Service asking for legal interpretation on the concrete responsibilities of the Board, so that this issue is clarified not only for current but also future members and alternates. The Administrative Board expressed expectation to the involved in the Agency's budget line for the functioning of the Board, as this was considered to be an issue of independence, transparency, responsibility and ownership. The Chair added that the potential increase of indemnities of the Administrative Board to recognize an increased actual work, including preparatory work of rapporteurs, would be discussed at the January 2023 closed session. It reminded that in 2023 the procedure on the recruitment process of the director of the Agency has to start.

(2) Agency's Progress Report – Part I

Regulatory Developments – recent ACER efforts, perspectives and reflections

Upon invitation of the Chair, the Director Mr C. Zinglensen presented the topic focusing on the recent role and impact of the Agency in the unfolding energy crisis.

The Director pointed to a very quickly evolving role of the Agency in the current challenging political context in which the EU is increasingly moving to an uncharted territory. The Agency was closed to be assigned two new emergency tasks (LNG assessment and Market Correction Mechanism) that in their nature differ from the core Agency's mandate (namely the coordination of national energy regulators). Moreover, in case of their adoption, measures would need to be implemented within extremely short timeframe (beginning of 2023) and with the existing staff. Director explained that despite near-term gas price relief since August 2022, the supply and demand fundamentals suggested that gas and electricity would remain tight for some time and would continue to drive price expectations in the coming years and have significant impact on the energy systems. This implies that the emergency measures might last longer than initially envisaged and that some new measures might be needed in the future. In this context, ACER had been pointing to a number of important measures needed to be discussed in 2023 though seem to remain under the currently heated political radar (like tackling intra-EU gas market congestion; more gradual & cost-sensitive gas storage replenishment for next winter; addressing electricity adequacy; relaunch efforts on the 70% interconnection capacity target; taking decision on scenarios for network development planning; finding balance between costs and decarbonisation trajectory; etc.)

Director stressed that while near-term vigilance remains highly relevant, it was extremely important to keep the cross-border flows open as Member States relied a lot on neighbouring countries to alleviate network congestion and generation scarcity. ACER is strongly voicing this messages and it had started to be echoed also by the NRAs and picked up by media.

Director underlined also very important and growing work of the Agency in monitoring the wholesale energy market (REMIT), as at a time of high prices, transparency is crucial. Director explained that Agency collects over 16 million data points of trade per day. In order to keep pace with that developments, Agency would need gradual increase of resources in that area. Given time constraints, director offered a more detailed presentation of REMIT to the Administrative Board at the meeting in January 2023. The Administrative Board welcomed this proposal.

Upon request of the Administrative Board, Director provided also a state of play of measures taken by TSOs after the three major 2021 system incidents/splits. Expert panel of TSOs, which did the investigations after each incident, drew up 29 recommendation measures to be implemented. Director explained that ACER was part of the expert panel, but the implementation was in hands of TSOs. The implementation started in 2021 but was in 2022 disrupted by the TSOs involvement in the spring emergency synchronisation of Ukraine/Moldova grid to the Continental Europe Synchronous Area and by the energy crisis. TSOs continue to be committed to deliver on the expert panels' recommendations and in current circumstances, the operational follow-up work was advancing well (e.g. all TSOs apply the relevant protocol). In case of further interest, Director offered the possibility to provide a more technical update in the course of 2023.

The Administrative Board took notice of evolving role of the Agency and its growing stage as organisation. It noted that such growth might need to be supported also by more horizontal tasks and profiles. In addition, it was stressed that the implementation of other EU legislation (e.g. Security Regulation) would also impact on the energy sector and generate huge costs that should be taken into consideration. Director replied that indeed the growing stage of the Agency without further resources has been assessed as one of the upcoming risks in broader terms. On security, he informed that the Agency had started preparations to speed up the integration of cybersecurity policy in electricity sector but even broader. In fact, director stressed that cybersecurity was one of three agency's priorities in near-term – next to the implementation of the two new tasks (LNG assessment and Market Correction Mechanism) and REMIT.

Conclusion: (1) The Administrative Board thanked Director for detailed presentation of current situation in energy sector, including on the Agency's priorities on 2023 and welcomed the proposal for discussing REMIT at the next meeting.

Board of Regulators – Progress Report

Ms C. Poletti, Chair of the Board of Regulators, provided an update on the decisions taken by the Board of Regulators (BoR) at its meeting a day before (25 October 2022). Focus of discussion of national regulatory authorities was on current short-term emergency measures, though it was underlined that the long-term changes were also very important for them. Thus, the BoR decided to take next steps on emergency measures in 2 streams: imminently responding on EC consultation and supporting EC's work and legislative proposals expected in March 2023; subsequently, following the public consultation, pursue the analysis and ACER internal work on enduring market design (independently of the EC proposals) to be used in the upcoming reform (2023) or in the next reform. Ms. Poletti informed that among several decisions, BoR issued favourable opinion on ACER Single Programming Document 2023-2025. Among non-regulatory issues, it followed up on the November 2022 ACER leadership away day discussions, which brought together 40 participants involved in different capacities with ACER and discussed ACER's identity and contributions to the EU energy agenda with prioritisation, better internal and external communication to reinforce legitimacy and flexible cooperation arrangements benefitting the changing EU energy system. The discussions were crystallised in 10 concrete actions that were being implemented.

Conclusion: (1) The Administrative Board took note of the activities of the Board of Regulators in the light of the current crisis.

(3) Organisational Developments (HR, Budget, ACER Premises, Communication, Audits)

The Chair of the Administrative Board invited the Agency to present the topics.

Ms Borissova, Head of Corporate Services department, thanked all the rapporteurs (Ms Herczog, Mr Spiridonovs, Ms Jordan, Ms Lunning) for very good discussions on the topics prior to the AB meeting. She informed that the Agency was growing in terms of human resources and that the selection procedures to fill the posts assigned by the emergency package were on-going.

She brought to the Board's attention increasing concerns voiced by the staff on the situation with the European School in Ljubljana. The provision of good European School is an important element for staff – both for retaining current staff and for attracting new candidates. While the primary level has been functioning well, the secondary level has been facing problem of lacking adequate premises and overall quality of schooling. It was mentioned that this might jeopardise the accreditation for the European Baccalaureate, which is to take place in 2023 and thus lead to the interruption of the graduation of ACER pupils with the European Baccalaureate. ACER has been engaged in discussions with school, parents, Ministry of Education, mayor to improve situation. However, if the situation at the secondary level does not improve, there might be need for taking some other measures (e.g. supporting schooling for certain grade of pupils in other international schools).

Ms Borissova provided the update on the implementation of the 2022 budget. The procurement budget was already above the 95% target. The payments target was below the 75% target, which is however only internal KPI, but the payments had been monitored and it was expected that the target would be further improved by the end of the year. Revenue implementation (REMIT fees) has been on track. Similarly, the payment appropriations carried forward from 2021 were expected to reach the needed 95% target. Ms Borissova pointed to the fact that a lot of budget had been spent though public procurement (281 procedures) and that by the end of the year 27 procedures would be still concluded. To complete this work, additional 0.5 FTE was trained to help during the workload peak with the below €15k procedures. In January 2023, the team would look into possible simplifications in the workflow of procurement procedures.

Director and Ms Borissova provided the Board on the state of play on the file of premises where several different options are being consulted (no further information due to the confidentiality of the procedures).

On communication work, Mr Vereecke explained that the focus of the work clearly remained on the energy crisis which increased also the Agency's work in terms of stakeholders' outreach. Moreover, the Agency endured in November 2022 cyberattack on its website, which requested a lot of time and staff engagement to remedy the situation. The protocol to manage such situations in future was established. It was stressed that within the Agency it had been acknowledged that more investment in cybersecurity were needed. He informed that currently, the SDC department was supporting the communication of the new tasks that were expected to be assigned to the Agency. This for instance would require publication on the Agency's website on a daily basis (in the evenings) of the data required by the Market Correction Mechanism. Mr Vereecke informed that that the crisis communication strategy had started to be prepared.

On audits, Ms Borissova explained that the main ongoing audit was the IAS audit on Decision-making process under Article 2(d) of Regulation (EU) 2019/942 (2022) (about decision-making in the electricity market), where fieldwork was finished. Draft report was expected to be received in early spring. ECA annual audit for financial year 2022 has been on-going and it looked like no major observations are identified. On the ECA audit on the EU internal electricity market, the ACER response to the draft report was sent in close cooperation with DG ENER. According to ECA preliminary timeline, the publication of the report is envisaged between 19-31 January 2023. The Agency had been now focusing on the communication process around the report's publication. The Administrative Board repeated that it wanted to have a discussion on this report once it would be published.

Mr Martinet, Team Leader of Legal service, provided an overview of the Agency's support to the Board of Appeals (BoA). He underlined that after the entry into force of Clean Energy Package, which gave much more competence and responsibility to ACER, the number of appeals had increased. Therefore the Agency had been providing some HR support to the Registry of the Board of Appeal (2 part-time FTEs by legal service) as well as external legal support (for legal and occasional procedural Registry support). The agency continues with work on setting-up appeal case management tool through tailored-made IT system (consultant contract). The agency also enabled involvement of BoA members in litigation before Union Courts provided for access to trainings, etc. After witnessing doubling the number of apples in 2021, their number lowered in 2022. While this might be linked also with the increased quality of the BoA decisions, the increasing number of appeals has been recognized as one of the broader risks faced by the Agency. Still half of the BoA decisions are further appealed in front of general Court in Luxembourg.

As a conclusion to this agenda item, Director provided an overview of the broader risks that in a way summarise many topics discussed. These are: staffing, recruiting and continuity of teleworking regime; the fact that new/evolving nature of tasks might impact the organisational coherence; need for increased agility in a fast-moving context; scaling culture (due to the phase of growth); cybersecurity and business continuity, IT security, including website; premises; increase of procurement and hiring needs in a growing organisation without more admin support; many appeals against ACER decisions impact on resources.

After this presentation, the Chair invited the relevant rapporteurs for comments on their respective files.

Ms Jordan expressed dissatisfaction with the level of information provided on the progress on the Agency's premises at that point in time. Thus she called for a credible action plan on possible options, accompanied by the information on costs and timeline, by the Agency at the January 2023 Board meeting. This was supported by other members who requested a regular in-depth debrief on the state of play on this important file. Director confirmed the topic to be presented at the next Board meeting. Director was asked if options accommodated the growing number of staff, which was confirmed.

On the concerns related to the European School, it was suggested to check among Administrative Board members if anyone had interest in being appointed as a rapporteur and could be thus more involved in the file.

On budget file, the Board members welcomed much better results than last year, which were probably linked with improved procurement. The Agency was invited to use framework contacts as much as possible. The Agency confirmed it was already using them. The Board members were reminded that timely submission of the reimbursement claims linked with the participation at the Administrative Board meetings also impact the Agency's 75% payment target. The latter is an important KPI. In that context, the members were invited to act as a role model and submit the reimbursement requests immediately after the meeting to speed up budgetary procedures.

On communication, the Administrative Board expressed interest to provide at some point in 2023 information on the engagement rate in Agency's' social media, up-date on formats of internal communication (with staff) and on the recent website cyberattack. Director agreed to provide analysis. The possibility of Agency's communication department to provide suggestions on how members can spread information put on ACER social media has been welcomed.

On BoA support, the Administrative Board asked at one of the next occasions a more detailed analysis of the BoA appeals.

Conclusions: (1) The Administrative Board requested the Agency to prepare a credible action plan on possible premises options, accompanied by the information on costs and timeline, for the January 2023 Administrative Board meeting and to provide a regular debrief to the Board on this important file.

- (2) The Administrative Board might reflect on appointing a rapporteur to follow situation in European school.
- (3) The Administrative Board invited members to submit reimbursement claims linked with the participation at the Administrative Board meetings immediately after the meetings.
- (4) The Administrative Board invited the Agency to provide in 2023 an analysis on external and internal communication and welcomed the Agency's initiative to proposals for members' and alternates' engagement in ACER communication on social media.
- (5) The Administrative Board invited the Agency to provide in 2023 a more detailed analysis of the BoA appeals.

(4) *New ways of working and working time: future policy for the Agency*

Upon the invitation of the Chair, Director underlined that the issue of future telework regime was one of the biggest risks the Agency faced, as the clarity on this issue was the number one priority for the staff – both existing and future one. Especially a restrictive stance of EC rules on working time and hybrid working related to the telework from abroad could seriously challenge the retention of experienced staff, as in internal survey conducted by the Agency many expressed concern of leaving the job should these conditions change. In parallel, the selection procedures - especially after covid period - pointed to increasing challenges in recruiting new staff. During the past two years, 70% of ACER selection procedures had to be extended due to the insufficient number of applicants and 32% of candidates who received a job offer in the end declined it; with a set of reasons ranging from the difficulties to relocate to the competitiveness of the salaries' scale.

As the global competition for the energy profiles was extremely high, the Agency provided the identification of broader challenges linked with retaining and recruiting high-knowledgeable and experienced staff that the Agency needs for the implementation of its mandate. Among key challenges in attracting and retaining talents are correction coefficient of salaries for Slovenia, difficult labour market for spouses given limited international companies, limited schooling options for children (problems of quality and infrastructure of the European school), deteriorating transport connectivity.

In such context, the Agency realises that it would need to address the expectation of the staff on the flexibility that could be offered. This is even more so, as ACER has built over the past years well-functioning working culture based on trust and independence of its staff.

As a first step in this process, the Agency informed the Administrative Board of its intention to opt out from the Commission's new rules on working time and hybrid working which would be applied to the Agency by analogy if this opt-out was not adopted by 31 December 2022. After that, the Agency has to decide either to request an individual derogation to draft and implement its own rules, or adopt a model decision (MD), i.e. a text commonly agreed with the EC Services and shared with agencies that is under preparation. It was stressed that the Agency would need to analyse carefully the impact any decision would have on staff.

The Administrative Board expressed understanding of new attitudes of employees to work under greater flexibility as these could be witnessed everywhere. The Board adopted by the unanimity the opt-out from the Commission Decision C(2022) 1788 final of 24 March 2022 on working time and hybrid working, paving the way for further Agency's decision on this matter by taking into account the impact on the staff. The Commissions' representatives were notified accordingly.

Conclusion: (1) The Administrative Board adopted Decision No. 19/2022 of 15 December 2022 on the request for non-application by analogy from the Implementing Rules to the Staff Regulations by unanimity.

(5) Single Programming Document for the years 2023 -2025

Upon invitation of the Chair, Ms Borissova informed that following the receipt of the European Commission's comments on the draft Single Programming Document 2023-2025, the Agency had accommodated the text with additional requested information. Following the adoption of the EU budget for 2023, the Agency had also adjusted the budget and human resources in the document. The Administrative Board was informed that Director presented the draft Programming Document 2023-2025 to the European Parliament on 28 November 2022. As reported by Ms Poletti, chair of the Board of Regulators, the Board gave it a favourable opinion on 14 December 2022. The Administrative Board adopted the document by unanimity.

Conclusion: (1) The Administrative Board adopted the Agency's Single Programming Document 2023-2025 by unanimity.

(6) ACER's Budget and Establishment Plan for the financial year 2023

Upon invitation of the Chair, Ms Borissova presented the Budget and Establishment Plan for the financial year 2023, which had to be adopted as a specific decision along the Programming Document. She presented the main elements of revenue in 2023, which would increase for 24% compared to the 2022 budget. On expenditure side, she presented the breakdown of the three budget titles, indicating also which items within each title would increase or decrease in financial terms.

At the request of the rapporteurs, Ms Borissova provided also the breakdown of the budget lines of the Agency's three boards (Administrative Board, Board of Regulators, Board of Appeal). Ms Borissova explained that the funds of these budget lines were not set in stone, but could be modified during the quarterly budgetary reviews. The rapporteur explained that the provision of breakdown was important not regarding the amount of the money allocated, but due to the respect of the budgetary procedure and in view of ensuring Board's independence. It was stressed that according to the Regulation, the Board adopts the Agency's budget, therefore it should be consulted in defining the budget that concerns its independent functioning. The director expressed plea that the Agency's budget should remain uniform and that in case of Board's consultation on the budget line, it should be agreed on how this was best done.

Conclusion: (1) The Administrative Board adopted Decision No. 20/2022 of 5 December 2022 on the Agency's Budget and Establishment plan for the financial year 2023 by unanimity.

(2) The Administrative Board called on being involved in the process of setting up budget line defining i the Administrative Board's functioning.

(8) Board of Appeal – Report by the Board of Appeal Chair

The Chair invited Mr M. Prek, Chair of the Board of Appel (BoA), to provide information on functioning of the BoA. Mr Prek expressed having felt more involved in the work of the Agency, but considered there was still room for improvement in being more involved in some aspects (like budget and IT support). On the latter, the BoA was looking forward to the document management system for the Registry, but it seemed it would not be available before 2024. He expressed disappointment on the availability of human resources, as he had hoped for having 1 AD and 1 AST at permanent disposal.

For future, he expressed the following risks: 1.) while the quality and timelines of decision is the BoA responsibility, the Board should be assisted by adequate infrastructure, 2) unattractiveness of work for BoA members if these needs remain unaddressed, 3) request to be included in the BoA budget line and in human resources in more formal way.

Director responded that the Agency has been trying to address many of these requests. It was true that the IT support was still in the process. However, Agency made efforts to get a quick and efficient off-the-shelf solution for such a management tool, but it turned out it did not exist. Thus, the Agency had to run the procurement procedure, which was on-going. On human resource support, the Agency can continue to provide the current support: half-time AD8 post and half-time AST post and external legal support. Due to upcoming new priorities (cybersecurity, LNG, Market Correction Mechanism, REMIT) it was impossible to provide 2 full-time posts. This was complemented by the European Commission representative who stressed that any increase of staff was only exceptional and possible in case of getting new tasks. It was reminded that ACER already got additional posts which was a remarkable achievement and that there was no margin of manoeuvre to get new staff within the constrained limits of Multiannual Financial Framework by 2027. It was noted that Agencies had been already much privileged in getting staff compared to EU institutions. Therefore, the Commission would not support any additional staff for the current tasks. On budget involvement, Director repeated the plea for budget to remain uniform and not fragmented. He underlined that the BoA budget line was triggered by the number of ACER decisions and appeals against them and that buffers were therefore needed. It was also stressed that in order to professionalize the BoA and make it more attractive, the BoA indemnities per case were increased.

While the Board members acknowledged that any staff increases in short-term looked unrealistic, Mr Prek underlined that for the long-term stability and well-functioning of the BoA, he would continue to advocate addressing the above-mentioned risks and searching for solutions. Mr Prek thanked the ACER Director and its Registry for the support provided to the BoA so far.

Conclusion: (1) The Administrative Board got acquainted with the current functioning of the Board of Appeal.

(9) Draft the Single Programming Document for the years 2024 – 2026

The Chair invited Ms Borissova to present the draft Single Programming Document 2024-2026. Ms Borissova explained that at the 2021 December meeting, the Administrative Board requested to receive the programming document for endorsement before it is submitted to the BoR. Thus, the Agency submitted the structural overview of the document earlier than usually and asked the Administrative Board for the endorsement of the structure and approach (strategic goals and strategic action areas, the prioritisation system used, new objectives/tasks added). It was also explained that based upon the recent lessons learnt related to the rapidly changing context and fast evolving role of the Agency, the document would reflect the need for flexibility, efficiency and agility, while ensuring the resilience in implementing the tasks. This would be recognized in a new strategic goal, which would be translated into concrete actions.

The Chair invited the rapporteur Mr B. Chirițoiu for comments. Mr. Chirițoiu expressed support for the flexibility, the need for deprioritisation of some tasks and for regular assessment of where ACER knowledge could provide an important contribution. The Administrative Board also pointed to the fact that in the document there should be a reference to the Secretariat of the Administrative Board and that all three Agency's boards should be listed as part of the strategic goal on the resilience.

Conclusion: (1) The Administrative Board endorsed the structural overview of the draft Single Programming Document 2024-2026 by unanimity.

AOB

The Chair informed he was contacted by the previous Chair of the Administrative Board Mr J. Penker who is suggesting a joint meeting with UN, ACER Administrative board and Energy Community in spring 2023. Once he receives more information, the Chair would like to debate the proposal with the members. Under AOB, members expressed request to the Secretariat for allocating more time to the agenda points. In case of need, organisation of half day virtual meetings was suggested as well.

CONCLUSION

The Chair invited the Administrative Board to the 57th Meeting, which will take place on 25 and 26 January 2023 in Ljubljana. The meeting closed at 13h40.