



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

***– 45th Meeting –
– Ordinary Session –***

Thursday, 18 June 2020, 08:30 — 13:00

**Trg Republike 3, Ljubljana – Slovenia
- ONLINE MEETING -**

MINUTES

I. LIST OF ATTENDEES

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

Dr Jochen PENKER,	<i>Member</i>	Dr Jurijs SPIRIDONOVs,	<i>Vice-Chair</i>
Dr Romana JORDAN,	<i>Member</i>	Ms Edit HERCZOG,	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Karin LUNNING	<i>Member</i>
Mr Michel THIOILLIERE,	<i>Member</i>	Mr Florian ERMACORA,	<i>Alternate</i>
Mr Pal KOVÁCS,	<i>Alternate</i>	Mr Diego VAZQUEZ,	<i>Alternate</i>
Ms Britta THOMSEN,	<i>Alternate</i>	Mr Vaclav BARTUŠKA,	<i>Alternate</i>

Mr Florian ERMACORA submitted proxies by Ms Ditte JUUL JØRGENSEN and Ms Anne MONTAGNON.

Mr Christian Pilgaard ZINGLERSEN (*Director*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Ms Luiza DRAGHICI, Mr Juan-Ignacio DE DIOS MORALES and Mr Michael SCHUETZ, acting as advisors, were present at the meeting.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 45th MEETING OF THE ADMINISTRATIVE BOARD

At the 45th meeting, the Administrative Board:

- (1) invited the Director to proceed in drafting a proposal for the future communication strategy of the Agency in line with the need to maintain the image of Agency as a trusted partner, while enhancing its visibility by communicating further and more effectively with stakeholders its added value in contributing from a regulatory perspective to the objectives of the Union and to the political debate around those objectives, whenever in its field of competence;
- (2) stressed the need to ensure that a fine balance is maintained between the communication activities of the Agency and the fulfilment of regulatory tasks assigned to the Agency so as that the communication efforts do not impact upon the already limited financial and human resources of the Agency;
- (3) expressed concerns as regards the ability of the Agency to face the challenges forecasted for the year 2021 should not be provided with adequate human and financial resources to successfully accomplish its mandate, therefore impacting on the timely and successful implementation of the Clean Energy for all Europeans Package and the Green Deal;
- (4) invited the Agency to propose a concrete action plan to face the increase of appeals and the fulfilment of the mandate of the Agency should the budget negotiation not provide the desired outcome in terms of financing of the Agency for the year 2021;
- (5) welcomed the efforts put in place in reducing its carbon footprint and invited the Agency to intensify further those efforts to digitalise all its processes and move towards the ISO 14001 certification, taking into consideration the budgetary constraints faced by the Agency.

III. MINUTES

SESSION I

SECTION I – OPENING

The 45th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 18 June 2020. The meeting started at 09h00.

Upon invitation of the Chair to 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 actual or potential interest was declared nor reported.

Dr Romana Jordan informed the Board of her recent appointment as Chair of the Administrative Board of the National Regulatory of Slovenia. She reported to have informed already the services of the Agency to that hand and the assessment is currently pending.

(1) *Approval of the Agenda*

The Agenda of the 45th meeting of the Administrative Board was approved as follows:

OPENING

08:30 - 08:40

Opening of the 45th Meeting of the Administrative Board

Adoption of the Agenda and Declaration of Interests

STRATEGIC

DISCUSSION

08:40 - 11:30

The Agency in the changing European Context – Communicating Effectively and beyond

Presentation by the Director of the Agency on a multi-year perspective for the Agency, organizationally and communication-wise, linking this to the upcoming communication strategy and drawing on the organizational adjustments of this year.

Roundtable Discussion

Budget 2021 – future outlook and way forward

Presentation by the Director of the Agency, on future perspectives for the Agency's budget, as well as recent lessons regarding expected increase in legal appeals against Agency decisions.

Report by the Representative of the European Commission

Update on Remit fees

Roundtable Discussion

Sustainable ACER initiative (further “greening” of ACER’s own activities)

Presentation by the Agency

Roundtable Discussion

**REPORTING,
INFORMATION,
AND INTERNAL**

FUNCTIONING

OF THE

Report on the activities of the Board of Regulators

Presentation by the Chair of the Board of Regulators

Rules of Procedure of the Working Groups – Amendment

Presentation by the Director and the Chair of the Board of Regulators

AGENCY *Roundtable Discussion*

11:30-12:50

Consolidated Annual Activity Report – Year 2019

Adoption of the Annual Activity Report for the year 2019

Opinion on the Final Accounts of the Agency for the financial year 2019

Presentation on the position of the European Court of Auditors

Adoption of the Opinion on the final accounts – year 2019

The Effects of the pandemic on the Agency's operations and the future opportunities

Presentation by the Agency

Roundtable Discussion

CLOSURE **Invitation to the 46th Meeting of the Administrative Board**

12:50-13:00

AoB

SECTION II – STRATEGIC DISCUSSION

(2) *The Agency in the changing European Context – Communicating Effectively and beyond*

The Director and the Strategy Delivery and Communication of the Team Leader introduced the discussion on the wider strategic perspective of the Agency on the future communication plans of the Agency, looking at the wider political and energy context.

The Director recalled his introduction at the 44th meeting of the Administrative Board hinting to the need to ensure that the Agency maintains its image of trusted partner and enhances this role also by communicating further and more effectively with stakeholders, contributing from a regulatory perspective to the objectives of the Union and to the political debate around those objectives. In particular, he clarified that the objective of the Agency is to make itself more visible, showing better its added value within the limit of its remit, putting itself in a position to translate its deliverables also to less technical audience. The Director further recalled that this overall objective entails not only an external dimension but also an internal dimension hinting the latter to the need to ensure a cultural change enhancing the potential of the internal expertise existent in-house.

Starting from the internal dimension, the Director clarified that the Agency needs to move away from its current silos working method towards a more cohesive, aligned and homogenous approach. He also stressed the need to (i) ensure better planning, improve the model for the attribution of roles and responsibilities at the right level, (ii) assign resources according to priorities, (iii) invest in feedbacks and learning and development, and (iv) create synergies whenever more efficient. He also stressed the need to improve communication and stakeholder engagement activities to bring added value to the overall objective of the Agency. In particular, the Director stressed the desire to implement the leadership pipelines principles at the Agency.

The Director, therefore, exposed the multi-annual plan to bring the Agency to meet this vision of the Agency, starting from the activities to be performed internally so as to ensure that over the years the Agency is perceived as an open, accessible, transparent, trusted and forward partner, helping, from a regulatory perspective, in driving the EU Agenda.

The Director, therefore, reported to the Administrative Board the organisational adjustments performed in the course of the month of March with the objective to reinforce those functions that are providing support horizontally to the Agency, simplify the organisational structure, enhance alignment of solutions across the Agency, and bring synergies over time.

As a result, those functions, which were formerly performed in the director's office, while remaining under the supervision of the Director, have been further embedded in the organisation. He highlighted that this is reflected more prominently in the creation of the strategy, delivery and communication function and the legal services.

The Strategy Delivery and Communication Team Leader was invited to take the floor to guide the Administrative Board through the proposal for guiding principles to establish the communication and stakeholder engagement strategy of the Agency. Taking stock from the suggestions of the Administrative Board, it was explained that the overall objectives are threefold: rendering more visible the contribution of the Agency to the Energy Union objectives and the Green Deal, making more evident the EU added value of the Agency and reaching out more effectively the stakeholders.

In this field, the Strategy Delivery and Communication Team Leader will be active, focusing mainly on stakeholder management, external and internal communication, strategy and outreach activities, supporting the Director in this last aspect and ensuring coordination of the different Agency's functions communication wise.

In order to reach these objectives, the most prominent priority is represented by the significant upgrade of the Agency's website, to be also based on the outcome of a survey with the most important stakeholders of the Agency to understand their perception of the Agency and their needs. This will be followed by the definition of the Agency's digital identity. Finally, the Agency will shift to a more interactive platform so as to have the means to engage further and more effectively with the actors in the most relevant fields. To that hand, a first sketch of the revamped website was presented to the Administrative Board.

The Administrative Board welcomes the attempt made by the Director through the re-organisation of the Agency's service towards a more strategic oriented Agency. Still, the Administrative Board stressed the need to ensure that the priority of the Agency should remain the implementation of the existing regulations, ensuring legal quality of outputs to minimise delays in the entry into force of the technical measures needed to foster the Energy Union and the Clean Energy Package. The Administrative Board highlighted that while policy input is certainly valuable, as well as the envisaged related communication activities, those should be balanced with the need to ensure first the fulfilment of the Agency's mandate, especially in light of the structural underfunding that the Agency is experiencing, with the lack of sufficient human and financial resources.

In light of that, the Administrative Board expressed appreciation for the past communication activities of the Agency. In this respect, the Administrative Board invited the Director to consider investing rather on trainings and developments for the existent staff so as to ensure that communication is handled at all level of the organisation, ensuring that staff can act as ambassador for the Agency.

In light of the limited resources, the Administrative Board further stressed the need to focus stakeholder engagement in inter-institutional relations especially to attempt to address the budgetary needs of the Agency. In this specific regard, the Administrative Board acknowledged the need to try to approach stakeholder engagement in a different manner so as to attempt to secure more funding for the Agency. It still recognised the need to establish a fine balance between those activities and the core tasks of the Agency, so as not to put at risk the fulfilment of its mandate. In this respect, it invited the Agency to communicate more effectively the Union added value of the Agency and its contribution to the sustainable developments goals of the Union to maintain its attractiveness in the communication political context. The Administrative Board concluded by inviting the Agency to establish an action plan to increase the visibility of the Agency employing also the opportunities given by the European Parliament and the ITRE Committee to that hand.

Conclusion: The Administrative Board supported the effort made by the Director in setting the principles for the future communication strategy of the Agency and invited the Director to proceed with the definition of a proposal for a communication strategy.

The Administrative Board stressed the need to ensure that a fine balance is maintained between the communication activities of the Agency and the fulfilment of regulatory tasks assigned to the Agency so as that the communication efforts do not impact upon the already limited financial and human resources of the Agency.

(3) Budget 2021 – future outlook and way forward

The Director provided an overview on the current challenges and the future perspective in light of the budget negotiation for the year 2021. In particular, he referred to the decision made in January 2020 to reduce the scope of the requests for human resources put forward by the Agency for the year 2021. At the same time, the Director recalled that translation costs and the expectation of a significant raise in appeals for the years 2020 and 2021 are likely bringing additional pressure on the Agency's limited financial and human resources. The Director recalled that for every appeal against an Agency's decision, the Agency does not only have to cover its own costs, but shall also ensure legal support to the Board of Appeal resulting in a significant financial impact upon the Agency's budget.

The Director identified the short-term and medium-term measures put in place and to be put in place to re-assign financial and human resources to address the needs stemming from the above reported new challenges. The Director clarified that those measures represent an attempt to be conservative also in managing the uncertainty stemming from the potential increase of appeals, which although likely, is not certain.

As regards the short-term measures, the Director pointed to the internal re-assignment of resources to address the understaffing of the Legal Services compared to the peak in workload, and the invitation put forward to NRAs to support the Agency by providing short-term legal support on identified projects. He also explained the terms of engagement of NRA support and further stressed that new recruitment procedures would have been launched for the recruitment of contract agents in Function Group IV to further boost the human resources in the Legal Services. Finally, he also explained that the Agency considered prioritising the defence of its decisions before the Board of Appeal, bringing the defence to the minimum essential, whenever considered appropriate.

As regards the medium-term measures, the Director explained that for the year 2021 the Agency intends to reassign two FTEs to the legal services should the Budgetary Authority assign them to the Agency.

The Director therefore illustrated the proposed measures to engage with the different actors involved in the negotiation for the budget 2021, providing an overview of the actors to be approached and the internal organisation in order to be effective in the attempt to bring the Agency's operation on a sound financial footing. In this regard, the Director stressed the need to reinforce the Strategy Delivery and Communication Team so as to make sure that the effort to be put in the budgetary negotiation can be more effective.

Mr Volker ZULEGER, Head of the Market Integrity and Transparency Department, was further invited to provide an update on the developments concerning the establishment of the scheme for raising fees for REMIT. In this regard, it was reported the status of the process and the methodology proposed to that end. Finally it was stressed the need to ensure a mechanism to mitigate deficit in case fee raising would not meet the expected forecasts. In this respect, the European Commission recalled the need to ensure that the system is place since the beginning of the year 2021 to avoid deficit situations.

The Administrative Board was updated also on the expected proposal for the budget of the Agency for the year 2021. In this respect, it was highlighted the need to manage scarcity since past records shew the difficulty in raising the subsidies from the Union in the course of the budget negotiations, especially given the complications in reaching Member States when the budget proposal is tabled at the Council.

In this latter respect, the Administrative Board expressed concerns for the resources envisaged for the Agency for the year 2021 and supported the strategy of the Director in the outreach effort to bring the Agency's budget for the year 2021 on a sound financial footing. The Administrative Board invited the Agency to provide Members and Alternates with the necessary information to approach the different actors involved in the budget negotiations.

The Administrative Board stressed the need to improve the legal quality of the decisions of the Agency without need to lower the ambitions of the Agency to implement the spirit and objectives behind the acts to be adopted. In particular, the Administrative Board highlighted that since the Agency is a relatively new institution, with a low record of appeals, it is likely that stakeholders impacted by the contentious decision will take the opportunity to bring cases to the Board of Appeal and the General Court. This is likely to happen until sufficient case-law will address part of the inevitable open issues created with the provision of powers to the Agency.

In this respect, the Administrative Board appreciated the need to be conservative in addressing future potential events. It also acknowledged that both communication and legal support functions are necessary part of a well-functioning organisation, especially with regard to the Agency and the challenges ahead. The Administrative Board, concluding by inviting the Director to consider strengthening further the legal services of the Agency considering also the past reported difficulties to attract experts to Ljubljana, balancing this with the genuine chances to reach a successful outcome in the budget negotiations both short-term and in the longer term.

In this regard, the Administrative Board, while supporting the envisaged short-term measures to ensure business continuity at the Agency, invited the Director to prepare an action plan to be deployed to address the challenges of the year 2021 should the budgetary negotiation result in not being positive for the Agency. In this respect, the Director clarified that in preparing the action plan will consider also the possibility to use flexibility in the management of human resources.

Conclusion: The Administrative Board expressed concerns as regards the ability of the Agency to face the challenges forecasted for the year 2021 should not be provided with adequate human and financial resources to successfully accomplish its mandate, therefore impacting on the timely and successful implementation of the Clean Energy for all Europeans Package and the Green Deal.

The Administrative Board appreciated that both communication and legal support functions are necessary part of a well-functioning organisation, especially with regard to the Agency and the challenges ahead.

The Administrative Board invited the Agency to propose a concrete action plan to face the increase of appeals and the fulfilment of the mandate of the Agency should the budget negotiation not provide the desired outcome in terms of financing of the Agency for the year 2021.

Members and Alternates of the Administrative Board expressed their availability in concretely supporting the Director in the envisaged outreach activities in the context of the budget negotiations to attempt to secure the Agency's budget for the year 2021. They therefore invited the Agency to support them by providing the necessary information to approach the different actors involved in the budget negotiations.

(4) Sustainable ACER initiative (further "greening" of ACER's own activities)

The Chair of the Administrative Board introduced the discussion on the initiatives to be implemented in the effort to reduce the carbon footprint of the Agency as part of the overall strategy of the Agency to contribute to the objectives of the Union starting from concrete actions toward a more green Union.

Olga BORISSOVA, Head of Corporate Services, presented the efforts already put in place at the Agency to increase its sustainability and the plans of the Agency to reach efficiency gains via sustainable solutions, touching upon potential way to become a green Agency.

As regards the efforts put already in place, following the best practices from other Agencies, a number of digitalise workflows have been implemented combining the need to reduce the carbon footprint of the Agency and the establishment of more efficient handling of processes. Those processes relate to the financial workflow, the management of documents and of human resources. At the same time, a green ambassador group has been create to stimulate the discussion and propose concrete solutions to reduce the carbon footprint of the Agency. Finally, the pandemic has brought the Agency to anticipate the implementation of other more green solutions, such as e-recruitment digitalising fully the selection procedures. It also favoured the rapid development of more cost-effective and environmentally friendly interaction with stakeholders with the employment of webinars and web-conferences arrangements.

To those processes, the Agency is already in the process to improve further measures of environmental management migrating the management of missions and procurement procedures (green procurement, e-tendering, and e-submissions) to paperless tools, further improving the environmental managements of the Agency's administrative functions. In this respect, it was reported that e-submissions and MIPS will be in place before the end of the year 2020. On-site catering events also contribute in reducing waste and minimising CO₂ emissions. The Agency is also in the process of implementing a system of promotion of the use of public transports. The Agency aims at providing also an environmental training to staff. The Agency is also in the process of replacing its IT equipment towards more environmentally efficient solutions available in the market.

Ms BORISSOVA clarified the limitations faced by the Agency in handling environmental management due to the limited human resources available. Despite these limitations, also thanks to the help of the green network of the EU Agencies, the Agency has made significant improvements in reducing its carbon footprint.

The Members and Alternates of the Board invited the Agency to consider adopting checklists for green events, digitalise signatures, and appoint a sustainability officer tasked to coordinate and foster the greening of the Agency.

Conclusion: The Administrative Board welcomed the efforts put in place in reducing its carbon footprint and invited the Agency to intensify further those efforts to digitalise all its processes and move towards the ISO 14001 certification, taking into consideration the budgetary constraints faced by the Agency.

SECTION III – REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY

(5) Report on the Activities of the Board of Regulators

Ms Clara POLETTI, the Chair of the Board of Regulators, invited to report on the most recent activities of the Board of Regulators, stressed the availability of the Board of Regulators and of its Members in supporting the Agency's budget requests and needs for the year 2021.

She further reported on the logistical arrangements put in place by the Board of Regulators to ensure business continuity during the pandemic, with the successful shifting of all meetings to online conferencing tools. The Board of Regulators is, therefore, looking into ways to efficiently handle its decision-making process through conferencing tools and, as a result, adapt its day-to-day working and procedural arrangements to the permanent use of conferencing tools.

The Board of Regulators also decided to restructure its agenda to include a strategic discussion at its meeting, allowing the Director and the Board to discuss the contentious issues to be addressed by the Agency in the course of this year.

Conclusion: The Administrative Board took note of the report of the Chair of the Board of Regulators and thanked its Members for the availability to support the Agency in the course of the budget negotiations.

CLOSING

Due to time constraints and the impossibility to discuss the agenda items related to the internal functioning of the Agency, the Chair of the Administrative Board declared urgency for the adoption via written procedure of (i) the Annual Activity Report for the year 2019; (ii) the Opinion on the Final Accounts of the Agency for the year 2019; and (iii) the amendment of the internal rules of procedure for the functioning of the working groups of the Agency.

As regards the adoption of the Opinion on the Final Accounts of the Agency for the year 2019, the Administrative Board invited the Agency to provide an in-depth assessment of the preliminary conclusions of the Court of Auditors to allow the Administrative Board to adopt informed decisions.

The Administrative Board postponed to the 46th meeting of the Administrative Board the information session on the Effects of the pandemic on the Agency's operations and the future opportunities.

In the absence of any other business to be treated, the Chair closed the 43rd meeting at 13:00.