

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

**– 57th Meeting –
– Ordinary Session –**

**Wednesday 25 January 2023, 16:45 — 18:45
Thursday 26 January 2023, 08:30 — 13:00**

**ACER
– Trg Republike 3, Ljubljana – Slovenia –**

MINUTES

I. LIST OF ATTENDEES

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

<i>Mr Michel THIOLLIÈRE,</i>	<i>Chair</i>	<i>Ms Edit HERCZOG,</i>	<i>Vice-Chair</i>
<i>Dr Jurijs SPIRIDONOVŠ</i>	<i>Member</i>	<i>Dr Romana JORDAN,</i>	<i>Member</i>
<i>Mr Bogdan CHIRIȚOIU,</i>	<i>Member</i>	<i>Ms Karin LUNNING,</i>	<i>Member</i>
<i>Mr Václav BARTUŠKA</i>	<i>Member</i>	<i>Ms Anne MONTAGNON,</i>	<i>Member</i>
<i>Ms Cristina CUADRA GARCIA</i>	<i>Alternate</i>	<i>Ms Kristina ČELIĆ</i>	<i>Alternate</i>
<i>Mr Péter KADERJÁK</i>	<i>Alternate</i>		

Ms Anne MONTAGNON submitted proxy by Ms Ditte JUUL-JØRGENSEN.

Mr Péter KADERJÁK was present on 26 January 2023 only.

Mr Christian Pilgaard ZINGLERSEN (ACER Director) and Ms Clara POLETTI (Chair of the Board of Regulators) were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 25 January 2023.

Mr Juan-Ignacio DE DIOS MORALES and Mr Michael SCHUETZ (both European Commission) were present acting as advisor.

The meeting was chaired by Mr THIOLLIÈRE on 25 January 2023 and until the end of agenda point 3 on 26 January 2023, when the chairing was taken over by the Vice-Chair Ms HERCZOG (for the agenda points 4, 5 and AOB).

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 57th MEETING OF THE ADMINISTRATIVE BOARD

At the 57th meeting, the Administrative Board:

- (1) appointed Mr Václav Bartuška as a rapporteur, who will provide the Administrative Board with a regular debrief on the energy related discussions in the Council;
- (2) adopted by Decision No. 2/2023 the amendment to its Rules of Procedures, which aligns the relevant Article of the Rules of Procedure on the prevention and management of the conflict of interest with the recently adopted Guidelines on this matter, by unanimity;
- (3) reconfirmed 31 January 2023 as the deadline by which members and alternates should submit the relevant documents requested by the Conflict of Interest policy through the e-platform despite a delay in the launch of the 2023 process due to the technical adaptations of the platform;
- (4) decided to inform the respective Appointing Authorities of the adopted Guidelines on the prevention and management of the conflict of interest policy so that they are taken into consideration for the forthcoming appointment procedures of new members or alternates;
- (5) adopted by Decision 3/2023 the amendment to the rules on the reimbursement of expenses and compensation of costs incurred by Members and Alternates of the Administrative Board;
- (6) got acquainted with current overview of the energy market and provided with a very detailed outline of the 2023 Agency's key activities, in particular on the two new tasks of the LNG assessment/benchmark and Market Correction Mechanism as well as on the REMIT surveillance of the wholesale energy market and data quality projects;
- (7) took note of the activities of the Board of Regulators in context of the current crisis;
- (8) welcomed the Director's engagement in the file, agreed with the approach on Agency's premises' options presented by the Director and stressed the urgency of the process;
- (9) expressed strong support for one move only (for the long-term solution) also in view of budgetary constraints, time sensitivity and impact of move on staff and its work;
- (10) welcomed the Staff Committee had been involved in the building project and appreciated the expressed Staff Committee's considerations for the long-term premises;
- (11) requested to remain regularly briefed on the building file also in-between the meetings and asked for the feedback on the final meeting that is to take place in the following week;
- (12) congratulated the Agency for a very good 2022 budget execution; however pointed that the Agency should in future pay attention to the size of the carry-forward funds and to the payment execution;
- (13) confirmed that the Agency's top priority remained the planned recruitments assigned by the emergency regulations in order to employ new staff as quickly as possible;
- (14) was acquainted with the challenges the Agency faces to retain the existing staff and recruit new colleagues (notably on the quality of secondary schooling in the European School, value of flexibility and teleworking) and agreed there were very relevant arguments for the Agency to take account of the current extraordinary circumstances facing the Agency so as not to put retention and recruitment at risk;

(15) endorsed by unanimity the draft Single Programming Document 2024-2026 which can be transmitted to the EU institutions by 31 January.

III. MINUTES

SECTION I – OPENING

The first session of the 57th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 25 January 2023. The meeting started at 16h45 and finished by 18h45.

Upon invitation of the Chair to the present Members and Alternates of the Administrative Board to declare any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda, no Member or Alternate of the Administrative Board declared or reported any actual or potential interest.

(1) *Approval of the Agenda*

The Agenda of the first session of the 57th meeting of the Administrative Board was approved as follows:

<i>OPENING</i> 16:45 - 16:55	Opening of the 57th Meeting of the Administrative Board <i>Adoption of the Agenda and Declaration of Interests</i>
<i>DECISION- MAKING</i> 16:55 - 17:05	Amendment to the Rules of Procedure of the Administrative Board in line with the recently adopted Guidelines for the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal <i>Presentation by AB Secretariat</i> <i>Roundtable Discussion and Adoption</i>
<i>DECISION- MAKING</i> 17:05 - 17:30	Conflict of Interest policy implementation: assessment procedure in line with new Guidelines (standard of review) <i>Presentation by AB Secretariat</i> <i>Roundtable Discussion and Adoption</i>
17:30 - 18:45	Closed Session – Administrative Board Discussion (Members only)
<i>CLOSURE</i> 18:25-18:25	Invitation to the II Session of the 57th meeting of the Administrative Board

SECTION II – DISCUSSION AND DECISION-MAKING

Appointment of a new rapporteur: Václav BARTUŠKA – energy related discussions in the Council

The Chair informed that Mr Václav Bartuška was appointed as a rapporteur, who will provide the Administrative Board with a regular debrief on the energy related discussions in the Council.

1) Amendment to the Rules of Procedure of the Administrative Board in line with the recently adopted Guidelines for the prevention and management of conflict of interest

The Administrative Board Secretariat informed that the Boards' Rules of Procedure have to be aligned with the recently adopted Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal (hereafter the Guidelines). The Guidelines which were adopted in December 2022 by the Administrative Board Decision No 16/2022 have implications on the Article 13 of the Rules of Procedure that refers to the conflict of interest for the Administrative Board members and alternates. The proposed amendment to the Rules of Procedure stipulated two modifications: a) reference to the Guidelines as the relevant document that complements the Agency's overall policy on the prevention and management of conflict of interest and b) introduction of a new paragraph in the Rules of Procedure (as Article 13.3) that defines the consequential actions to be undertaken in case of non-compliance of an Administrative Board member or alternate either by not submitting annual conflict of interest declarations or by providing false or incomplete information. According to the Guidelines, this would lead to an automatic suspension of the membership until the obligations of the prevention and management of the conflict of interest policy are met.

The Administrative Board welcomed the timely and useful alignment of its Rules of Procedure with the Guidelines on the prevention and management of the conflict of interest.

Conclusion: (1) The Administrative Board adopted by Decision No. 2/2023 the amendment to its Rules of Procedures, which aligns the relevant Article of the Rules of Procedure on the prevention and management of the conflict of interest with the recently adopted Guidelines on this matter, by unanimity.

2) Conflict of Interest policy implementation: assessment procedure in line with new Guidelines (standard of review)

The Administrative Board Secretariat provided information on the current state of play of the 2023 Conflict of Interest exercise. The latter has been temporarily postponed due to the technical adaptations of the electronic platform in order to make the exercise easier for the members and alternates by pre-populating the required forms with the data that they had inserted in the system during the 2022 exercise. The external contractor was finishing the adaptations and the 2023 process of Conflict of Interest was launched on 26 January 2023. The present Administrative Board members and alternates reconfirmed 31 January 2023 as the deadline by which they should fill in the required documents. The Administrative Board Secretariat offered the needed support and assistance in order to complete the exercise by then and thanked for the understanding of its efforts to make the exercise more user friendly.

Moreover, in line with the Administrative Board request that accompanied the adoption of the Guidelines, the Secretariat provided a presentation on examples of potential conflict of interest and indicated their possible assessment stemming from the recently adopted Guidelines. The presentation of a mix of selected hypothetical and real cases aimed at stimulating the debate among members, so

that they would be fulfilling their duties according to ACER policy on the prevention and management of conflict of interest and would be aware of the impact of Guidelines on the upcoming assessment process. In addition to that, the discussion aimed at providing additional information to the appointed Review Panel for the assessment of circumstances in line with the Guidelines. Though the presentation focused on examples for which the identified risk level would be assigned at level 2 (relevant interest declared, but which do not appear likely to have any direct influence) or 3 (interests declared pertain directly to the field of Board's competence), it was stressed that specific circumstances inevitably always require a case-by-case analysis, as not all possible scenarios could be foreseen. Given the wide range of possible situations there was a certain margin of discretion given to the Review Panel to determine whether a particular interest was substantial enough to give rise to a potential conflict of interest. Moreover, it was stressed that the responsibility for declaring any interest that might be considered prejudicial to independence could only be placed on the concerned persons themselves.

The Administrative Board thanked for the presentation and underlined the importance of the implementation of the management and prevention of conflict of interest policy for ensuring the independence of the Administrative Board as a whole and for maintaining trust of stakeholders and citizens in the Agency's integrity. The particular context of ACER vis-a-vis other EU agencies was pointed out, as ACER in contrast to other agencies did take market sensitive decisions. There was a suggestion that derivatives should be also taken into consideration among the financial investments that should be declared by the members and alternates. Moreover, it was recommended that all new members and alternates were well informed upon their appointment about the policy on the management and prevention of the conflict of interest. In this context it was recommended that the Appointing Authorities, especially the Council, were reminded about the adopted Guidelines so that they would be taken into consideration when appointing new members or alternates.

- Conclusion:*
- (1) The Administrative Board reconfirmed 31 January 2023 as the deadline by which members and alternates should submit the relevant documents requested by the Conflict of Interest policy through the e-platform despite a delay in the launch of the 2023 process due to the technical adaptations of the platform.
 - (2) The Administrative Board decided to inform the respective Appointing Authorities of the adopted Guidelines on the prevention and management of the conflict of interest policy so that they are taken into consideration when appointing new Administrative Board members or alternates.

3) Administrative Board Discussion – Closed session (Members only)

SESSION II

SECTION I – OPENING

The second session of the 57th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 26 January 2023. The meeting started at 8h30.

(1) Approval of the Agenda

The Agenda of the 57th meeting of the Administrative Board was approved as follows:

OPENING **Opening of the 57th Meeting – Second session**
08:30 - 08:45 *Adoption of the Agenda and Declaration of Interests*
Report on Conclusions of Closed Session

FOR INFORMATION, **Agency’s Progress Report – Part I**
08:45-09.50 *Regulatory Developments – recent ACER actions, efforts, perspectives and reflections*
Presentation by Mr C. ZINGLERSEN, ACER Director and select ACER colleagues (M. B. VEREECKE, Director’s Office - Strategy Delivery and Communication, Team Leader; M. D. HESSELING, Head of Infrastructure, Gas and Retail department; Mr. M. VOICHEM, Market Surveillance department, Team Leader; Mr M. GODFRIED, Head of Market Surveillance and Conduct Department; Mr V. ZULEGER, Head of Market Information and Transparency Department)
Discussion

Board of Regulators – Progress Report
Presentation by Ms C. POLETTI, Chair of the Board of Regulators

FOR INFORMATION, **Update on ACER premises**
10:00-10:50 *Presentation by Mr C. ZINGLERSEN, ACER Director and Ms O. BORISSOVA, Head of Corporate Services*

Intervention of Mr Savvas SAVVIDES, representative of Agency’s Staff Committee and member of the building project

FOR INFORMATION, **Organisational Developments (Budget & Procurement Implementation, Human Resources Management, challenges for ACER recruitment and retention: European School and flexibility via teleworking)**
10:50-11:30 *Presentation by Mr C. ZINGLERSEN, ACER Director, Ms O. BORISSOVA, Head of Corporate Services and S. MANESSI, Team Leader Human Resources Management*

FOR DISCUSSION AND ENDROSEMENT **Draft Single Programming Document for the years 2024 -2026**
11:45-12:30 *Presentation by Ms O. BORISSOVA, Head of Corporate Services*
Rapporteur: Mr B. CHIRIȚOIU
Discussion and adoption

CLOSURE **AoB**
12:30-12:45

Upon invitation of the Chair to the present Members and alternates of the Administrative Board to declare any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda, no Member or Alternate of the Administrative Board declared or reported any actual or potential interest.

The Chair reminded the present Alternate member Mr Kaderják that the 2022 Review Panel assessed his conflict of interest situation at the level 3. While the agenda items of the meeting do not seem to be in conflict with Mr Kaderják’s activities, the Chair nevertheless reminded him of the duty to declare a conflict of interest should the discussion arose to such a situation. Mr Kaderják agreed with the approach.

Since this was the first Administrative Board meeting attended by the Alternate member Mr Kaderják, he presented himself to the Board. The present members and alternates also introduced themselves to Mr Kaderják.

REPORT ON CONCLUSIONS OF CLOSED SESSION

The Chair explained that during the closed session, a letter signed by the Administrative Board Chair and Vice-Chair was handed to the European Commission (DG ENER) representative Ms Montagnon asking Commission's services for the legal opinion on the ACER governance and in particular of the legal status of the Administrative Board as an independent body of the Agency and on the level of the responsibility (individual or collegial) of the Administrative Board members.

The Administrative Board also discussed the increase of indemnities of the Administrative Board meetings to recognize an increased actual work. The Board adopted the proposed amendment to the Decision No 07/2020 on the reimbursement of expenses and compensation of costs incurred by members and alternates of the Administrative Board by general consent. The European Commission pointed that the any further increase of indemnities would require a new legal base.

The Chair informed that he had asked the Administrative Board Secretariat to prepare throughout the year (and ahead of the next round of the appointments) a digital booklet/welcome package with key information on ACER and commitments and obligations linked with the membership of the Administrative Board so that it could provide the newcomers with a better understanding of the roles and working process.

The Board also decided to thank for the invitation issued to the Administrative Board by its previous Chair Mr Penker to co-organize a joint event on energy topics and concluded it would suggest extending the invitation to ACER or CEER which seem to be better placed to cover the proposed topics.

Conclusion: (1) The Administrative Board adopted by Decision 3/2023 the amendment to the rules on the reimbursement of expenses and compensation of costs incurred by Members and Alternates of the Administrative Board.

(1) Agency's Progress Report – Part I

Regulatory Developments – recent ACER efforts, perspectives and reflections

Upon invitation of the Chair, the Director Mr C. Zinglensen and ACER colleagues presented the overview of the current market situation. In the last month the gas and electricity prices in the EU had been decreasing, though they still remained higher than for instance in the US. Due to several factors (mild and more wet and windier weather; reduction of - especially gas - consumption, more LNG terminals online and more nuclear supply), the short-term outlook in the EU turned out more positive than expected: in short-term less price spikes were expected, gas storage remained fuller than usual and consequently less gas generation needs were expected.

The overview was followed by a more thorough presentation of the two new emergency tasks that were officially assigned to the Agency at the end of December 2022 (LNG assessment/benchmark and Market Correction Mechanism) and on which the Agency had been intensively working in the last weeks to deliver within a very short period of time. Per the Board's request from the last meeting, the Agency delivered also a presentation of the REMIT activities. The latter was timely as the just launched public consultation on the long-term electricity market design reform refers inter alia also to REMIT, giving potential to its reform. Moreover, it was announced that the Agency was preparing in cooperation with the NRAs the joint input to the electricity market design public consultation. As stressed by the Director, all these topics would be very much in the forefront at the Agency's activities in 2023 and would have important organisational impact, hence might lead to a deprioritisation of certain Agency's tasks.

The Administrative Board commended the Agency and the teams involved for the good delivery of the two new tasks in such a short timeframe. According to the board, this pointed also to a very strong Agency's internal structure and had showed high level of agility. The Board stressed the great importance of the market surveillance activities (REMIT) in the period of crisis, as it enabled the European consumers to retain confidence in the market functioning.

Conclusion: (1) The Administrative Board was aquatinted with the current situation in energy market and provided with a very detailed outline of the 2023 Agency's key activities, in particular on the two new tasks of the LNG assessment/benchmark and Market Correction Mechanism as well as on the REMIT activities and data quality projects.

(2) Board of Regulators – Progress Report

Ms C. Poletti, the Chair of the Board of Regulators, provided an update on the decisions taken by the Board of Regulators (BoR) at its meeting a day before (25 January 2023). Ms Poletti stressed that the BoR discussions were currently focused a lot on the emergency measures. In that context, she thanked ACER, in particular its Director, for the excellent cooperation and a very cooperative approach in holding thorough discussions on the emergency measures, which was relevant not just for the transparency, but was enabling the NRAs to settle internally different views and speak externally with one voice.

Ms Poletti informed the Administration Board about the topics on which BoR took decisions based on several rounds of earlier discussions held at the level of working groups. The BoR issued a favourable opinion on the Agency's draft Single Programming Document 2024-2026 by consensus, paving the way for its discussion at the current Administrative Board meeting. The document's endorsement was accompanied by a discussion of the BoR on difficulties faced by the regulators and ACER to prepare multiannual programming documents in such a rapidly changing environment. Moreover, the BoR gave a favourable opinion also to the ACER network tariff report on the electricity, which importantly complements the current lively national discussions on the change of tariff structures in a way to encourage deployment of renewables and demand side response. BoR endorsed by consensus also ACER's opinion on the ETNSO-E winter outlook and the draft Framework guidelines on the TEN-E scenarios (on gas and electricity). Moreover, the regulators approved by the required majority also a very relevant ACER policy paper on the electricity forward market and its identified challenges (e.g. low liquidity, accessibility, competition, etc.). BoR was updated also on this year's approach envisaged for the Market Monitoring Reports (the Electricity MMR compiling a series of volumes will resume, the Retail & Consumers volume will proceed as usual, while the Gas Wholesale Market and Decarbonisation volumes will be deprioritised).

Conclusion: (1) The Administrative Board took note of the activities of the Board of Regulators, in the context of the current crisis.

(3) Update on ACER premises

The Chair invited the Agency to provide an up-date on the building file, as requested by the Administrative Board at the last meeting in December 2022.

The Director informed the Board that since then the Agency had several meetings that were scheduled with the aim to be finished by the Board's current meeting. Unfortunately due to the commitments abroad of some key interlocutors, one relevant meeting had to be postponed and would take place during the following week. Despite that the Director stressed the Agency could provide the Board with a well-rounded information on the aim and principles the Agency was following in that process and would present several credible options that were under discussion. Based on that, the Agency would inform the Board of its favoured approach (prioritisation of options).

The Director stated that while the current premises could be considered as adequate, they had not been following the growth of the Agency. The strong disaggregation of space between different floors that moreover are not interconnected represented an important drawback on the organisational culture and that factor was not irrelevant in the context of Agency's clear trajectory growth. In that context, the Agency had explored also alternatives - other new options that exist on the market. The Director stressed the strong preference of moving only once, in principle to future premises with longer contract duration.

The Director presented to the Administrative Board five credible premises options (mainly for up to 5 years) with key information, including costs, potential timeline and potential risks (no further information on each option due to the confidentiality of the procedure).

The Administrative Board thanked very much the Director for being transparent and welcomed the Director's decision to be personally involved and active in that very important file. The presented plan was labelled as a good and credible plan. The Board expressed strong support for only one move, preferably to a long-term solution, in order not to increase immediate workload given time sensitivity and current human resources limitations. Several moves would be discouraged also due to a very strict EU budgetary constraints. The importance of paying attention to the overall costs was very much emphasised also in view of the fact that in general rental costs as well as heating costs had increased dramatically.

Then Mr Savvas Savvides, representative of Staff Committee and member of the building project team, was invited to the meeting to provide the Administrative Board with the opinion of the staff on the premises. Mr Savvides thanked the Director and the management team for including the Staff Committee in the deliberations regarding the Agency's new premises and new ways of working. He underlined that according to the Staff Committee selection of new premises needed to follow a holistic approach in order to satisfy the various elements that affect the well-being of staff both in their professional and private life aspects. Taking into consideration the challenges that arise from limited real estate options in the market of Ljubljana, the Staff Committee believed the new premises should satisfy the following staff considerations:

- The office spaces should provide a motivating environment, enabling both cooperation and focus when needed. Given a very much analytical nature of the ACER work, the planned more open team-oriented areas should be coupled with provision of sufficient personal offices matching the type of work (e.g. quite spaces or smaller offices for a few people only)
- Natural light and proper air quality (fresh air) were integral for the wellbeing of staff and should be factored in.
- As learnt in the current building, the closer the various areas or floors are the better for enhancing the corporate culture of the organization.
- The staff room and activity area have proven to be useful for the mental well-being of staff.
- A canteen – or similar area – inside the building or restaurants in close proximity of the building should be considered.
- Commuting to and from the office during specific hours (morning/afternoon office commute, schooling requirements etc.) were relevant factor for the staff and hence traffic conditions during those timeframes should be researched and taken into account with the aim of ensuring that they do not hamper the work nor quality of life of staff. The provision of public transport is critical (the bus routes available in the relevant area should be sufficient). Furthermore, the proximity to the EU school should be considered. Since the European School may be moving, the traffic and overall commuting conditions during relevant times should be taken into account for parents.

- Further to the abovementioned suboptimal public transport and specific driving needs, the availability of sufficient parking spaces inside the building or in the immediate proximity had proven to be a very important factor for staff, though the costs should be considered.

Mr Savvides stated that the Staff Committee was ready to run surveys for gathering even more specific staff needs and expectations whilst assisting the management with enhancing communication and transparency.

The Administrative Board thanked very much to Mr Savvides for provided input and expressed great value for having discussion with the Staff Committee. The Board expressed satisfaction the Staff Committee was included in the project team and noted the presented positions, especially on the ratio between open space and smaller/single offices due to the analytical nature of work, as a very relevant for the longer-term solution.

The Administrative Board agreed with the approach that was presented to them by the Director. While the operational tasks are in the hands of the Director, the Board expressed preference for a 5-year solution (with focus on termination clause). The Board stressed the urgency of the process and called for a final decision on the premises file to be taken as soon as possible. In that context the Director was asked to provide the Administrative Board with the information following the meeting taking place the next week. It repeated the requirement of keeping the Board well informed and regularly briefed on the file.

- Conclusions:
- (1) The Administrative Board welcomed the Director's engagement in the file, agreed with the approach on premises' options presented by the Director and stressed the urgency of the process.
 - (2) The Administrative Board expressed strong support for one move only (for the long-term solution) also in view of budgetary constraints, time sensitivity and impact of move on staff and its work.
 - (3) The Administrative Board welcomed that the Staff Committee had been involved in the project and appreciated the expressed Staff Committee's considerations for the long-term premises.
 - (4) The Administrative Board requested to remain regularly briefed on the file also in-between the meetings and asked for the feedback on the final meeting that is to take place in the following week.

(4) Organisational Developments (Budget & Procurement Implementation, Human Resources Management, challenges for ACER recruitment and retention: European School and flexibility via teleworking)

The Vice-Chair of the Administrative Board Ms Herczog took over the chairing of the meeting from the Chair Mr Thiollière who had to leave due to travel arrangements. Ms Jordan also left the meeting due to other commitments. The two-thirds quorum (6 votes) was maintained.

The Vice-Chair invited the Agency to present the topics.

Ms Borissova, Head of Corporate Services department, provided the Board with the final implementation rate of the 2022 budget, which was very good. Overall, the Agency achieved the record high budget implementation rate (99,26%, well above the 95% threshold). The payment rate had importantly improved from last year 65,96% to this year 70,12%. This is still below the internal KPI target of 75%, but the positive trend was observed. On the revenue side, the 2022 REMIT fees were almost all collected with the exception of one case which has been ongoing in front of the court. The implementation rate of the carried-over 2021 budget was above the 95% target (95,59%). The cancelled payment appropriations of 4.41% were mainly due to: less than expected deliverables on a couple of contracts, and lower than expected actual consumption for the month of December 2022. Regarding the procurement plan, the Agency extremely surpassed the 95% target, as it achieved 150,26% execution. Total number of concluded procurement procedures in 2022 was 284, out of which 273 procedures implemented EUR 9.9m of the 2022 budget, and 11 procedures implemented EUR 1m of the 2023 budget. In that respect Ms Borissova mentioned that the growth of the Agency should be supported also by an increase of staff providing horizontal tasks such as the procurement ones because the current limited number of people performing these tasks has been unsustainable.

On the 2023 budget trends, Ms Borissova gave forewarning that according to the calculations the REMIT fees in 2023 would be lower than initially expected, while the REMIT costs foreseen for 2023 were already determined. To limit the negative impact of cutting the REMIT budget, the gap would probably needed to be addressed by a combination of two actions: by reducing the envisaged costs and by providing additional funds through the internal budgetary reshuffles.

Ms Borissova also informed the Board that following the December 2022 discussion, the Agency took a measure to simplify the internal payment procedure for the reimbursement of costs for the Administrative Board meetings. It was decided to abolish one internal administrative step. Since January 2023, a person from financial unit Ms Matea JAKIN would be the direct contact point for the Administrative Board members on the reimbursement (in close contact with the Administrative board Secretariat to ensure the four eyes principle control).

Ms Borissova informed that given the Agency's recruitment trajectory the recruitment remains the top priority for the Human Resources team. 21 new positions were allocated to the Agency for 2023 and as of January 2023, the Agency has 29 vacant positions in total to fill in. Currently 7 selection procedures were ongoing, while the Agency aims to publish selection notices for all the remaining vacant positions in Q1 2023. 6 vacant posts for non-statutory staff (trainees and interim) would be recruited in Q1 2023.

In relation with the recruitment policy, the Agency raised to the attention of the Administrative Board two issues that have been a major source of concern for the existing staff, but also for the potential newcomers.

The first issue has been the worrying situation of the secondary level at the European School Ljubljana that does not seem to meet the standards in terms of size and adequacy of premises and above all in the quality of education. The latter goes primarily with the lack of teachers who would be able to cover the EU syllabus and teach the subject in the language of the pupils. As reported already at December meeting, the Agency has been trying to improve the situation with a different set of activities vis-à-vis the Slovene authorities and other actors (e.g. aligning with the European Commission Representation in Slovenia that also voices concerns regarding the European school secondary level). So far, the parents employed at ACER having children at the secondary grade had been assessing the progress of the school in addressing this issue as not satisfactory. All in all, the situation carried significant risk for retention of key staff if not mitigated. Hence, and drawing on past practices, the Corporate Service and the Director of the Agency informed the Administrative Board that they were looking into the current Administrative Board Decision possibly to subsidize the costs of other secondary schools in Ljubljana for staff (meaning only for a certain group of children) for a limited period of time, until the European School is providing the complete education cycle in line with the required European School standards.

The second issue causing concern among staff are the rules on new ways of working, in particular on the flexibility of teleworking from abroad. The Director emphasised that this remained the top priority issue in his discussions with the Staff Committee. He recalled that the Administrative Board adopted at its December 2022 meeting the Decision No. 19/2022 on the opt-out from the Commission Decision C(2022) 1788 final of 24 March 2022 on working time and hybrid working, this leading to the current follow-up discussion on the appropriate way forward given different options for tackling the aforementioned concerns.

The Director stressed that in the current context – an unprecedented energy crisis impacting the EU, likely making for tight gas markets for at least the next two years, providing significant short and medium term challenges for the Agency (including the new, highly politically sensitive tasks granted to the Agency as per the preceding agenda items) – there was a very strong premium for the Agency in ‘not rocking the boat’ vis-à-vis staff so as to ensure retention and recruitment. Hence, relying on a similar teleworking regime as currently in place would seem necessary. The recent recruitment rounds as well as the ongoing dialogue with current staff demonstrated that flexibility in teleworking, in particular from afar, was a high priority and an expectation from many. As a result, the Director was inclined to apply the new EU Agencies Model Decision, taking account of the current extraordinary circumstances, so as to keep a flexibility regime similar to the one currently in place. This he would be inclined to do for a time-limited period of two years, from the expected entry into force this spring of the new EU Agencies Model Decision, this per the likely continued tight gas market situation up ahead.

The Administrative Board congratulated the Agency on a very good 2022 budget execution, which confirmed the good budget planning. It also thanked the Agency for the regular and timely discussion on the budgetary issues throughout the year. The Board however pointed out that the size of carry-over funds still warranted attention, as the volume has been increasing over the years and it shouldn't become unsustainable. Moreover, it was recommended to improve the payments target to reach the internal target of 75%. On the anticipated lower 2023 REMIT fee revenue, it was concurred that no increase of the EU subsidy to cover the gap between REMIT revenues and anticipated costs could be envisaged, especially as the net volume of REMIT fees has been increasing over the years. It was stressed that the recruitments linked with the implementation of the emergency regulations were top priority in order to get new staff employed as soon as possible. On the schooling issue and telework regime, the Administrative Board acknowledged that in both cases there were very relevant arguments for the Agency to take account of the current extraordinary circumstances facing the Agency so as to make sure retention and recruitment for the Agency was not put at risk. The Board also pointed that the Agency like all the other EU institutions would be impacted by the broader context of the next multiannual financial framework and size of its administrative heading.

- Conclusions: (1) The Administrative Board congratulated the Agency for a very good 2022 budget execution. However, it pointed that the Agency should in future pay attention to the size of the carry-forward funds and payment execution.
- (2) The Administrative Board confirmed that the Agency's top priority remained the planned recruitments assigned by the emergency regulations in order to employ new staff as quickly as possible.
- (3) The Administrative Board was acquainted with the challenges the Agency faces to retain the existing staff and recruit new colleagues (notably on the quality of secondary schooling in the European School, value of flexibility and teleworking) and agreed there were very relevant arguments for the Agency to take account of the current extraordinary circumstances facing the Agency so as not to put retention and recruitment at risk.

(5) The draft Single Programming Document for the years 2024 – 2026

The Vice-Chair Ms Herczog invited Ms Borissova, Head of Corporate Services department, to present the draft Single Programming Document 2024-2026. Ms Borissova recalled that that the outline of the document had been discussed by the Board already at the December 2022 meeting and informed that since then Boards' comments were incorporated in the document. She thanked in particular to the rapporteur for the programming documents Mr B. Chirîtoiu for the useful deliberations in the preparation of the draft document.

The Director emphasised that based upon the lessons learnt in the last 12-18 months related to the rapidly changing context and fast evolving role of the Agency, the Agency refined the 2024-2026 programming document in a way to adjoin the planning cycle with a much greater need than before for the flexibility, efficiency and agility, while ensuring the resilience in implementing its tasks. The flexibility and agility would be captured in two out of five Agency's strategic goals: in the strategic goal of "Agency's contribution to addressing longer-term regulatory challenges" and above all in a newly introduced strategic goal "Ensuring resilience, efficiency and agility of the Agency". The flexibility would be captured through various strands: by flexible yearly realignment to real-time developments and requests within the multi-year planning perspective, by the implementation of different organisational initiatives aimed at achieving efficiency gains (e.g. internal mobility, cross-departmental project groups like the one on the emergency tasks, process redesign and automation, etc.), but also by more regular assessment of the prioritisation system and by more operational risk management.

Mr V. Ilić, Quality Management Assistant, explained the alignment of the set five strategic goals with the concrete strategic actions that would be monitored through annual targets/outputs and defined Key Performance Indicators.

Ms Borissova provided also the procedural context of the document. She informed that the BoR issued a favourable opinion to the document a day before (on 25 January 2023). After its positive endorsement by the Administrative Board, the Agency would submit the draft document to the three EU institution by the legal deadline of 31 January for its further deliberations. The procedure would resume in the second half of the year after receiving European Commission's comments on a draft document.

The Administrative Board pointed to the fact that in near future ACER might be assigned with new tasks, hence suggested to regularly continue with the deliberations on the impact of trends and developments on the programming document. The Board assessed that in spite of high volatility of the current environment the draft document was well prepared for the start of the procedural cycle. It was recommended that it should reflect also some horizontal initiatives (e.g. the security union) that have impact on the sector.

Conclusion: (1) The Administrative Board endorsed by unanimity the draft Single Programming Document 2024-2026 which can be transmitted to the EU institutions by 31 January.

AOB

The ACER Director informed the Administrative Board about the two invitations he had received in January 2023 by two different entities to engage in their activities. First is the invitation of EU agency Europol to become a member of its Disciplinary Board. The invitation is linked with the Staff Regulations requirement that each EU institution/agency should establish a Disciplinary Board for carrying out the disciplinary proceedings within the EU institution/agency. Europol has currently been renewing the composition of its Disciplinary Board which should be composed of a chair and four full members, in grade AD 14 or above, and invited the ACER Director to become a member.

The second invitation was addressed by the Florence School of Regulation (FSR) which invited the ACER Director to become a member of its new Advisory Board. The Advisory Board would be a smaller group of high-level representatives of EU institutions and bodies that would meet twice a year only to provide a high-level steer to the topical policy and regulatory energy issues.

Mr Zinglarsen explained that the Europol invitation should be probably assessed in the context of the cooperation between the EU agencies and as a duty of being a civil servant at a certain grade, while the FSR invitation was considered as of direct interest for the Agency's work.

The Administrative Board stated that both invitations could be understood as recognition of ACER and its work. It concluded that the invitation of the Europol was understood as the statutory requirement that could be accepted. However, the Board concluded that the engagement with the FSR should be declared as an outside activity and thus submitted for the approval to the Administrative Board either via written procedure or at the next Administrative Board meeting.

CONCLUSION

The Vice-Chair Ms Herczog invited the Administrative Board to the 58th ordinary meeting that will take place on 22 June 2023 in Ljubljana. Following the discussion on the format of the meetings, it might take place two half days (starting on 21 June) or one full day, depending on the agenda.

The meeting closed at 13h00.