



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

**– 36th Meeting –
– Ordinary Session –**

Thursday, 7 June 2018, 15:00 – 18:00

Friday, 8 June 2018, 09:00 – 11:30

Trg Republike 3, Ljubljana - Slovenia

MINUTES

I. LIST OF ATTENDEES

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

Dr Romana JORDAN, Dr Jochen PENKER,	<i>Chair</i> <i>Vice-Chairr</i>	Ms Edit HERCZOG, Ms Britta THOMSEN, <i>(without voting right)</i>	<i>Member</i> <i>Alternate</i>
Mr Martin HANSEN, Mr Ľubomír KUČHTA, <i>with voting rights</i>	<i>Member</i> <i>Alternate</i>	Mr Jurijs SPIRIDONOVŠ, Mr Pal KOVACS, <i>with voting rights</i>	<i>Member</i> <i>Alternate</i>
Mr Pawel PIKUS,	<i>Alternate</i>	Ms Agnieszka KAZMIERCZAK, <i>and proxy of Mr Dominique RISTORI</i>	<i>Member</i>
Mr Georgios SHAMMAS	<i>Alternate</i>		

Mr Alberto POTOTSCHNIG (*Director*) and Mr Garret BLANEY (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Ms Marie-Christine JALABERT, acting as adviser, was present at the meeting.

Ms Olga BORISSOVA (*Head of Administration*), acting as adviser, was present for the discussion of Items 6 to 13.1 and 19 to 20 of the Agenda.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 36th MEETING OF THE ADMINISTRATIVE BOARD

At the 36th meeting, the Administrative Board:

- (1) decided, by unanimity, to revise Decision No 1/2010 of 22 March 2010 of the Administrative Board of the Agency on the participation of Alternates and the attribution of voting rights. The Administrative Board instructed the legal services of the Agency to submit a draft at the following meeting of the Administrative Board;
- (2) Adopted, by unanimity, Decision No 5/2018 establishing measures to support the staff of the Agency with regard to kindergarten and school fees;
- (3) Adopted, by unanimity, Decision No 6/2018 on the 'Guide to missions and authorised travel accompanying the Commission Decision on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel';
- (4) Adopted, by unanimity, Decision No 7/2018 laying down implementing rules on temporary occupation of management posts;
- (5) Adopted, by unanimity, Decision No 8/2018 on the Framework for Learning and Development;
- (6) Adopted, by unanimity, Decision No 9/2018 establishing the Guidelines on Whistleblowing and repealing Decision No 14/2014 of 18 December 2014;
- (7) Approved, by unanimity, the Guidelines setting principles for an Agency Communication Strategy and invited the Agency to develop the Communication Strategy according to the recommendations provided;
- (8) Adopted, by unanimity, the Consolidated Annual Activity Report of the Agency for the Cooperation of Energy Regulators for the year 2017;
- (9) adopted Opinion No 1/2018 on the final accounts of the Agency for the financial year 2017;
- (10) invited the Director to provide an assessment of the possible solutions to face the lack of financial resources in the attempt to establish a disaster recovery system for REMIT;
- (11) invited the European Commission and the Agency to explore the practices of other European Agencies with regard to the funding of the Boards of Appeal;
- (12) invited the Board of Appeal to provide a more detailed assessments of the resources that it considers necessary to operate at optimal level;
- (13) took note of the efforts of the Agency to implement the recommendation of the IAS and invited the Director to report along the year about the implementation of the action plan.
- (14) recognised the need for additional office space and endorsed the rental of additional office space as proposed by the Director.

III. MINUTES

SESSION I

SECTION I – OPENING

The 36th meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened in ordinary session on 7 and 8 June 2018. The first session started on 7 June at 15 hours. The second session started on 8 June at 9 hours.

The Chair invited the present Members and Alternates of the Administrative Board to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda. No relevant interest was declared.

(1) *Approval of the Agenda*

The Agenda of the 36th meeting of the Administrative Board was approved as follows:

Agenda Topics		Documents	Rapporteur
SESSION I – 7 June			
Opening			15:00
(1)	Approval of the Agenda and Declaration of Interest	Doc. 1 <i>for approval</i> Doc. 1.1 <i>for information</i>	AB Chair
(2)	Minutes of the 34 th AB Meeting	Doc. 2 <i>for approval</i> Doc. 2.1 <i>for information</i>	AB Chair
Items for Information			15:10
(3)	Reporting on participation of Alternates and the attribution of voting rights.	Doc. 3 <i>for information</i>	AB Secretariat
Items for Reporting			15:20
(4)	Report on Decisions by delegation	Doc. 4 <i>oral update</i>	AB Chair
(5)	Report on Agency's developments, budget implementation, and on the activities of the Board of Regulators, Audit Results.	- <i>oral update</i>	Agency Director BoR Chair
(6)	Report on the European School	- <i>oral update</i>	Agency Director
Items for adoption			16:30
(7)	Staff Social Measure – Amendment to Decision AB No 10/2014 on support for Kindergarten and School fees	Doc. 5 <i>for adoption</i> Doc. 5.1 <i>for information</i> Doc. 5.2 <i>for information</i>	Agency Director

(8)	Staff Regulations Implementing Rules – Adoption by Analogy – Commission Decision C(2017) 5323 – Mission Guide	Doc. 6 <i>for adoption</i> Doc. 6.1 <i>for information</i>	Agency Director
(9)	Staff Regulations Implementing Rules – Model Decision - Temporary Occupation of Management Posts	Doc. 7 <i>for adoption</i> Doc. 7.1 <i>for information</i>	Agency Director
(10)	Staff Regulations Implementing Rules – Model Decision – Framework for Learning and Development	Doc. 8 <i>for adoption</i> Doc. 8.1 <i>for information</i>	Agency Director
(11)	Staff Regulations Implementing Rules – Model Decision – Whistleblowing	Doc. 9 <i>for adoption</i> Doc. 9.1 <i>for information</i> Doc. 9.2 <i>for information</i>	Agency Director
(12)	Communication Strategy of the Agency	Doc. 10 <i>for adoption</i>	Agency Director
(13)	Agency’s Annual Activity Report	Doc. 11 <i>for adoption</i> Doc. 11.1 <i>for information</i>	Agency Director
(13.1)	Opinion on the Final Accounts of the Agency for the financial year 2017	Doc. 15 <i>for adoption</i> Doc. 15.1 <i>for adoption</i> Doc. 15.2 <i>for information</i> Doc. 15.3 <i>for information</i>	Agency Director
Items for discussion			17:00
(14)	Format and level of details of the minutes of the meetings of the Administrative Board.	- <i>for discussion</i>	AB Chair
(15)	Board of Appeal – technical and financial support	Doc. 12 <i>oral update</i> Doc. 12.1	Agency Director
AOB			17:50
End of Meeting			18:00

SESSION II - 8 June			
Items for Reporting			09:00
(16)	Report on the Declaration of Interest of AB Members and Alternates, BoR Members and Alternates and the Director of the Agency	- <i>oral update</i>	AB Chair
Items for Discussion			09:10
(17)	Board of Appeal – technical and financial support – Intervention of Mr Piebalgs, BoA Chair	- <i>for information</i>	Agency Director BoA Chair
(18)	Developments on the appointment of the Director	- <i>oral update</i>	AB Chair

Items for Information		11:00
(19) IAS HR report – Report on Action Plan	Doc. 13 <i>for information</i> Doc. 13.1	Agency Director
(20) Renting of additional office space in the building	Doc. 14 <i>for endorsement</i>	Agency Director
End of Meeting		11:30

(2) Approval of the Minutes of the 34th Meeting of the Administrative Board

The Chair went through the conclusions of the 34th Meeting of the Administrative Board, confirming the achievement of the outstanding actions.

With regards to the minutes of the 34th Meeting, the Chair reported that, by the closing date for comments of 13 March 2018, the Agency received textual comments from a European Commission-appointed Member (Ms Kazmierczak). The comments were included in the final version of the minutes submitted to the Administrative Board for approval.

Conclusion: The minutes of the 34th Meeting of the Administrative Board was approved by unanimity.

SECTION II - INFORMATION

(3) Reporting on the participation of Alternates and the attribution of voting rights

Upon invitation of the Chair of the Administrative Board, the Secretariat reported on the applicable rules on the participation of Alternates to the meetings of the Administrative Board and the attribution of voting rights. The Secretariat confirmed that Alternates can participate to the meetings of the Administrative Board irrespectively of the attribution of voting rights.

The attribution of voting rights is defined by Decision No 1/2010 of 22 March 2010 of the Administrative Board of the Agency.

According to Decision No 1/2010, if a Member of the Board cannot assist a meeting:

- (1) the member will be replaced by the alternate who is designated to the member following the alphabetical order within the group appointed by the same institution; or
- (2) if that alternate cannot join the meeting either, the member will be replaced by the next alternate following the alphabetical order within the group appointed by the same institution; or
- (3) if no alternate of the group appointed by the same institution is available, the member can give a proxy to another member of the Board.

After discussion on the accuracy of the rules on the attribution of voting rights, the Administrative Board deemed necessary to amend the current decision to reflect more accurately the attribution of voting rights particularly in light of the appointment decisions of the European Parliament, the Council and the European Commission respectively.

Conclusion: (1) The Administrative Board decided to amend Decision No 1/2010 by establishing that in case a Member of the Board cannot assist to a meeting, the Member concerned will be replaced:

- (i) by the alternate designated by his/her appointing institution; or
- (ii) in case the appointing institution has not designated an alternate:

- (a) by the alternate attributed following alphabetical order within the group appointed by the same institution. To this purpose, the Secretariat shall pre-assign Alternates to Members for the entire term of their office; or
 - (b) in case the designated alternate cannot join the meeting either, the next available alternate following the alphabetical order within the group appointed by the same institution; or
 - (c) if no alternate of the group appointed by the same institution is available, the member can give a proxy to another member of the Board.
- (2) The Administrative Board will formally adopt the above decision, amending Decision No 1/2010, at the next meeting of the Administrative Board.

SECTION III - REPORTING

(4) Report on Decisions by delegation

The Chair reported that, on 22 February 2018, she appointed Mr Paul McGowan as alternate member of the Board of Regulators in representation of the Commission for Regulatory Utilities of Ireland. The Chair reported that the decision was adopted pursuant to Decision No 05bis/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 21 September 2010 on the Delegation to the Chair of the powers to appoint new members of the Board of Regulators.

(5) Report on Agency's developments, budget implementation, and on the activities of the Board of Regulators, Audit Results

5.1 Progress Report on Human Resources

As regards the Agency's human resources, the Director presented the latest statistics identifying the number of staff members subdivided by contract type and amounting to a total of 118 FTEs. The Director highlighted that roughly a quarter of the FTE is composed by interim agency workers and trainees in an attempt to address, at least partially, the severe shortage of human resources that the Agency is suffering from.

The Director further reported on the recently adopted general implementing provisions of the Staff Regulations and briefed the Administrative Board on the decisions to be adopted in the next meetings.

Finally, the Director reported that the Agency received the results of the staff engagement survey run in Q1 2018 and for which the Agency contracted the Faculty of Social Science of the University of Ljubljana. The Director reported that the Management Committee of the Agency is assessing the results which, at first sight, appear not to be as positive as for the past surveys.

5.2 Audit of the Court of Auditors

The Director reported that the Court of Auditors reviewed and validated the Agency's accounts. As a result of the review, the Court of Auditors raised five concerns: (1) the last validation of the accounting system was performed in 2011, instead of being validated every five years; (2) the Agency was not equipped with a second recovery site for REMIT, eventually undermining business continuity; (3) the Agency was not provided with a comprehensive assessment of the impact of BREXIT on its operations; (4) not all vacancy notices of the Agency were published on the EPSO website; (5) the Agency did not yet deploy e-procurement.

In addition, the Court of Auditors noted also that two recommendations of the last Audit 2016 and one of the Audit 2014 were still pending.

The Director recalled that, for the Audit 2016, the Agency is still implementing the recommendations on the amount of carry-over and on the procurement process. The recommendation of the Audit 2014 is, instead, related to the European School which will be hopefully addressed soon, given that the School is planned to open in September 2018.

As regards the action undertaken by the Agency to address the highlighted concerns, the Director reported that:

- (i) the accounting services of the Agency have been outsourced to the European Commission and therefore the validation shall be ensured by the European Commission;
- (ii) the Agency is aware of the risks related to REMIT business continuity; however, the discontinuation of the disaster recovery site results from the lack of financial resources and the reestablishment of the recovery site is a priority for the Agency as soon as the necessary financial resources become available;
- (iii) the Agency has limited exposure to BREXIT. From an administrative perspective, the Agency does not currently employ UK-only nationals. From a regulatory perspective and particularly within REMIT, the Agency will need to address the re-registration of RRM after BREXIT. In any case, the Agency has now drafted a comprehensive assessment of the impact of BREXIT on its operations, which will be updated on the basis of the developments in the negotiations;
- (iv) the publication on the EPSO website requires the translation in all the official languages of the Union. The translation entails a significant impact on the financial resources of the Agency. The Agency has therefore adopted a pragmatic approach publishing on the EPSO website those vacancy notices related to horizontal positions, which are likely to attract interest more widely. To the contrary, vacancy notices related to operational specialised positions which are likely to attract experts in the field that are aware of the role of the Agency, are published on the website of the Agency in the English language;
- (v) E-procurement will be deployed as of this year.

Finally and with regard to the implementation of the recommendation on procurement process, the Director highlighted that the Agency has closed two very important recommendations and two important recommendations. There are three important recommendations still open, although the Agency has already proposed actions to address them. As regards the audit on HR, the Agency has already submitted its action plan and already delivered the actions due in Q1 2018 and will perform those due in Q2 2018 by the end of June.

5.3 Budget Implementation

As regards the Budget Implementation for the year 2018, the Director reported that, at the end of May, on the C1 appropriations, commitments reached 79% (target 95%) and payments 29% (target 75%). As regards the C8 appropriations, payments reached 43% (target 95%).

5.4 Document Management

The Director reported that the Agency has established an inter-departmental working group which produced an action plan and drafted a document management manual detailing the rules on registration, filing, retention period and handling of sensitive non-classified information. The Director highlighted also that the Agency has deployed a central records repository tool, which will be used until ARES is fully deployed in two years' time.

5.5 Overview on Regulatory Activities

As regards the regulatory activities of the Agency, the Director provided a detailed outlook of the terms and conditions or methodologies ('TCM') envisaged for the implementation of the Capacity Allocation and Congestion Management ('CACM'), the Forward Capacity Allocation ('FCA'), the System Operation ('SO') and the Balancing ('BAL') Guidelines. He underlined that it is estimated that 200 decisions¹ need to be adopted in the future, a large part of which by NRAs, but many of them, encompassing the most contentious and complex issues, are likely to be referred to the Agency.

The Director stressed that the increase of tasks attributed to the Agency in the context of the implementation of the network codes and guidelines has not been mirrored in the level of budgetary appropriations and human resources required to perform those tasks.

In this respect, the Director brought to the attention of the Board the language regime of the Agency. He stressed, once again, that should the Agency replace NRAs in taking TCM decisions concerning the implementation of the CACM/FCA/SO/BAL Guidelines, it should issue those decisions in all official languages of the Union. This would have a severe adverse effect on the already limited financial resources of the Agency. It would also have procedural implications, given the tight timeframe within the Agency has to adopt these decisions.

The Director further reported that the Agency published the Annual Report on Contractual Congestion at Interconnection Points for Gas² and it will release, later than expected, the PCI monitoring report. The delay is due to the lack of human resources and the need to use those available to other operational activities, namely the assessment of an exemption request.

The Agency has been requested to issue an opinion on the application of Articles 5 and 141(2) of the SO Guideline, where there was disagreement between the NRAs on the interpretation on this Guideline.

Finally the Director recalled that there are still appeals pending before the General Court with regard to the decision of the year 2016 on the capacity calculation regions adopted by the Agency and by the Board of Appeal respectively. In this regard, the Director reported that, since Germany and Austria appear to be in the process of implementing congestion management of their border, the results of the ruling may well have limited practical impact.

5.6 International Cooperation

As regards international cooperation, the Director recalled that the Agency is open to the participation of third countries in the activities of the Board of Regulators. This participation is subject to a decision of the European Commission on the basis of compliance with the *acquis communautaire*. Meanwhile, the Agency allows for participation at technical level of experts from NRAs of third countries which have made steadily progress in implementing the Third Energy Package.

Within this framework, as of January 2018, experts from the NRA of the Republic of Montenegro are allowed to participate in the Agency's Working Groups.

Moreover, the geographical scope of the Annual Market Monitoring Report of the Agency has been widened. In particular, the gas wholesale and retail sections of the Report now contain also sub-sections on the Energy Community Contracting Parties, based on data collected and analysed with the support of the Energy Community Secretariat.

¹ Those decisions are to be taken by all National Regulatory Authorities ('NRAs'), or in case of regional TCM, by the NRAs of the concerned region. However, if these NRAs do not agree, or upon their joint proposal, the Agency is called to decide.

² The Annual Report on Contractual Congestion at Interconnection Points for Gas indicates at which interconnection point side NRAs have to establish firm day-ahead use-it-or-lose-it rules so as to soften congestion.

The Director further stressed the importance of the ongoing cooperation with the Federal Energy Regulatory Commission ('FERC'), the federal agency of the United States that regulates electricity and natural gas inter-state transmission and wholesale market in the United States.

Finally, the Director reported about the efforts of the Agency in increasing cooperation with neighbouring countries and sharing best practices. In this context, following the positive experience of last year with study visits of delegations from FYROM, Ukraine and Japan, the Agency hosted study visits of delegations from Norway and Georgia.

5.7 REMIT

The Director provided the key figures on the performance of the REMIT Information System (ARIS). Data collection (ARIS tier 1&2) and data sharing (ARIS tier 4) are very stable. The market surveillance solution SMARTS (ARIS tier 3) is operational for monitoring wholesale energy trading. The Director highlighted that 13,228 Market Participants have registered so far in the European Register of Market Participants. The number of Market Participants for which data has been reported amounts to 12,875.

Approved RRM amounts nowadays to 118 (49 Third party RRM, 56 TSO/LSO/SSO and 13 other MPs). The number of records of transactions, including orders to trade, that are being reported, has reached 2 million records per day (500 thousands more compared to the year 2017).

The Director reported that this amount of reporting per day highlights even more the risks related to the absence of a data recovery site and the potential impact on business continuity.

In this regard, and upon request for clarification from the Administrative Board with regard to the difference between external storages and disaster recovery sites, the Director first clarified that the Agency runs a database that is within the ten largest among EU bodies that employ Oracle technology. The Director further explained that external storages and the disaster recovery site are deeply intertwined and interdependent. In fact, the external storage of the data is not sufficient to ensure business continuity, as this data needs to be read by a very sophisticated IT system, which the Agency has developed over the years. Therefore, only the availability of a disaster recovery site would allow to re-establish operation following an accident that rendered the primary site unusable. The Agency is in contact with EUIPO in the attempt to address the risks deriving from the absence of a disaster recovery system.

The Director briefly recalled that a new Framework Contract for System Integrator Services (lot 1) was assigned in December 2017 and for IT Consultancy services (lot 2) in early-2018 to transition from the current programme management model to a REMIT information management model in 2018 and beyond. In addition, a negotiated procedure to extend the current use of the Agency's market surveillance solution SMARTS was concluded at the end of 2017. The Director informed the Administrative Board that the Agency is already experiencing delays in the implementation of the Framework Contract, and therefore is putting in place contingency measures to ensure the operation of the system. The Agency is considering resorting to contractual measures for the delays that are under the responsibility of the contractor.

The Director reported also about the updated timeline for the implementation of the remaining REMIT activities, which will be delayed to the year 2019, or beyond, for budgetary reasons.

The Director finally briefed the Administrative Board on the surveillance strategy adopted by the Agency to implement REMIT, providing statistics on the increase in the number of potential breaches of REMIT since its inception.

5.8 Progress Report from the Board of Regulators

The BoR Chair reported on the contribution of NRAs in the activities performed by the Agency. The BoR has been involved in the assessment of Brexit and the exemption request submitted to the Agency. The BoR Chair reported also about the hearing before the ITRE Committee with regard to the Winter Package as well as the Copenhagen and Florence Forum where discussions focused on the future developments in the energy sectors.

Conclusion: The Administrative Board took note of the progress report on the activities of the Agency and future development delivered by the Director and the BoR Chair.

(6) Report on the European School

The Director informed the Administrative Board about the developments on the establishment of the European School (ESL).

He recalled that, on 18 January 2018, the Government of the Republic of Slovenia adopted the decision to establish the ESL at the School Centre Ljubljana. Following its establishment, the ESL launched its website providing basic information and announcing the call for the enrolment of pupils in February 2018.

The enrolment remained open, as planned, during the months of February - April. The Headmaster - Ms. Darinka Cankar – took service on 1 March 2018 and organised an information day for parents to present the school facilities, followed by another meeting at the Agency's premises. In the course of this meeting, the Headmaster presented to the staff members concerned the ESL and provided the timeline for i) the accreditation process of the ESL and ii) the establishment of the grades identifying the year of birth of the pupils in the respective grades.

The Director reported that the call for recruitment of the teachers was launched on 20 April for the English and the Slovene language sections. The call remained opened for 15 days. After the interviews phase, in the course of the month of May 2018, the parents, who have kids enrolled in the ESL, had the possibility to meet the teachers and discuss the programme, playground, pre-class and after-class activities.

Still in May 2018, the Ministry of Education, Science and Sport published the Draft European School Ljubljana Programme Rules on the governmental E-Democracy website. The text has been drafted by the working group for the establishment of the ESL. The text was open for comments until 24 May 2018. The Agency was provided with the documents both in the Slovene and the English languages.

As regards the financing framework, the Director reported that the financial agreement with the European Commission should be signed in the course of the spring 2019. The signature is subject to the adoption of the Accreditation Agreement. To this end, on 18 April 2018, the Board of Governors of the European Schools adopted the Dossier of Conformity of the ESL which initiated the accreditation process. In this framework, the auditing process is expected to start in autumn 2018 with a site visit by a team of inspectors to be followed by the completion of an Audit Report. The accreditation process will then be finalised with the decision of the Board of Governors of the European Schools, foreseen for April 2019.

The Director concluded by informing the Administrative Board that the ESL will officially open with the next school year, on the 3rd of September 2018. At the moment the School has enrolled 10 pupils, 6 of whom in the English section and 4 in the Slovene section. The ESL will initially offer only some classes and not the full education cycle, which will be completed in the years to come.

Conclusion: The Administrative Board took note of the Director's oral report on the developments concerning the establishment of the European School.

SECTION IV – ITEMS FOR ADOPTION

(7) Staff Social Measure – Amendment to Decision AB No 10/2014 on support for Kindergarten and School fees

Further to the report on the developments concerning the establishment of the ESL, the Director invited the Administrative Board to consider the need to revise the current approach on the support for kindergarten and international schools in the light of the gradual phasing in of the ESL.

The Director recalled that staff members have so far had to rely on the Slovenian public education system or on the international schools established in Ljubljana for the education of their children. From the School Year 2018-2019, staff members will have the opportunity also to enrol their children in the Accredited ESL in Ljubljana, to the extent that the latter will offer the relevant classes.

Until the Accredited ESL in Ljubljana offers a complete education cycle at the pupil's level, and given the school fees charged by the international schools in Ljubljana, there is the need to address the unequal working conditions to which staff members are subject, compared to those of other European institutions, where European Schools offer a complete education cycle.

In order to make the transition period smoother and not to disrupt the education of children of staff members attending international schools, financial support to staff members, whose children are attending schools and kindergartens in the Ljubljana area will continue to be provided until the Accredited ESL in Ljubljana offers a complete education cycle at the pupil's level.

The Director stressed that this approach is in line with the eligibility for the education allowance paid to a ceiling of twice the maximum, as applied by the European Commission's Office for the Administration and Payment of Individual Entitlements (PMO) and as per the Internal Commission Directive (Conclusion No 257/09 revised) and under the provisions of the Staff Regulations.

The Director highlighted that this system would see an exception with regard to those pupils enrolled at the *Ecole Française Internationale de Ljubljana*. In this respect, the Director explained that it is appropriate that the financial support is maintained until they remained enrolled in the same school or the Accredited ESL in Ljubljana offers the corresponding classes in the French language. This measure will have a limited financial impact as it will affect only two families.

Finally, the Director recalls that, under the current approach - established by Decision No 10/2014 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 18 September 2014 – the Agency granted financial support to the staff members for the international schooling of their children. To the contrary, under the new regime, it would be appropriate to ensure that payments in respect to children eligible for such support are transferred directly to the kindergarten or school, subject to the prior conclusion of a tuition agreement with the institution concerned.

The Decision highlighted that the support for Kindergarten and School fees would be adopted within the framework of the Agency's financial regulation and would not interfere with the individual rights provided for in the Staff Regulations.

The Director concluded by reporting that Staff Committee was consulted.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 5/2018 establishing measures to support the staff of the Agency with regard to kindergarten and school fees.

(8) Staff Regulations Implementing Rules – Adoption by Analogy – Commission Decision C(2017) 5323 – Mission Guide

The Director reported that, on 2 October 2017, the Commission notified to the Agency the adoption, on 27 September 2017, of the general implementing rule of the Staff Regulations on the new 'Guide to mission and authorised travel' annexed to Commission Decision C(2017) 5323. The Commission Decision entered into force on 28 September 2017 and took effect six months after its adoption.

The Director recalled that, in application of Article 110(2) of the Staff Regulations and in absence of derogation, these implementing rules should apply by analogy to the Agency by the decision of the Administrative Board within nine months upon the date of notification.

The Director highlighted that, compared to the rules currently applied at the Agency, the main changes introduced by the Guide to mission and authorised travel concern the means of travel, the calculation of daily subsistence allowance, the long-stay missions and the authorised travels.

As regards the means of transport, for travel by air, staff going on mission are automatically authorised to travel by air if the outward and return journeys by rail would total at least 800 Kilometres. Air travel is permitted for shorter distances when justified on grounds of cost-efficiency. To the contrary, for travel by private car, the reimbursement is based on a kilometeric distance (allowance of 0.28 EUR per kilometre driven).

As regards the calculation of daily subsistence allowance, for missions not exceeding 24 hours, the daily subsistence allowance is calculated as follows: (i) 00-06 hours: 0.2 daily allowance; (ii) 07-12 hours: 0.5 daily allowance; and (iii) 13-24 hours: a full daily allowance. For missions lasting more than 24 hours, the daily subsistence allowance is calculated pro-rata, on the basis of the actual duration declared in the statement of expenses (including extra time needed for travel to stations, ports and airports).

As regards long-stay mission, a new definition is provided for establishing that mission, lasting at least 60 consecutive calendar days or several consecutive missions at the same place are considered to be a single long-stay mission if their combined duration is more than 60 days and they are covered by the same mission order.

Finally as regards the authorised travels – which are travels of voluntary nature, primarily in the individual interests of the person concerned but which also involves some benefit for the service – depending on the extent to which the event for which travelling is undertaken may be considered to be in the interest of the service, the institution may decide to finance the travel in whole or in part.

The Director concluded by reporting that the Staff Committee was consulted. In addition, a presentation to the staff, highlighting the changes, will be given after the adoption.

On request of the Administrative Board, the Director recalled that the missions are approved by the Heads of Departments and authorised beforehand by the Authorising Officer or the Authorising Officer by Delegation. Means of transport are authorised on the basis of cost-effectiveness.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 6/2018 on the 'Guide to missions and authorised travel accompanying the Commission Decision on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel'.

(9) *Staff Regulations Implementing Rules – Model Decision - Temporary Occupation of Management Posts*

The Director introduced the draft model decision implementing Article 7(2) of the Staff Regulations on the temporary occupation of management posts, on which the European Commission issued its agreement, on 6 November 2017, pursuant to Article 110(2) of the Staff Regulations.

The Director reported that the draft model decision concerns the case in which a temporary staff members may be called upon to occupy, temporarily, a vacant post in a grade in their function group which is higher than their substantive grading. In such an occurrence, the draft model decision would grant the Temporary Staff member, who take up duties entailing responsibilities substantially greater than those involved in their own post, and for a substantial period of time (above three months), a remuneration which corresponds to those greater responsibilities. The Decision covers up to grade AD 15, including the post of Director.

The Director concluded by confirming that i) the model Decision does not introduce major changes compared to the current regime based on Decision No 7/2012 of the Administrative Board and ii) the Staff Committee was consulted.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 7/2018 laying down implementing rules on temporary occupation of management posts.

(10) Staff Regulations Implementing Rules – Model Decision – Framework for Learning and Development

The Director reported that, on 8 July 2016, the Commission informed the Agency about the adoption on 24 June 2016 of i) Decision C(2016)3828 on the implementation of the learning and development strategy of the European Commission, ii) Decision C(2016)3855 on training on the own initiative of the member of staff and iii) Decision C(2016)3827 repealing existing rules on learning and development.

The Director reported, once again that, in application of Article 110(2) of the Staff Regulations and in absence of a derogation, these implementing rules should apply by analogy to the Agency by the decision of the Administrative Board within nine months upon the date of notification.

However, since the framework for learning and development of the Agencies differs from the framework present at the Commission, Commission Decisions C(2016)3828 and C(2016)3855 had to be adjusted so as to take into consideration the different actors involved in the implementation of the learning and development strategy and the specific provisions on language training and the self-initiative of the staff members of agencies.

In light of the above, the proposed Model Decision establishes new rules concerning learning and development taking into account the specificities of the Agency.

Compared to the current framework, and with regard to language training, the draft Model Decision establishes that the time spent by staff members in authorised language training will be credited in the balance of working time only in case a number of conditions, related to the interest of the service, are fulfilled. In all other instances, it is established that the participation in language training may be authorised in the interest of multilingualism and of the staff member concerned. However, the time spent in such training as well as travelling to and from the course shall not be credited in the balance of working hours.

As regards staff own initiative training, contrary to the current rules – setting up a ceiling for contributions up to 1,540 EUR (with the contribution of 80% and then 50% according to different scales) – the Model Decision foresees a 50% contribution, with the limit of 1.600 EUR.

The Director concluded by highlighting that the adoption of the draft Model Decision will make necessary to repeal: i) Decision No 06/2012 of the Administrative Board of the Agency, ii) Director Decision No 16/2013, establishing the policy and procedure for financial contribution for participation in language training and iii) Director Decision No 04-2015, establishing the policy and procedure for the Personal Initiative Training.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 8/2018 on the Framework for Learning and Development.

(11) Staff Regulations Implementing Rules – Model Decision – Whistleblowing

The Director recalled that the Agency has already in place procedures for reporting fraud, corruption or other serious wrongdoings. In particular, Decision No 14/2014 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 18 December 2014, in an effort to meet the requirements of good administration and accountability, introduced adequate whistleblowing procedures and ensured the protection of whistle-blowers.

The Director reported that the change brought about by the reform of the Staff Regulations requires the update of the general implementing provisions also with regard to whistleblowing. In this regard, a draft Model Decision has been prepared.

The Director introduced the draft Model Decision highlighting that, compared to the current AB Decision No 14/2014 on the guidelines on whistleblowing, it provide additional clarity and reflect more accurately the whistleblowing reporting channels.

In this regard, the Administrative Board took note that Annex 2 of the Decision should be more accurate at the time of drawing the internal whistleblowing reporting channels and should be read differently so as to make clear that whistle-blowers can reach either the Director or the Administrative Board of the Agency. It therefore invited the Agency to ensure that this is communicated to the staff.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 9/2018 establishing the Guidelines on Whistleblowing and repealing Decision No 14/2014 of 18 December 2014.

(12) Communication Strategy of the Agency

The Director invited the Administrative Board to consider the need to establish a communication strategy for the Agency. In this vein, the services of the Agency have drafted a paper aiming at establishing guidelines to assist the Agency in developing a Communications Strategy which can contribute, through effective communication, at fulfilling its overall mission and main goals and providing adequate transparency vis-à-vis the public.

The Director recalls that the overall mission of the Agency is to foster a fully integrated and well-functioning Internal Energy Market, where electricity and gas are traded and supplied according to the highest integrity and transparency standards, and EU consumers benefit from a wider choice, fair prices and greater protection. For this purpose, the Agency works with European Institutions, National Regulatory Agencies for Energy and stakeholders.

In light of this mission and with the aim of increasing the transparency and the understanding of the Agency's activities, the Guidelines focuses on the principal tools and channels to communicate to the Agency's main audiences, the Agency's contribution towards (i) achieving a single energy market in the Union and (ii) ensuring the integrity and transparency of this market for the benefit of European consumers.

The Administrative Board discussed the content of the Guidelines inviting the Agency to undergo an accurate assessment of the current situation, undertaking a risk assessment, establish goals and provide actions to achieve those goals, on the basis of the following pillars: (i) situation analysis, (ii) resources, (iii) timescale, (iv) evaluation and (v) management, (vi) risks, and (vii) mitigation.

In this respect, the Director highlighted that the Agency has not sufficient resources to undertake this comprehensive assessment. The Communication team is composed of two staff members, contract agents. In light of the strategy of the Agency to reduce horizontal functions to the benefit of the operational activities, the Communication team will be further reduced to only one staff member. This reduction of resources will therefore have an impact on the development and implementation of the Communication strategy.

The Administrative Board invited still the Agency to develop the communication strategy along the following principles:

- (i) to centre the communication on the contribution of the Agency, as a body of the Union, to the objectives of the Energy Union (section 2 and 3 of the Guidelines) and showing its added-value;
- (ii) develop further the communication strategy in the era of digitalisation alongside with the upgrade of the Agency's website;
- (iii) outreach the audience in the Energy sector and more widely at policy level at Union and national level to clarify the role of the Agency and the benefits brought forward by its activities;

Conclusion: The Administrative Board approved, by unanimity, the Guidelines setting principles for an Agency Communication Strategy and invited the Agency to develop the Communication Strategy according to the recommendations provided in the course of the meeting.

(13) Consolidated Annual Activity Report of the Agency for the Cooperation of Energy Regulators

The Director recalled that, every year, the Agency shall issue its Annual Activity Report, which comprises an independent section on its regulatory activities, to be approved by the Board of Regulators, and an additional section on financial and administrative matters. The Administrative Board shall adopt and publish the Annual Activity Report on the activities of the Agency, on the basis of the draft annual report referred to in Article 17(8) of the Agency's Funding Regulation, and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year.

The Director informed the Administrative Board that the Board of Regulators approved, on 3 May 2018, the section on the regulatory activities of the Agency for the year 2017.

The Administrative Board examined the Agency's 2017 Annual Activity Report and concluded that:

- The policies and the operational achievements were strategically aligned;
- the report correctly identifies the challenges faced by the Agency in the completion of the internal energy market (IEM), including delivering the benefits to EU energy consumers;
- the Agency largely met its main objectives, despite the difficulties encountered due to resource constraints;
- the completion of the IEM and the monitoring of trading in EU wholesale energy markets remained at the heart of the Agency's objectives;
- in 2017 the Agency's key achievements were:
 - a. the publication of the Annual Market Monitoring Report on the remaining barriers to the Internal Energy Market;
 - b. the successful shift of the Agency's work to accompanying and monitoring the implementation of the already adopted network codes in electricity and gas.
 - c. the implementation of the regulation on wholesale energy market integrity and transparency (REMIT). 2017 being the first full year of data reporting to the Agency. As

expected, the number of alerts exceeded the capability of the Agency of assessing them due to the limited number of surveillance experts in the Agency; market monitoring thus remains an ongoing challenging area where the Agency is unable to deliver on its mandate due to its limited surveillance resources.

- the Agency made efficient use of resources in line with the activities developed in the 2017 work programme;
- key performance indicator targets were largely met, with the exception of a few communication indicators, and the commitment and payment appropriations indicators were implemented;
- the Director has provided a clear declaration of assurance;
- the risks threatening the achievement of key objectives were identified and mitigating measures taken, especially with respect to the resources necessary for the implementation of REMIT;

The Administrative Board took note of the critical recommendation issued by the IAS in their audit on Human Resources Management and acknowledged that it had no financial impact. The Action Plan established by the Agency is adequate to mitigate the risks identified by the IAS. In order to mitigate the possible reputational exposure of the Agency, the AB will monitor the implementation of the measures foreseen in the Action Plan.

- Conclusion:
- (1) The Administrative Board concluded that the Agency successfully implemented the 2017 work programme and that the resources allocated to the activities described in the report were used for their intended purpose in accordance with sound financial management principles;
 - (2) The Administrative Board adopted by unanimity the Consolidated Annual Activity Report of the Agency for the Cooperation of Energy Regulators for the year 2017.

(13.1) Opinion on the Final Accounts of the Agency for the financial year 2017

The Director recalled that, in accordance with Article 99 of the Financial Regulation of the Agency, the Accounting Officer shall draw up the final accounts of the Agency upon receiving the observations on the provisional accounts from the European Court of Auditors. The final accounts shall be sent by the Director to the Administrative Board for an opinion.

The Director informed the Administrative Board that, on 24 April 2018, the European Court of Auditors adopted the opinion on the provisional accounts of the Agency and the final accounts were received from the accounting services of DG BUDG on 25 May 2018.

The Director reported that the observations made by the European Court of Auditors do not require any change to the provisional accounts, therefore the final accounts of the Agency are a precise copy of the provisional ones.

The Administrative Board took note of the opinion of the European Court of Auditors and expressed once again its concerns with regard to the absence of financial resources allowing the Agency to establish a disaster recovery system for REMIT.

- Conclusion:
- (1) The Administrative Board adopted Opinion No 1/2018 on the final accounts of the Agency for the financial year 2017;
 - (2) The Administrative Board invited the Director to provide an assessment of the possible solutions to face the lack of financial resources in the attempt to establish a disaster recovery system for REMIT.

SECTION V – ITEMS FOR DISCUSSION

(14) Format and level of details of the minutes of the meetings of the Administrative Board

The Administrative Board considered the current practice of keeping records of the meeting of the Board with the aim of striking the right balance between transparency, collegiality, data protection and necessary conciseness to guarantee accessibility.

The Administrative Board considered different options to ensure the respect of the above mentioned principles.

Conclusion: The Administrative Board concluded that minutes should capture the overall discussion for each agenda items, identifying the topic, the general arguments raised and the conclusions reached. Dissenting opinions should be recorded on request of the Members and Alternates concerned. Recording will be allowed for secretarial purposes only. Records will be destroyed after the adoption of the minutes.

(15) Board of Appeal – technical and financial support

The Director introduced the agenda topic by recalling that Regulation (EC) No 713/2009, and in particular Article 19(2), foresees the possibility that binding acts issued by the Agency be appealed before an internal Board of Appeal. The Board of Appeal, comprising experts in the energy sector, is called to decide upon appeals within two months of the lodging.

The Director further recalled that the scope of review of the Board of Appeal encompasses the possibility to exercise any power which lies within the competence of the Agency. However, the Board of Appeal has also the possibility of remitting the case to the competent body of the Agency, without exercising the above-mentioned prerogative.

In the course of the last year, the Board of Appeal received four appeal cases and is being involved in several cases before the Court of Justice against its own decisions.

The Director reported that the Chair of the Board of Appeal invited the Agency to take action to support the activities of the Board in light of the significant increase of its workload by providing:

- a four-year framework contract to support the Board of Appeal in carrying out technical reviews as part of the appeal decisions alongside the current framework contract for legal support;
- the establishment of a system for indemnity payments for the members of the Board of Appeal handling appeals to address the time intensive nature of the activities performed; and
- the establishment of a system of further involvement of the alternates of the Board, to compensate for the lack of technical economic support, translated into a request for additional meetings.

The Director invited the Administrative Board to discuss the requests of the Board of Appeal. In doing so, the Director highlighted the financial constraints that the Agency is facing and noted that at this stage, the establishment of indemnity payments and the broadening of the prerogatives of the Alternates of the Board of Appeal appears to be precluded by the applicable legislative framework and in particular by the honorary function that members and alternates of the Board of Appeal have been called to.

The Administrative Board considered the requests of the Board of Appeal in light of its mandate and prerogatives, in the overall governance structure of the Agency, as well as in light of the available financial resources.

The Administrative Board discussed the possibility to guarantee an indemnity to the Members and Alternates involved in appeals in the light of the unpaid honorary function that the office of member of the Board of Appeal entails. In this regard, it was highlighted that the establishment of an unpaid honorary function was perceived as a tool to guarantee independence from the appointing institution (i.e. the Agency) whose position may be perceived in conflict with the quasi-jurisdictional role of the Board of Appeal. The Administrative Board concluded that the possibility to guarantee an indemnity could be considered for the future, subject to the fulfilment of a number of conditions to ensure that the indemnity will not amount to remuneration.

As regards the provision of additional resources to the Board of Appeal, the Administrative Board acknowledges the need to ensure adequate access to resources to fulfil its mandate also having in mind the profile of Members and Alternates of the Board of Appeal, encompassing senior experts in the energy sector.

In this regard, the Administrative Board highlighted the need to gain additional experience also from other European Agencies to have an overview of the practices present across the Union.

- Conclusion:
- (1) The Administrative Board acknowledges the importance of the role of the Board of Appeal and recognises the need to ensure that the Board of Appeal can perform its role at an optimal level;
 - (2) The Administrative Board invited the European Commission and the Agency to explore the practices of other European Agencies.

SESSION II

SECTION VI – ITEMS FOR REPORTING

(16) Report on the Declaration of Interest of AB Members and Alternates, BoR Members and Alternates and the Director of the Agency

The Chair reported that, the review of the Declaration of Interests of the Members and Alternates of the Administrative Board is still ongoing and two members have been invited to submit additional information so as to finalise the review process.

The Chair recalled that Decision No 02/2015 of the Administrative Board establishes three levels of risks: Level 1 – where no relevant interests is detected; Level 2 -- where a relevant interests (e.g. in the energy sector) exists but which does not have any (and are not expected to have any for the year following the declaration) direct influence on the decision-making process of the Board or which are not directly impacted by the Board’s decision-making process; and Level 3 – where instead there is an interest pertaining directly to the field of competence of the Board.

The Review Panel, convened on 7 June 2018, did not detect any interest that could be considered critical (level 3).

The Chair also reported that the review of the Declaration of Interest of the Director of the Agency did not revealed any major interest, with the sole exception of the collaboration of the Director with the Florence School of Regulation, collaboration which is authorised by the Administrative Board itself.

As regards the Board of Regulators, the BoR Chair reported that the review of the Declarations of Interests of the Members and Alternates revealed, in four instances, the existence of potential or perceived conflict of interest. On the basis of the practice in place in the BoR, those cases were

referred back to the relevant National Regulatory Authority ('NRA') to ensure that each NRA can manage those conflicts so as to ensure the independence and impartiality of its representative in the decision-making process of the Board.

- Conclusion
- (1) The Administrative Board took note of the progress made in the assessment of the Declarations of Interests of its Members and Alternates and of the Director of the Agency.
 - (2) The Administrative Board took note of the report on the review of the Declarations of interests of the Members and Alternates of the Board of Regulators.
 - (3) The Administrative Board welcomed the absence of interests that could impair the integrity of the Agency at all level of its decision-making process.

SECTION VII – ITEMS FOR DISCUSSION

(17) Board of Appeal – technical and financial support – Intervention of Mr Piebalgs, BoA Chair

The Chair recalled that, at the 31st meeting of the Administrative Board of 28 June 2017, the Administrative Board invited the Board of Appeal to exchanged views on its activities. In that meeting, the Board of Appeal expressed its concerns due to the short-deadlines to adjudicate appeals and the limited resources at its disposal which would have had the potential to undermine its independence and effectiveness. The Board of Appeal was, therefore, invited further to substantiate the need for additional resources.

The Administrative Board expressed the intention to ensure that the Agency and its Boards work effectively, at an optimal level, and in a timely manner. However, it expressed awareness of the challenges deriving from the limited financial resources at disposal of the Agency to perform its extensive mandate.

In this context, the Administrative Board expressed consideration for the degree of discretion attributed to the Board of Appeal ('BoA') by Article 19 Regulation (EC) No 713/2009, encompassing a large range of powers from the application of the manifest error of assessment test up until the possibility fully to replace the appealed decision.

In particular, the Administrative Board stressed how the assessment of the resources to be provided shall be defined on the basis of the extent to which the Board of Appeal can exercise such a vast range of powers in the very short deadline of two months to adjudicate.

The BoA Chair highlighted that the Board of Appeal shall fulfil its legal mandate to adjudicate on appeals and the extent of the employment of its powers is intertwined with the demands put forward by appellants. He stressed that this mandate shall be performed independently from the Agency.

The BoA Chair stressed that the requests submitted to the attention of the Administrative Board were forward-looking and based on the relevant increase of number of decisions that are likely to be taken by the Agency, potentially leading to an unforeseeable increase of appeals eventually impacting upon the ability of the BoA to fulfil its mandate. In this respect, the BoA Chair recalled that there have been already four appeals, with a significant number of interventions. These appeals, as the related interventions, triggered additional ones before the Court of Justice.

These cases made evident the need to ensure optimal management of cases and quality of decisions. As regards the optimal management of cases, the BoA Chair highlighted that the instruments at disposal of the BoA to ensure efficiency are not always available or out of risks. For instance, consolidation of appeals is subject to the condition of homogeneity. In addition, limitation of interventions is subject to the review of the Court of Justice and it may indeed impact upon the decision-making process of the BoA should the decision of the BoA denying the intervention be repealed. The BoA Chair also explained that in recent appeals, parties intervened with statements of support, which are procedurally unforeseen and requested additional care in addressing their content.

As regards instead the quality of decisions, the degree of complexity of a case shall be also appreciated i) in light of the limited time frame attributed to the BoA for adopting a decision, considered also that an appeal entails a number of intra-procedural decisions before the final adjudication (e.g. admissibility, suspension, etc.); and ii) the degree of novelty of the issues on which the Agency first and the BoA consequently are called to decide upon.

The need to ensure optimal case management and quality of decisions in the given time frame results in the full-time dedication of BoA members, with limited resources available to support the decision-making process and where, at times, the external support provided by the Framework Contract for the provision of legal services to the BoA turns into additional managerial burden for the BoA itself. The BoA Chair highlighted that these issues should also be considered in light of potential parallel appeals dealing simultaneously with different decisions.

The BoA Chair provided an estimate of the hours spent by each BoA member for a single case (approximately 16 hours), on the top of the hours needed by the Rapporteur to prepare the appeal for the adjudication (approximately 80 hours) and the full-time involvement of the registrar.

Against this background, the BoA Chair concluded that appeared justifiable to ensure that the BoA is provided with technical support and more flexibility in managing the participation of Alternates so as to expand the pool of the available resources.

Also in this regard and more broadly with regard to the level of involvement of BoA Members and especially the rapporteur, the BoA chair invited the Administrative Board to consider that the recognition of an indemnity for the effort in handling an appeal would allow fair treatment.

Finally and with regard to the appeals currently pending before the Court of Justice, the BoA Chair concluded by inviting the Administrative Board to consider to which extent, in order to ensure full independence and avoid conflict of interests, it is appropriate that appeals against BoA decisions shall be dealt by the Agency. In this respect, the BoA Chair highlighted how the Agency is a defendant before the BoA and therefore it may be perceived as inadequate to defend the acts of the BoA, being a former party to the proceeding. The BoA Chair emphasised that this potential conflict of interest would be more perceived in those instances in which the positions of the BoA and the Agency diverged on the merit.

The Director, although supporting the BoA requests, recalled the limitations that the Agency is facing due to (i) the available limited resources and (ii) the absence in the Agency's funding regulation of the provision of direct funding for the BoA. In addition, the Director noted that the recognition of an indemnity for BoA members may discount the honorary function to which BoA members have been called to.

The Administrative Board while recognising once again the need to ensure the appropriate level of resources to function to an optimal level, so as to guarantee optimal quality of decision, also noted that the BoA is still phasing in. In this respect, the experience from the cases pending before the Court of Justice would provide additional guidance on the resources to be attributed to the BoA.

The Administrative Board further noted that it is not unusual that the financial and human support to an independent body of an institution is provided by the institution itself. The Administrative Board therefore concluded that the financing does not necessarily affect independence and can be granted by other means.

As regards the possibility to provide indemnities, the Administrative Board reaffirmed that BoA members and alternates have been appointed to an honorary function and therefore an indemnity is not foreseeable for this term of office. The Administrative Board also highlighted that the attribution of an indemnity cannot and should not lead to remuneration. However, the Administrative Board committed to consider the possibility to grant an indemnity after a complete assessment of the workload and the short-time to adjudicate appeals.

The Administrative Board finally noted that neither the Agency's funding regulation nor the current text of the recast Regulation foresee, at this stage, the possibility to collect fees. In this context, it was discussed the extent of which the inclusion of fees in the recast Agency's regulation is still feasible and how, the inclusion of fees, could have a potential deterrent effect on frivolous appeals. The Administrative Board expressed concerns on the setting of fees and stated that fees should be set with the sole objective to cover the administrative costs of a given case.

The Administrative Board proposed to invite the Commission to consider the possibility to recommend the inclusion of a provision, in the recast Agency's regulation, for the collection of fees at the time of lodging appeals against the acts of the Agency before the Board of Appeal, leaving to secondary legislation the setting of the amounts.

Conclusion: The Administrative Board invited the Board of Appeal to provide a more detailed assessments of the resources that it considers necessary to operate at optimal level.

(18) *Developments on the appointment of the Director*

The Chair reported about the procedure for the appointment of the Director of the Agency highlighting that the candidate designated by the Administrative Board did not receive a favourable opinion by the BoR.

In this framework, it was reported about the procedure for the selection of candidates. In particular, the Vacancy notice, focusing particularly on managerial and communication skills, was published widely and the Commission received 44 applications, representing a limited number of applicants compared to similar posts in other agencies, most probably for the characteristics of the energy sector. After the first screening, the Panel selected 5 candidates. After the assessment centre, the shortlisted candidates were assessed by the Consultative Committee on Appointments, selecting all the senior officials of the Commission and chaired by the Director General for Human Resources and composed by the Deputy Secretary General of the Commission, the Head of Cabinet of the Commissioner for Budget and Human Resources, the Director General for Energy, one rapporteur (a director) from another service of the Commission and another rapporteur. Three candidates were short-listed. The three shortlisted candidates were interviewed by the Commissioner for Energy. The Decision on the short-listed candidates was adopted by the College of Commissioners on 13 March 2018.

The Administrative Board expressed its concerns on the timing of the selection procedure and the need to guarantee continuity of service in light of i) the specificities of the selection procedure; ii) the risks of relaunching a selection procedure too close to the previous call; iii) the incoming end of the mandate of the current Director on 15 September 2018; and iv) the pending negotiations on the Clean Energy Package and the recast Agency's funding regulation.

In light of the above, and after a discussion on the possible solutions, the Administrative Board, while acknowledging the respective role of each institution and body involved, decided to invite the BoR to reconsider its position.

Conclusion: The Administrative Board invited the BoR of Regulators to reconsider its position of 4 May 2018 on the candidate designated by the Administrative Board.

SECTION VIII – ITEMS FOR INFORMATION

(19) IAS HR report – Report on Action Plan

The Director reported that the Internal Audit Service ('IAS') performed an audit on the Human Resources Management (HRM) function of the Agency, in line with the Strategic Audit Plan for the period 2017-2019. The audit was conducted in accordance with the Mutual Expectations Paper, which also summarises the key milestones of the audit process.

The IAS prepared a Draft Report, which the Agency received on 16 November 2017. Following the receipt of the Draft Report, the Agency transmitted to the IAS its formal comments, which are attached to the Final Audit Report. After receipt of the Agency's comments, the IAS prepared the Final Audit Report, which was received on 15 December 2017.

The Report contained a limited number of recommendations – five in total (one critical, two very important and two important). The Agency, while disagreeing with some of the conclusions drawn by the IAS, accepted the recommendations and submitted, on 23 January 2018, an Action plan to address them. The Action Plan has been accepted on 8 February 2018 by the IAS confirming that it is satisfactory in terms of actions and deadlines.

The Action Plan details the actions to be implemented by the end of the year 2018 to mitigate the risks highlighted in the IAS Final Audit Report and identifies the manager for each project. In particular, in the first quarter of the year, the Agency established guidelines and provided training on setting SMART objectives. It also issued a paper on the HRM Team back-up system. In the second quarter of the year, the Agency will adopt guidelines on the management of disciplinary and fraud issues.

In the third quarter of the year, the Agency will undertake the following actions: i) the adoption of practical guidelines on conflict of interest in selection, appraisal and reclassification processes; ii) the revision of Standard Operating Procedures and quality of documentation in the recruitment area; iii) the mapping of HR processes; iv) the revision of the Rules of Procedure of the Staff Committee; and v) the improvement of the HR intranet.

Finally, in the last quarter of the year, the Agency will finalise the revision of the Standard Operating Procedures and the quality of documentation of the Appraisal and Reclassification area.

Conclusion: The Administrative Board took note of the efforts of the Agency to implement the recommendation of the IAS and invited the Director to report along the year about the implementation of the action plan.

(20) Renting of additional office space in the building

The Director reported that the Agency is currently renting office premises with a surface area of 3,234.18 m², located at Trg republike 3, 1000 Ljubljana, Slovenia, for a period of five (5) years, starting 01.02.2014 until 31.01.2019. The Agency already notified the landlord of its intention to extend the lease term for an additional period of five (5) years. According to the provision of the current rental

contract, the Agency will need to conclude a new rental contract for the extension of the lease. In this respect, the Director noted that, according to the current contract, the terms and conditions of the new contract cannot be less favourable for the Agency.

According to the rental contract, the Agency has the possibility to expand the rented area (under the same terms and conditions). The landlord approached the Agency informing that there will be one floor available for rent in the very near future.

The premises currently rented by the Agency are overpopulated without any possibility for creating additional working places. In particular, the space where the meeting rooms are located does not provide an option for creating working space. Further the common areas (mainly corridors) cannot be turned into additional working space due to the shape of the building;

Therefore, taking into account the additional staff envisaged for the purposes of the new Clean Energy Package – additional 18 staff members in 2020 – the Agency is looking into the option of expanding the rented area with one additional floor (one floor has 447.14 m² of pure working space/office space which would be sufficient for the above-mentioned increase).

The Director recalled that since 2015, despite the increase in staff, the Agency did not rent any additional space to accommodate its needs.

In addition, once the offered floor will be rented by another tenant, the Agency will not have an option to rent any space in the current building (the building had a couple of floors and parts of floors available for the past 2 years, and is now being completely filled by new tenants who are anticipated to stay for at least 5 years).

The real estate market in Ljubljana does not provide options for renting space of such size (i.e. approx. 4,000 m²) in the city centre, or even in the vicinity of the city centre.

Moreover, according to the rental contract, in case there were a significant increase in the number of Agency staff requiring an increase in the rented area by at least 1,000 m², provided that the landlord were unable to offer at least 50% of the required increased office space in the building or in the immediate vicinity within 12 months from receiving such a request and the remaining required area within the following 12 months, the Agency would have the possibility to terminate the rental contract by giving 18 months' notice.

The Director reported that it is highly unlikely that the landlord will be able to provide additional space for rent once the available floor will be rented out. In such a case, the Agency would be forced to run a new procedure for renting office space which would require at least 12 months to be concluded from the day the procedure is launched.

With the aim to have sufficient time to arrange office space for the additional staff envisaged for the purposes of the new Clean Energy Package, the Agency will need to start the negotiations with the landlord for the expansion. The aim would be to have the additional floor available for rent as of 01.02.2019 when the new rental period would commence.

The Director finally reported that the budgetary impact of renting one additional floor would amount to EUR 210,186 per year in total (a sum of additional rent of EUR 139,586 and additional running costs of EUR 70,600 for utilities, security and cleaning and maintenance). The amount in question will be absorbed in the existing EU contribution.

Upon request of the Administrative Board, the Director reported that the additional floor would accommodate 31 staff members, allowing to reduce the overpopulation of one of the floors where the Agency's staff is located and fulfil the needs of the Agency for the near future.

Conclusion: The Administrative Board fully recognised the need for additional office space and endorsed the rental of additional office space as proposed by the Director.

SECTION IX – AOB

(21) Information on the EU Draft Budget for the year 2019

The Commission reported that, on 23 May 2018, it adopted the EU draft Budget for the year 2019 and transmitted it to the Budgetary Authorities. According to the EU draft Budget related to the Agency, the Commission proposed the allocation of EUR 16.147.000 including EUR 293.000 surpluses from previous year. The proposed establishment plan foresees 67 TAs (55 Ads and 12 ASTs) and 27 contract agents and 4 SNEs.

(22) Call of a meeting of the Administrative Board in extraordinary session for the 6th of September 2018

The Administrative Board convenes the next meeting, in extraordinary session, on 6 September 2018.

Conclusion: Members and Alternates of the Administrative Board took note of the date for the next meeting of the Administrative Board for year 2018.

CLOSING

In the absence of any other business to be treated, the Chair closed the 36th meeting at 11:30.