



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

**– 41st Meeting –
– Ordinary Session –**

Thursday, 13 June 2019, 10:00 — 14:00

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,	<i>Chair</i>	Dr Jochen PENKER,	<i>Vice-Chair</i>
Ms Edit HERCZOG,	<i>Member</i>	Mr Martin HANSEN,	<i>Member</i>
Mr Edmund HOSKER,	<i>Member</i>	Mr Michel THIOILLIERE,	<i>Member</i>
Mr Jurijs SPIRIDONOVs,	<i>Member</i>	Mr Florian ERMACORA,	<i>Alternate</i>
Mr Ľubomír KUČHTA,	<i>Alternate</i>	Mr Paweł PIKUS,	<i>Alternate</i>
Mr Diego VAZQUEZ,	<i>Alternate</i>	Mr Georgios SHAMMAS,	<i>Alternate</i>
Prof Uwe LEPRICH,	<i>Alternate</i>	Ms Britta THOMSEN,	<i>Alternate</i>

Mr Florian ERMACORA submitted the proxy of Ms Anne MONTAGNON and Mr Dominique RISTORI.

Mr Alberto POTOTSCHNIG (*Director ad interim*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Ms Olga BORISSOVA (*Head of Administration*), acting as adviser, was present for the discussion of Items 7 and 11 of the Agenda.

Mr Volker ZULEGER (*Head of the MIT Department*), acting as adviser, were present for the discussion of Item 6 of the Agenda.

The secretariat was provided by the Agency.

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

At the 41st meeting, the Administrative Board:

- (1) expressed satisfaction for the interim results of the review of the declarations of interests and information provided by the Members and Alternates of the Administrative Board, showing the absence of interest that could be considered critical in line with Decision No 02/2015 of the Administrative Board laying down the policy for the Agency on the prevention and management of conflicts of interest;
- (2) expressed concerns for the lack of adequate human resources despite the increase in tasks, the complexity of deliverables and the urgency under which the Agency will need to act to implement the Clean Energy Package;
- (3) declared urgency for the adoption via written procedure of the Financial Regulation of the Agency;
- (4) adopted, by unanimity, the Consolidated Annual Activity Report for the Year 2018;
- (5) adopted, by unanimity, Decision No. 7/2019 on the replacement of No. 1 Member as Reporting Officers for the annual appraisal of the performance of Mr Pototschnig;
- (6) adopted, by unanimity, Opinion No 1/2019 endorsing the final accounts of the Agency for the financial year 2018;
- (7) concluded that documents submitted to the Administrative Board later than 15 calendar days prior to the meeting shall be tabled for discussion only to further subject to written procedure should the conditions of urgency be met.

III. MINUTES

SESSION I

SECTION I – OPENING

The 41st meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened in ordinary session on 13 June 2019. The meeting started at 10 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 41st meeting of the Administrative Board was approved as follows:

Agenda Topics		Documents	Rapporteur
Opening			10:00
(1)	Approval of the Agenda - Declaration of Interest and Report on Review of DoI and DoC – Administrative Board	Doc. A <i>for approval</i>	The Chair
(2)	Minutes of the 39 th Meeting Minutes of the 40 th Meeting	Doc. A <i>for approval</i> Doc. B	The Chair
Items for Reporting			10:20
(3)	Report on decisions by written procedure and by delegation	Doc. A <i>for information</i> Doc. B	The Chair
(4)	Report on Agency's developments and Budget Implementation	- <i>oral update</i>	Director <i>ad interim</i>
(5)	Report on the activities of the Board of Regulators	- <i>oral update</i>	BoR Chair
(6)	Report on the Action Plan following the IAS Audit on Information Security at the Agency and in the "REMIT" domain- Action Plan	Doc. A <i>for information</i> Doc. B	Director <i>ad interim</i>
Items for Decision			11:20
(7)	Decision on the Financial Regulation of the Agency for the Cooperation of Energy Regulators	Doc. A <i>for adoption</i>	Director <i>ad interim</i>
(8)	Outside Activities – Mr Pototschnig	Doc. A <i>for adoption</i>	The Chair
(8.1)	Amendment of Decision No 2/2019 and replacement of No 1 Reporting Officer for the appraisal of Mr Pototschnig	Doc. A <i>for adoption</i>	The Chair
Items for Adoption			11:40
(9)	Consolidated Annual Activity Report – Year 2018	Doc. A <i>for adoption</i>	Director <i>ad interim</i>
(10)	Opinion on the final accounts of the Agency for the financial year 2018	Doc. A <i>for adoption</i>	Director <i>ad interim</i>

Items for Information		12:00
(11)	Joint proposal from the Director and the BoR on the establishment of Agency's Working Groups and their Rules of Procedure	- <i>oral update</i> Director <i>ad interim</i>
Items for Discussion		12:20
(12)	Report on the risks of failure of the Agency due to the shortage of human resources after the Clean Energy Package	- <i>oral update</i> Director <i>ad interim</i>
(13)	Procedure for the selection of the Director of the Agency	- <i>oral update</i> The Chair & European Commission
AOB and End of Meeting		14:00

The Chair reported that the review of the Declaration of Interests of the Members and Alternates of the Administrative Board has not been finalised.

The Chair briefly recalled that Decision No 02/2015 of the Administrative Board establishes three levels of risks: Level 1 – where no relevant interest is detected; Level 2 -- where a relevant interest (e.g. in the energy sector) exists, but which does not have any (and, for the year following the declaration, is not expected to have any) direct influence on the decision-making process of the Board or which is 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, after reviewing the declarations of interests and information provided by the Members and Alternates, did not detect any interest that could be considered critical (level 3). However, the Review Panel considered necessary to request additional information to a Member to complete the assessment.

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, based on the assessment of the information provided, – no conflicts of interest was identified by the relevant review panel. Where potential or perceived interests were declared and considered by the Review Panel to be potentially relevant primarily to the NRA, the BoR Chair wrote to the respective NRA to note that the Panel had reviewed the declaration and she was satisfied that the relevant national procedures would be sufficient to manage any potential conflict. This was the case for one of the submissions.

(2) Adoption of the Minutes of 39th and 40th Meeting of the Administrative Board

The Chair went through the conclusions of the 39th and 40th meetings of the Administrative Board, confirming the achievement of the outstanding actions with the exception of the submission to the Administrative Board of two reports to be reported to the next meeting.

The Chair further reported that, by the closing date for comments, the Agency did not receive comments on the minutes of both meetings.

Conclusion: The Administrative Board adopted, by unanimity, the minutes of the 39th and 40th meeting of the Administrative Board.

SECTION II - REPORTING

(3) Report on the decisions adopted by delegation and by written procedure

The Chair reported about the adoption of two decisions by written procedure after the 40th Meeting of the Administrative Board. In particular, on 21 March 2019, the Administrative Board adopted, by unanimity, the following two decisions:

- Decision No 5/2019 on the estimate of revenue and expenditure and the establishment plan of the Agency for the Cooperation of Energy Regulators for the financial year 2020; and
- Decision No 6/2019 on the Anti-fraud strategy for the Agency for the Cooperation of Energy Regulators, establishing an action plan for the years 2019-2022.

The Decisions were adopted via written procedure, pursuant to Decision No 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedures of the Administrative Board, and, in particular, Article 9(2) thereof.

Conclusion: The Administrative Board took note of the adoption of Decision No 5/2019 and Decision No 6/2019 via written procedure.

(4) Report on Agency's developments, budget implementation, Audit Results, and the regulatory activity

4.1 Human Resources

As regards the Agency's human resources, the Director *ad interim* presented the latest statistics identifying the number of staff members subdivided by contract type and amounting to 120 FTEs, 2 of whom in the Brussel's office of the Agency. The Director *ad interim* highlighted that the Agency, in terms of human resources needed, is equipped with just 80% of its requirements to fulfil its mandate. This situation is even more dramatic considered that SNEs positions are becoming less attractive and 20% of the available resources is covered through traineeship agreements and interim agency workers, which cannot provide the necessary level of expertise to face the increasing number of tasks assigned to the Agency by the Clean Energy Package, which is about to enter into force.

The Director *ad interim* further reported on the efforts put in place by the Agency to ensure a timely filling of the posts assigned to the Agency for the year 2019 and 2020.

The Director *ad interim* provided details on the reclassification procedure for the year 2019 and the competency framework project to assess the competences needed within the Agency and the foreseen deployment of SYSPER, the Commission's tool for the management of human resources.

The Director *ad interim* also provided an overview of the incoming general implementing provisions of the Staff Regulations to be adopted by the Administrative Board at the next meeting.

The Director *ad interim* concluded by updating the Administrative Board on the establishment of the European School in Ljubljana, which has been finally accredited and it is attracting more and more pupils since the start of its operations. The European School will be offering a complete primary educational cycle (classes P1 – P5) starting from the school year 2019-2020. The secondary educational cycle (S1 – S7) is foreseen to be first offered in the school year 2020-2021 (complete secondary cycle is planned for the school year 2023-2024).

4.2 Internal Control Mid-term Assessment, Implementation of the Anti-Fraud Strategy, Implementation of the Action Plan following the Staff Engagement Survey, and the IAS Audit on the HRM and IT functions of the Agency

The Director *ad interim* recalled that the Administrative Board adopted at its December meeting the new Internal Control Framework of the Agency with Decision No 17/2018. In light of that, in the course of May 2019, the Agency performed a mid-term review revealing the absence of difficulties in achieving the targets by year-end, signalled by 72 % of the targets already achieved and no major or critical deficiency identified.

The Director *ad interim* provided also a detailed overview of the measures put in place by the Agency to ensure a timely implementation of the action plan following the entry into force of the Decision No 6/2019 for the Administrative Board on the Anti-Fraud strategy of the Agency.

The Director *ad interim* concluded by reporting in detail on the action plan adopted by the management of the Agency to address the results of the Staff engagement survey of March 2018. In particular, he reported that 23 out of the 30 actions were implemented by 20 May 2019, while the remained 7 actions are on-going.

Finally, the Director *ad interim* reported on the implementation of the action plan adopted by the Agency following the IAS audit on the HRM function and IT security at the Agency.

As regards the HRM function, the Director *ad interim* stressed that two “very important” recommendations (on Recruitment and management of CoI and on Appraisal and reclassification exercises) have been fully implemented. The measures put in place were also further tested with an on-site follow-up audit performed on 8-10 April. The critical recommendation was also downgraded to “very important”, to reflect progress in the implementation of the action plan. Finally, the Director *ad interim* reported that one “very important” recommendation (on Guidelines, document management, job descriptions and sharing of information) and two “important” recommendations (on Setup and management of the HR function and on Planning of resources and monitoring) are due to be implemented in Q3-Q4 2019.

As regards the implementation of the Action Plan following the IAS Audit on IT security in ACER and Information Security in the “REMIT” domain, approved by the IAS on 11 March 2019, the Director stressed that the recommendations on the implementation of the Information Security policy and on IT security governance have been already partially implemented. The Director *ad interim* clarified that two recommendations are expected to be addressed by Q3 2019 and Q2 2020 respectively. The Director *ad interim* concluded by highlighting that the implementation of all other six important recommendations is ongoing.

4.3 Budget Implementation

As regards the Budget Implementation for the year 2019, the Director *ad interim* reported that commitments for C1 appropriations reached 82.86% (target 95%) while C1 payments reached 30.66% (target 75%). As regards the C8 appropriations, payments reached 55.21% (target 95%).

With regard to C8 appropriations, the Director *ad interim* warned the Administrative Board about the possibility of not reaching the target due to the inability of contractors to deliver, both according to the timing of the contract and in relation to the overall quality of the deliverables. The Director *ad interim* alerted the Administrative Board about the consequences of not meeting the target, with a penalisation of the Agency of a 2% cut of the budget.

The Director *ad interim* also reported on the preliminary observations of the European Court of Auditors on the accounts for the year 2018, highlighting the legality and regularity of the transactions and on the reliability of the annual accounts, with no observations.

4.4 Regulatory activities

The Director *ad interim* concluded the report by providing an overview on the most recent regulatory tasks performed by the Agency in the first semester of the year 2019. In addition, the Director *ad interim* provided an overview of the amount of decisions that the Agency is expected to deliver. He highlighted the degree of complexity of those decisions concerning terms and conditions or methodologies implementing network codes and most importantly the impact that the Clean Energy Package will have on the Agency, where all decisions having a Union-wide impact will fall directly under the competence of the Agency itself. The Director *ad interim* reported, for instance, that about twenty decisions will have to be taken by the Agency in the course of the year 2020. In this regard he explained that the amount of decisions to be taken by the Agency in the implementation of network codes should also be considered in terms of the complexity of the issues raised and therefore the high potential for appeals, the need for translation in the languages of the Union and the possibility for amendments. Therefore, these decisions constitute a significant burden for the Agency in light of the limited financial and human resources that have been assigned by the Budgetary Authority.

In particular, the Director *ad interim* provided insights on the most important decisions adopted by the Agency providing details on the difficulties encountered due to the shortage of human resources that the Agency is constantly facing and the need to maintain its recognised role of qualified actor in the energy sector.

The Director *ad interim* further reported about the appeals currently pending against the decisions adopted by the Agency, pointing to a multiplication of actions both before the Board of Appeal of the Agency and the Court of Justice. In this regard, the Director *ad interim* recalled that the Chair of the Board of Appeal invited the Agency to consider the possibility to further support the Board of Appeal in facing the dramatic increase of its workload. The Director *ad interim* concluded by highlighting that the Agency's services are analysing the possibility given by the new financial regulation to establish indemnities for the administrative costs incurred by the members of the Board of Appeal in the handling of appeal cases. The results will be present to the Administrative Board.

The Director *ad interim* finally reported on REMIT operations, providing the key figures and warned about the risks of failure due to the lack of financial resources.

Conclusion: The Administrative Board took note of the report and expressed concerns for the lack of sufficient resources to ensure that the Agency meets its mandate.

(5) Progress Report from the Board of Regulators

The BoR Chair reported on the recent activities of the Board of Regulators, with particular regard to the terms and conditions or methodologies foreseen in the Network Codes. The BoR Chair highlighted the availability of the NRAs to cooperate closely with the Agency's staff via the working groups to ensure a timely adoption of the necessary decisions.

The BoR Chair reported further on the activities undertaken at BoR level to ensure that all measures are in place so as that the Agency will be able to act according to the new legal framework in which the Agency will be called to act soon after the entry into force of the recast Agency Regulation.

Conclusion: The Administrative Board took note of the report of the BoR Chair and invited the BoR and the Director to involve the Administrative Board at an early stage in all dimensions of the recast Agency's Regulation requiring the adoption of decisions by the Board.

(6) Report on the Action Plan following the IAS Audit on Information Security at the Agency and in the "REMIT" domain - Action Plan.

The Director *ad interim* briefed the Administrative Board about the Action Plan following the IAS Audit on Information Security at the Agency and in the “REMIT” domain. The Director *ad interim* reported that, following the Final Audit Report of the Internal Audit Service on Information Security in ACER and in the “REMIT” domain, received in January 2019, the Agency has adopted an Action Plan on the implementation of the accepted recommendations. The Director *ad interim* highlighted that the Final Audit Report only contained important recommendations, with no Critical or Very Important ones.

The Director *ad interim* therefore went through the principal actions envisaged to address the recommendations of the Internal Audit Services and the prioritization of the actions to be undertaken. In particular, the Director *ad interim* drew the attention of Members and Alternates of the Administrative Board to the fact that the envisaged timeline is contingent upon the availability of (human and financial) resources, particularly with regard to those areas where the Agency has been struggling in the past year with insufficient resources. The Director *ad interim* highlighted in this context the postponement of the replacement of ageing REMIT-related infrastructure.

The Director *ad interim* further clarified the intermediate preparatory actions to be undertaken to mitigate the risks stemming from the timeline for the implementation of the full actions, facilitating the implementation of the Action Plan, taking into account the available resources.

The Director *ad interim* concluded by highlighting that the Agency will revise the Action Plan, and propose more ambitious timelines, in case sufficient additional resources were made available to the Agency and to its REMIT operations, in the budget for the financial year 2020.

Conclusion: The Administrative Board took note of the report on the Action Plan following the IAS Audit on Information Security at the Agency and in the “REMIT” domain.

SECTION III – ITEMS FOR DECISION

(7) Decision on the Financial Regulation of the Agency for the Cooperation of Energy Regulators

The Director *ad interim* informed the Administrative Board that on 10 May 2019, Commission Delegated Regulation (EU) 2019/715 of 18.12.2018 on the framework financial regulation for the bodies set up under the Treaty on the Functioning of the European Union and the EURATOM Treaty was published. This Delegated Regulation establishes the framework financial regulation for the bodies which are set up by the Union under the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community and which have legal personality and receive contributions charged to the Union budget (‘Union bodies’).

In light of the above, the Director *ad interim*, explained that it is necessary to repeal the current Financial Regulation of the Agency as it shall be aligned with Regulation (EU, Euratom) 2018/1046. This would allow for additional simplification and clarification of rules to take into account the experience gained in their application, and will improve further the Agency’s governance and accountability with regard to the application of the financial rules.

The Director *ad interim* drew the attention of the Administrative Board that Recital 38 of Commission Delegated Regulation (EU) 2019/715 establishes that transitional provisions shall be maintained for programming and for the consolidated annual activity reporting. This is due to the fact that the Union bodies need time to adapt to the new programming and reporting.

In light of the above, and as established by Article 113 and 114 of Commission Delegated Regulation (EU) 2019/715, Decision No 22/2013 of the Administrative Board of the Agency of 12 December 2013 on the adoption of the Financial Regulation of the Agency for the Cooperation of Energy Regulators shall be repealed. Only Articles 32 and 47 of Decision AB no 22/2013 shall continue to apply until 31 December 2019.

The Director *ad interim* finally reported that the Decision of the Administrative Board adopting the new Financial Regulation should be applicable retroactively as from 1 January 2019 with the exception of Articles 32 and 48 to be applicable as of 1 January 2020 only.

The Administrative Board, in light of the late submission, decided to adopt the Financial Regulation via written procedure to ensure that Members could make themselves acquainted with the content of the act to be adopted and the changes brought about by the new Financial Regulation.

- Conclusion:*
- (1) The Administrative Board took note of the report on the changes brought about by Commission Delegated Regulation (EU) 2019/715 of 18.12.2018 on the framework financial regulation for the bodies set up under the Treaty on the Functioning of the European Union and the Euratom Treaty;
 - (2) The Chair of the Administrative Board declared urgency for the adoption of the Financial Regulation via written procedure.

(8) Authorisation to engage in Outside Activities of Mr Pototschnig

The Chair recalled that, on 6 September 2018, the Administrative Board adopted by unanimity Decision No 13/2018 granting permission to Mr Alberto Pototschnig to engage in outside activities. The permission concerned the engagement in outside activities as Part-time Professor at the Florence School of Regulation for a maximum of two hundred hours – one hundred of which that could have been performed during working hours – with no costs to be incurred by the Agency and no remuneration in excess of EUR four thousand five hundred. The authorisation was granted for the period 16 September 2018 – 15 September 2019.

On 13 December 2018, the Administrative Board adopted by unanimity Decision No 16/2018 on the adoption by analogy of the Commission Decision on outside activities and assignments and on occupational activities after leaving the Service. This Decision introduced more flexibility in the assessment of individual cases and provided for a more favourable treatment of staff members compared to the previous legal framework under which Decision No 13/2018 was adopted.

Mr Pototschnig highlighted that his contract of employment with the Agency will end on 31st December 2019 and he requested authorisation to engage in outside activities for the remainder of his contract of employment with the Agency by acting with the same role of Part-time Professor at the Florence School of Regulation as authorised pursuant to Decision No 13/2018.

The Administrative Board, after having invited Mr Pototschnig to leave the meeting, to allow for discussion, concluded by authorising Mr Pototschnig to engage in outside activities as Part-time Professor at the Florence School of Regulation out of working hours. The Chair declared urgency for the adoption of the consequent decision setting the conditions of engagement in outside activities via written procedure.

- Conclusion:* The Chair declared urgency for the adoption via written procedure of the decision authorising Mr Alberto Pototschnig to engage in outside activities for the period 16 September – 31 December 2019.

(8.1) Replacement of No. 1 Reporting Officer for the annual performance appraisal of Mr Pototschnig

The Chair recalled that an annual appraisal exercise is organised at the beginning of each calendar year to assess the performance of the staff of the Agency. In this context, Mr Pototschnig shall be assessed in terms of his efficiency, competencies and conduct. In light of this, she recalled that the Administrative Board shall designate at least two reporting officers from its Members with the mandate to assess the annual performance of the Director. One of the two Members should be selected among the Members appointed by the European Commission. The Chair reported that she is excluded from the designation, as she will be acting as appeal assessor.

At the 40th meeting, with Decision No 2/2019, the Administrative Board designated Ms Agnieszka KAZMIERCZAK and Dr Jochen PENKER as reporting officers with the mandate to assess the annual performance of Mr Pototschnig.

The Chair recalled that Ms KAZMIERCZAK is no longer a member of the Administrative Board and therefore the Administrative Board shall agree on the appointment of one reporting officer replacing Ms KAZMIERCZAK and adopt the proposed decision.

The representative of the European Commission informed the Administrative Board that Ms Anne MONTAGNON would be available in replacing Ms KAZMIERCZAK in her role as reporting officers.

Upon invitation of the Chair, the representative of the European Commission provided a report on the status of the procedure for the appraisal of the performance of Mr Pototschnig.

- Conclusion:*
- (1) The Administrative Board adopted, by unanimity, Decision No 9/2019 on the appointment of Ms Anne MONTAGNON to replace Ms KAZMIERCZAK as Reporting Officer for the annual appraisal of the performance of Mr Pototschnig;
 - (2) The Administrative Board invited Mr Pototschnig to submit his self-assessment to allow the performance appraisal exercise to be concluded according to the applicable legal framework.

SECTION IV – ITEMS FOR ADOPTION

(9) Consolidated Annual Activity Report of the Agency for the Cooperation of Energy Regulators for the year 2018

The Director *ad interim* recalled that each year the Agency shall prepare the Consolidated Annual Activity Report providing an overview of the activities of the Agency for the previous year. He highlighted that the Consolidated Annual Activity Report shall contain an independent section on the regulatory activities of the Agency, approved by the Board of Regulators, and a section on financial and administrative matters.

The Director *ad interim* informed the Administrative Board that, on 16 May 2019, the Board of Regulators approved the independent section of the Consolidated Annual Activity Report on the regulatory activities of the Agency during the year considered.

The Administrative Board is therefore called to adopt and publish the Consolidated Annual Activity Report, on the basis of the draft annual report referred to in Article 17(8) of the Agency's funding Regulation. The report shall be transmitted to the European Parliament, the Council, the Commission, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 15 June of each year.

The Director *ad interim* highlighted that the Consolidated Annual Activity Report is structured according to the template foreseen in the Communication from the Commission on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual

Activity Report for decentralised agencies of 16.12.2014. He further highlighted that, compared to the Consolidated Annual Activity Reports submitted in previous years, the introductory contains sections highlighting the Agency's key achievements in 2018, as well as the tasks deprioritised or not executed due to lack of resources.

The Administrative Board examined the Agency's 2018 Annual Activity Report and noted that the Agency aligned its policies and operational achievements with the EU priorities in the field of energy in line with ACER 2018 work programme (i.e. the completion of the internal energy market and the monitoring of trading in the wholesale energy markets of the Union remained at the heart of the Agency's objectives).

The Administrative Board recognised that the challenges faced by the Agency related to the completion of the internal energy market, including delivering the benefits to EU energy consumers, are correctly identified and the operational achievements contributing to the implementation of the EU energy policy priorities are convincingly presented.

The Administrative Board acknowledged that the Agency largely met its objectives through prioritisation and redeployment of staff, to overcome the difficulties encountered due to resource constraints and the need to allocate resources for peaks of unpredictable workload, especially when called to replace NRAs in the adoption of decisions requesting high-level expertise.

The Administrative Board expressed concerns for the resource constraints under which the Agency is forced to operate. Due to these constraints, the Agency's work could have not been done to the extent which would be desirable, limiting the ability of the Agency to contribute to the completion of the internal energy market to the benefit of energy consumers and the competitiveness of the Union.

The Administrative Board highlighted the Agency's key achievements for the year 2018. In particular, the Administrative Board welcomed the publication of the Annual Market Monitoring Report on the remaining barriers to the Internal Energy Market, the successful shift of the Agency's work to accompanying and monitoring the implementation of the already adopted network codes in electricity and gas. With regard to REMIT, the Administrative Board, welcomed the implementation of the regulation on wholesale energy market integrity and transparency, highlighting: i) the increasing number of alerts being transmitted to NRAs for further investigation; ii) the conclusion of a substantial number of preliminary initial assessments of potential market abuse cases (the Agency prioritises the market monitoring of cross-border trading activities); and iii) the improvement of data quality, by providing updates of guidance documents on data reporting.

The Administrative Board recognised that the Agency reached a high level rate of execution for commitment appropriations and that the key performance indicator targets were largely met, with the exception of a few indicators concerning the improvement of REMIT data quality, due to the lack of sufficient resources, and staff satisfaction. The crucial issue of staff satisfaction was discussed in details by the Administrative Board. The Agency has adopted an ambitious action plan with measures to be implemented under the close monitoring of the Administrative Board, so as to ensure that an engaging and attractive working environment is established.

The Administrative Board further recognised that the Director *ad interim* has provided a clear declaration of assurance and the Administrative Board recognised that the controls and supervisory checks performed in 2018 provided no evidence of significant or repetitive errors in reporting by Agency departments, budget execution, human resources management or KPI implementation. The Administrative Board further recalled that the monitoring reviews showed no instances of inadequate or ineffective controls that could expose the Agency to key risks.

The Administrative Board, therefore, concluded that the Agency successfully implemented the 2018 work programme. The available resources allocated to the activities described in the Report were used for their intended purpose in accordance with sound financial management principles.

Conclusion: The Administrative Board adopted, by unanimity, the Consolidated Annual Activity Report of the Agency for the Cooperation of Energy Regulators for the year 2018.

(10) Opinion on the final accounts of the Agency for the financial year 2018

Upon invitation of the Chair, the Director *ad interim* intervened recalling 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. He concluded by recalling that the final accounts shall be sent by the Director to the Administrative Board for an opinion.

The Director *ad interim* further reported that the European Court of Auditors adopted the opinion on the provisional accounts of the Agency on 14 May 2019 and the final accounts were received from the accounting services of DG BUDG on 11 June 2019 only.

In this regard, the Director *ad interim* highlighted that the European Court of Auditors concluded that the Agency's accounts presented fairly, in all material respects, the financial position of the Agency at 31 December 2018, the results of its operations, its cash flows, and the changes in net assets for the year then ended. The European Court of Auditors further confirmed that the Agency's accounts have been drafted in accordance with its Financial Regulation and with accounting rules adopted by the Commission's accounting officer, based on internationally accepted accounting standards for the public sector. The European Court of Auditors further concluded by highlighting that the Agency's revenues and payments underlying the accounts for the year 2018 are legal and regular in all material respects.

The Administrative Board welcomed the opinion of the European Court of Auditors and congratulated the Director *ad interim* for the activity performed considered that the Agency did not receive observations on the final accounts.

Conclusion: The Administrative Board adopted, by unanimity, Opinion No 1/2019 endorsing the final accounts of the Agency for the financial year 2018.

SECTION V – ITEMS FOR INFORMATION

(11) Joint proposal from the Director and the BoR on the establishment of Agency's Working Groups and their Rules of Procedure

Upon invitation of the Chair, the Director *ad interim* briefed the Administrative Board on the current working procedures of the Agency to ensure the cooperation of National Regulatory Authorities ('NRAs') and the changes to be brought by the recast of the Agency's Regulation. In particular, the Director *ad interim* recalled that, since its inception, the Agency has established, by Director's decision, working groups composed of staff members and representatives of the NRAs. The working groups, under the supervision of the Director, have been supporting the decision-making process of the Agency in the performance of those regulatory activities requiring a favourable opinion of the Board of Regulators. The Director *ad interim* highlighted that the working groups of the Agency encompass the Electricity Working Group, the Gas Working Group and the Market Integrity and Transparency Working Group.

The Director *ad interim* further highlighted that the recast Agency's Regulation has formalised the role of the working groups of the Agency in supporting the Director and the Board of Regulators in the regulatory field, in particular at the time of preparing opinions, recommendations and decisions which are subject to the favourable opinion of the Board of Regulators. In addition, the Recast Agency's Regulation has changed the governance structure of the working groups by establishing that the Administrative Board is not only called to establish or remove working groups, but it shall also adopt and publish internal rules of procedure for the functioning of the working groups.

In particular, the Director *ad interim* stressed that the Administrative Board will be called to establish or remove working groups on the basis of i) a joint proposal from the Director and the Board of Regulators, and ii) a favourable opinion of the Board of Regulators. The adoption of the internal rules of procedure of the working groups will instead require the proposal from the Director and the prior consultation with the Board of Regulators and its favourable opinion.

The Director *ad interim* further reported that, on 16 May 2019, he agreed with the Board of Regulators a joint proposal for the establishment of the Electricity and Gas Working Groups. He also shared with the Board of Regulators a draft proposal for the rules of procedure of the working groups.

The Director *ad interim* therefore concluded that, at the time of entry into force of the Recast Agency's Regulation, it would be appropriate to avoid disruptions in the regulatory activities of the Agency and, therefore, it would be essential to ensure the timely adoption of the decisions establishing the working groups and setting their rules of procedure.

In light of the above, the Director *ad interim* invited the Administrative Board to consider the adoption of those decisions via written procedure to meet the above-mentioned objectives.

The Administrative Board clarified that, due to the need to ensure the timely adoption of the decisions concerning the establishment of the Gas and Electricity Working Groups and their rules of procedures, and the short notice with which it is called to take such decisions, only minor changes to the existing rules of procedure would be considered acceptable.

The Administrative Board, in light of the role that it has been assigned to it by the recast Agency's Regulation, invited the Director *ad interim* and the Board of Regulators to ensure its early involvement in any act involving its approval and invited the Director *ad interim* and the Board of Regulators to consider proposing a revision clause for the rules of procedures of the Working Groups of the Agency and establish a roadmap in that respect.

- Conclusion:*
- (1) The Administrative Board took note of the changes brought about by the Recast Agency's Regulation and the Chair declared the urgency for the establishment of the Gas and Electricity Working Groups and the adoption of the rules of procedure once the Recast Agency's Regulation enters into force.
 - (2) The Administrative Board invited the Director *ad interim* and the Board of Regulators to ensure an early involvement of the Administrative Board on the discussion concerning the decision-making process of the Agency;
 - (3) The Administrative Board invited the Director *ad interim* to present at the December meeting, a roadmap on the process for the amendment and adoption of the decision-making process of the Agency.

SECTION IV - DISCUSSION

(12) Report on the risks of failure of the Agency due to the shortage of human resources after the Clean Energy Package

The Director *ad interim* briefed the Administrative Board about the risks of failure deriving from the lack of human resources available to the Agency to face the additional tasks assigned by the Clean Energy Package with a large number of deliverables of complex nature to be concluded within the first six months after its entry into force.

The Director *ad interim*, therefore, illustrated that, according to the Agency's estimates, the additional tasks attributed to the Agency by the Clean Energy Package would require the provision of additional 28 TAs. These additional resources, coupled with those needed to deliver on the Agency's pre-existing mandate, lead to a total request of 59 FTEs. However, despite additional tasks were added to the remit of the Agency during the legislative negotiation, there was no revision of the CEP Financial Statement, which still envisages the provision of appropriations mostly for contract agents rather than of positions for temporary agents with a grade commensurate to the level of technical complexity, requesting, for some deliverables, technical expertise out of the core activities of the Agency.

The Director *ad interim*, therefore, drew the attention of the Administrative Board to the fact that, due to the limited provision of human resources with the attribution of appropriations not equivalent to the level of responsibilities assigned to the Agency, the latter will be forced to deprioritise and delay other tasks mandated to it so as to meet the deadlines for the most important deliverables envisaged by the Clean Energy Package for the last semester of the year 2019 and the first quarter of the year 2020.

The Director *ad interim* highlighted the potential risk of failure of the Agency due to the increased number of tasks and the absence of an adequate mirroring of those tasks in sufficient human and financial resources.

The Director *ad interim* further turned to the perennial challenge faced by the Agency concerning REMIT. In this regard, he highlighted that the financial resources currently needed by the Agency to ensure adequate support the REMIT IT system, its operations and its development amount to 3.5 Mio EUR per year. To the contrary, the Agency will be facing a shortage of financial resources for the year 2020 for REMIT, being provisionally set at 2.8 Mio EUR.

The Director *ad interim* therefore invited Mr Zuleger to provide a report on the risks of failure of the Agency due to the shortage of financial resources for REMIT.

Mr Zuleger reported that the draft Budget 2020 foresees 2.8 Mio EUR to support REMIT operations. He highlighted that this amount was estimated by DG ENER's expert group in the year 2016 to cover current operations only. Mr Zuleger highlighted that the estimate of DG ENER's expert group was based on the then applicable set of data records, which has tripled since then, due to network developments and more liquidity in the market.

The increase of the amount of data entails the need of larger infrastructure and support services to handle such data. Mr Zuleger, therefore, draw the attention of the Administrative Board to the fact that, if the 2020 budget were to include funding for REMIT IT operations of 2.8 Mio EUR, the Agency will not be in a position to: i) progress with the re-establishment of a disaster recovery site, as recommended by the European Court of Auditors, ii) to guarantee software developments, allowing the collection of all the data that the Agency is mandated to gather.

Properly with regard to this last element of concern, Mr Zuleger stressed that the Agency will not be in a position to gather data concerning financial transaction and share them with financial authorities, with the result of not being in a position to detect cross-sector manipulation between financial and

energy markets. Mr Zuleger, therefore, stressed the danger deriving from the lack of financial resources in fulfilling one of the objectives of REMIT entrusted by the European legislator to the Agency.

Mr Zuleger also stressed that the Agency is receiving an increasing number of complaints due to the delays in providing support to reporting parties. This is affecting the reputation of the Agency and above all the overall functioning of the market, increasing costs for the delays of the Agency and the uncertainties deriving from the lack of clear guidance for the reporting of data.

Mr Zuleger also stressed that the lack of human and financial resources reduces the possibility to share data with other institutions, such as DG COMP, DG FISMA, and national competition authority, which would increase the overall value of those data to the benefit of European consumers.

The representative of the European Commission highlighted the budgetary constraints affecting horizontally all European Institutions, bodies and agencies, besides those having to face emergencies. He further stressed the increase of financial and human resources available to the Agency compared to the current financial year. The representative of the European Commission invited the Director *ad interim* to consider putting in place transitory measures to manage scarcity of resources, similar to other European bodies.

The Director *ad interim* and the Administrative Board expressed appreciation for the effort of DG ENER in supporting the Agency for the budget for the financial year 2020. However, it expressed once again concerns for the lack of adequate financial resources for the Agency, dissatisfaction for the current budgetary forecasts for the Agency.

- Conclusion:*
- (1) The Administrative Board expressed reservations for the current shortage of financial and human resources after the Clean Energy Package;
 - (2) The Administrative Board decided to continue the discussion on this topic at its next meeting in order to find solutions better to support the Agency in the negotiations for the budget, inviting the Agency to provide an action plan to improve the communication of the Agency's bodies with other stakeholders involved in the budgetary cycle.

(13) Procedure for the selection of the Director of the Agency

The Chair of the Administrative Board recalled that on 15 October 2018, the Commission published a new vacancy notice for the post of Director of the Agency, inviting to submit applications by 26 November 2018. At its 39th meeting, the Administrative Board discussed the procedure and practical arrangements for the appointment of the Director of the Agency. At its 40th Administrative Board adopted the practical arrangements for the selection and appointment of the Director of the Agency and adopted the Evaluation Grid.

The Representative of the European Commission provided an update of the status of the selection procedure.

The Chair of the Administrative Board reported about the arrangements put in place with the Board of Regulators for the purpose of the selection of the Director of the Agency.

- Conclusion:*
- (1) The Administrative Board took note of the developments in the procedure for the selection of the Director of the Agency;

- (2) The Administrative Board endorsed the arrangements put in place with the Board of Regulators for the purpose of the selection of the next Director of the Agency.

CLOSING

Before closing the meeting, the Administrative Board concluded that documents submitted later than 15 calendar days prior to the meeting shall be tabled for discussion only and will be subject to written procedure should the conditions of urgency be met.

In the absence of any other business to be treated, the Chair closed the 41st meeting at 14:00.