



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

***– 51<sup>th</sup> Meeting –  
– Ordinary Session –***

**Thursday, 16 December 2021, 10:00 — 15:00**

**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> |
| Mr Michel THIOLLIERE, | <i>Member</i>    | Ms Edit HERCZOG,          | <i>Member</i>     |
| Mr Bogdan CHIRIȚOIU,  | <i>Member</i>    | Ms Karin LUNNING          | <i>Member</i>     |
| Mr Eberhard HOLSTEIN, | <i>Alternate</i> | Ms Romana JORDAN          | <i>Member</i>     |
| Mr Pal KOVÁCS,        | <i>Alternate</i> | Mr Christof LESSENICH     | <i>Member</i>     |
| Ms Britta THOMSEN,    | <i>Alternate</i> | Ms Cristina CUADRA-GARCIA | <i>Alternate</i>  |

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

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 50<sup>th</sup> MEETING OF THE ADMINISTRATIVE BOARD**

At the 51<sup>st</sup> meeting, the Administrative Board:

- (1) took note of the conclusion of the conflict of interests assessment for the year 2021 for the Administrative Board, the Board of Regulators, the Working Groups and the Task Force chairs;
- (2) adopted, by unanimity, the amendment to ACER 2021 budget, in light of the discrepancy between the REMIT fees anticipated and as collected;
- (3) invited ACER Director to reintroduce the past practice of providing to the Administrative Board with regular updates on budget developments and budget achievement rates;
- (4) tasked ACER Director to present at the 52<sup>nd</sup> Meeting of the Administrative Board a solution, in agreement with the Chair of the Board of Appeal, addressing the needs of the Board of Appeal for additional human resource, with a legal profile and sufficient seniority, enabling the Registry to ensure business continuity and procedural/legal support to the Board of Appeal in handling the very demanding workload and the procedural complexities faced;
- (5) adopted, by unanimity, the Programming Document 2022-2024, inviting ACER Director to provide in the future relevant information related to any amendments of the Programming Documents at an early stage and involve the Administrative Board before submitting the act to the Board of Regulators for its favourable Opinion;
- (6) adopted by unanimity ACER Budget and Establishment Plan for the financial year 2022;
- (7) adopted by unanimity i) the Anti-Fraud Strategy 2022-2024 and ii) the Action Plan containing the objectives and mitigating measures to address the risks identified through the risk assessment exercise performed by the Agency;
- (8) appointed Ms JORDAN, Member of the Administrative Board, and the Director-General of DG ENER as Reporting Officers for the performance appraisal of the Director for the period starting from 1 October 2020 until 31 December 2021.

## **III. MINUTES**

### **SESSION I**

#### **SECTION I – OPENING**

The 51<sup>st</sup> meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 16 December 2021. The meeting started at 10h00.

Before adopting the Agenda, the Chair explained that the amendment of the Conflict of Interests Policy of the Agency should have been moved to the 53<sup>rd</sup> meeting of the Administrative Board to allow sufficient time to review the draft in accordance with Article 19(1)(o) ACER Regulation. Therefore, the Chair asked the Members and Alternates of the Administrative Board to adopt the Agenda as circulated, with the exception of the adoption of the new Conflict of Interests of the Agency.

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 actual or potential interest was declared or reported.

The Chair informed that the Review Panel has concluded the Report on the Conflict of Interest assessment for the Administrative Board, explaining that due to the delays in the implementation of the IT tool for the submission of Declarations of Interests and Declarations of Commitment through the website, Members and Alternates were requested to provide by 15 October 2021 their respective Declaration of Interests, CV (in case of any changes or updates from the last CV submitted) and Declaration of Commitment. Overall, the Chair informed that 11 Members and Alternates of the Administrative Board were found to pertain to level risk 1, while 6 Members and Alternates belong to risk level 2, according to the classification provided in point 4.2.3.3 of the Conflict of Interest Policy of the Agency. No Members or Alternates were identified as level 3 risk.

The Chair also reported that on 25 May 2021, the Review Panel of the Board of Regulators also concluded the 2021 Conflict of Interest assessment for Members and Alternates of the Board of Regulators, Working Group and Task Force chairs. Based on the assessment of the information provided, no conflict of interests were identified. He explained that in two cases, the Review Panel of the Board of Regulators identified or considered potential or perceived conflict of interests and it contacted the relevant national regulatory authority. The Board of Regulators received reassurance that the relevant national procedures were sufficient to manage any potential perceived conflict.

## **(1) Approval of the Agenda**

The Agenda of the 51<sup>st</sup> meeting of the Administrative Board was approved as follows:

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|---|--|
| <i>OPENING</i><br>10:00 -10:10  | <b>Opening of the 51<sup>st</sup> Meeting of the Administrative Board</b><br><i>Adoption of the Agenda and Declaration of Interests</i><br><i>Report on the Conflict of Interest Review Panel Conclusion</i>   |
| <i>REPORTING,<br/>INFORMATION<br/>, AND<br/>INTERNAL<br/>FUNCTIONING<br/>OF THE<br/>AGENCY</i><br>10:10-15:00 | <b>Amendment to ACER Budget 2021 and budget developments</b><br><i>Presentation by the Head of Corporate Service</i><br><i>Question time on budget development</i><br><b>Board of Appeal Report by the Board of Appeal Chair</b><br><i>Presentation by Miro Prek, Chair of the Board of Appeal</i><br><br><b>Single Programming Document 2022-2024</b><br><i>Presentation by the Agency's Services</i><br><br><b>Budget and establishment plan for the financial year 2022</b><br><i>Presentation by the Director</i><br><br><b>The Agency's Anti-Fraud Strategy 2022-2024</b><br><i>Presentation by the Agency's services</i><br><br><b>Appointment of Reporting Officers – ACER Director – Years 2020-2021</b> |

## **Report on the Agency's activities**

*Presentation by the Director on Acer preliminary assessment of Europe's high energy prices and the current wholesale electricity market*

## **Report on the activities of the Board of Regulators**

*Presentation by the Chair of the Board of Regulators*

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### **CLOSURE**

15:00-15:05

### **Invitation to the 52<sup>nd</sup> Meeting of the Administrative Board**

**AoB**

## **SECTION II – REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY**

### **(2) Amendment to ACER Budget 2021 and budget developments**

#### **2.1 Presentation by the Head of the Corporate Services**

The Chair of the Administrative Board invited Ms BORISSOVA, Head of Corporate Services of the Agency, to present the topic.

Ms BORISSOVA recalled upon adoption of the ACER Budget 2021 it was pointed out that the budget corresponded to a planned amount based on the Agency's anticipated number of collected fees under REMIT. She explained that according to the applicable provisions, if the revenue arising from the fees results to be different from the anticipated amount, than an amendment of the Budget 2021 is required. In this respect, Ms BORISSOVA informed that the total revenue and expenditures of the Agency for the financial year 2021 needs to be reduced by the difference between the initially planned revenue (from the anticipated REMIT fees) and the revenue actually established (from the collected REMIT fees), as the total amount of debit notes was lower than the one originally anticipated.

Ms BORISSOVA informed that the proposed amendment consisted in balancing the budget and recognizing the difference, in line with Regulation (EU) 2019/942 and the Financial Regulation; to this end, ACER Director proposed to amend the Administrative Board Decision 19/2020 of 21 December 2020 on the budget, which requires a voting from the Administrative Board.

Upon request of the Chair, Ms BORISSOVA also provided the Administrative Board with an overview of the increases of expenditures.

- Conclusion:**
- (1) The Administrative Board adopted the amendment to the Agency Budget 2021 by anonymity.
  - (2) The Administrative Board invited ACER to provide a regular update on the budget implementation and budget achievement rate, in the form of a short visual presentation, to identify immediately significant increases or decreases in specific budget lines.

### **(3) Board of Appeal – Report by the Board of Appeal Chair**

The Chair introduced Mr PREK, the newly appointed Chair of the Board of Appeal, recalling that following the substantial increase in the number of appeals against the Agency's decisions, the Administrative Board devoted a significant amount of time in 2020 and 2021 to find a viable solution for securing the full-functioning of the Board of Appeal.

The Chair informed that on 24 November 2021, the Board of Appeal met in extraordinary session and identified a number of challenges that could affect the full-function of the Board of Appeal. He then invited Mr PREK to provide his views on the identified challenges and constraints of the Board of Appeal.

Mr PREK emphasised the very demanding workload faced by the Board of Appeal and stressed the importance to contribute in an effective and efficient way to the mandate of the Agency and to guarantee its independence; at the same time, he underlined the importance of undertaking control of complex, legal, technical and economic assessments of the Agency's decisions, reducing the scope for successful litigation before the EU Judicature. He opined that by delivering high quality decisions, even if those are later challenged before the EU Judicature, the process to review them will be shorter, without hindering for too long the functioning of the internal energy market.

Mr PREK explained the composition of the Board of Appeal and congratulated the Administrative Board for its selection, which ensures a well-balanced composition in terms of geography, professional background and gender balance. He then highlighted the workload of the Board of Appeal in the past years, informing that up until 2018 there were almost no cases, followed by a steady increase until 2020, and 14 cases in 2021, with an expectation that the number of cases will remain the same or will increase in future years.

Moreover, Mr PREK reported that one of the main challenges faced by the Board of Appeal is issuing a decision within four calendar months, according to the terms of the Regulation (EU) 2019/942; he emphasised that the real problem is when several appeals run in parallel, which was the situation of the first semester of 2021 with 12 appeals, while 2 appeals were running in parallel during the second semester of 2021. He also explained that while the Registry and the Board of Appeal need to work in synchronicity (respectively on procedure and substance), additional procedural complexity is provided by interveners and multiple appellants. He also pointed out that the current IT tools do not facilitate the management of cases.

With regard to workload, Mr PREK informed that for each appeal there are on average 350 communications of different length and complexity to be assessed from a legal perspective, and aggressive litigators are looking for procedural errors to challenge the appeal procedure and to have the decision annulled (there are on average 30 communications from or to appellants, which expose the Registry to procedural errors), instead of progressing on the substance.

Mr PREK mentioned also an increased public interest in the Board of Appeal's public hearings (21 individuals attended in 2021), which is a positive aspect, but on the other side it means additional work for the Registry.

Mr PREK informed that there are currently 16 appeals against Board of Appeal's Decisions lodged before EU courts, which means that if annulled, the Board of Appeal would be required to adopt new decisions; he pointed out that so far, 2 out of 3 Board of Appeal's Decisions have been annulled by the General Court, while a decision on the *Aquind* case is still pending before the Court of Justice of the European Union.

Mr PREK explained that the Call for Expression of Interest for the Members and Alternates of the Board of Appeal foreseen at least 10 appeals in 2022, which means an average of 3500 communications, of different length, to be legally assessed and registered, as well as 300 contentious communications to be thoroughly addressed from a legal perspective, while there are only 214 working days established for the Registry of the Board of Appeal (an average of 16 documents to be reviewed and legally checked by the Registry, among which almost 1.5 contentious communications).

Mr PREK proceeded by explaining that the function of the Registry supports the Board of Appeal in the handling cases and in the overall organization of activities, while being the entry point of appeal cases by performing an admissibility check, registering documents and dispatching communications. He added that the Registry supports the Chair and the Rapporteur, while assisting also with horizontal activities (induction, review of processes and procedures, support in the developments of the Board of Appeal IT tools etc.).

Mr PREK then focused on the handling of the Registry function in the past, observing that until 2020 the function was covered by one staff member, while from 2020-2021 it was performed by two experienced lawyers (part-time) and as of August 2021, it was covered only by one experienced lawyer (part-time). Mr PREK stressed that in the Board of Appeal's view, full-time continuous support is essential to ensure that the Board of Appeal fulfils its mandate in the Agency's interest. He added that given the expected workload and litigants' approach, the potential for procedural mistakes is high and the full functionality of the Board of Appeal can potentially be hindered.

Moreover, Mr PREK mentioned the Commission's Opinion of 5 October 2021 on the Agency Programming Document 2022-2024, supported a second FTE to the Registrar function for the Board of Appeal, arguing that the legal assistant (TA AST4) must be recruited shortly after the start of the mandate of the new Board of Appeal (hence in 2022). According to Mr PREK, this is an indispensable condition to guarantee the appropriate functioning of the Board of Appeal at a certain minimum level of standard.

Mr PREK also reported that during the extraordinary meeting of the Board of Appeal held on 24 November 2021, it was decided unanimously to invite the Agency to assign to the Registry one FTE with adequate seniority and functionally independent from the Agency's services, on an exclusive basis and as a matter of urgency, and to request the Agency to develop IT tools further; he added that in the Board of Appeal's view, this would ensure adequate business continuity in the handling of appeal cases, as well as the full-functioning of the Board of Appeal, minimising the risks of procedural errors facilitated by the heavy workload of the Registry.

The Administrative Board commented on the importance of the decisions undertaken by the Board of Appeal, especially for the credibility of the Agency, and enquired whether the Board of Appeal could rely on different legal services from national regulatory authorities for the future.

Mr PREK informed that the Board of Appeal is putting a lot of emphasis on being independent, in its functioning, communications and in its reliance on resources and added that seconded national experts work for the Agency for a limited period and therefore, this would not be the preferred solution as unstable working conditions expose the registry to costs of hand-over and re-training of staff. With regard to the annulment of the two Board of Appeal's Decisions, Mr PREK recalled the *Aquind* case, explaining that the General Court focused on substantive issues, and found that the Board of Appeal should perform a full assessment of the Agency's decisions.

The Director welcomed the diversity and the expertise of the new Board of Appeal and agreed with the need to provide continuity to the Registrar function. In this regard, he pictured the possibility to employ a junior staff in the legal team and there may be some secretarial assistance coming up in the future. With regard to the AST grade position, he explained that considering the rise in recruitment, this might have to be allocated to the HR Department. In relation to IT tools for the Board of Appeal, he informed that there are allocated resources for it, which is expected to move forward by next year.

The Director further opined that the Agency needs more legal staff to help with the Agency's decisions while they are being developed, as opposed to providing support in the appeal phase and observed that it is easier to outsource legal experts for an appeal, than outsourcing during the development of the initial decision, reason why a gradual growth in legal resources is needed.

In Mr PREK maintained that the Registry should not rely on junior staff as the tasks entails a sufficient level of seniority to allow a proper back-up of the Registrar. Following the Commission's proposal, assigning the Registrar function to one person full-time, would go in this direction.

- Conclusion:*
- (1) The Administrative Board supported the Board of Appeal and expressed concerns for the limited available resources having the potential to impact upon the full-functionality of the Board of Appeal.
  - (2) The Administrative Board tasked ACER Director to present at the 52nd Meeting of the Administrative Board a solution, in agreement with the Chair of the Board of Appeal, addressing the needs of the Board of Appeal for additional human resource, with a legal profile and sufficient seniority, enabling the Registry to ensure business continuity and procedural/legal support to the Board of Appeal in handling the very demanding workload and the procedural complexities faced

#### **(4) Single Programming Document 2022-2024**

The Chair recalled that the Agency's Draft Programming Document 2022-2024 is due for adoption by the end of 2021 and includes the Work Programme with all the planned operational activities and tasks for 2022. He informed that the Commission provided its Opinion last 5 October 2021.

The Chair also recalled that the EU budget for 2022 has been adopted on 24 November 2021, and the Agency has adjusted the budget and human resources in the Programming Document 2022-2024 accordingly; he pointed out that the Programming Document was submitted after the deadline foreseen in the Rules of Procedure, and therefore, in order to enable an informed discussion, the Chair asked the Agency to provide a detailed overview of the allocation of resources. The Chair reported that on 15 December 2021, the Board of Regulators approved the Programming Document 2022-2024.

The Chair allowed the Director to introduce the item, followed by a presentation from Mr BELOGLAVEC, Team Leader of Planning, Reporting and Horizontal Policies in the Agency.

The Director recalled the difficult circumstances of the year 2021, including the pandemic and the impacts on services, especially on the resources front (for legal, electricity and REMIT departments); he explained that with the REMIT fees model, financial resources are more stable for the future, and mentioned a gradual growth trajectory on human resources, which will possibly be enhanced by the Gas Package, which foresees a number of new tasks and resources for the Agency.

The Director explained that at the outset of 2021, two broader high-level strategic challenges were identified, one on human resources and the other one on the visibility of the Agency on key priority files. He observed that with the outcome of the 2022 budget and the multiannual outlook for a gradual growth trajectory on the human resources front, the situation is improving in comparison to the beginning of the year. He added that visibility of the Agency is also improving.



With regard to investments related to the internal life of the Agency (cultural, HR, and leadership oriented priorities) both in terms of time and financial resources, the Director informed that the Agency is working on feedback processes, as well as on work spaces, adjusting them to the new ways of working. He added that the Agency is trying to focus significantly on professional development of staff and management and there is an idea of developing an 'Acer Academy', implementing a more structural approach to professional development efforts in the coming years, along plans to develop appraisals (more focused on improvements), and other developments on the leadership side.

Mr BELOGLAVEC recalled that the Programming Document was already presented to the Administrative Board back in January 2021, and later sent to the Commission, which provided its formal Opinion. He informed that the background of the document has not changed, but there have been some changes to resources, mainly because back in January, the Agency did not know the exact level of resources that it would have received, and the budget has been adopted on 24 of November 2021 (now fully reflected in the new version of the document). He added that the specific challenges and tasks remain the same: monitoring the implementations and effects of Electricity and Gas Network Codes and Guidelines, REMIT (crucial at the time of price spikes in terms of trust in the market), and contribution to the EU's energy infrastructure challenge (TEN-E).

Mr BELOGLAVEC explained that there are additional tasks possibly allocated to the Agency in the coming years (for example in relation to the upcoming Gas Package) but at this stage, those are not included in the document. Overall, he observed that the changes introduced by the last version of the Programming Document are minor, also because the Commission already provided its Opinion, while the Programming Document 2023 may look slightly different, also in terms of the Agency's definition of activities.

Mr BELOGLAVEC further explained that in the new versions of the Programming Document, there has been an adjustment on resources and allocation of the budget per activity, as well as some minor factual amendments and edits, while the Commission Opinion has been taken into account and reflected in the document. He also informed that on 15 December 2021, the Programming Document 2022-2024 received the Favourable Opinion of the Board of Regulators, explaining that the Board of Regulators' discussion led to one minor amendment within the document, which slightly changed the focus of the wholesale electricity volume of the Market Monitoring Report.

The Director clarified that last October, in its 'tool box communication' the Commission requested the Agency to provide an assessment about the benefits and drawbacks of the current electricity market design in Europe by April (which required an internal redistribution of resources), as well as a preparatory work on the demand-side flexibility network code. He explained that in order to suit these priorities, the Agency adjusted the approach to the Market Monitoring Report (as far as electricity wholesale is concerned), and this was discussed at the last meeting of the Board of Regulators. Overall, he mentioned that there is substantial work going on, but instead of having a full report on electricity wholesale, the report will point on the April deliverables and the monitoring report on the 70% target (related to how much cross-zonal capacity needs to be allocated for trade in electricity between borders) and adequacy.

The Director then focused on resource distribution and the envisaged allocation of new positions in 2022 and informed that there have been a number of discussions across the senior management of the Agency, explaining that the followings principles were taken into account: i) the alignment with the broader direction of the Commission's proposal (with a few adjustments for types of contracts or grades when deemed necessary for the Agency needs), including the reinforcement of the legal services unit and REMIT departments, along with addressing new issues such as Brexit and the administrative arrangements negotiated with the UK regulatory authority, as well as cyber security; ii) a multiannual staffing perspective, starting with 2022 and 2023, streamlining further the organisation

when it comes to strategic approaches and more horizontal tasks in nature; iii) assessment of available grades and types of contracts, to achieve an optimal outcome; iv) flexible approach to the significant increase in seconded national experts' positions, from either national regulatory authorities or other public authorities (from 4 to 10).

The Director clarified that for legal services, there were two positions envisaged in the Commission Opinion and the Agency will implement two high seniority positions at AD7 grade, one being a transfer from the Infrastructure, Gas and Retail Team due to retirement. In relation to the REMIT departments, he informed that there will be six positions (as envisaged in the Commission's Opinion), a contract agent position for the MIT Department and a seconded national expert positions for the MSC Department; with regard to the Electricity Department, the Director explained that there is a plan to add resources for cyber security, possibly an AD7 grade for 2023, unless the position can be filled by an SNE. As per the HR Department, he mentioned that the Agency believes that an AST position would be a good fit to reinforce the HR Team in 2022, although this was not envisaged in the Commission Opinion.

The Director further explained that there are a number of horizontal processes, including Brexit; he informed that there was a discussion as to whether the MIT Department needs an FGIV position or an AD5 position, but it seems that there are currently FGIV candidates in existing reserve lists that could cover the position. With regard to the Board of Appeal, he stressed that the Agency wants to make sure that there is adequate external legal counsel for individual files, along with a robust Registrar function, as well as secretarial assistance to be allocated to Legal Services.

The Administrative Board expressed support for the document, observing that the share of resources FTEs allocated is respected, although the type of FTEs are not entirely respected, and there is a need to avoid financial implications that result from a more expensive or less expensive fee category moved from one part to another. The Administrative Board also mentioned the recent adoption of the Gas Package proposal, which has a financial statement attached to it concerning also the Agency's resources. In addition, it observed an increase in numbers of interim staff, from 10 to 16 and then a further increase of interim staff for 2022 and enquired about the reasons behind it.

The Administrative Board also observed that there seem to be an increase in investments, especially in the electricity sector, and asked to clarify whether this has an impact on the regulatory work of the Agency with respect to the Guidelines on the network codes, and on the Projects of Common Interest (especially for interconnections). The Administrative Board also asked clarifications in relation to the priorities of the Programming Document, the reasons for outsourcing in different areas, as well as the current position of the Board of Appeal in the Programming Document, including clarifications as to how the Commission's request was incorporated or taken into account.

The Director agree that the demarcation between what is fee financed and subsidy financed needs to be observed, especially in light of the new structure of the budget. With regard to the recent proposal of the Gas Package, the Director confirmed that there seem to be envisaged a significant reinforcement of the Agency, aligned with new tasks and mandates, and confirmed that human resources will grow significantly over the next three to five years. With regard to the increase of interims, the Director explained that they help the Agency with a number of priority tasks, including for REMIT, and clarified that with the move towards a gradual growth trajectory over the coming years, the Agency will rely less on interim assistants of a temporary nature.

In relation to the increasing investments in electricity, he noted that there is a significant need for deployment of generation and grid reinforcement, which entail better utilization of existing infrastructures and ensuring a right incentive framework for network operators. The Director explained that this affects the Agency' approach to infrastructure related tasks.

With regard to outsourcing, the Director explained that there have been significant investments in IT outsourcing, which will also continue in the future, while outsourcing of a temporary nature will be needed to meet some organizational HR development priorities. With regard to legal services, the Director informed that the Agency has been looking into different options including outsourcing and explained that considering the significant increase in appeals, it would be wise to have external legal assistance, especially for litigation before EU courts, and also for a number of Board of Appeal's cases. In relation to the latter, he clarified that the Agency priority for the next years is to reinforce the legal services and the Registrar function, including providing the Board of Appeal with adequate legal and technical assistance, as well as some secretarial support. With regard to the Commission's proposal envisaging two staff members for 2022, the Director clarified that for one of the profiles, the Agency wish to have a higher seniority profile.

Overall, the Director opined that the Programming Document is overall in line with the Commission's Opinion for 2022, stressing priorities towards the reinforcement of the legal services, the two REMIT departments, new tasks such as Brexit and cyber security, as well as reinforcement of HR with an AST grade position.

With regard to outsourcing legal experts, the Administrative Board suggested to estimate the volume of litigation and then calculate whether it would be more convenient to outsource legal support or invest in internal legal resources. The Director agreed that with the exception of litigation before EU courts, it would be cheaper to have an internal increase of high quality lawyers, but this requires financial resources and head count allowance, and therefore, the forecast for the future would still be a mix of internal and external legal resources.

The Administrative Board indicated that ACER should maintain consistency in its position, priorities and resource allocation, between the January Draft Programming Document and the Programming Document to be adopted in December.

In this respect, the Director clarified that there is an envisaged strengthening of the legal services, maintaining the two positions originally envisaged, although one with higher seniority, in line with the identified priorities laid down in January; he explained that at the same time, there are other needs across the Agency and the HR reinforcement came about as a consequence of the new allocation of resources.

- Conclusion:*
- (1) The Administrative Board adopted the Programming Document 2022-2024 without going to written procedure.
  - (2) The Administrative Board invited ACER Director to urgently address the needs identified by the Board of Appeal, so as to ensure its full functioning, and to present a solution agreed with the Board of Appeal at the 52nd Meeting of the Administrative Board.
  - (3) The Administrative Board tasked ACER Director to provide relevant information about any amendments to the Programming Documents before their submission to the Board of Regulators, in order to allow the Administrative Board to be involved in the decision-making process.

## **(5) Budget and Establishment Plan for the financial year 2022**

Upon invitation of the Chair, Ms BORISSOVA presented the Budget and Establishment Plan for the financial year 2022. She began by explaining that along with the Programming Document, there must be a specific Decision of the Administrative Board on the budget, as adopted by the Budgetary Authority, including also the Establishment Plan.

She informed that the total budget for the financial year 2022 has increased in comparison with 2021, due to the budget received for one FTE allocated under the TEN-E legislation, while all the other resources will be covered by the current subsidies and the current fees collected. However, she explained that in nominal terms, the increase is also due to the fact that every year the EU subsidised, as well as the fees of the Agency are indexed; hence, in nominal terms there is a growth, but in real terms it is just an indexation absorbed by many other aspects in the budget, which are also under an indexation.

With regard to resources, she informed that in total there is an equivalent of 12 additional full time resources received, although the Establishment Plan reflects only an increase of five temporary agents, hence the total number of temporary agents as per the Establishment Plan is 76 temporary agents.

- Conclusion:*
- (1) The Administrative Board adopted by unanimity the Budget and Establishment Plan for the year 2022.
  - (2) The Administrative Board tasked ACER services to report about the budget developments across the year.

## **(6) The Agency's Anti-Fraud Strategy 2022-2024**

The Chair explained that the Anti-Fraud strategy serve as a management tool to ensure progress and transparency, while protecting the Agency and the European Union's reputation. He recalled that the Agency's latest strategy for the years 2019-2021 was adopted with Decision No 6/2019 of the Administrative Board, and since the strategy expires by the end of the year, the Agency was due to prepare a new strategy to be implemented in the years 2022-2024.

Upon invitation of the Chair, Ms BORISSOVA presented the Agency Anti-Fraud Strategy 2022-2024, informing the Administrative Board about the main changes. She reported that the implementation of the Anti-Fraud Strategy Action Plan 2019-2021 was monitored very closely and it was found that regular actions were implemented according to timelines; she also explained that the Standard Operating Procedure was approved internally following the OLAF Recommendations, but its implementation is pending OLAF's final approval. She further informed that information security has been subject to a series of implementing measures in accordance with the Internal Audit Action Plan.

She explained that the building blocks of the new Anti-Fraud Strategy are very similar to the previous one; nevertheless, every three years the Agency needs to update the Strategy based on the Action Plan implementation and a reassessment of the risks.

Ms BORISSOVA explained that the basis for this exercise is the Anti-Fraud Strategy of the Commission, while OLAF Methodology and guideline to decentralized agencies indicates that all the risk assessment and follow up actions have to be proportionate to the risk level of the institution and to the resources allocated. She also clarified that the anti-fraud risk assessment is part of the risk management exercise, which is performed twice a year. As part of the building blocks, she mentioned guidelines on whistleblowing, policy and procedure for management of sensitive functions, as well as ethics and integrity measures. She also added that the Implementation Report was part of the Agency Fact Sheet provided to the Administrative Board, which shows all the actions implemented and the level of responsibility undertaken by the different units.

Ms BORISSOVA explained that the strategic objectives of the Strategy did not change, mainly 1) maintaining and enhancing anti-fraud culture, 2) strengthening measures for detection of suspicious behaviors, including efficient reporting of suspected irregularities, and 3) implementing all actions necessary for fraud risk mitigation (also identified through internal assessment and external audits).

- Conclusion:*
- (1) The Administrative Board welcomed the new fraud risk assessment exercise performed in October 2021 and the draft Anti-Fraud Strategy for the period 2022-2024, along with the Action Plan containing the objectives and mitigating measures to address the identified risks.
  - (2) The Administrative Board adopted the Anti-Fraud Strategy of the Agency for the period 2022-2024 by unanimity.

## **(7) *Appointment of Reporting Officers – ACER Director – Years 2020-2021***

The Chair recalled that the Director successfully passed the nine months probationary period, confirmed by a probationary period report in line with Decision AB No 26/2011 and explained that upon written agreement with the Director, it was decided to combine the performance appraisal for the remaining three months of the year 2020 (1 October 2020-31 December 2020) with the performance appraisal for the reference period 1 January 2021-31 December 2021.

The Chair indicated that the Administrative Board is called to appoint two Reporting Officers to assess the performance of the Director over the assessment period (one being a representative of the Commission). He mentioned that Dr JORDAN is still available to act as reporting officer for the above-mentioned period, while the Commission confirmed the availability of DG ENER Director-General.

- Conclusion:*
- (1) The Administrative Board adopted by unanimity the decision on the appointment of Ms JORDAN and the Director-General of DG ENER as Reporting Officers for the performance appraisal of the Director for the reference period from 1 October 2020 to 31 December 2021.
  - (2) The Administrative Board informed that at the end of the appraisal, the Reporting Officers are invited to report to the Administrative Board.

## **(8) *Report on the Agency's activities***

Upon invitation of the Chair, the Director presented the Agency preliminary assessment of Europe's high energy prices and the current wholesale electricity market.

## **(9) *Report on the activities of the Board of Regulators***

Ms POLETTI, Chair of the Board of Regulators provided an update on the activities of the board of Regulators.

## **CONCLUSION**

The Chair invited the Administrative Board to the 52nd Meeting, which will take place on the 27<sup>th</sup> of January 2022 in Ljubljana, providing that the epidemiological situation will allow so.