

Minutes

ACER – 4th meeting of Administrative Board

3 March 2011, 8:30-11:30
Ljubljana, Trg republike 3, meeting room 2. floor

Present:

Mr. Piotr Grzegorz Wozniak, Chair
Mr. Razvan Eugen Nicolescu, Vice-Chair

Mr. Carlos Westendorp y Cabeza, Member
Mr. Peter Mombaur, Member

Mr. Guido Bortoni, Member
Mr. Phillippe Guillard, Member
Mr. Detlef Dauke, Member

Mr. Philip Lowe, Member
Mr. Augusto Bonucci, Member

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

Mr. Alberto Pototschnig, Director of ACER.

Other attendees:

Mr. Heinz Hilbrecht and Mr. Lukas Repa from the EC, Mrs. Fay Geitona, assistant to Lord John Mogg, Mrs. Olga Borissova and Mrs. Saša Borko from ACER.

Main conclusions from the meeting:

1. The Administrative Board decided that the estimated costs related to the external consultancy line in the 2012 draft budget are raised from €70,000 to €130,000, to cover impact assessments. The estimate of total costs is increased accordingly.
2. The Board concluded that the decision on the Board of Appeal members would be taken via the written procedure, following a proposal from the Commission.



3. The Board authorised the director to request the consent of the Commission on the contribution in kind from CEER related to the premises and logistical support for ACER's liaison office in Brussels. The Board will take a final decision by written procedure.
 4. The Board adopted the Implementing Rules for Seconded National Experts.
 5. The Board decided to continue the written procedure on the 2 assessors of the probationary period of the Director should continue with (the deadline is 4 March).
 6. The Board decided on the dates of next meetings in 2011 (1 June, 22 September, and 2 December) and that an effort would be made to organise them back to back with the Board of Regulators meetings thereafter.
 7. The Board decided that there should not be any annual activity report of ACER for 2010, as the Agency has only just started working officially on 3 March 2011.
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1. Adoption of the Agenda

The following agenda of the 4th ACER Administrative board meeting was approved:

1. Adoption of the Agenda
2. Report on the outcome of the written procedures adopted since the last meeting of the Administrative Board
3. Preliminary Draft Budget for the 2012 Financial Year
4. Estimate of revenue and expenditure of the Agency for the 2012 Financial Year
5. Appointment of members of the Board of Appeal
6. Acceptance of the offer for logistical support by the Council of European Energy Regulators in connection with the ACER's liaison office in Brussels: for decision, subject to Commission's agreement
7. Implementing Rules for Seconded National Experts
8. Implementing Rules to the Staff Regulations
9. Implementing Rules for the Engagement and Use of Temporary Agents and Contract Agents and Classification in Grade and Step on appointment or engagement
10. The REMIT Proposal



11. Agency's Financial Autonomy
12. Multi-annual Staff Policy Plan 2012 – 2014
13. Any other business

2. Report on the outcome of the written procedures adopted since the last meeting of the Administrative Board

Director Pototschnig reported on the outcome of the written procedures which were run since the last meeting on 21 September 2010. He indicated that 3 decisions were adopted in 2010 (on the notification to the budgetary authority of the intention of the Agency to occupy temporary premises in Ljubljana; on the Seat Agreement; on access to documents of the Agency) and 1 decision in 2011 (on the support granted to ACER staff members in respect to kindergarten and school fees). He also indicated that all these written procedures resulted in the adoption by the Board of the proposed decisions. 1 written procedure (on the appointment of the reporting members for the evaluation of the Director's performance over the probationary period) was still ongoing (the deadline was 4 March).

3. Preliminary Draft Budget for the 2012 Financial Year and
4. Estimate of revenue and expenditure of the Agency for the 2012 Financial year

Regulation (EC) No 713/2009 provides that by 15 February each year, the Director shall draw up a preliminary draft budget covering the operational expenditure and the programme of work anticipated for the following financial year, and shall forward that preliminary draft budget to the Administrative Board, together with a list of provisional posts for consideration. Each year, the Administrative Board shall, on the basis of the preliminary draft budget prepared by the Director, decide on an estimate of revenue and expenditure of the Agency for the following financial year. That estimate, including a draft establishment plan, shall be transmitted by the Administrative Board to the Commission by 31 March. Prior to the adoption of the estimate, the draft prepared by the Director shall be transmitted to the Board of Regulators, which may deliver a reasoned opinion on the draft.

Director Pototschnig presented the preliminary draft budget that had been circulated to the Administrative board by 15 February 2011. The total cost envisaged for 2012 is 7,598,775 euro. The majority of the budget is foreseen to be spent on staff (4.894.080 euro, out of which 500,000 euro for Seconded National Experts). Around 500,000 euro is envisaged to cover the costs for the three boards. The Commission's REMIT proposals should, once adopted, involve costs estimated at another 1,3 million euro in 2012. Director Pototschnig indicated that the preliminary draft budget has been compiled very parsimoniously.

The Chairman of the Board of Regulator indicated that the BoR considered the draft budget in its meeting the previous day and came to the view that higher budget allocations may be needed for external consultancies – to cover the costs of impact assessment studies that the Agency will not be able to carry out internally, given its limited human resources – and for missions, given the fact



that travelling from/to Ljubljana is more expensive than from many other places in Europe..

The Board then discussed the concerns expressed the BoR and, more specifically, the allocations under item 2321 (expert consultations) and item 1200 (missions).

The Director explained that the current figures under item 2321 cannot cover any major consultation work. The Commission's members of the Board were of the opinion that, while the framework guidelines that the Agency will issue are not binding in nature, the Agency should in fact carry out impact assessments, so they proposed to increase the allowance under item 2321 from €70,000 to €130,000 to cover at least 2 impact assessment studies in 2012 (this will be indicated in the commentary to item 2321. The Board agreed on this proposal. On the other hand, it was considered too difficult to assess the exact cost of missions at this stage, so no action was taken.

Decision: The Board considered the preliminary draft budget for the 2012 and decided that the amount of the budget line 2321 is raised from €70,000 to €130,000. The total cost estimates are increased accordingly.

5. Appointment of members of the Board of Appeal

According to Article 19 of Regulation (EC) No 713/2009, the Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector. The members of the Board of Appeal will be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

Even though the agenda envisaged that the Administrative board would take a decision on the members of the Board of Appeal, the Director explained that ACER is still waiting for the proposal from the Commission. The Commission explained that its proposal is still in the inter-service consultations and the deadline is 7 March.

Decision: The Chairman concluded that the decision on the Board of Appeal members would be taken via the written procedure, following a proposal from the Commission and after consultation with the Board of Regulators.

6. Acceptance of the offer for logistical support by the Council of European Energy Regulators in connection with the ACER's liaison office in Brussels: for decision, subject to Commission's agreement

The Director introduced the argument explaining that the Agency would benefit significantly by opening a liaison office in Brussels. This office, staffed with one TA, would be responsible for maintaining contacts with EU institutions (EP, Commission) and energy-sector stakeholder associations, most of which are based in Brussels.



He also explained that the Council of European Energy Regulators has offered logistical support for the establishment of ACER's liaison office in Brussels.

The Director explained that, based on the results of a research of the property market in Brussels conducted by CEER in January 2011, the costs associated with establishing ACER's liaison office in Brussels could be in the order of €100,000. Therefore, accepting CEER's offer would result in substantial savings for the Agency. Therefore, he proposed that the Board accepts this donation in kind, following the consent of the Commission.

One member raised the concern about the Board taking a decision before the Commission gives its opinion. Two members raised the concern about a possible negative signal that such decision would convey on the day of the inauguration of the Agency in Ljubljana. The Director commented that the opening of a liaison office in Brussels should not be interpreted in any way a signal of de-commitment with respect to the Seat of the Agency in Ljubljana. The Commission's board members expressed some hesitation to accepting this offer, if this were to impact on the independence of the Agency; on the other hand they mentioned that recital 20 of the Regulation (EC) No 713/2009 stipulates that "in particular, the resources currently pooled by regulatory authorities for their cooperation at Community level should continue to be available to the Agency". Finally, they announced that the Commission is only able to deliver its decision on this donation in May.

Decision: The Board authorised the director to request the consent of the Commission on the donation. The Board will take a final decision by written procedure.

7. Implementing Rules for Seconded National Experts

The Director introduced the proposed rules on Seconded National Experts (SNEs) indicating that they have been developed in similar ways to those currently in force in the Commission. These rules can be directly adopted by the Board, because they do not need to go through the inter-service consultations of the Commission.

The Director also informed the Board on the unsatisfactory response to the ACER's publication of the SNEs posts. As the first publication was not successful, a new publication requesting fewer years of professional experience was issued. The deadline for applications is 15 April. He expressed expectation that this time the response would be more satisfactory and is hoping for the support from the regulators.

Decision: The Board adopted the Implementing Rules for Seconded National Experts.

8. Implementing Rules to the Staff Regulations

Director Pototschnig explained that the proposed implementing rules were submitted for consideration only, given that the Commission first needs to screen them via the inter-service consultations, and later they will be submitted to the Board for adoption. The Board took note without comments.



9. Implementing Rules for the Engagement and Use of Temporary Agents and Contract Agents and Classification in Grade and Step on appointment or engagement

Director Pototschnig explained that the proposed implementing rules were submitted for consideration only, given that the Commission first needs to screen them via the inter-service consultations, and later they will be submitted to the Board for adoption. The Board took note without comments.

10. The REMIT Proposal

Director Pototschnig presented the main features of the proposed Regulation on Energy Market Integrity and Transparency (REMIT). He focused on the new proposed mandate for ACER. In addition to already existing ACER's market monitoring responsibilities (art.11 of the Regulation (EC) 713/2009) the new proposed role for ACER is to monitor the internal market in wholesale energy products in electricity and gas and to facilitate data collection. The proposed draft budget for the implementation of REMIT is €1,3 million, out of which €1 million only for the IT system and mechanisms to share information. The Chairman underlined that the discussion on the proposed Regulation is preliminary, given that the process of adopting this legislation is still ongoing. The Commission's representative presented more details on recent discussions of the Energy Ministers regarding this legislation (competent authorities, data collection etc.). They stressed that this Regulation would impose a significant additional work for ACER. The link between ACER and the national authorities would be crucial. The Commission and the national regulators are trying to push the process forward.

11. Agency's Financial Autonomy

Director Pototschnig informed the Board that the Agency's financial autonomy is expected by March 17 and this will be the result of a concerted effort of DG BUDG, DG ENER and ACER. ACER recently held a final meeting with DG BUDG who gave its green light. Moreover, a note will be sent on 7 March to its parent DG with the necessary documents and a request that the financial autonomy is granted to ACER. ACER's Head of Administration confirmed that ACER is ready to take on this financial responsibility. The Commission's representative stated that subject to his colleagues' approval in DG ENER/SRD, DG ENER will grant the financial autonomy to ACER.

12. Multi-annual Staff Policy Plan 2012 – 2014

Director Pototschnig explained that the proposed MSPP is currently undergoing inter-service consultations of the Commission with DG HR. As soon as the procedure in the Commission is finalised, the Board will be able to consider it for approval (by 31 March at the latest, when the final draft has to be submitted back to the Commission). The Chairman therefore announced that a written procedure on the draft MSPP is expected in March. In addition, two other written procedures are expected: assessment of the probationary period of the Director and the CEER's donation of the ACER's liaison office in Brussels.



13. Any other business

a.) Assessment of the probationary period of the Director

The Chairman explained that the Board is due to issue a report on the Director's performance over his first six months of duty and deliver it in writing to the Commission. The procedure requires the involvement of two Board members and a subsequent adoption of the report by the Board. The deadline is 15 March. Via the written procedure the Chairman asked two Board members to prepare the report. One member of the Board raised the issue that the assessors should not be of the same nationality as the Director. The Chairman requested feedback from the Board asking whether this was a serious concern. The Commission's representative underlined that the Agency is an EU body and that nationality cannot be a valid criteria for a conflict of interest argument. One member of the Board expressed his explicit agreement with the nomination of the two assessors.

Decision: The Board decided that the written procedure on the 2 assessors of the probationary period of the Director should continue (the deadline is 4 March).

b.) Next meetings

The Chairman proposed the dates of the next Board meetings in 2011: 1 June, 22 September, and 2 December. The Chairman also underlined that, from now on, he will not accept proxies unless two weeks ahead of the meeting a member appoints his alternate (according to the agreed procedure- alphabet order of the group of alternates), and only if no alternate can attend. No objections were raised regarding the dates of the meetings. One member suggested that the meetings should be organised back to back with the Board of Regulators. The Commission's representative mentioned that the Commission would officially change its alternates.

Decision: The Board decided on the dates of next meetings in 2011 (1 June, 22 September, and 2 December) and that an effort would be made to organise them back to back with the Board of Regulators meetings thereafter.

c.) Annual activity report

One member requested clarification on the procedures regarding different types of reports. The Director clarified that the annual activity report (Article 17(8) of Regulation (EC) No. 713/2009) is approved by the Board, whereas the monitoring report (Article 11 of Regulation (EC) No. 713/2009) is to be approved by the Agency.

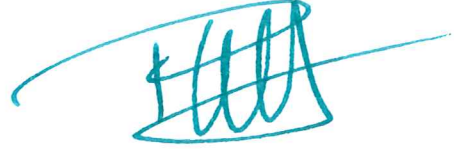
Decision: The Board decided that there should not be any annual activity report of ACER for 2010, as the Agency has only just started working officially on 3 March 2011.

d.) Travel expenses and the use of ACER's webpage for the meetings

The Director informed that as soon as the Agency adopts its financial regulation, it will endeavour to assist Board members with their travel arrangements, however travel standards taken as reference for reimbursement could not be changed (economy class air ticket). Moreover, the Board is expected to start



using the ACER's webpage regarding the organisation of its meetings and training for the Board members is organised by ACER on 4 March.

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