

DECISION No 1/2021

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

of 28 January 2021

**establishing the Internal Rules of Procedure for the Functioning of the Working
Groups of the European Union Agency for the Cooperation of Energy Regulators and
repealing Decision No 10/2019 of 6 May 2010 on the Rules of Procedure of the
Administrative Board of the Agency for the Cooperation of Energy Regulators**

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

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council
of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy
Regulators, and, in particular, Articles 24(2) and 30(3) thereof,

Having regard to the proposal of the Director of 26 November 2020,

Having regard to the favourable opinion of the Board of Regulators of 22 December 2020,

Whereas:

- (1) Working groups are to be established with the purpose of supporting the Director and the Board of Regulators in their regulatory work as defined in Regulation (EU) 2019/942.
- (2) The Director shall submit proposals for the draft opinions, recommendations and decisions, which require a favourable opinion of the Board of Regulators, to the relevant working group for consultation.
- (3) The Board of Regulators shall, within its field of competence and with the exception of ACER's tasks under Regulation (EU) No 1227/2011, provide guidance to ACER's working groups established pursuant to Article 30 of Regulation (EU) 2019/942.
- (4) In light of the above, Decision No 9/2019 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 4 July 2019 established the Agency's Working Groups for electricity and gas respectively.
- (5) On 4 July 2019, the Administrative Board also adopted Decision No 10/2019 establishing the Internal Rules of Procedure for the Functioning of the Working Groups of the European Union Agency for the Cooperation of Energy Regulators. This Decision contained a revision clause, inviting the Director to submit a new proposal taking into account the experience gained in the first period of time of application of the internal rules of procedure for the functioning of the working groups.
- (6) It is necessary that the internal rules of procedure for the functioning of the Agency Working Groups are efficient and well suited to the procedural requirements foreseen

in Regulation (EU) 2019/942, whilst taking due account of the valuable experience gained by the Agency over the past years.

- (7) The Agency and its staff shall respect all relevant provisions laid down in the Treaty on the Functioning of the European Union (TFEU), the Staff Regulations and the Conditions of Employment of other servants of the European Communities (CEOS), and, in particular, Articles 17 and 18 of the Staff Regulations and Article 11 of CEOS.
- (8) The participants in the Agency Working Groups and in any substructure thereof (members, observers and external experts) are not necessarily Agency staff, and thus not bound by the provisions of the TFEU, the Staff Regulations or the CEOS.
- (9) Measures are therefore required to align the provisions governing the functioning of the Agency Working Groups and any substructure thereof with those governing the functioning of the Agency.
- (10) In particular, the Agency shall ensure that participants in the Agency Working Groups and in any substructure thereof will not disclose commercially sensitive information shared within the context of the activity of the Working Groups and their sub-structures.
- (11) For the sake of clarity and legal certainty, Decision No 10/2019 of the Administrative Board of the Agency of 4 July 2019, establishing the Internal Rules of Procedure for the Functioning of the Working Groups of the European Union Agency for the Cooperation of Energy Regulators, should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

The internal Rules of Procedure for the functioning of the Working Groups of the European Union Agency for the Cooperation of Energy Regulators, as included in Annex I, are hereby adopted.

Article 2

Decision No 10/2019 of the Administrative Board of the Agency of 4 July 2019, establishing the Internal Rules of Procedure for the Functioning of the Working Groups of the European Union Agency for the Cooperation of Energy Regulators is hereby repealed.

Article 3

This Decision shall take effect on the day of its adoption.

Done at Ljubljana, 28 January 2021.

For the Administrative Board,

The Chair

Dr. J. PENKER

ANNEX I

**INTERNAL RULES OF PROCEDURE FOR THE FUNCTIONING OF THE
WORKING GROUPS
OF THE EUROPEAN UNION
AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

1. Scope and general principles

- 1.1. The European Union Agency for the Cooperation of Energy Regulators (the ‘Agency’) shall establish one or more Agency Working Groups (‘AWGs’) pursuant to Article 30(1) of Regulation (EU) 2019/942 where justified and, in particular, to support the regulatory work of the Director and of the Board of Regulators (‘BoR’) on regulatory issues and for the preparation of the regulatory acts of the Agency referred to in Articles 3(1), 4 to 8, 9(1) and (2), 10, 11(c), 13, 15(4), 30 and 43 of the same Regulation, which require the BoR’s favourable opinion, pursuant to Article 22(5) and 24(2) thereof. This document lays down the Rules for the Functioning of the AWGs (‘Rules’).
- 1.2. For the purpose of the previous paragraph, the AWGs shall provide the Director and the BoR with all the information needed in order to facilitate the adoption of a favourable opinion, reporting on the areas where consensus was reached within the AWGs and, where appropriate, giving technical advice for the solution of the issues under consideration, including the controversial areas. The AWGs may also provide early input to the Director for the development of Agency’s opinions, recommendations and decisions.
- 1.3. The organisation and functioning of the AWGs shall:
 - a) support the efficient functioning of the Agency, allowing for a smooth and timely decision making process between its main bodies;
 - b) safeguard the regulatory independence of the BoR.
- 1.4. These Rules may be amended by the Administrative Board on the basis of a proposal from the Director, after consulting the Board of Regulators and obtaining its favourable opinion

2. Establishment, objectives and process for the preparation of Agency’s acts

- 2.1. The Administrative Board establishes and removes the AWGs on the basis of a joint proposal from the Director and the BoR, after having received the favourable opinion of the BoR, pursuant to Article 30(1) of Regulation (EU) 2019/942.
- 2.2. The Director and the BoR jointly appoint one or more Chairpersons for each AWG. The appointment is typically for a period of two years. However, the Director and the BoR may jointly extend the term of appointment or appoint a new Chairperson before the end of the period if they consider this to be in the best interest of the Agency. When

more than one AWG Chairperson is appointed, they should jointly or severally, but in a coordinated way, perform the functions of the Chairperson envisaged in these Rules. When in these Rules reference is made to the AWG Chairperson, such reference should be read as referring to the AWG Chairpersons, if more than one Chairperson is appointed.

- 2.3. The Director and the BoR, having consulted the Chairperson, may jointly appoint one or more Vice-Chairpersons of an AWG. The Vice-Chairperson assists the Chairperson and replaces him/her when he/she is not able to convene and chair the AWG meetings or to perform any other function provided for in these Rules or which is required for the efficient running of the AWG. When more than one AWG Vice-Chairperson is appointed, they should jointly or severally, but in a coordinated way, perform the functions of the AWG Vice-Chairperson envisaged in these Rules. When in these Rules reference is made to the AWG Vice-Chairperson, such reference should be read as referring to the AWG Vice-Chairpersons, if more than one Vice-Chairperson is appointed.
- 2.4. In case the Chairperson is unable to continue to perform his/her role in the AWG, a new Chairperson is appointed, following the same procedure. For this purpose, the Director informs the BoR of the need to appoint a new Chairperson in order to receive the BoR's recommendation.
- 2.5. Pursuant to Article 30(4) of Regulation (EU) 2019/942, the AWGs shall carry out their activities and contribute to the deliverables assigned to them in the Programming Document adopted pursuant to Article 20 of Regulation (EU) 2019/942 and those assigned to them by the Director and the BoR. The Director and the BoR define the milestones and deadlines for the activities of the AWGs as defined in the Programming Document, after consulting the Chairperson. The Director and the BoR define additional deliverables and the relating milestones and deadlines for the activities of the AWGs either jointly or separately, always after consulting the Chairperson. In case of conflicting milestones or deadlines, the Chairperson shall consult the Director and follow his/her guidance. The objectives, deliverables and milestones/deadlines of an AWG may be amended when a new activity is assigned to the Agency and as appropriate. This might happen, for example, in connection with a request received from the European Commission to develop new Framework Guidelines or with a request to adopt individual decisions.
- 2.6. Before submitting the draft opinion, recommendation or decision to the BoR for its favourable opinion, pursuant to Article 24(2) of Regulation (EU) 2019/942, the Director shall submit the preliminary draft opinion, recommendation or decision to the relevant AWG for consultation sufficiently in advance. The AWG shall provide its advice to the Director and the Chair of the BoR within one week following receipt of the preliminary draft opinion, recommendation or decision from the Director. In case of a particularly complex opinion, recommendation or decision, the Director shall

endeavour to grant the relevant AWG a longer time period, up to two weeks, to provide its advice. In exceptional and duly justified circumstances and upon the agreement of the AWG Chairperson, the Director may request the AWG to provide its advice within a shorter period. If the AWG has not provided the advice within the stated period, it is deemed not to have any advice to submit to the attention of the Director.

The AWGs may resort to electronic communication as appropriate in order to provide their advice within the stated period and to facilitate their work.

- 2.7. The advice from the AWG on a draft proposal submitted by the Director shall include:
- a) the issues analysed and the considerations which have emerged from the analysis along with technical advice on the solution of the issues under consideration;
 - b) the areas where consensus was reached within the AWG with a description of the agreed consensus;
 - c) the areas where it was not possible to reach a consensus within the AWG, with a brief description of the different positions and an assessment of their relative merits and drawbacks.

This should be, as much as possible, a factual account of the work undertaken by the AWG. However, the AWG Chairperson may include in the report his/her/their own views or the views of other AWG participants as long as these are clearly identified as such, in particular when consensus has not been reached at working level.

- 2.8. The Chairperson is responsible for the effective functioning of the AWG and for the achievement of the assigned objectives. The Director and the BoR may provide guidance to the Chairperson on aspects related to the functioning of the AWG. If more than one Chairperson is appointed, they are expected to cooperate in co-chairing the AWG according to the guidance provided by the Director and the BoR.
- 2.9. The AWG Chairperson may establish Task Force(s) if this is considered appropriate. The AWG Chairperson shall define the composition of the Task Force, taking the interests of AWG members into account. The Chairperson appoints one or more Convenors for each Task Force. The AWG Chairpersons informs without delay the Director and the BoR of any newly established Task Force and of the appointed Convenor. When more than one Task Force Convenor is appointed, they should jointly or severally, but in a coordinated way, perform the functions of the Task Force Convenor envisaged in these Rules. When in these Rules reference is made to the Task Force Convenor, such reference should be read to refer to the Task Force Convenors, if more than one Task Force Convenor is appointed.

3. Composition, membership and observers

- 3.1. The AWGs should allow the Agency and Regulatory Authorities (“RAs”) staff to work together from an early stage on Agency deliverables. Therefore, each AWG is

composed of senior experts from the staff of RAs' represented in the BoR (from the Member States and from the EEA EFTA States - Iceland, Liechtenstein and Norway) and of Agency's staff, as members. Each RA shall appoint one senior expert to each AWG. If the AWG Chairperson allows it, more than one expert from each RA staff can be allowed to participate in the AWG and its meetings.

- 3.2. The Director may allow experts from the RA of a third country to participate, as observers, in one or more AWGs in case the country is assessed by the Agency to be making good progress towards and be expected to meet the conditions of Article 43 of Regulation (EU) 2019/942 within a reasonably short period of time (six to twelve months).
- 3.3. Representatives from the European Commission and from the EFTA Surveillance Authority may participate in each AWG and its Task Forces.
- 3.4. Continuity of participation in the AWGs and Task Forces is crucial. Experts from RAs' staff in an AWG or any of its Task Forces should commit themselves to attend meetings regularly and actively contribute to the work. If an expert cannot be present at a given meeting, he/she may provide comments on draft documents before the meeting and/or delegate another person from the same RA to attend the meeting.

In order to ensure transparency and operational consistency between the AWG and its Task Forces, the Convenor of a Task Force shall regularly inform the AWG of the work undertaken in the Task Force.

- 3.5. Participation in the AWGs or any of its Task Forces or substructures implies acceptance of the Rules. Alternatively, a RA may submit a Joint Compliance Commitment for its staff which shall be kept at the Agency in a dedicated Registry. Should the member or observer fail to respect the obligations laid down in the Rules, the Agency may ask the RA of the concerned member or observer to take appropriate measures in relation to his/her participation in the AWGs, Task Forces and other substructures and inform the BoR and the Director.
- 3.6. If the Rules are modified, the members, observers and participants, as well as any other persons and institutions who have signed a Compliance Commitment shall be duly notified of such change in conformity with this paragraph.

Members, observers and participants shall be automatically alerted via e-mail that the latest version of the Rules has been uploaded by the Director onto the ACERnet area of the Agency's website. In addition, the Director shall inform the AWG Chairpersons of such upload.

Each AWG Chairperson shall inform all members and observers of the AWG or of its Task Forces of the modified Rules by summarising the main modifications and by making reference to the ACERnet area where they can be found. The AWG Chairperson may delegate the provision of information on the Rules and their

modification to the Task Force Convenor in respect to the Task Force members and observers.

- 3.7. The members and observers may withdraw from the AWGs or Task Forces upon advance notice to the AWG Chairperson.
- 3.8. Members, observers and participants in the AWG and Task Forces shall take all lawful steps to prevent the unauthorised disclosure of information which they receive from their participation in the AWGs or Task Forces (in particular, but not limited to, information about undertakings, their business relations or their cost components), unless that information has already been made public or is accessible to the public. Members, observers and participants in the AWGs or Task Forces shall continue to be bound by this obligation also when they no longer take part in the AWGs or Task Forces. A request may be submitted to the AWG Chairperson and Director of the Agency if any doubt arises as to whether or not particular information may be disclosed.

Members and observers are allowed to exchange commercially sensitive information either within the RA which they represent or with other RAs, to the extent that all persons receiving such information are bound by these Rules or by rules having equivalent effect on confidentiality of information. The information exchange and the appreciation of the level of protection of the confidential information by the concerned RAs shall fall under the member's or observer's responsibility albeit any such information should be shared on the need-to-know basis.

- 3.9. At each meeting of the AWG or Task Force, members, observers and participants shall declare any conflict of interest which could be prejudicial to their independence with respect to any point on the agenda. The Chairperson or Convenor shall decide to which extent such interest may affect the participation of the member, observer or participant concerned on that relevant point and take the necessary measure to ensure that the declared interests do not adversely affect the proceeding of the AWG or Task Force, and their neutrality, and inform the BoR and the Director.
- 3.10. All rights, including copyright and other intellectual property rights, in any writings or other work created by a member, observer or participant in an AWG, Task Force or any substructure, in the performance of his/her duties as such, shall be the property of the Agency. The member, observer or participant shall be deemed to have assigned to the Agency all such rights automatically and without further formality at the time of creation of the concerned right.

The first subparagraph shall not apply to pre-existing documents circulated in an AWG or a Task Force for information purposes only by a RA or the Commission.

- 3.11. With the agreement of the Director, the AWG Chairperson or the Task Force Convenor may represent the AWG or the Task Force at external meetings with relevant stakeholders. Other AWG or Task Force members may participate in such meetings. In

the interest of transparency, an oral or a written report of the meeting shall be presented to the AWG and to the Director.

4. Procedures

- 4.1. The AWG should produce an action plan for each objective or deliverable, as defined pursuant to paragraph 2.5 above, allocate tasks among the AWG's members, decide on the dates/frequency and nature of meetings, on the working method used, including the means of electronic communication, and on the potential use of consultants. However, the retention of consultants shall be authorised by the Agency's Authorising Officer.
- 4.2. The AWG Chairpersons and the Task Force Convenors, respectively, shall keep the action plan up to date and inform on the progress being made during the BoR and AWG meetings. Significant changes to the action plan should be reported by the AWG Chairperson to the Director and the BoR and by the Task Force Convenors in the AWG meetings.
- 4.3. The Chairperson convenes the AWG meetings. The Convenor convenes the meeting of the Task Force. The meetings are convened at the Seat of the Agency or, in duly justified circumstances and with the authorisation of the Director, in another location.

Meetings can take place virtually via appropriate tools preserving the confidentiality of the proceedings. At the same condition, physical meetings could be made accessible by voice or videoconference.

The costs for the participation of experts from the staff of regulatory authorities and other attendees in the AWG meetings and the Task Force meetings shall not be covered by the Agency.

- 4.4. The draft agenda of AWG meetings is defined by the Chairperson. Agenda items may be added or modified, if necessary, at a later date. However, one quarter of participants to an AWG meeting may veto the treatment at the meeting of items not included in the original draft agenda. Each agenda item should indicate whether it is accompanied by a properly referenced document.
- 4.5. The draft agenda of the meetings shall be made accessible via ACERnet by the AWG Chairperson to all members, observers and participants, at least 10 working days in advance of the meeting. The accompanying documents should be made accessible to members, observers and participants at least 5 working days before the meeting.
- 4.6. Meetings should not be cancelled or re-scheduled, except in exceptional circumstances and, if possible, with at least 5-day notice. The Chairperson should inform AWG members, observers and participants immediately, by email, of any cancellation of meetings. If the meeting is to be rescheduled, the Chairperson should propose alternative dates.

- 4.7. The draft minutes of an AWG meeting should be submitted by the Chairperson to AWG members, observers and participants well in advance of the next AWG meeting. Members, observers and participants may provide comments prior to or at the next AWG meeting. The minutes must be submitted for approval at the next AWG meeting.
- 4.8. The minutes should at least include the following information: the date and venue of the meeting; the list of participants; approval of the agenda; approval of the draft minutes from the previous meeting; a brief update on the AWG's work/discussions; and a clear set of agreed action points and decisions (with deadlines).
- 4.9. The rules governing the meetings of the Task Forces are agreed between the AWG Chairperson and the Convenors. The rules should in any event allow that in urgent cases, the relevant Task Force and the AWG may have to respond simultaneously on a given proposal.
- 4.10. The Chairperson monitors progress in the activities of the AWG. Members and observers who have committed to perform specific tasks or Task Force Convenors should inform the Chairperson of any delay or foreseen problems, so that the Chairperson can take any appropriate remedial action.

5. Reporting

- 5.1. The AWG Chairperson reports regularly during the BoR meetings, to the Director and the BoR on the progress achieved by the AWG. The AWG Chairperson informs the Director and the BoR immediately of any problem in the functioning of the AWG or when delays in the fulfilment of the objectives occur or are foreseen.
- 5.2. Upon completion of each activity, excluding those which were subject to AWG advice under Article 2.7, the AWG Chairperson may prepare and submit to the Director an explanatory cover note. Where relevant, the cover note is the output of that activity. The AWG Chairperson should also send the report to the Chairman of the BoR.
- 5.3. The cover note referred to in paragraph 5.2 above should present, at least:
 - a) The background of the activity/output and the approach taken;
 - b) The issues analysed by the AWG and the considerations which have emerged from the analysis;
 - c) The areas of concern within the AWG;
 - d) A brief description of the different issues and views an assessment of their relative merits and drawbacks, to the extent possible.
- 5.4. The cover note referred to in paragraph 5.2 above should be, as much as possible, a factual account of the work undertaken by the AWG. However, the AWG Chairperson may include in the report his/her own views or the views of other AWG members as long as these are clearly identified as such.

6. Involvement of stakeholders

- 6.1. The AWG may organise informal consultations of stakeholders or stakeholder dialogues in formats to be agreed with the Director.
- 6.2. The AWG Chairperson or the Convenor of a Task Force may invite external experts to participate in AWG or Task Force meetings, respectively. The Director as well as members and observers of AWGs and/or Task Forces have to be informed in advance about the participation of external experts. The invitees may present their opinions and, with the Director's consent, may have access to documents that are related to their contribution. External experts shall ensure the confidentiality of the information which they receive in connection to their participation in AWG and Task Force meetings. To this end, and prior to receiving any confidential documents, external experts shall sign a Statement of Confidentiality and Conflict of Interest, by using the model provided in the Annex.