

Board of Appeal

<p><u>PUBLIC VERSION</u></p> <p>MINUTES</p> <p>9th Board of Appeal meeting (restricted)</p> <p>Tuesday, 14 February 2017, 09.00 – 11.00,</p> <p>Tuesday, 28 February 2017, 15.00 – 17.00,</p> <p>Monday, 6 March 2017, 11.00 – 13.00 and</p> <p>Tuesday, 7 March 2017, 17.00 – 19.00 (continuous)</p> <p>Teleconference</p>

The meeting of the Board of Appeal is restricted due to the appeal cases A-001-2017, A-002-2017, A-003-2017 and A-004-2017 dealt with.

By teleconference:

Member	Yvonne Fredriksson
Member	Jean-Yves Ollier (Rapporteur)
Member	Andris Piebalgs (Chairman)
Member	Mariusz Swora
Member	Michael Thomadakis
Member (by replacement)	Mariano Bacigalupo Saggese
Registrar	Andras Szalay

1. The Board of Appeal approved the Agenda as follows:

Agenda items	BoA decision
1. Briefing on the status of the external legal provider	no
2. Decision on the requests for intervention	yes

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3. Discussion on the merits of the case	no
4. Any other business	no

2. Discussion of the items of the Agenda

Agenda item n° 1. – Briefing on the status of the external legal provider

The Registrar notified the Board of Appeal that the framework contract upon the negotiated procedure for legal support of the BoA is signed by both parties (Agency and the ‘EJEM’ consortium of four independent law firm). The specific contract to order the product defined in the tender specification under 4.7.2. ‘Legal services to the Board of Appeal concerning more complex merit-related questions’ will be send to the contractor on the day of this meeting. The service ordered comprises of maximum 90 work hours with a maximum value of 24,750 euro. Practically speaking, in approx. 7-10 days the consortium can start (at least informally) its work.

Agenda item n° 2. – Decision on the requests for intervention

In accordance with Article 11(7) of the Rules of Procedure, the Board of Appeal shall decide whether to allow or not the applicants to intervene.

The Registrar notified the Board of Appeal that, in accordance with the previously sent documents, after the consolidation of the cases, 18 requests for intervention is to be decided by the Board (altogether 45 requests were submitted in the respective cases by 18 applicants). The one time-barred (KIGEIT) is already dismissed as inadmissible.

Since the Rules of Procedure do not contain elaborated rules how to decide upon the requests for intervention and reads only ‘interest in the result of the case’ as a criterion

for these decisions, it is for the Board to interpret the regulations in the light of the practice of the CJEU as well as with regard to procedural economy.

[restricted part]

Then, the Board of Appeal reached the following decision:

BoA Decision 1./15.02.2017

[restricted part]

Agenda item n° 3. – Discussion on the merits of the case

Subsequently, in accordance with Article 21(2) of the Rules of Procedure, each member stated his or her opinion and the reasons for it. The Chairman was heard last.

[restricted part]

In accordance with Article 21 of the Rules of Procedure, deliberations shall be and shall remain secret.

Agenda item n° 4. – Any other business

It is agreed that on **28 February 2017, from 15.00 to 17.00 CET** the Board will take the next teleconference.

The Registrar should upload zipped documents to the Extranet as well for easier handling.

The reimbursement of travel costs from the previous meetings is still under proceeding, currently the ones from 10/2016 are dealt with by the Agency.

Then the meeting is not adjourned because it is considered as continuous with the next scheduled meeting.

Agenda item n° 5. (on 28 February 2017) – Questions raised by the external legal service

The Board of Appeal discussed the following issues raised by the external legal consortium.

[restricted part]

Agenda item n° 6. (on 28 February 2017) – Strategy in drafting the final decision

The Board agreed upon the guidances regarding the drafting of the final decision.

[restricted part]

It is agreed that on **6 March 2017, from 11.00 to 13.00 CET** the Board will take the next teleconference along with the representatives of the external legal consortium as well as on **7 March 2017, from 17.00 to 19.00 CET**.

Then the meeting is not adjourned because it is considered as continuous with the next scheduled meeting.

Agenda item n° 6. (on 7 March 2017) – Strategy in drafting the final decision (cont.)

The Board agreed upon the guidances regarding the drafting of the final decision.

[restricted part]

Agenda item n° 7. (on 7 March 2017) – Recent submissions before the Court

The registrar informed the Board that two dismissed applicants for intervention (EXAA and MONDI) challenged the dismissal decision of the BoA before the Court. They requested the stay of the appeal proceeding before the Board of Appeal.

BoA Decision 1./07.03.2017

[restricted part]

It is agreed that on **16 March 2017** the Board take the next teleconference.

Then the meeting was adjourned.

For the Board of Appeal:

Andris Piebalgs, Chairman