

MINUTES

31st ACER Administrative Board meeting
Wednesday, 28 June 2017, 14.00 – 18.00
Ljubljana, Trg republike 3, 14th floor meeting room

Present:

Dr Romana Jordan, Chair, Member, with proxy from Mr Rene Tammist,

Mr Jochen Penker, Vice-Chair, Member,

Mr Georgios Shamas, Member,

Mr Edmund Hosker, Member,

Mr Piotr Woźniak, Member,

Ms Agnieszka Kaźmierczak, Member, with proxy from Mr Dominique Ristori,

Pál Kovács, Alternate, with voting right,

Mr Alberto Pototschnig, Director of ACER, Observer,

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

Ms Marie-Christine Jalabert, Adviser.

Main conclusion of the meeting

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| <p>1.) The Board discussed the 2018 draft Agency's budget as proposed by the Commission as part of the 2018 draft EU Budget. The discussions will be continued in September, when the Director will present two options papers, one on the implication of a potential shortage of funds on the implementation of REMIT and the other one on the possible use of differentiated budget appropriations.</p> |
| <p>2.) The Board held an initial discussion on the AB selection process for the new Director. It will revert to it in its September meeting.</p> |
| <p>3.) The Board took note of the preliminary observations of the ECA on the annual accounts of the Agency for the financial year 2016, regarding, more specifically: (a.) the need to clarify roles and improve procurement planning and monitoring in line with internal control standards; b.) the level of carry-overs; and c.) the suggestion to consider introducing differentiated budget</p> |

appropriations. The Board endorsed by unanimity the final accounts of the Agency for the financial year 2016 (ANNEX 1) and invited the Director to take immediate actions to address the comments made by ECA in its preliminary observations, where relevant, and to report, in due course, on the actions taken.

4.) The Board endorsed the outsourcing of the accounting services to the Commission and appointed an accounting officer ad interim (ANNEX 2).

5.) The AB and BoA met to update each other on activities and discussed open issues. The AB Chair invited the BoA chair to prepare the BoA's views in writing. The AB will then revert to the BoA issues, particularly on resources, in one of its future meetings. The AB chair will reply in writing.

Opening

The Chair greeted the members, informed them that she has received a decision from the Commission concerning the appointment of their alternate member. As it is a functional appointment, the Chair asked the Commission to update the AB secretariat with the name of the staff member holding the relevant position. The Commission replied that the person has not yet been chosen and they will inform the secretariat as soon as he/she is.

Lord Mogg, the BoR representative, welcomed the introduction of the cover notes, which facilitate the preparations of the AB meetings.

1. Approval of the Agenda

The Chair asked the members to declare any relevant interest and adopt the agenda. No interest was declared. The following agenda was adopted:

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Wednesday, 28 June 2017, 14.00 – 18.00
Ljubljana, Trg republike 3, 14th floor meeting room Irena Praček
DRAFT AGENDA V3

Agenda Topics	Accompanying documents	Rapporteur
PART I (Administrative Board meeting from 14h-17h)		
Opening		
1. Approval of the agenda/declarations of interest	Doc 1 for approval	AB Chair
2. Minutes of the 30 th ACER Administrative Board	Doc 2.1 for approval Doc 2.2 for information	AB Chair
Reporting on developments		
3. Report on the written procedure(s)	Oral update	ACER Director
4. Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010	Docs 4.1 for information	AB Chair
5. Report on ACER developments (including budget implementation, progress on the implementation of the European school) and on the activities of the Board of Regulators	Oral update	ACER Director BoR Chair
6. Establishment plan 2017	Oral update	European Commission ACER Director
7. Budgetary developments 2018	Doc 7 for information	European Commission ACER Director
General ACER work		
8. Update on the conflict of interest panel	Oral information	AB Chair
9. Update on the selection of the new ACER Director/ Roadmap for the AB	Oral update Doc 9 for information	Commission AB Chair
10. Discharge 2015	Doc 10 for information	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
Administrative Work		
11. AB opinion on the final 2016 accounts of the Agency	Doc 11 for adoption Doc 11a for information	ACER Director
12. Outsourcing of accounting services to the EC Appointment of the accounting officer ad interim	for endorsement Doc 12 for adoption	ACER Director
13. Job titles revision	Oral information	ACER Director
AOB		
14. Annual Conference 2017	Oral information	ACER Director
15. EU Agencies Network	Oral information	ACER Director
PART II (Joint session of the Administrative Board with the Board of Appeal (BoA) from 17h-18h)		
16. Update on the activities of the two Boards	Oral updates followed by discussion	AB Chair and BoA Chair

2. Minutes of the 30th ACER Administrative Board

The Chair reported that, by the closing date for comments, 21 April 2017, the Agency had received comments from Ms Agnieszka Kaźmierczak (Commission) and from Lord Mogg (BoR representative). Their comments, including a text agreed between Ms Kaźmierczak and the Chair regarding the 3rd conclusion, second sentence, have been included in the final version of the minutes.

Conclusion: The Administrative Board approved the final version of the 30st AB meeting minutes.

3. Report on the written procedure(s)

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

The first one was regarding the appointment of reporting officers for the appraisal of the Director for 2016. Messrs. Dominique Ristori and Rene Tammist were proposed as reporting officers for the annual appraisal of the Director for the reference period of 1 January 2016 to 31 December 2016. By the closing of the period for raising objections on 26 May 2017, no objection was raised and the Decision of the Administrative Board on the appointment of reporting officers for the appraisal of the Director for 2016 was adopted.

The second written procedure was on the adoption of the Annual Activity Report for 2016. By the closing of the period for raising objections on 14 June 2017, no objection was raised and the Annual Activity Report for 2016 was adopted together with Administrative Board's assessment.

Conclusion: The Administrative Board took note of the Director's oral report on the recent written procedures.

4. Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010

The Chair reported on the appointment decisions she had recently taken, in line with the delegation of the AB to the Chair via Decision AB 05bis/2010 of 21 September 2010.

On 15 March she appointed Mr Dalius Kontrimavičius as the Lithuanian alternate member of the Board of Regulators, as well as Mr Jean-François Carenco as the French member of the Board of Regulators and Ms H el ene Gassin as the French alternate member of the BoR.

On 29 May she appointed Ms Annegret Groebel as the German member of the BoR and Mr Jochen Homann as the German alternate member of the BoR.

Conclusion: The Administrative Board took note of these appointments.

5. Report on ACER developments (including budget implementation, progress on the implementation of the European school) and on the activities of the Board of Regulators

The Director updated the Administrative Board on the Agency's administrative and regulatory activities.

On staffing, he presented the staff numbers according to category and department: a total of 111 staff members, 22 nationalities are present, 39 % of staff are female. At present, the Agency has 20 CAs; however, the key positions are being recruited and non-key positions will be closed as soon as the current contracts expire, in order to come closer to 19 CAs.

The Agency will be using the human resource management tool Sysper and it will need to adapt the job titles, refer to a competency map. At this occasion, the organisational chart will be updated. Most of the colleagues will become policy officers as this category was selected from the catalogue of the job titles as the one which most accurately reflect their functions, even though the Agency is not involved in the development of policies.

The Agency is also working on its mission, vision and values. The away-day on 9 June was devoted to define the mission and vision of the Agency and to identify its shared values. The outcome of this process will be shared with the AB at the next meeting. One of the additional values that was added to the list of proposed ones was "European". Moreover, a new traineeship scheme has been introduced at the Agency. It will introduce clearer profiles, a possibility of running an open call, and changes in the traineeship grant.

The IAS conducted the audit on HR management (HR planning, staff policies, recruitment, performance appraisal, learning and development). The final report with the main findings, opinions and recommendations is expected to be shared with the Agency and the AB in September.

On correction coefficient, Eurostat has launched a family budget survey with the staff of the Agency to determine the correct cost of living in Ljubljana. The deadline had to be extended to 19 June due to low rate of replies.

On the ECA audits, there were two recommendations from the 2016 audit:

- no. I on the Amount of carry-overs; and
- no. II on the Implementation of IAS Audit on Procurement process.

One recommendation from 2014 audit on European School is still on-going.

On the IAS audits, the audit from 2014 on Development of framework guidelines and opinion on network codes was finally closed. Closing an audit recommendation means that Agency action to respond to the audit findings has been discussed with the auditors, and that the auditors are content with the Agency's response.

In fact, after careful consideration and several rounds of discussions with the main stakeholders, the Director has come to the view that it is currently impossible to reach consensus with the NRAs on the amendment of the working groups rules as suggested by the IAS.

The IAS audit 2015 on Procurement process resulted in two "very important" recommendations, which have been closed, two "important" recommendations, which have been closed, and two "important" recommendations, which remain open.

The 2015 audit on Procurement processes resulted in two “very important” and “two important” recommendations, which have been closed. The very important recommendations were on *clarifying the roles and responsibilities and perform an ad-hoc workload analysis* and on *Improving the procurement planning and monitoring*. The important recommendations were on *harmonising the information on procurement from the Agency's programming and reporting documents* and on *enhancing the reporting on delays/backlogs* and on *strengthening the internal controls related to procurement and enhance the awareness on procurement risks*.

The third important recommendation on *improving the implementation of procurement and address the situations of non-compliance with applicable rules and regulations* has been submitted for closure.

Nevertheless two “important” recommendations remain open. These are on *completing and adopting the procurement guidelines* and on *enhancing the procurement training delivered to Project Managers*.

On the European school, the Director reported that the Slovenian government had reserved €2 million to start the European school on 1 September 2018, most probably with English and German language sections. The government has also chosen the premises, which will be in the vicinity of the current Agency's headquarters. The Director emphasised the necessity to meet the staff's expectations of a high quality education.

The representative of the Commission asked the Agency to provide it with the audit report on the accounts from the external contractor.

Lord Mogg, the BoR representative, commented that the proportion of staff working in administration (36 staff) compared to the staff working in operational departments (75 staff) appears somewhat high. He was also of the opinion that ACER values should include “national” and “regional”, especially to reflect the Winter package proposals.

One member wanted clarifications on the process of closing recommendations. The Director replied that the IAS agrees to the proposed action plan and checks its implementation.

The Board members requested that all IAS reports be circulated.

The Vice-Chair asked why the interimaire are mainly female. The Director replied that the nature of the tasks for which interimaire are used are typically of an administrative support nature and the gender balance of interimaire at the Agency is simply a reflection of the market. He underlined that the Agency is not discriminating on gender.

The AB representative appointed by the Commission called on the Agency to introduce some measures to encourage a more non-traditional composition of the Agency's staff.

The Director reported that the Agency is on facebook.

The Chair asked that the staff committee is present at the next meeting and that it reports on staff developments in the Agency.

Lord Mogg, the BoR representative, reported that the BoR produced a series of white papers. Some of them are joint papers between NRAs and the Agency, others are issued by the NRAs/CEER alone.

He also replied to the Commission about the concern regarding the appointment of the CEER Chair and the Vice-Chair being linked to the Chairmanship of the BoR and confirmed that the BoR is trying to resolve it.

The Director presented progress in regulatory cooperation, especially as regards the implementation of network codes in electricity. The NRAs will need to take more than 130 separate decisions to implement the network codes. He underlined that the adoption of the network codes does not mean less work for the Agency, but more, as in the absence of an agreement amongst the NRAs, the Agency will need to take the decisions.

Lord Mogg, the BoR representative, commented that the NRAs favour the provisions in the Winter Package regarding the implementation decisions that need to be adopted by all NRAs. The current provisions could lead to one NRA blocking the decision, but some NRAs are unwilling to pass the decision to the Agency from the beginning, thus resulting in a lengthy process.

The Director also explained that the Commission proposed to establish an implementation and monitoring group (a high level group) to meet twice a year in order to take stock of the implementation process and of any other issues), without prejudice to the role of the different actors in the implementation.

On other regulatory activities, a number of white papers have been agreed (European Regulators White Paper on Renewables in the Wholesale Market, European Regulators White Paper on The Role of the DSO, European Regulators White Paper on Facilitating flexibility, and European Regulators White Paper on Efficient Pricing). In gas, the Agency issued the Congestion report. It also issued an opinion on the ENTSOs' draft consistent and interlinked electricity and gas market and on the network model, as well as the Position of the Agency on Potential Improvements to the Energy Infrastructure Package.

The Director updated the Board on the appeals: there were two appeals to the General Court against the Peer Review Opinion (on XBCM in the CEE Region). The General Court planned to deliver its judgment on 29 June 2017. There is one appeal to the General Court against the CCRs Decision, where the final closure of the proceedings by the General Court is still outstanding. There was one appeal to the Board of Appeal against the CCRs Decision. By decision of 17 March 2017 the BoA dismissed all appeals, partly as unfounded (E-Control, APG, VUEN), partly as inadmissible (Verbund). There were two appeals to the General Court against the BoA's Decisions on interventions in the CCRs Decision case and two appeals to the General Court against the BoA's Decision dismissing the appeals (in the latter defence is due on 22 August 2017). The Director reported that a bilateral agreement was found for the Austrian - German border, which may render some of the decisions irrelevant.

Lord Mogg, the BoR chair, explained that a number of countries were disappointed on the lack of consultation during this bilateral process, the transparency being very important. This case has been a learning process and collaboration should be extended at least to all NRAs in the affected CCR(s). A similar case has been developing between Denmark and Germany.

One member inquired about the Agency's position in the White Paper on Renewables in the Wholesale Market. The Director replied that the aim of all these papers is to discuss the proposals of the Winter package and propose improvements, sometimes going beyond the current legislation. As regards the priority dispatch, the Agency is not questioning the support for renewables. However it is very difficult to maintain the priority dispatch in auction-based markets, even more so if these markets are coupled.

On REMIT, he presented the most recent statistics: 12,249 Market Participants have registered so far nationally and are listed in the European Register of Market Participants; of these, 11,281 are those for which data is being reported, 113 approved RRM's (47 Third party RRM's, 54 TSO/LSO/SSO and 12 other MP's).

The Director reported that the Agency is changing its hosting strategy, whereby the secondary site will be discontinued. The ARIS Primary and Disaster Recovery sites have been migrated to the internal ACER Data Centre in early April. As a final step of the migration, the environments of the previous sites will be integrated into one to optimise and advance performance and address increasing space requirements by the end of June 2017. The Director clarified, however, that the change in the hosting strategy does not weaken the resilience of the system because the Agency is not operating in real life and there is back up at the level of reporting parties. Therefore, the risk is only the delay. On cases, last year there were 48 cases, this year already 27. The new and the remaining open cases are just piling up. He replied to an AB member that at most 20 percent of cases coming to the Agency are generated through ARIS. The Agency has so far not been affected by the cyber-attacks. The Agency is in any case not operating in real time, therefore the risk is the delay in receiving data. A back-up is ensured at the level of reporting parties.

On implementation of budget: the ACER budget execution report was circulated.

Conclusion: The Board took note of the Director's Progress report. All auditors' reports will be circulated to the Board.

6. Establishment plan 2017

The Director noted that the Establishment Plan for the Agency, adopted as part of the 2017 EU Budget on 1 December 2016, and subsequently by the Agency's Administrative Board on 15 December 2016 (Decision AB No 20/2016) did not support the implementation of a sound staff evolution, allowing for the reclassification of staff members according to the criteria laid down in the Staff Regulations and its Implementing Rules (budgetary appropriations, permanence in the grade,

reclassification quotas and third language proficiency), nor did it reflect the responsibilities in the job profiles of some vacant positions.

Moreover, the 2017 Establishment Plan, as adopted by the Budgetary Authority, did not cover the actual grades of staff in service; the situation with the 2017 Establishment Plan was similar to the one the Agency faced in 2016: for that year, the Administrative Board, with its Decision AB No 21/2016 of 15 December 2016, implemented the “flexibility rule” envisaged in Article 38(1) of the Financial Regulation of the Agency.

On 31 January 2017, the Agency submitted a request for the amendment of its Establishment Plan for the financial year 2017, as adopted by the Budgetary Authority together with the general budget of the EU.

The proposed amendment is based on the adoption by the Administrative Board (Decision AB No 02/2017) of the Programming Document 2018 - which includes the revised 2017 Establishment Plan.

The amended 2017 Establishment Plan is now reflected in the 2018 Statement of Estimates from the European Commission: the formal confirmation for 2017 will be made once the Budgetary Authority validates it, probably during the month of July 2017.

The Commission appointed AB member further clarified that this amendment is simply providing a solution to the problem of the establishment plan, which is now going to be aligned with the actual situation at the Agency. As always, the AB keeps its 10 percent flexibility to introduce changes to the establishment plan.

Conclusion: The Board took note of the presentation.

7. Budgetary developments 2018

The Director reported that on 30 May the European Commission issued the Statement of estimates of the European Commission for the financial year 2018.

The Commission appointed AB member reported on the final decision of the College - the additional staff numbers were not included in the draft budget, as last year the Agency received 15 staff. In fact, the Agency needs to reduce one more post (to 67 TAs). The level of contract agents remains 19, the level of SNEs 4. Unfortunately the requested additional €1.3 million for REMIT were not allocated. The Commission justified this stance by the excessive level of carry-overs that were used at the Agency. The Commission appointed AB member asked the Agency to change the way in which appropriations are treated and proposed the use of differentiated appropriations. Moreover, the Commission insisted that the Programming Document (SPD) should be adjusted to the resources that were granted in their draft budget. Finally, she stressed the need to adopt the SPD in December with the final budget figures, because the SPD also serves the purpose of the financing decision.

The Director expressed gratitude to DG ENER for their efforts. He recalled that the reference document is a Commission communication of 2013, now already 4 years

old, and underlined that the world had changed since, which makes it difficult to understand the Commission's position on the Agency's budget. Furthermore, he believes the Agency cannot run with this level of staff; it has to depend on the interimaire. DG Energy conducted a limited review of the Agency's IT contracts and confirmed the need for €2.8M to run it, but it's the draft budget had nevertheless come up with €1.5M. The Director provided the background on the carry-overs. He is open to use the differentiated appropriations, provided that there is more certainty on the budget granted to the Agency so that proper planning can be developed.

Moreover, he said that some hard decisions will need to be taken and that no monitoring could be performed with this budget.

The Chair said she is concerned about the letter she had received from Commissioner Arias Cañete on 2 June, informing her about the difficult budgetary context.

The AB member appointed by the Commission added that the ECA also requested that the Agency use differentiated appropriations. This would entail the need to improve the budgetary planning, but would help to build trust with DG BUDG and ensure better alignment of the needs with budget allocation. She agreed that the Communication in 2013 was not able to foresee all cost, but looking forward the Agency would receive additional resources in the Clean Energy Package (18 staff). She proposed that the Agency provides option papers – different budgetary options for REMIT as well as the use of differentiated appropriations, which would be prepared for the AB in September.

She underlined that Commissioner Arias Cañete supports ACER. However, there were other priorities that requested urgent attention from the Commission (defence, migration). The Director agreed to prepare the two papers for September meeting.

Most members were concerned about the budgetary situation.

Lord Mogg warned the members and said that if no monitoring is in place at the Agency's level, half of the NRAs will not be monitoring. He asked about the effect of this decision at the Union level and said the information should be presented to the regulators.

The Vice-Chair said that financial resources are important, but so is the cost, therefore he asked about potential savings in terms of organisational restructuring. He also asked that the Agency present different scenarios in the SPD, categorising activities in relevant, important, and critical.

The Director said that a gap analysis with NRAs was conducted. Its result showed that the NRAs are able to monitor a third to a quarter of the market. The Agency already deprioritised the retail part of the MMR, which led to criticism, and it started with the REMIT implementation action.

Conclusion: The Board discussed the 2018 draft Agency's budget as proposed in the Commission's draft budget. The discussions will be continued in September, when the Director will present two options papers, one on REMIT implementation and the other on differentiated appropriations.

8. Update on the conflict of interest panel

The Chair recalled that the first AB Conflict of interest review panel 2017 took place on 16 March. The follow-up AB Conflict of interest review panel took place before the AB meeting on 28 June. The Chair reported on its outcome. As Mr Woźniak is at risk level III, she will write to the Council. Other members need to amend their documents. One member failed to submit his documents. If he does not submit the documents after the very last reminder she will write to the appointing authority.

9. Update on the selection of the new ACER Director/ Roadmap for the AB

Based on the information provided by the Commission at the last AB meeting, the Agency has proposed a roadmap/ process for the AB to appropriately plan its work in order to be able to appoint the new Director in time, so that he may take up duties on 16 September 2018, when the mandate of the current Director definitively ends.

The AB Chair presented the paper prepared by the Agency, based on the Commission's note and the Agency's legal interpretation.

The Commission appointed member explained that the selection of the Agency Director is performed according to an established and standard procedure that is used for the selection of Commission's senior management. Contrary to the proposed timeline, in her opinion June 2018 should be the last deadline to have the new director appointed while taking account of the notice period. She also underlined that it is the Commission's prerogative to publish the vacancy notice.

There were diverging views as regards the interpretation of Article 13(1) of the Agency's founding regulation.

Conclusion: The Chair said the AB would revert to the revised paper in September. The evaluation grid will also be discussed then.

10. Discharge 2015

The Director reported that he was granted discharge for 2015 on 27 April 2017.

The draft discharge report in respect of the implementation of the budget of ACER for the financial year 2015 was presented to the EP Committee on Budgetary Control in February 2017. A number of amendments were proposed by the MEPs, but have to a large extent been rejected. The final discharge report includes specific recommendations for action.

Main points and issues requiring follow-up:

Commitments and carry-overs

The report notes that the carry-overs for operational expenditure were at EUR 1 360 000 (59 %) of its committed appropriations, compared to EUR 1 570 000 (62 %) in 2014; notes, furthermore, that those carry-overs were predominantly related to the long-term nature of the implementation of REMIT.

Points out that carry-overs are often partly or fully justified by the multiannual nature of the agencies' operational programmes and do not necessarily indicate weaknesses in budget planning and implementation nor are they always at odds with the budgetary principle of annuality, in particular if they are planned in advance by the Agency and communicated to the Court; notes the fact that the Agency found it difficult to reconcile the principle of annuality with the multi-annual nature of the REMIT implementation project.

Internal Control Standards (ICS)

Notes that the Agency complied with the minimum requirements of all the internal control standards and that the Agency evaluated the efficiency of its ICS with a view to finding areas for further improvements in 2015; calls on the Agency to inform the discharge authority of the measures implemented.

Performance

Notes that in October 2015 the Agency released a study for a methodology proposal to evaluate the impact of the gas network codes and guidelines in terms of implementation and market effects; asks the Agency to keep the discharge authority informed on the matter.

Prevention of conflicts of interests and transparency

Notes that the Agency's Administrative Board adopted the policy for the prevention and management of conflicts of interests; notes, furthermore, that the Agency published the declarations of conflicts of interests on its website but points out that some CVs and declarations of BoR members remain missing; notes that in 2016, the Administrative Board detected a potential conflict of interests of one of its members and followed the ad hoc procedure provided for; asks the Agency to provide further information about this issue to the discharge authority.

Conclusion: The Board took note of the report.

11. AB opinion on the final 2016 accounts of the Agency

The Director reported that on 25 April 2017, the European Court of Auditors (ECA) issued its preliminary observations with a view to report on the annual accounts of the Agency for the financial year 2016. On 13 June 2017, the Director circulated to the AB the final accounts of the Agency for the financial year 2016.

Conclusion: The Board took note of the preliminary observations of the ECA on the annual accounts of the Agency for the financial year 2016, in particular with respect to (a.) the need to clarify roles and improve procurement planning and monitoring in line with internal control standards b.) the level of carry-overs; and c.) the suggestion

to consider introducing differentiated budget appropriations to better reflect the multiannual nature of operations and unavoidable delays between the signature of contracts, deliveries and payments). The Board endorsed by unanimity the final accounts of the Agency for the financial year 2016 (ANNEX 1) and invited the Director to take immediate actions to address the comments made by ECA in its preliminary observations, where relevant, and to report, in due course, on the actions taken.

12. Outsourcing of accounting services to the EC

Appointment of the accounting officer ad interim

The Director informed members that the Agency has contacted DG BUDG and has started the procedure for outsourcing the accounting services of the Agency to the European Commission.

The services to be provided would include all accounting tasks: treasury, accounting and statutory reporting, validation of local systems, year-end carryover and budget structure, recovery of debts, as well as financial reporting.

The Commission's accounting officer will become, after the appointment by the Administrative Board, the accounting officer of the Agency. The Agency will have what is called an "accounting correspondent" that remains responsible for the operational accounting and acts as a main contact point for the Directorate-General. The price for the accounting services would be € 35,000 annual fee, complimented by a start-up fee of € 10,000 (one-off) and fee for validation of local systems around € 8,500, payable for the year when the validation is performed (i.e. every 3-5 years). The SLA signed will also state that extra costs (for example costs of missions) that would also be re-charged to the entity.

He explained that the procedure followed up to that moment were:

- DG BUDG organised two information meetings with the Agency, together with the Commission teams to explain the services and answer any questions from the Agency;
- A draft offer and draft SLA was discussed with the Agency;
- Following the endorsement by the AB, the offer would be accepted by the Director and the SLA would be signed by the Agency and the Commission. The starting date is agreed to be 1 October.

He further explained that the Agency's current accountant, Ms Mandroc, ceased her duties as the Agency's staff member on 16 March 2017. However, she remained in function as the accounting officer of the Agency with the duty to prepare and present the accounts for the year 2016 in accordance with Title IX of the Agency's Financial Regulation.

Finally, the AB would needed to appoint an accounting officer ad interim until the outsourcing of the accounting services to the Commission takes place.

Conclusion: The Board endorsed the outsourcing of the accounting services to the Commission and appointed an accounting officer ad interim (ANNEX 2).

13. Job titles revision

The Director informed the members that the Agency is currently finalising a project on the revision of the job titles and update of the organisational structure. A Director's Decision containing the following elements is being prepared and circulated for consultation to the Staff Committee:

- The Agency's structure and the definitions of its entities (Departments and Teams);
- The (re)definition of roles and responsibilities;
- The revision of the staff job titles (as per the catalogue of the European Commission in the Sysper HRM system);The workflow of approvals for HR related processes (appraisal, time management requests, etc.); and
- The organisational change management principles.

The project aims to increase transparency and coherence, foster the simplification of administrative processes and improve the Agency's overall organisational efficiency and effectiveness.

The revision of the job titles and the update of the organisational structure, together with the (re)definition of the mission, vision and values of the organisation, will serve as a basis for the competency framework of the Agency.

The next step in the creation of the competency framework will be:

- The definition of the Agency's structural competencies for all the positions;
- The revision of the job descriptions;
- The gap analysis based on the staff current competencies; and
- The design of a learning and development strategy and talent management strategy.

Conclusion: The Board took note of the information.

14. Annual Conference 2017

The Director informed the members attending the ACER conference the day after about the logistical details.

15. EU Agencies Network

This point was postponed to the next meeting.

16. Update on the activities of the two Boards

The AB met with BoA members and alternates. The meeting started with the tour de table presentation of the members and alternates present, followed by an activity update by the Chairs.

The AB Chair said that the AB has been in the current composition since January last year (when most of the members changed and when she and Mr Penker were appointed Chair and Vice-Chair respectively). She recalled that a few years ago, Mr Pippo Ranci, the former BoA chair, already made a presentation at the AB, where he pointed out to some of the BoA's concerns (short deadlines for taking BoA decisions, challenge of translations and the need for sufficient administrative support).

In addition to the main tasks of the AB (adopting annually the Programming Document, the Annual activity report, Final accounts, Implementing Staff Rules, appointment of the Board of Appeal members etc.), the main issue the AB has been concerned with, was supporting the allocation of sufficient resources (both financial and human resources) to the Agency to be able to implement its mandate.

While the Agency was successful last year when it was allocated 15 additional staff, this year seems to be more challenging (the current EC proposal is giving back (-1) staff, and less funding is envisaged for its activities, which may jeopardise the Agency's wholesale market monitoring (REMIT)).

She informed the BoA chair that the AB also discussed the new provisions of the proposed Commission's package - Clean Energy for all Europeans (the Recast of the Agency's Regulation) where it specifically focused on the issues of:

1) The independence of the Agency and of its Administrative Board (Members of the AB should continue acting independently without seeking political instructions, without prejudice to the Commission's specific role);

2.)The opening of local offices by the Agency (the opening of local offices in other Member State(s) should not be promoted, while allowing to maintain the implicit option of seconding staff to another location (eg Brussels) by the Director);

3) The Agency's financial and human resources (the AB supports the possibility to charge fees to Registered Reporting Mechanisms (RRMs) under REMIT and to the ENTSOs and suggest that it is assigned all additional posts as Temporary Agent posts (currently only 4 out of 18 additional posts)).

Finally, she concluded that the AB will be appointing the new Director and will seek that the process of appointing will be smooth and it will lead to the new Director taking office on 16 September 2018, when the mandate of the current Director will finish definitely.

Mr Piebalgs, the BoA Chair welcomed the initiative for the two boards to meet. He presented the Board of Appeal (6 members and 6 alternates), mentioned that they work in teams, and underlined the careful considerations they are taking as regards the respect of Conflict of interest.

In terms of open issues, he pointed out:

- 1.) the short deadlines within which the BoA has to make a decision;
- 2.) the need for additional resources in order to keep the BoA independent and effective.

Lord Mogg, the BoR representative, reported on the BoR work by underlining the pressure on resources, both at Agency and the NRA level. The working groups composed of the NRAs have been a real success. He presented the idea of the use of the referenda, based on the organisation of the General Court, which would be composed of the NRAs and could be used when needed.

Another BoA member raised additional issues that needed clarification, i.e. whether ACER could appeal against the decision of the BoA. He mentioned that an increased number of appeals is most likely in the future. Some clarification on this issue in the Clean Energy Package would be welcomed.

The Director added that some experience with the cases has already been gained. The Agency would be pleased to allocate more resources to the BoA if the overall Agency's budget allowed. An MoU between the Agency and the BoA is already in place. He recalled that the new proposed provisions in the Clean Energy Package enlarged the deadline for the BoA decision to 4 months (from the current 2 months). It also foresees a separate budget line for the registrar. He clarified, however, that this does not assume more resources on it.

The BoA Chair invited the Board members to think out of the box. In his view the solution to the issues is the effective new Agency Regulation, which should ensure BoA's independence and effectiveness.

Conclusion: The AB and BoA met to update each other on activities and discussed open issues. The AB Chair invited the BoA chair to send the BoA's views in writing. The AB will then revert to the BoA issues, particularly on resources, in one of its future meetings. The AB chair will reply in writing.

Done at Ljubljana, on 21 September 2017.

For the Administrative Board



Dr Romana Jordan,

Chair of the Administrative Board

ANNEX 1

OPINION AB 01/2017
OF THE ADMINISTRATIVE BOARD
OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS
of 28 June 2017

on the approval of the final accounts for the financial year 2016

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹, and, in particular, Article 24(5) thereof,

Having regard to Decision AB No 22/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 12 December 2013 on the adoption of the Financial Regulation of the Agency for the Cooperation of Energy Regulators, and, in particular, Article 99(2) and (3) thereof,

Whereas:

- (1) On 25 April 2017, the European Court of Auditors issued its preliminary observations with a view to report on the annual accounts of the Agency for the Cooperation of Energy Regulators (hereinafter referred to as the “Agency”) for the financial year 2016.
- (2) On 13 June 2017, the Director submitted to the Administrative Board the final accounts of the Agency for the financial year 2016.

HAS ADOPTED THIS OPINION:

Article 1

The Administrative Board takes note of the preliminary observations of the European Court of Auditors on the annual accounts of the Agency for the financial year 2016, attached as Annex Ia to this Opinion.

Article 2

The Administrative Board hereby endorses the final accounts of the Agency for the financial year 2016, attached as Annex II to this Opinion.

Article 3

The Administrative Board invites the Director to take immediate actions to address the comments made by the Court of Auditors in its preliminary observations, where relevant, and to report, in due course, on the actions taken.

Article 4

This Opinion shall be communicated, together with the final accounts, to the accounting officer of the Commission, the Court of Auditors, the European Parliament, and the Council by 1 July 2017.

¹ OJ L211, 14.8.2009, p.1.

Done at Ljubljana, 28 June 2017.

For the Administrative Board

The Chair

Dr Romana Jordan

ANNEX1a



EUROPEAN
COURT
OF AUDITORS

Preliminary observations

**with a view to a report on the annual accounts
of the Agency for the Cooperation of Energy Regulators
for the financial year 2016**

These preliminary observations were adopted by Chamber IV at its meeting of 25 April 2017.

Function group and grade	2016 Authorised under EU Budget	Amended 2016 ¹² ESTABLISHMENT PLAN (according to Art. 38 of the ACER FR (Decision AB No 22/2013))	
		Amendments	Amended Establishment Plan 2016
AD 16	0		0
AD 15	1		1
AD 14	0		0
AD 13	0		0
AD 12	0	3	3
AD 11	5		5
AD 10	0		0
AD 9	2		2
AD 8	10		10
AD 7	10		10
AD 6	7		7
AD 5	19	-3	16
Total AD	54	0	54
AST 11	0		0
AST 10	0		0
AST 9	0		0
AST 8	0		0
AST 7	0		0
AST 6	0	1	1
AST 5	1	3	4
AST 4	1		1
AST 3	13	-4	9
AST 2	0		0
AST 1	0		0
Total AST	15	0	15
GRAND TOTAL	69	0	69

¹² Decision AB n° 21/2016 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 15 December 2016 amending Decision AB No 21/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 on the adoption of the budget for the financial year 2016 and on the establishment plan of the Agency for the Cooperation of Energy Regulators as amended by Decision AB No 3/2016 of 27 January 2016.

ANNEX 2

DECISION AB n° 10/2017

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

of 28 June 2017

**appointing in an *ad interim* capacity the Accounting Officer
of the Agency for the Cooperation of Energy Regulators
and repealing Decision AB No 23/2011 of 22 September 2011**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹³, and, in particular, Article 13(7) thereof,

Having regard to Decision AB No 22/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 12 December 2013 on the adoption of the Financial Regulation of the Agency for the Cooperation of Energy Regulators (hereinafter ‘Agency’s Financial Regulation’), and, in particular, Article 50(1) and 50(2) thereof,

Having regards to the Staff Regulations and the Conditions of Employment of Other Servants of the European Union (‘CEOS’)¹⁴,

Having regard to Decision AB No 23/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 22 September 2011 appointing the Accounting and Budget Officer,

Whereas:

- 1) In accordance with Article 50(1) of the Agency’s Financial Regulation the Administrative Board appoints an accounting officer of the Agency for the Cooperation of Energy Regulators (further: ‘the Agency’), who should be independent in performance of his/her duties and covered by the Staff Regulations. Furthermore, pursuant to Article 50(2) of the Agency’s Financial Regulation, two or more union bodies may appoint the same accounting officer, and the Agency may also agree with the Commission that the accounting officer of the Commission also acts as the accounting officer of the Agency.

Pursuant to Decision AB No 23/2011 of 22 September 2011 appointing the Accounting and Budget Officer, Ms Rodica Mandroc was appointed to the function. Ms Mandroc ceased her duties as a staff member of the Agency and from 16 March

¹³ OJ L211, 14.8.2009, p.1.

¹⁴ Council Regulation (EEC, Euratom, ECSC) No 259/68 OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15

2017 subsequently took up duties at another union body. From 16 March 2017 until new accounting officer is appointed Ms Mandroc remained in function as the accounting officer of the Agency with the duty to prepare and present the accounts for the year 2016 in accordance with Title IX of the Agency's Financial Regulation.

- 2) Pursuant to the possibility envisaged in Article 50 (2) of Agency's Financial Regulation, the Agency is currently under discussion with the European Commission with a view to agree that the accounting officer of the Commission also acts as the accounting officer of the Agency as of 1 October 2017.
- 3) Taking all of the above into consideration and to ensure business continuity, it is necessary to repeal the Decision AB No 23/2011 of 22 September 2011, and appoint the accounting officer of the Agency, who shall be covered by the Staff Regulations and functionally independent in the performance of his/her duties, for the limited period of time until it is decided that the accounting officer of the Commission is assigned duties to act as the accounting officer of the Agency;

HAS DECIDED AS FOLLOWS:

Article 1

Decision AB No 23/2011 of 22 September 2011 appointing Ms Rodica MANDROC the Accounting and Budget Officer of the Agency is hereby repealed.

Article 2

Mr Clement MARIN is hereby appointed in an *ad interim* capacity the Accounting Officer of the Agency until the Accounting Officer of the Commission is assigned these duties, or until further notice, whichever occurs first.

Article 3

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

Done at Ljubljana, on 28 June 2017.

For the Administrative Board:

Dr Romana Jordan

Chair of the Administrative Board