

MINUTES

29th ACER Administrative Board meeting

Thursday, 15 December 2016, 8.30 – 13.00

Ljubljana, Trg republike 3, 6th floor meeting room

Present:

Dr Romana Jordan, Chair, Member,

Mr Jochen Penker, Vice- Chair, Member,

Mr Georgios Shammias, Member,

Mr Piotr Woźniak, Member,

Mr Edmund Hosker, Member,

Mr Rene Tammist, Member,

Ms Paloma Aba-Garrote, Alternate Member, with proxy from Mr Dominique Ristori,

Mr Pál Kovács, Alternate member, with voting rights,

Mr Alberto Pototschnig, Director of ACER, Observer,

Lord John Mogg, Chair of the Board of Regulators, Observer,

Ms Marie-Christine Jalabert, Adviser,

Ms Isabel Rosenbrock, Adviser.

Main conclusion of the meeting

- 1.) The Board requested that the Secretariat circulate the Agency's summary of Winter package proposals, the presentation of the Commission and the position paper based on the discussion made during the meeting, which will allow the Board to prepare its position regarding its independence and the Agency's governance and HR issues. The Board also requested the Secretariat to circulate information on registration to the January ACER-CEER conference entitled: "Towards a future-proofed EU Energy Market Design".
- 2.) The Board noted the Director's report on his outside activities in 2016 and adopted the decision on the permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2017 (with 7 votes in favour and 2 abstentions from the Commission appointed members) (ANNEX 1).

<p>3.) The Board took note of the Agency's progress report. The Board requested that the budget implementation be reported at all meetings. A visit to the wholesale market surveillance room will be organised in March. The Secretariat will circulate the new organigramme.</p>
<p>4.) The Board adopted, by unanimity, the 2017 ACER budget (ANNEX 2). The majority of the Board members highlighted the concern that the limited resources available to the Agency is forcing it to deprioritise some activities which are legally mandated. The Board requested that at the March meeting the budget is presented in percentage change with respect to the previous year.</p>
<p>5.) The Board discussed the Single Programming Document (PD) for 2018. The Director was requested to circulate a shorter note highlighting the main features and challenges of the PD for 2018, as well as of the 2017 Revised PD. He was also requested to provide an Action plan on budgetary discussions in the EU institutions. The Commission had a number of preliminary comments on the draft SPD. It was agreed that a technical meeting between the Commission and ACER staff would be held early in January to coordinate and address the Commission's preliminary comments.</p>
<p>6.) The Board appointed Mr Lentz to take part in the 2017 Col Review panel examining the Chair's and Vice-Chair's declaration of interest.</p>
<p>7.) The Board postponed the decision on the financial compensation to Board members to its next meeting. The Commission appointed Member undertook to make informal contacts with DG BUDG on a possible wording for an article.</p>
<p>8.) The Board took note of the Agency strategy for contract agents.</p>
<p>9.) The Board took note of the Agency's note on Reclassifications in 2013-2015.</p>
<p>10.) The Board adopted, by unanimity, the Decision amending Decision AB No 21/2015 of the Administrative Board of 17 December 2015 on the adoption of the budget for the 2016 financial year and of the establishment plan, as amended by Decision AB No 3/2016 (ANNEX 3).</p>
<p>11.) The Board adopted, by unanimity, a decision on replacement of Board of Appeal members by pairing the members with their alternates (ANNEX 4).</p>

Opening

1. Approval of the Agenda

The Board approved the following agenda:

29th ACER Administrative Board meeting
Thursday, 15 December 2016, 8.30 – 13.00
Ljubljana, Trg republike 3, 6th floor BIG meeting room
DRAFT AGENDA V3

Agenda Topics	Accompanying documents	Rapporteur
Opening		
1. Approval of the agenda	Doc 1 for approval	AB Chair
2. Minutes of the 27 th ACER Administrative Board	Doc 2.1 for approval Doc 2.2 for information	AB Chair
3. Minutes of the 28 th ACER Administrative Board	Doc 3.1 for approval Doc 3.2 for information	AB Chair
Reporting on developments		
4. Energy Market Design (Winter Package)	Oral update	European Commission
5. Report on the outside activities of the Director in 2016 and Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2017	Doc 5.1 for consideration Doc 5.2 for adoption	ACER Director
General ACER work		
6. Report on ACER developments and on the activities of the Board of Regulators	Oral update	ACER Director BoR Chair
7. ACER Budget 2017	Doc 7 for adoption	ACER Director
8. Draft Single Programming Document	Doc 8 for strategic	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
2018	discussion	
9. Appointment of AB Member to take part in the 2017 Col Review Panel	Oral discussion – for decision	ACER Director
Administrative Work		
10. Amendment of AB Rules of Procedure - Financial compensation of AB Members	Doc 10 for adoption	ACER Director
11. Strategy on contract agents	Doc 11 for information	ACER Director
12. Note on Reclassification in 2013-2015	Doc 12 for information	ACER Director
13. Decision AB amending Decision AB No 21/2015 of the Administrative Board of ACER of 17 December 2015 on the adoption of the budget for the financial year 2016 and of the establishment plan of ACER as amended by Decision AB No 3/2016	Doc 13 for adoption	ACER Director
14. Decision AB on the replacement of members of the Board of Appeal of the Agency for the Cooperation of Energy Regulators	Doc 14 for adoption	ACER Director
AOB		
15. AB meetings in 2017	Doc 15 for information	AB Chair

2. Minutes of the 27th ACER Administrative Board

The Chair reported that, by the closing date for comments, 16 November 2016, the Agency received one comment from the Vice-Chair, Mr Penker. His comment has been included in the final version of the minutes. The Chair ran through the action points from the 27th AB meeting and their implementation.

Conclusion: The Administrative Board approved the final version of the 27th AB meeting minutes.

3. Minutes of the 28th ACER Administrative Board

The Chair reported that, by the closing date for comments, 6 December, the Agency received comments from the Commission appointed AB member. All comments have been included in the final draft of the 28th Administrative Board.

Conclusion: The Administrative Board approved the final version of the 28th AB meeting minutes.

4. Energy Market Design (Winter Package)

The Commission adviser provided an update on the recently published EC's proposals "Clean energy for all Europeans", released on 30 November, in particular its Proposal for a (recast) Regulation on a European Agency for the Cooperation of Energy Regulators.

She pointed out to the uncertainties regarding the exact beginning of the legislative process at the Council and the Parliament. As regards the new tasks and competences, the proposed changes are related to the network code/guideline adoption process, to the streamlining of decisions which have to be taken by all NRAs in the network codes, to the coordination of regional tasks foreseen in the network codes, to the tasks as regards ROCs (regional operational centres), especially concerning the monitoring and analysing their performance, issuing opinions and recommendations to ROCs, requesting information from them, and approving the geographical scope of the region covered by ROCs on proposal of ENTSO-E. The proposal is also introducing tasks related to generation adequacy and risks preparedness.

As regards the implementation of the Common Approach for EU decentralised agencies, the name of the Agency is proposed to change to a European Union Agency for the Cooperation of Energy Regulators. The proposal provides for the possibility of the Agency to establish local offices in the EU (e.g. the Brussels office). The BoR would be voting by simple majority (except for opinion on the appointment of Director – two thirds), and the Director's term of office would be 5 years with a possible extension of 5 years, instead of the current 3.

She furthermore presented the proposed changes affecting the Administrative Board:

- Decisions are proposed to be taken by simple majority except Chairman's election, adoption of programming document, budget, and removal of the Director (where two-thirds majority applies),
- The Administrative Board adopts the draft programming document and final one following the Opinion of the Commission, exercises disciplinary powers over staff, becomes the AIPN, but delegates appointing authority powers to the Director,

- The Administrative Board shall adopt a strategy for relations with third countries or international organisations, and establishes working groups to support regulatory work of the AB or BoR.

The proposal envisages 18 additional staff members (4 TAs and 14 CAs).

The Director added to the presentation by summarising the new tasks for ACER:

- directly reviews and finalises Network Code proposals for submission to the Commission,
- directly decides on terms and conditions or methodologies for Network Code implementation (current “all NRA” decision),
- decides on the methodology and assumptions for the bidding-zone review, defines methodologies for a coordinated European Adequacy Assessment,
- defines technical parameters for the cross-border participation in capacity mechanisms,
- coordinates national actions related to risk preparedness,
- monitors the implementation of NEMOs functions,
- oversees Regional Operation Centres,
- supports the creation of a EU DSO Entity, and
- may issue recommendation to NRAs and market players, on its own initiative.

He also reiterated the changes in the internal governance and pointed out to some inconsistencies, such as

- the Director being accountable to the Administrative Board, while still discharged by the European Parliament,
- the Director still being directly assigned the role of AIPN, while at the same time being delegated to it by the AB, which is proposed to be no longer shielded from political instructions.

He indicates that he is available to pass his comments to the Commission.

Lord Mogg, the BoR representative, expressed views on the proposal, based on BoR discussions the day before. He was pleased that some problematic governance elements of the Common approach were not applied to the Agency. Nevertheless, he noticed several inconsistencies and incorrect references. Finally, he confirmed that the Commission’s proposal addresses the major areas of concern in moving towards a Single European Energy market, such as the regionalisation, and the new tasks on DSOs and ENTSOs for ACER. He noted that the proposals are only addressing legislation on electricity (not gas).

On the other hand, he was surprised that the BoR disappeared from the Work Programme adoption process, and noted the intrusion in the way the Director operates internally and externally (RoPs of the WGs, AIPN). Disappointingly, the option of raising fees has also not been included. He expressed serious concerns about the independence of the regulatory system (the shield against the political interference has disappeared). A Policy Committee is expected to produce a Vision paper, which will be circulated by early January, consulted with NRAs and discussed at the 23-24 January joint ACER-CEER conference. In the 6-month period following the conference a set of White papers is going to be prepared, proposing amendments underlying the need to maintain balance.

The Director welcomed the package, underlining the overall importance of the proposals for ensuring that the energy sector can best meet the challenges which it is facing, and which the Commission has correctly identified (already in the Energy Union strategy). The preliminary analysis indicated that the level of additional staff proposed may, in case no additional tasks are proposed by the legislators, prove to be sufficient. However, as the proposed staff are mainly the contract agents, they may not attract the required expertise. In any case, the proposed resources do not come anywhere close to filling the existing resource gap at the Agency. The implementation will start only following the adoption of the legislation, which will take some time. In the meantime the current governance remains in place – and the lack of resources unresolved. Even though the Agency welcomes the proposed legislation, there are still issues that will need to be clarified, as it is important for the Agency to have a clear regulatory framework from a technical point of view.

One AB member said that there are 2 sets of issues: 1.) governance on the one hand, and 2.) skills and resources on the other. He considered that new tasks in relation to generation adequacy will require new skills. He also wanted to discuss what tasks could not be carried out without additional resources.

A member welcomed the presentations, which provided a good overview and asked not to duplicate the discussions which would be held at the Council and the Parliament.

Some members regretted that the reference to the political interference shield has disappeared and that the Agency was not given the possibility to raise fees. They suggested the AB issues its position on the text. The Commission appointed AB member explained the internal complexities of the Winter package adoption process.

Conclusion: The Board requested that the Secretariat circulate the Agency's summary of Winter package proposals, and the presentation of the Commission, which will allow the Board to prepare its position regarding its independence and the Agency's governance and HR issues. The Board also requested the Secretariat to circulate information on registration to the January ACER-CEER conference entitled: "Towards a future-proofed EU Energy Market Design".

5. Report on the outside activities of the Director in 2016 and Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2017

The Chair reminded the members that the Administrative Board, with its Decision AB no 34/2011 of 2 December 2011, granted permission to Mr Pototschnig to engage in academic cooperation with the School. Since then, the Administrative Board granted permission to the Director to continue in his role of adviser to the Director of the School and with his activities of instructor at the School on a yearly basis. Last year the permission was granted for the period from 1 January 2016 to 31 December 2016.

In its latest decision, the AB specifically requested that:

- the activities for which permission was granted shall be carried out for a maximum of two hundred (200) hours during 2016,
- the activities for which permission is granted, to the extent that they are carried out during working hours with a limit of 100 hours, are considered to be carried out in the interest of the service,
- that permission is granted subject to the condition that no costs shall be incurred by the Agency,
- that Mr Pototschnig shall receive no remuneration in connection with the activities for which permission is granted to the extent that they are carried out during working hours. To the extent that these activities are carried out outside working hours, Mr Pototschnig shall hand over any remuneration received in excess of EUR four thousand five hundred (4,500). Such limit shall apply to net remuneration and shall exclude any royalties or similar utilities received for publications, as well as any reimbursement of expenses, and
- that Mr Pototschnig will report to the Administrative Board on his activities at the School at the end of the period.

The Director presented the Report on his activities at FSR during the year 2016. He confirmed that his FSR activities did not present any cost for the Agency, only his time. He answered to the question of one AB member, that there was no conflict of interest. In fact, the FSR workshops' discussions were in the interest of the Agency, often discussing main regulatory challenges the Agency was confronted with.

One AB member underlined the importance of sharing Director's FSR knowledge with the Agency.

The Commission appointed AB member was of the view that in 2017 the Agency will face many challenges and therefore preferred the Director's presence and oversight at the Agency to his teaching at the FSR.

Conclusion: The Administrative Board noted the Director's Report on his outside activities in 2016 and adopted the decision on the permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2017 (with 7 votes in favour and 2 abstentions from the Commission appointed members) (ANNEX 1).

6. Report on ACER developments and on the activities of the Board of Regulators

The Director updated the Administrative Board on the Agency's activities, both administrative and regulatory.

He presented the staff figures, where in 2017 the Agency will have 91 staff members and SNEs. He informed the Board of the split of the Market Monitoring department (MMD) into the Market Integrity and Transparency department (MIT) and the Market Surveillance and Conduct department (MSC).

He updated the Board on the recruitment, where two positions are currently open. He also informed the Board that there are 4 SNEs employed by the Agency. He informed the member that the correction coefficient for Slovenia dropped again down by 0.5%, from 81.2% to 80.7% as from 1 July 2016 retroactively. This correction coefficient results in the staff based in Ljubljana earning 20% less than staff based in Brussels. He updated the Board on the status of the Staff Regulation Implementing rules and on the implementation of the ACER budget on the day.

He reported that on 17 November the new Board of Appeal designated, for a two-and-a-half year period, Mr Andris Piebalgs as Chairman and Mr Jean-Yves Ollier as Vice-Chairman.

On regulatory issues related to electricity, the High-voltage direct current (HVDC) code is now in force. The Emergency and Restoration (ERP) code was agreed in the comitology on 24.10.2016. The Forward Capacity Allocation (FCA) code entered into force on 17.10.2016. On 17.11.2016 ACER issued its first CACM decision, on which the NRAs were unable to agree, on the Electricity Transmission System Operators' Proposal for the Determination of Capacity Calculation Regions.

On the Gas side, the Harmonised Transmission Tariffs Rules were eventually voted in the Gas comitology.

The Agency also issued Opinions on the ENTSO-E Summer Outlook Report 2016 and on Winter Review 2015/2016, on ENTSO-E Research and Innovation Roadmap 2017-2026. On 11.11.2016 it issued a very important Recommendation on the common capacity calculation and redispatching and countertrading cost sharing methodologies, as well as a Report to the Commission on the implementation of the ITC mechanism in 2015. In Gas the Agency issued an opinion on ENTSOG Work Programme 2017.

The Board was updated on the two appeal cases and on the administrative arrangement that was signed on 2 December 2016 with the Energy Community Secretariat. It envisages that the Energy Community Secretariat staff is admitted to attend meetings of the Agency's Electricity, Gas, and Implementation, Monitoring and Procedures Working Groups and their substructures. The Agency will be able to seek assistance of the Energy Community Secretariat to assess the applications of NRAs from Energy Community Contracting Parties to participate in the Agency's Working Groups ("imminent compliance" criterion). Finally, the Agency will be able to seek the assistance of the Energy Community Secretariat to extend the coverage of the Agency's Market Monitoring Report to the Energy Community Contracting Parties.

On REMIT, the MoUs with Financial Market Authorities on Cooperation and with European Competition Network on Cooperation will be postponed to 2018 due to lack of resources.

There are more than 1429 RRM applications pending, out of which 1396 from self-reporting Market Participants, that ACER is unable to process. The Agency receives around 1 million transactions a day. The data collection is finally stable. Tiers 2 (data base) and 3 (surveillance software, Smarts) are working well. He reported on a major problem with development and deployment of CEREMP that had happened a week before. He also updated the Board about the Agency's change of strategy regarding the hosting of the IT system.

The number of potential breach of REMIT cases notified to/by the Agency is increasing and is already totalling 37 in 2016 (it was 33 in both 2014 and 2015).

Conclusion: The Administrative Board took note of the Agency's progress report. The Board requested that the budget implementation should be reported at all meetings. A visit to the wholesale market surveillance room (tier 4) will be organised in March. The Secretariat will circulate the new organigramme.

7. ACER Budget 2017

The Director proposed that the Board formally adopts the 2017 budget for the Agency, based on the subsidy approved by the budgetary authority as part of the EU Budget on 1st December 2016. He noted that the budget is significantly lower than the one requested by the AB through its decision 02/2016 of 27 January 2016 on the estimate of revenue and expenditure for 2017 (€19.8m compared to €13.2m). There is also a significant reduction in comparison to the current year (€15.8m versus €13.2m) representing a 16.4% cut. A reduction of one temporary agent post was also made through the draft budget proposed by the Commission. The 2017 budget is based on the Financial Framework 2014-2020 adjusted only for the salaries of the 15 additional human resources approved for the 2016 year. No other changes since the adoption of the financial framework are accounted for. For example, this budget considers for REMIT only the maintenance recurring costs and does not take into account any necessary current and future developments in terms of IT and human resources.

He announced that in January he will submit a revised annual Work Programme, where some activities will be deprioritised, including some activities for which the Agency has a legal mandate.

The Chair proposed a minimal change in the language of the decision, which was accepted. One AB member asked which legally mandated tasks by the Agency will be deprioritised. The Commission appointed AB member underlined the importance of good organisation of the resources. The Director replied that deprioritisation and redistribution of resources takes place internally in the SPD exercise for 2017-2018, where the Agency is trying to redeploy resources where they are most valuable: however, given the different specialised expertise required in the different area, redeployment is not always easy.

A member suggested to introduce for the next budget a column that indicates the percentage change of each budget item (year/previous year) and if the percentage change is significant, should provide an explanation. So, if the budget significantly differs from the budget of the previous year, the remarks given shall help with interpretation of these differences. He stated there was room for improvement in this respect.

Conclusion: The Board adopted the 2017 ACER budget by unanimity (ANNEX 2). The majority of the Board members highlighted the concern that some activities to be deprioritised are legally mandated. The Board requested that at the March meeting the budget is presented in percentage change with respect to the previous year.

8. Draft Single Programming Document 2018

The Director presented the draft Programming Document (PD). In line with the new requirements of the Framework Financial Regulation applicable to decentralised agencies, the Agency must submit its draft Programming Document (PD) 2018 to the institutions by 31 January 2017.

The Agency has prepared the preliminary draft PD 2018, including a list of all the planned operational activities and tasks for 2018, which the Agency is presenting to the BoR and the AB for a strategic discussion. The endorsement of the AB will be sought in January, prior to the submission of the draft PD 2018 to the institutions. Following the Commission's opinion, in line with ACER's founding regulation, the BoR will be called to approve the document and the AB to adopt it by 30 September 2017.

The multiannual section of the document was updated, as has the Strategic Outlook for 2018, providing an indicative overview of the Agency's human resources and budgetary needs in 2018. The Agency estimates that 30 additional staff members are needed in 2018 in order to ensure that it can perform its tasks and fulfil its mandate.

It should be noted that the PD 2018 is based on the Agency's mandate at the time of drafting this Work Programme and on the assumption that the Agency will be assigned the resources required effectively to deliver on its mission. Should these additional resources not be assigned to the Agency, this Work Programme will have to be revised in line with the level of resources actually available.

In order to ensure an appropriate prioritisation of its activities, and to allocate resources accordingly, focusing on those areas and activities which are most critical for delivering the Energy Union objectives and, ultimately, benefits for consumers, in the Work Programme for 2018 the Agency has clustered its tasks and deliverables according to the following three priority levels:

Priority level 1 – Critical – Activities/tasks that must be performed/executed under any circumstance. Failure to do so would seriously undermine the functioning of the Internal Energy Market and the achievement of the Energy Union objectives.

Priority level 2 – Important – Activities/tasks that could be postponed, reduced in scope or de-scoped with only limited repercussion on the Internal Energy Market.

Priority level 3 – Relevant – Activities/tasks that the Agency could usefully perform, provided adequate resources were made available.

In case the resources assigned to the Agency were not be sufficient to perform all the activities included in the Work Programme for 2018, the deprioritisation of activities would be performed starting from those classified as “relevant” and then, to the extent necessary, including those classified as “important”, in order to devote sufficient resources to the “critical” activities.

He reminded the members that at their September meeting they requested a discussion on the Agency’s critical risks at the December meeting. The only critical risk for 2018 is the implementation of REMIT from different aspects (Limited resources for operational activities, quality of the data received, and there is also a risk of leakage of highly sensitive trade data if adequate security measures are not in place). Ineffective application of REMIT, even if due to reasons outside the Agency’s control, could represent a reputational risk for ACER (in addition to the economic damage due to the negative effects on markets).

The Chair, supported by other members, welcomed the presentation and suggested the Director presents a 2 page summary of the document (with key messages) and includes it in the beginning of the document.

The Commission appointed AB member suggested a technical meeting between the Commission and ACER staff to be held early in January to coordinate and address Commission’s preliminary comments. She took note of the Agency’s HR request in the draft PD. She explained the process of budgetary preparations in Brussels and suggested to lower expectations for 2018 as in her view it would be nearly impossible to meet the demands of the Agency.

The Director welcomed the opportunity to meet with the Commission’s services on the content of PD; he however underlined to be responsible for the full preparation of the PD until the budgetary authority decide on the final allocation of Agency’s resources.

A few members asked for an Action plan on budgetary discussions in the EU institutions.

Conclusion: The Administrative Board discussed the Single Programming Document (PD) for 2018. The Director was requested to circulate a summary of the PD for 2018, as well as for the 2017 review PD. He was also requested to provide an Action plan on budgetary discussions in the EU institutions.

9. Appointment of AB Member to take part in the 2017 Col Review Panel

The Chair said that the Agency's Conflict of Interest Policy envisages that the (updated) Declarations of Interests are examined by a review panel, which shall consist of the Chair, the Vice-Chair and a European Commission representative in the Administrative Board and, as alternate, a Commission official, with the Director of the Agency as observer and a legal expert of the Agency as secretary. For the examination of the Chair's and the Vice-Chair's declarations, the panel shall include one appointed Board member. The Chair contacted Mr Lentz, who agreed to be appointed as Conflict of Interest Review panel member again in 2017.

Conclusion: The Administrative Board appointed Mr Lentz to take part in the 2017 Col Review panel examining the Chair's and Vice-Chair's declaration of interest.

10. Amendment of AB Rules of Procedure - Financial compensation of AB Members

The Director introduced the agenda point and said that since the beginning of 2016, and in fact even before, the Board has been discussing the demanding situation of some members participating in the work of the Administrative Board without any financial compensation. The Commission and the Agency have been exploring options to find a solution for the concerned AB members.

If the Administrative Board decides it is appropriate to foresee a special indemnity for Administrative Board members to cover other costs derived from their contribution to and participation in the work of the Administrative Board, the Director proposes to apply the financial compensation rules based on the Commission decision of 5 December 2007 containing the rules on the reimbursement of expenses incurred by people from outside the Commission invited to attend meetings in an expert capacity, which foresees that, in particular and justifiable cases, very high-level experts may have their allowances increased with a minimum of EUR 300 when the increase applies to both the daily allowance and the accommodation allowance.

For the precise setting of the level of reimbursement, existing practice at other European agencies for the payment of Management Board members are taken as benchmark.

The Commission appointed Board member replied that the Commission does not oppose that the Agency covers the special indemnity to Board members, however they oppose the modality which was proposed. The Commission is of the opinion that a change in the Agency's Financial Regulation is required as there is currently no legal basis to remunerate AB members. The Commission appointed Board member undertook to make informal contacts with DG BUDG on a possible wording for an article. If the Commission could informally agree on a text, ACER could then send a formal request to the Commission to revise its Financial Regulation. The point could then be put back on the agenda of the next Board meeting.

Conclusion: The Administrative Board postponed the decision on the financial compensation to Board members to its next meeting.

11. Strategy on contract agents

The Director explained that the number of Contract Agents engaged by the Agency has to be re-aligned to as close as possible to the level indicated as forecast in the Budgetary Financial Statements of the 2016 and 2017 EU draft budget, i.e. a total of 19 Contract Agents.

The Agency, in the management and recruitment of Contact Agents, has always considered the availability of budgetary appropriations, as it was the case in all previous years as well as in the current one.

While being aware of the needs to re-align the number of Contract Agents to a level close to 19 as indicated in the Budgetary Financial Statement for the EU draft 2016 and 2017 budget, the Agency also has to consider the staffing needs for the fulfilment of its mandate, the legal commitment taken with the current Contract Staff members and the duty to care of the Agency vis-à-vis its staff.

In the current situation, the Agency therefore intends to take a sound but flexible approach by implement the following steps:

- Identification of Contract Agents key positions,
- Amendment of the Agency's policy on contract renewal,
- Request for the revision of the 2018 budget for Contract Agents and amendments for 2017, and
- *Ad-hoc* exit plan for Contract Agents whose contracts will not be renewed.

The Commission appointed AB member thanked the Director for the Agency's strategy regarding the contract agents' posts. The Commission was of the opinion that the current long-term contracts for contract agents are reducing the Agency's flexibility options, putting it under constraint when there is no budgetary assurance. This strategy would need to be reconsidered.

Conclusion: The Board took note of the Agency strategy for contract agents.

12. Note on Reclassification in 2013-2015

The Director updated the members and explained that in July 2016 the Agency ascertained that, due to *bona fide* misinterpretations of the requirements for the reporting/programming documents in the past three years, the Establishment Plans adopted as part of the general EU Budget(s) did not reflect the actual grades of staff members in service, but rather the recruitment/appointment grades.

The Commission's Services suggested that the Agency withdraw the reclassification decisions adopted in previous years. Such a withdrawal would have widespread negative consequences on the Agency, likely to jeopardise its ability to fulfil its legal mandate.

Moreover, the legal analysis performed by the Agency and supported by external advice concluded that, since:

- the staff members acquired legitimate expectations, as they could have confidence in the apparent lawfulness of the reclassification decisions,
- the reasonable period in which the administration may decide to withdraw the past decisions has expired,
- the reclassification decisions, albeit not in line with the Financial Regulation, do not adversely affect the financial interest of the Agency and
- there is no overriding interest of the Agency in withdrawing the reclassifications as the non-withdrawal imposes non additional financial burden on the Agency and, in fact, it could be claimed that the Agency's in promoting engagement of staff and trust in the institution, essential for meeting its challenging mandate, is aligned with the interest of staff in maintaining the reclassification,

the conditions permitting withdrawal of past reclassifications are not met.

In light of the above the Agency intends to:

- not proceed with the withdrawal of past reclassification decisions; and
- re-align its Establishment Plan through decisions of its Administrative Board, taking advantage of the flexibility allowed by article 38 of the Agency's Financial Regulation (*please see next agenda point*).

The Director explained that this situation affects 50% of the Agency staff. This will be reported in the annual register of exceptions and in the Annual Activity report.

No discussion took place.

Conclusion: The Board took note of the Agency's note on reclassification in 2013-2015.

13. Decision AB amending Decision AB No 21/2015 of the Administrative Board of ACER of 17 December 2015 on the adoption of the budget for the financial year 2016 and of the establishment plan of ACER as amended by Decision AB No 3/2016

The Director explained that the proposed decision implements the procedure established in Article 38(1) of Agency's Financial Regulation (AB Decision 21/2016 ('flexibility rule')).

According to flexibility rule, the Administrative Board may, under specific conditions, modify the Establishment Plan of the Agency up to 10% of the posts authorised. The specific conditions for implementation this procedure are met, since:

- the volume of staff appropriations corresponding to a full financial year is not affected,
- the limit of total number of posts authorised by the establishment plan is not exceeded (as the number of posts remains unchanged),
- the modification does not affect the grades AD 16, AD15, AD14 and AD 13, and
- the Agency carried out the benchmarking exercise for 2015 in line with the applicable provisions.

The use of this flexibility rule is required to realign the Establishment Plan to the actual grades of staff in service, following the reclassifications in previous years, as well as to make room for some of the reclassifications proposed for 2016. The implementation of the flexibility rule requires repealing AB Decision 3/2016 and amending the Establishment Plan adopted together with the 2016 Agency's budget by AB Decision No 21/2015. By upgrading three posts of grade AD5 to AD12, three posts of grade AST3 to AST5 and one post of grade AST3 to AST6, this procedure will allow for realignment of the Establishment Plan of the Agency with the actual grades of the staff members in service and a limited number of reclassifications for this year.

The Commission proposed some changes to the draft decision, which were accepted by the Board.

Conclusion: The Board adopted the Decision amending Decision AB No 21/2015 of the Administrative Board of 17 December 2015 on the adoption of the budget for the financial year 2016 and of the establishment plan, as amended by Decision AB No 3/2016 (ANNEX 3).

14. Decision AB on the replacement of members of the Board of Appeal of the Agency for the Cooperation of Energy Regulators

The Director recalled that the Administrative Board formally appointed the members and alternates of the Board of Appeal (BoA) by its Decision AB no 18/2016 on 18 October 2016. The decision established a list with the names of the members and, respectively, with the names of the alternates, but did not indicate how an alternate would be chosen from the list in order to replace a member in case of necessity. Article 18(6) of Regulation (EC) 713/2009 stipulates that a BoA member shall be replaced by his alternate, therefore pairing of the members with the alternates seems necessary. The BoA discussed this issue at its 7th meeting held on 17 November 2016 and mandated its newly appointed Chairman, Mr Piebalgs, to address this question to the Administrative Board.

The Chair reported that on 24 November 2016 Mr Piebalgs wrote to her, asking the Administrative Board to provide clarification on the above issue.

Conclusion: The Board adopted a decision on replacement of members of the Board of Appeal by pairing the members with their alternates (ANNEX 4).

15. AB meetings in 2017

The Chair presented the dates/locations of the 2017 AB meetings: 16/3, 8/6, 21/9, and 14/12, all in Ljubljana. On request of one AB member the timings will be planned according to the agenda items and not according to the flight schedule of Board members.

Conclusion: The Board took note of the dates of 2017 AB meetings. A possible January AB meeting is yet to be confirmed.

AOB:

The Chair asked the Commission to prepare, for the next AB meeting, a timeline on the process and the tasks of the Administrative Board regarding the appointment of a new ACER Director.

For the Administrative Board:

SIGNED



ANNEX 1



DECISION AB n° 19/2016

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

of 15 December 2016

**granting permission to the Director of the Agency for the Cooperation of Energy
Regulators to engage in outside activities for the year 2017**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy
Regulators, and, in particular Article 28 thereof,

Having regard to the Staff Regulations of Officials of the European Union, and in
particular Article 12b and 55 thereof, and to the Conditions of Employment of Other
Servants of the European Union, and in particular Article 11 thereof,

Having regard to Commission Decision C(2013) 9037 final of 16 December 2013 on
outside activities and assignments, and in particular Articles 6 and 9 thereof;

Whereas:

- (1) Mr Alberto Pototschnig, Director of the Agency for the Cooperation of Energy
Regulators (hereinafter referred to as 'the Agency'), has been cooperating with
the Florence School of Regulation (hereinafter referred to as the 'School') since
its foundation in 2004.
- (2) The School of Regulation is a partnership between the European University
Institute – Robert Schuman Centre for Advanced Studies, the Council of the
European Energy Regulators and the Independent Regulators Group, and it

works closely with the European Commission. It is a European forum dedicated to economic regulation.

- (3) The objectives of the School are of non-commercial nature, being focused on the i) the organisation of policy events on key regulatory issues, ii) the provision of state-of-the-art training for practitioners, iii) the production of analytical and empirical research in the field of regulation, and iv) the promotion of networking, through documents and ideas exchanges.
- (4) Through its activities, the School contributes to enhancing and spreading best practices in regulated markets, including the energy sector.
- (5) The Administrative Board of the Agency, with its Decisions AB n° 34/2011 of 2 December 2011, AB n° 24/2012 of 5 December 2012, AB n° 23/2013 of 12 December 2013, AB n° 18/2014 of 18 December 2014 and AB n° 24/2015 of 17 December 2015, granted permission to Mr Alberto Pototschnig to engage in outside activities with the School for the years 2012, 2013, 2014, 2015 and 2016, respectively. The permission granted covered the same kind of outside activities for which is sought permission for the year 2017.
- (6) At the School, Mr Alberto Pototschnig will be acting as Adviser to the Director of the School with regard to the activities in the energy policy area. Mr Alberto Pototschnig will also participate in teaching and other educational, academic and research activities organised by the School.
- (7) The role of adviser to the Director of the School ensures that the School focuses on the most relevant issues in the regulation of the European energy sector, thus ensuring that the activities of the School also benefit the Agency. Similarly, the involvement in educational, academic and research activities at the School ensures that the Agency can gather experience from the academic fora.
- (8) It is therefore clearly in the interest of the Agency that Mr Pototschnig maintains the role as Adviser to the Director of the School and is involved in other related educational, academic and research activities, including lecturing in training courses organised by the School.
- (9) Given the governance and the non-commercial mission of the School, the activities for which permission is granted do not raise any conflict of interest.
- (10) It is necessary to encourage external mobility to enable staff to acquire new skills and knowledge which are of benefit to the staff itself and to the Agency.
- (11) Given the importance for the Agency of Mr Pototschnig's activities as Adviser to the Director of the School, exceptional circumstances are deemed to exist for permission to be extended to include academic and research activities as well, up to a total of 200 hours per year,

HAS DECIDED AS FOLLOWS:

Article 1

1. Mr Alberto Pototschnig is granted permission to engage in outside activities in the year 2017 to act as adviser to the Director and lecturer at the Florence School of Regulation.
2. The activities for which permission is granted shall be carried out for a maximum of two hundred (200) hours during the year 2017.
3. The activities for which permission is granted, to the extent that they are carried out during working hours with a limit of 100 hours, are considered to be carried out in the interest of the Agency.

Article 2

1. The permission is granted subject to the condition that no costs shall be incurred by the Agency.
2. Mr Alberto Pototschnig shall not receive remuneration in connection with the activities for which permission is granted to the extent that they are carried out during working hours. To the extent that these activities are carried out outside working hours, Mr Pototschnig shall hand over any remuneration received in excess of EUR four thousand five hundred (4,500). Such limit shall apply to net remuneration and shall exclude any royalties or similar utilities received for publications, as well as any reimbursement of expenses.

Article 3

1. Mr Pototschnig shall report to the Administrative Board on his activities at the School at the end of the period of permission.
2. The Chairman is mandated to implement this Decision and for any procedural step related to the permission granted with this Decision.

Article 4

1. The permission is granted for the period 1 January 2017 to 31 December 2017.
2. This Decision shall take effect on 1 January 2017.

Done at Ljubljana, on 15 December 2016

For the Administrative Board:

Dr Romana Jordan
Chair

ANNEX 2

DECISION AB n° 20/2016

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

of 15 December 2016

**on the adoption of the budget for the financial year 2017 and of the establishment
plan of the Agency for the Cooperation of Energy Regulators**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy
Regulators¹ and, in particular, Articles 1(1), 3 and 23(5) thereof,

Having regard to Decision AB No 22/2013 of the Administrative Board of the Agency
for the Cooperation of Energy of 12 December 2013 on the adoption of the Financial
Regulation of the Agency for the Cooperation of Energy Regulators, and, in particular,
Articles 26, 33(8), 35, 36, 37 and 38 and thereof,

Having regard to Decision AB No 02/2016 of the Administrative Board of the Agency
for the Cooperation of Energy of 27 January 2016 on the estimate of revenue and
expenditure of the Agency for the Financial year 2017, and, in particular, Article 1
thereof,

WHEREAS:

- (1) Following Decision AB No 02/2016 the Administrative board of the Agency
adopted the estimate of revenue and expenditure and the draft establishment
plan for the financial year 2017.
- (2) In accordance with Article 23(5) of Regulation (EC) No 713/2009 and Article
33(8) of Decision AB No 22/2013, the budget of the Agency for the
Cooperation of Energy (hereinafter referred to as the 'Agency') together with
the establishment plan shall be drawn up and adopted by the Administrative
Board of the Agency for the Cooperation of Energy (hereinafter referred to as
the 'Administrative Board'), and becomes definitive after the adoption of the
general budget of the European Union. Where necessary, the budget and the
establishment plan should be adjusted accordingly.

¹ OJ L 211, 14.08.2009, p. 1.

- (3) The general budget of the European Union for the financial year 2017 has been adopted by the budgetary authority on 1 December 2016. As part of the budget, the budgetary authority also adopted the establishment plan of the Agency.
- (4) The budget for the financial year 2017 of the Agency, as approved by the budgetary authority, sets 68 of the 102 human resources and their associated costs as approved by the Administrative Board of the Agency with Decision AB no 02/2016 of 27 January 2016 on the estimate of the revenue and expenditure of the Agency for the financial year 2017. Moreover, one of the 69 posts approved for 2016 financial year has been removed by the budgetary authority.
- (5) The Administrative Board adopts the budget and the establishment plan of the Agency for financial year 2017,

HAS ADOPTED THIS DECISION:

Article 1

The budget for financial year 2017 of the Agency and the establishment plan, as detailed in Annex I, are hereby adopted as final.

Article 2

This Decision shall enter into force on the day following its adoption.

Done at Ljubljana, on 15 December 2016

For the Administrative Board:

*Dr Romana Jordan
Chair of the Administrative Board*

Annex I

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
9	REVENUE					
	ANNUAL INCOME					
901	Subsidy from the EU general budget	10,297,876.28	8,020,503.81	15,164,582.00	12,520,160.00	This represents the annual operating subsidy from the European Union budget.
902	Others	415,000.00	415,000.00	708,000.00	752,000.00	Other revenue including assigned revenue of year N-2.
903	Bank interest	p.m.	p.m.	p.m.	p.m.	This represents the interest received on the balance of the bank accounts.
	CHAPTER 9 0 – TOTAL	10,712,876.28	8,435,503.81	15,872,582.00	13,272,160.00	
	TITLE 9 – TOTAL	10,712,876.28	8,435,503.81	15,872,582.00	13,272,160.00	
	GRAND TOTAL	10,712,876.28	8,435,503.81	15,872,582.00	13,272,160.00	
	EXPENDITURE					
	EXPENDITURE RELATING TO STAFF AND RESOURCES					
1	STAFF IN ACTIVE EMPLOYMENT					
110	Temporary staff holding a post provided in the establishment plan					
1100	Basic salaries and correction	2,969,808.45	2,969,808.45	3,835,126.00	4,036,500.00	Staff Regulations of officials and Conditions of employment of other servants of the European Communities, and in particular Articles 62 and 66 thereof. This appropriation is intended to cover basic salaries and corrections for temporary staff.
1101	Family allowances	459,831.00	459,831.00	724,895.00	676,200.00	Staff Regulations of officials of the European Communities, and in particular Articles 62, 67 and 68 thereof and section I of Annex VII thereto. This appropriation is intended to cover the household, dependent child and education allowances for temporary staff
1102	Expatriation and foreign residence allowances	513,140.00	513,140.00	739,218.00	703,800.00	Staff Regulations of officials of the European Communities, and in particular Articles 62 and 69 thereof and Article 4 of Annex VII thereto. This appropriation is intended to cover the expatriation and foreign-residence allowances for temporary staff.
111	Other agents					
1110	Contract agents	739,571.00	739,571.00	948,894.00	1,591,520.00	Conditions of employment of other servants of the European Communities, and in particular Article 4 and Title IV thereof. This item is intended to cover the remuneration and the employer's share of social security contributions for contract agent staff.
1111	Seconded National Experts	355,052.19	355,052.19	200,000.00	112,629.00	Various Seconded National Experts are placed at ACER to fulfil the need for assistance to the agency's work programme. This appropriation includes their daily and monthly allowances
	Article 1 1 1 – Total	1,088,623.19	1,088,623.19	1,148,894.00	1,704,149.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
112	Further training, retraining and information for staff					
1120	Training and information for staff	129,937.60	77,817.06	200,000.00	107,800.00	Staff Regulations of officials of the European Communities, and in particular the third paragraph of Article 24 a) thereof. This also includes costs related to missions for training events and trainer expenses.
	Article 1 1 2 — Total	129,937.60	77,817.06	200,000.00	107,800.00	
113	Insurance against sickness, accidents and unemployment					
1130	Insurance against sickness	124,242.38	124,242.38	165,647.00	172,500.00	Staff Regulations of officials of the European Communities, and in particular Article 72 thereof. Rules on sickness insurance for officials of the European Communities, and in particular Article 23 thereof. This appropriation is intended to cover the employer's contribution and the official's contribution of the basic salary.
1131	Insurance against accidents and occupational disease	21,541.41	21,541.41	43,483.00	27,600.00	Staff Regulations of officials of the European Communities, and in particular Article 73 thereof. This appropriation is intended to cover the employer's contribution to insurance against accidents and occupational disease (0.875 % of the basic salary).
1132	Unemployment insurance for temporary staff	46,599.86	46,599.86	56,027.00	69,000.00	Council Regulation (EEC, Euratom) No 2799/85 of 27 September 1985 amending the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of the European Communities. This appropriation is intended to insure temporary staff against unemployment.
	Article 1 1 3 — Total	192,383.65	192,383.65	265,157.00	269,100.00	
114	Miscellaneous allowances and grants					
1140	Birth and death grants	793.24	793.24	1,983.00	992.00	Staff Regulations of officials of the European Communities, and in particular Articles 70, 74 and 75 thereof. This appropriation is intended to cover: — the childbirth grant, — Death allowances payable in the event of the death of an official. Staff Regulations of officials of the European Communities, and in particular Article 8 of Annex VII thereof.
1141	Annual travel expenses from the place of work to origin	72,759.58	72,759.58	91,062.00	96,600.00	This appropriation is intended to cover the payment to staff members in each calendar year of a sum equivalent to the cost of travel from the place of employment to the place of origin for themselves and, if they are entitled to the household allowance, for the spouse and dependants.
1142	Schooling fees	214,000.00	186,800.40	280,000.00	209,000.00	This appropriation is intended to cover the additional schooling fees incurred by staff members for their children's education.
	Article 1 1 4 — Total	287,552.82	260,353.22	373,045.00	305,592.00	
115	Overtime					
1150	Overtime					Staff Regulations of officials of the European Communities, and in particular Article 56 thereof and Annex VI thereof. This appropriation is intended to cover flat-rate payments or hourly-rate payments for overtime worked by temporary agents in categories AST 1 - AST4 whom it has not been possible to compensate by flexi-hours.
	Article 1 1 5 — Total					

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
116	Expenses on entering and leaving the service and on transfer					
1160	Expenditure related to Recruitment	40,000.00	38,310.87	50,000.00	44,800.00	Staff Regulators of officials of the European Communities, and in particular Articles 27 to 31 and 33 thereof. This appropriation is intended to cover the expenditure involved in recruitment procedures.
1161	Travel expenses taking up duty	259.80	259.80	60,000.00	5,000.00	Staff Regulators of officials of the European Communities, and in particular Articles 2 and 71 thereof and Article 7 of Annex VII thereto. This appropriation is intended to cover the travel expenses of staff (including members of their families) entering or leaving the service.
1162	Installation, resettlement and transfer allowances	47,908.50	47,908.50	179,856.00	73,500.00	Staff Regulators of officials of the European Communities, and in particular Articles 20 and 71 thereof and Article 9 of Annex VII thereto. This appropriation is intended to cover the removal costs of staff obliged to change residence after taking up their appointment or when transferred to a new place of work or when they definitively cease their duties and settle elsewhere.
1163	Temporary daily subsistence allowances	25,837.95	25,837.95	127,355.00	79,800.00	Staff Regulators of officials of the European Communities, and in particular Articles 20 and 71 thereof and Article 10 of Annex VII thereto. This appropriation is intended to cover the daily subsistence allowances due to staff able to prove that they were obliged to change their place of residence after taking up their duties (including transfer).
117	Supplementary services	114,006.25	112,317.12	417,211.00	203,100.00	
1170	Supplementary clerical and interim services	170,589.20	141,568.53	147,900.00	178,200.00	This appropriation is intended to cover the services provided by interim agents employed to cover staffing needs where the establishment plan does not cover requirements as well as traineeship expenditure.
1171	Administrative Assistance	49,000.00	44,131.86	51,000.00	79,284.00	This appropriation is intended to cover the administrative assistance received from PMO in processing the salaries of temporary agents and contract agents.
1172	Trainees	-	-	60,000.00	132,000.00	maintenance of the electronic personal files database and budget publication in the EU Official Journal. This appropriation is intended to cover the costs of traineeship for the Agency.
12	Article 1 1 7 — Total	219,589.20	185,700.39	258,900.00	389,484.00	
120	MISSIONS AND DUTY TRAVEL	5,968,872.16	5,859,974.98	7,962,446.00	8,395,725.00	
120	Mission expenses, travel expenses and incidental expenditure					
1200	Mission expenses Administrative staff	30,580.23	29,297.16	50,000.00	42,590.00	This appropriation is intended to cover expenditure related to mission of the Administrative department.
1201	Mission expenses - Director	30,000.00	29,030.96	51,000.00	30,000.00	This appropriation is intended to cover expenditure related to the missions of the Director.
1202	Mission expenses Director office staff	46,893.19	44,339.43	55,626.00	40,000.00	This appropriation is intended to cover expenditure related to missions of the Director office staff.
	Article 1 2 0 — Total	107,473.42	102,667.55	156,626.00	112,590.00	
	CHAPTER 1 2 — TOTAL	107,473.42	102,667.55	156,626.00	112,590.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
13	SOCIOMEDICAL INFRASTRUCTURE					
130	Medical service					
1300	Medical services and equipment	-	-	50,000.00	60,494.00	Staff Regulations of officials of the European Communities, and in particular Article 59 thereof and Article 8 of Annex II plus purchase of medical supplies and equipment.
	Article 1 3 0 — Total	-	-	50,000.00	60,494.00	
	CHAPTER 1 3 — TOTAL	-	-	50,000.00	60,494.00	
14	SOCIAL SERVICES					
140	Social services					
1400	Special assistance grants	p.m.	p.m.	p.m.	p.m.	This item is intended to cover assistance in the form of cash which may be granted to an official, former official or survivors of a deceased official who find themselves in difficult circumstances.
1401	Social welfare of staff	16,427.89	11,042.89	27,744.00	23,962.00	This appropriation is intended to cover expenditure by the Agency on the social welfare activities of its staff, including schooling informative events.
	Article 1 4 0 — Total	16,427.89	11,042.89	27,744.00	23,962.00	
141	Staff Committee					
1410	Staff Committee	11,622.68	7,405.91	15,000.00	15,000.00	This appropriation is intended to cover the costs such as missions or other administration costs of the Staff Committee representing the staff of ACER.
	Article 1 4 1 — Total	11,622.68	7,405.91	15,000.00	15,000.00	
	CHAPTER 1 4 — TOTAL	28,050.57	18,448.80	42,744.00	38,962.00	
	TITLE 1 — TOTAL	6,104,396.15	5,981,090.43	8,211,816.00	8,607,771.00	
2	AGENCY'S BUILDING AND ASSOCIATED COSTS					
20	AGENCY'S PREMISES COSTS					
200	Rental costs					
2000	Rent	593,929.80	593,929.80	657,753.00	651,623.00	This appropriation is intended to cover the rental costs of ACER premises.
2001	Removal costs	2,850.00	1,350.00	5,100.00	4,500.00	This appropriation is intended to cover the costs related to the removal of furniture and equipment to new premises.
	Article 2 0 0 — Total	596,779.80	595,279.80	662,853.00	656,123.00	
201	Utilities and Services					
2010	Utilities	125,000.00	108,445.46	125,000.00	125,000.00	This appropriation is intended to cover the utility costs like: water, gas, electricity, waste collector.
2011	Cleaning and maintenance	95,000.00	83,008.22	100,000.00	106,100.00	This appropriation is intended to cover the costs of cleaning and maintenance of the premises.
	Article 2 0 1 — Total	220,000.00	191,453.68	225,000.00	231,100.00	
202	Insurance					
2020	Insurance	4,056.75	4,056.75	4,500.00	7,000.00	This appropriation is intended to cover the insurance policy premiums including insurance of the building occupied by ACER and its assets.
	Article 2 0 2 — Total	4,056.75	4,056.75	4,500.00	7,000.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
203	Security of buildings and persons					
2030	Security and surveillance of buildings	50,000.00	31,462.35	37,000.00	78,400.00	This appropriation is intended to cover expenditure on buildings connected with security and safety in particular loss, theft, unauthorized use or access, and other internal or external threats.
2031	Health and safety at work	2,299.31	2,299.31	4,000.00	8,200.00	This appropriation is intended to cover for the costs of health and safety issues at the work place.
	Article 2 0 3 — Total	52,299.31	33,761.66	41,000.00	86,600.00	
204	Other expenditure on buildings					
2040	Other expenditure on buildings	71,030.00	45,515.09	30,000.00	40,000.00	This item is intended to cover expenditures on buildings, renovations and refurbishment including the upgrade and maintenance of existing facilities.
2041	Audio and video equipment maintenance	16,242.60	11,968.20	18,360.00	-	
	Article 2 0 4 — Total	87,272.60	57,483.29	48,360.00	40,000.00	
	CHAPTER 2 0 — TOTAL	960,408.46	882,035.18	981,713.00	1,020,823.00	
21	DATA PROCESSING					
210	Equipment, data processing equipment and operating costs					
2100	Consumables	9,464.16	7,947.37	13,770.00	15,000.00	This appropriation is intended to cover the cost of consumables.
2101	Software	141.88	141.88	61,200.00	60,000.00	This appropriation is intended to cover the purchase/licensing of software.
2102	Subscriptions IT	175,545.80	111,484.02	193,800.00	443,518.00	This appropriation is intended to cover the subscription costs to various support services and shared applications such as ABAC, Business Objects, ABAC Assets etc.
2103	Disaster recovery site	85,994.23	-	81,600.00	50,000.00	This appropriation is intended to cover the expenditure related to the establishment and maintenance of a disaster recovery site.
	Article 2 1 0 — Total	271,146.07	119,573.27	350,370.00	568,518.00	
	CHAPTER 2 1 — TOTAL	271,146.07	119,573.27	350,370.00	568,518.00	
22	MOVABLE PROPERTY AND ASSOCIATED COSTS					
221	Purchase, hire, maintenance and repair of furniture					
2210	Purchase of furniture	43,361.15	42,399.15	48,120.00	22,000.00	This appropriation is intended to cover the purchase of furniture.
222	Transportation	43,361.15	42,399.15	48,120.00	22,000.00	
2220	Transportation costs	114,630.54	114,630.54	115,000.00	143,400.00	This appropriation is intended to cover the costs of parking, cabs and hire of vehicles.
	Article 2 2 2 — Total	114,630.54	114,630.54	115,000.00	143,400.00	
223	Documentation and library expenditure					
2230	Library Acquisitions	94,390.00	82,179.35	117,300.00	109,000.00	This appropriation is intended to cover the purchase of hard copies or electronic material, e.g. books, reference works or CD's etc. to support and strengthen the knowledge of the agency.
	Article 2 2 3 — Total	94,390.00	82,179.35	117,300.00	109,000.00	
	CHAPTER 2 2 — TOTAL	252,381.69	239,209.04	280,420.00	274,400.00	
23	CURRENT ADMINISTRATIVE EXPENDITURE					
230	Stationery and office supplies					
2300	Stationery and office supplies	42,000.00	23,908.20	20,000.00	30,000.00	This appropriation is intended to cover the purchase of paper and office supplies.
	Article 2 3 0 — Total	42,000.00	23,908.20	20,000.00	30,000.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
231	Financial charges					
2310	Bank charges	240.00	156.50	1,020.00	500.00	This appropriation is intended to cover bank charges in relation to the bank accounts held by the agency.
	Article 2 3 1 — Total	240.00	156.50	1,020.00	500.00	
232	Legal expenses					
2320	Legal expenses	31,256.50	18,056.50	100,000.00	45,000.00	This appropriation is intended to cover legal costs and the services of lawyers or other experts.
2321	Expert consultations - MITD and MSCD	-	-	50,000.00	50,000.00	This appropriation is intended to cover the expert consultation costs of the MIT and MSC departments.
2322	Expert consultations - Gas	104,723.80	19,625.00	200,000.00	93,768.00	This appropriation is intended to cover the expert consultation costs of the Gas department.
2323	Expert consultations - Electricity	180,946.94	24,053.24	200,000.00	70,000.00	This appropriation is intended to cover the expert consultation costs of the Electricity department.
2324	Expert consultations - Administration	6,900.00	-	6,426.00	-	- Administration department.
2325	External audit expenses	6,500.00	-	6,500.00	9,000.00	This appropriation is intended to cover the expenses with the external audit of the Agency's accounts.
2326	Information security	-	-	75,000.00	44,700.00	This appropriation is intended to cover expenditure related to security of information for the Agency.
	Article 2 3 2 — Total	329,727.24	61,734.74	637,926.00	312,468.00	
233	Other operating expenditure					
2330	Administrative Board meetings	36,000.00	20,434.20	36,720.00	51,000.00	This appropriation is intended to cover the costs for the members of the Administrative Board participating to meetings during the year.
2331	Board of Regulators meetings	81,483.00	55,197.53	128,080.00	94,880.00	This appropriation is intended to cover the costs for the members of the Regulatory Board participating to meetings during the year.
2332	Board of Appeal	42,800.00	10,985.19	49,000.00	54,000.00	This appropriation is intended to cover the costs of the Board of Appeal related to meetings, secretarial and legal support.
2333	External Participants to meetings	4,300.00	543.66	11,100.00	9,800.00	This appropriation is intended to cover the costs of external participants to meetings organised by ACER.
2334	EU Agencies Network	13,008.00	8,008.00	1,930.00	11,500.00	This appropriation is intended to cover the costs with the EU agencies networks and staff surveys.
	Article 2 3 3 — Total	177,591.00	95,148.58	226,830.00	221,180.00	
	CHAPTER 2 3 — TOTAL	549,558.24	180,948.02	885,776.00	564,148.00	
24	COMPUTER INFRASTRUCTURE					
240	TELECOMMUNICATION AND POSTAGE					
	Postal charges	7,000.00	4,598.16	8,000.00	7,000.00	This appropriation is intended to cover expenditure on postal and delivery charges, including parcels.
	Article 2 4 0 — Total	7,000.00	4,598.16	8,000.00	7,000.00	
241	Telecommunications					
2410	Telecommunications subscriptions and charges	58,600.00	43,503.44	83,850.00	90,000.00	This appropriation is intended to cover all telecom related running costs, including fixed lines, mobile telephones and Internet access.
	Article 2 4 1 — Total	58,600.00	43,503.44	83,850.00	90,000.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
242	Equipment and Computer infrastructure					
2420	Hardware and other equipment	182,519.62	21,226.40	103,640.00	105,000.00	This appropriation is intended to cover the purchase of hardware and other equipment for Agency's employees.
	Article 2 4 2 – Total	182,519.62	21,226.40	103,640.00	105,000.00	
	CHAPTER 2 4 – TOTAL	248,119.62	69,328.00	195,490.00	202,000.00	
	TITLE 2 – TOTAL	2,281,614.08	1,491,093.51	2,893,769.00	2,629,889.00	
3	OPERATIONAL EXPENDITURE					
30	REPRESENTATION EXPENSES					
300	Entertainment and Representation expenses					
3000	Representation expenses - Director office	1,800.00	1,658.26	5,000.00	4,000.00	This appropriation is intended to cover costs relating to representation on behalf of ACER.
3001	Representation expenses - Administration	84.10	84.10	3,600.00	500.00	This appropriation is intended to cover costs relating to representation on behalf of ACER.
3002	Representation expenses - Electricity	4,523.65	3,273.65	6,000.00	2,500.00	This appropriation is intended to cover costs relating to representation on behalf of ACER.
3003	Representation expenses - MITD and MSCD	718.20	718.20	6,000.00	1,000.00	This appropriation is intended to cover costs relating to representation on behalf of ACER.
3004	Representation expenses - Gas	3,217.14	2,608.34	5,000.00	2,500.00	This appropriation is intended to cover costs relating to representation on behalf of ACER.
	Article 3 0 0 – Total	10,343.09	8,342.55	25,600.00	10,500.00	
	CHAPTER 3 0 – TOTAL	10,343.09	8,342.55	25,600.00	10,500.00	
31	OPERATIONAL MISSIONS					
310	Missions					
3100	Operational Missions - Gas Department	81,116.92	73,339.03	95,000.00	80,000.00	This appropriation is intended to cover costs of missions related to operational issues of the Gas department.
3101	Operational Missions - Electricity Department	88,732.32	74,146.20	95,000.00	85,000.00	This appropriation is intended to cover costs of missions related to operational issues of the Electricity department.
3102	Operational Missions - MITD and MSCD	55,666.72	44,606.40	75,000.00	100,000.00	This appropriation is intended to cover costs of missions related to operational issues of the MIT and MSC departments.
	Article 3 1 1 – Total	225,516.56	192,091.63	265,000.00	265,000.00	
	CHAPTER 3 1 – TOTAL	225,516.56	192,091.63	265,000.00	265,000.00	

Title Chapter Article Item	Heading	Executed 2015 commitment appropriation	Executed 2015 payment appropriation	Budget 2016	Total budget for the Financial year 2017	Remarks
32	STAKEHOLDER INVOLVEMENT, PUBLIC RELATIONS AND WEBSITE					
320	Stakeholder Involvement, Public Relations & Website					
3200	Public hearings, workshops, conferences	103,572.12	66,344.99	135,900.00	70,000.00	This appropriation is intended to cover the cost of public relations activities including workshops organised by ACER.
3201	Website set-up and maintenance	108,997.00	-	59,500.00	88,000.00	This appropriation is intended to cover the costs of setting-up and maintenance of the website as primary communication tool with external party in the co-operation process.
3202	Publications, information material	3,993.00	3,601.00	60,600.00	44,000.00	This appropriation is intended to cover the cost of promotional material informing the public on ACER's activities and any reports production and distribution.
3203	Reports production	18,345.00	8,640.00	-	-	
	Article 3 2 0 - Total	234,907.12	78,585.99	256,000.00	202,000.00	
	CHAPTER 3 2 - TOTAL	234,907.12	78,585.99	256,000.00	202,000.00	
33	TRANSLATIONS					
330	Translation of documents					
3300	Translation at CDT	21,000.00	16,698.60	70,500.00	200,000.00	This appropriation is intended to cover the translation of materials or other operational needs of ACER.
	Article 3 3 0 - Total	21,000.00	16,698.60	70,500.00	200,000.00	
	CHAPTER 3 3 - TOTAL	21,000.00	16,698.60	70,500.00	200,000.00	
34	PROFESSIONAL INDEMNITY					
340	Liability Insurance					
3400	Insurance	5,000.00	5,000.00	6,000.00	7,000.00	This appropriation is intended to cover the liability insurance costs.
	Article 3 4 0 - Total	5,000.00	5,000.00	6,000.00	7,000.00	
	CHAPTER 3 4 - TOTAL	5,000.00	5,000.00	6,000.00	7,000.00	
35	REMIT OPERATIONS					
350	REMIT Operations					
3500	Hosting deployment and operations	100,000.00	100,000.00	2,000,000.00	300,000.00	This appropriation is intended to cover the expenditure related to the REMIT hosting services.
3501	ARIS development, support, licences, subscriptions and fees	756,052.53	337,174.01	1,007,482.00	p.m.	This appropriation is intended to cover the expenditure related to the development of REMIT applications.
3502	Surveillance and BI tools customisation, licences and consultancy	11,198.85	700.00	450,000.00	650,000.00	This appropriation is intended to cover the expenditure related to REMIT monitoring software.
3503	IT and expert consultancy	962,847.90	224,727.09	886,415.00	400,000.00	This appropriation is intended to cover the expenditure related to consultancy services for REMIT.
3504	REMIT hardware	p.m.	p.m.	p.m.	p.m.	This appropriation is intended to cover the costs related to IT hardware purchase for REMIT.
	Article 3 5 0 - Total	1,830,099.28	662,601.10	4,343,897.00	1,350,000.00	
	CHAPTER 3 5 - TOTAL	1,830,099.28	662,601.10	4,343,897.00	1,350,000.00	
	TITLE 3 - TOTAL	2,326,866.05	963,319.87	4,966,997.00	2,034,500.00	
	GRAND TOTAL	10,712,876.28	8,435,503.81	15,872,562.00	13,272,160.00	

Establishment plan of the Agency for the Cooperation of Energy Regulators			
Function group and grade	2017	2016	2015
	Authorised under the Union budget	Authorised under the Union budget	Actually filled as at 31 December 2015
	Temporary posts	Temporary posts	Temporary post
AD 16			
AD 15	1	1	
AD 14			1
AD 13			
AD 12			
AD 11	5	5	4
AD 10			
AD 9	2	2	2
AD 8	10	10	6
AD 7	10	10	6
AD 6	7	7	7
AD 5	18	19	13
AD total	53	54	39
AST 11			
AST 10			
AST 9			
AST 8			
AST 7			
AST 6			
AST 5	1	1	1
AST 4	1	1	1
AST 3	13	13	13
AST 2			
AST 1			
AST total	15	15	15
Total staff	68	69	54

DECISION AB n° 21/2016

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

of 15 December 2016

**amending Decision AB No 21/2015 of
the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17
December 2015 on the adoption of the budget for the financial year 2016 and on the
establishment plan of the Agency for the Cooperation of Energy Regulators
as amended by Decision AB No 3/2016 of 27 January 2016**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators²,
and, in particular, Articles 1(1), 3 and 13(4) thereof,

Having regard to Definitive Adoption (EU, Euratom) 2016/150 of the European Union's
general budget for the financial year 2016 of 24 February 2016, and in particular Title 32
(Energy), Annex 'Staff' thereof³.

Having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September
2013 on the Framework Financial Regulation for the bodies referred to in Article 208 of
Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council⁴, and,
in particular, Articles 1, 33 and 38 thereof,

Having regard to Decision AB No 22/2013 of the Administrative Board of the Agency for the
Cooperation of Energy Regulators on the adoption of the Financial Regulation of the Agency
for the Cooperation of Energy Regulators of 12 December 2013 and, in particular, Article
38(1) thereof,

Having regard to Decision AB No 21/2015 of the Administrative Board of the Agency for the
Cooperation of Energy Regulators of 17 December 2015 on the adoption of the budget for the
financial year 2016 and of the establishment plan of the Agency for the Cooperation of
Energy Regulators, as amended by Decision AB No 3/2016 of the Administrative Board of
the Agency for the Cooperation of Energy Regulators of 27 January 2016,

Whereas:

² OJ L 211, 14.8.2009, p. 1.

³ OJ L 48, 24.2.2016, p. 1934.

⁴ OJ L 328, 7.12.2013, p. 42.

- (1) The contribution of the EU Budget to the budget of the Agency, including the establishment plan for the year 2016, was adopted by the Budgetary Authority on 25 November 2015 as part of the European Union's general budget. The Establishment Plan establishes the maximum number of posts and the relevant grades which can be occupied by a member of the staff in a given year.
- (2) Following Decision AB No 21/2015 of 17 December 2015, the Administrative Board of the Agency for the Cooperation of Energy Regulators (further 'the Agency'), adopted the Agency's establishment plan. The establishment plan was subsequently amended following Decision AB No 3/2016 of 27 January 2016.
- (3) The Agency did not comply with the establishment plan as approved by the Budgetary Authority as it understood that the grades referred to those at the time of recruitment.
- (4) The ACER establishment plan must therefore be modified to correct this ACER *bona fide* error.
- (5) According to the procedure established in Article 38(1) of AB Decision No 22/2016 ('the flexibility rule'), the establishment plan may be modified by the Administrative Board of the Agency with respect to up to 10% of the posts authorised, save in the case of grades AD16, AD15, AD14 and AD13, subject to the following conditions cumulatively fulfilled: (a) the volume of staff appropriations corresponding to a full financial year is not affected, (b) the limit of the total number of posts authorised by the establishment plan is not exceeded; and that (c) the Agency has taken part in a benchmarking exercise with other bodies of the Union as initiated by the European Commission's staff screening exercise.
- (6) The modification referred to in recital (5) would allow for realignment of the establishment plan of the Agency with the actual grades of the staff members in service.
- (7) By modifying the establishment plan the total volume of appropriations (item of the budget "salaries and allowances" under Title 1 – Staff expenditure) will not be affected, giving that in its budget forecast of the different years, the Agency considered the actual grades of staff, following the reclassifications exercises, as reported in the past programming documents. Moreover, the limit of total number of posts authorised by the establishment plan would not be exceeded as the implementation of the flexibility rule affects the grades in the establishment plan, but not the number of posts, which remain unchanged. Furthermore, the modification of the establishment plan does not affect the grades AD 16, AD15, AD14 and AD 13. Finally, the Agency carried out the benchmarking exercise for 2015 in line with the provisions of Article 29(3) of the Framework Financial Regulation (FFR) and the snapshot for the benchmarking exercise was taken on 31 December 2015.
- (8) Giving that the conditions for implementing Article 38(1) of Decision AB No 22/2013 are fulfilled, it is appropriate to modify the 2016 establishment plan of the Agency by implementing 'the flexibility rule' and to repeal Decision AB No 3/2016 and amend Decision AB No 21/2015.
- (9) The changes in the grades as per the establishment plan should be reflected in 2017-2019 and 2018-2020 Programming Documents,

(10) No further appointments can be made beyond the limits of the Establishment Plan.

HAS ADOPTED THIS DECISION:

Article 1.

Decision AB No 3/2016 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 27 January 2016 is hereby repealed.

Article 2.

The establishment plan listed in Annex I of Decision AB No 21/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 on the adoption of the budget for the financial year 2016 and of the establishment plan of the Agency for the Cooperation of Energy Regulators shall be amended as follows:

- (a) Three AD 5 posts are upgraded to AD12;
- (b) Three AST 3 posts are upgraded to AST5.
- (c) One AST3 post is upgraded to AST6.

Article 3.

- 1. This Decision shall be implemented by means of filling the posts in the respective grades as per the amended establishment plan in annex.
- 2. This Decision shall enter into force on the day following its adoption.

Done at Ljubljana, on 15 December 2016.

For the Administrative Board:

Dr. Romana Jordan
Chair of the Administrative Board

Annex I.

Category and grade	2016 EU Adopted budget	Amended 2016 ESTABLISHMENT PLAN (according to Art. 38 of the ACER FR (Decision AB No 22/2013))	
		Amendments	Amended Establishment Plan 2016
AD 16			
AD 15	1		1
AD 14			
AD 13			
AD 12		3	3
AD 11	5		5
AD 10			
AD 9	2		2
AD 8	10		10
AD 7	10		10
AD 6	7		7
AD 5	19	-3	16
Total AD	54	0	54
AST 11			
AST 10			
AST 9			
AST 8			
AST 7			
AST 6		1	1
AST 5	1	3	4
AST 4	1		1
AST 3	13	-4	9
AST 2			
AST 1			
Total AST	15	0	15
GRAND TOTAL	69	0	69

DECISION AB n° 22/2016

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

of 15 December 2016

**on the replacement of members of the Board of Appeal of the Agency for the
Cooperation of Energy Regulators**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹
and, in particular, Article 18 thereof,

Whereas:

- (1) Pursuant to Article 18(1) of Regulation (EC) No 713/2009, the Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector.
- (2) Pursuant to Article 18(2) of Regulation (EC) No 713/2009, the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

- (3) Article 18(6) of Regulation (EC) No 713/2009 stipulates the events of replacement of members of the Board of Appeal by their alternates. The Rules of Procedure of the Board of Appeal provides further details on replacement.
- (4) The Administrative Board appointed the members and alternates of the Board of Appeal by its Decision AB n° 18/2016 on 18 October 2016.
- (5) The new Board of Appeal met on 17 November 2016 (7th Board of Appeal meeting) and gave a mandate to its Chairman to invite the Administrative Board to clarify the question of replacement of the Board of Appeal members.
- (6) The Chairman of the Board of Appeal addressed a correspondence dated 23 November 2016 to the Chairman of the Administrative Board requesting clarification concerning the replacement of the Board of Appeal members by alternates,

HAS ADOPTED THIS DECISION:

Article 1

The members of the Board of Appeal shall be replaced, in the events stipulated by Regulation (EC) No 713/2009 and the Rules of Procedure of the Board of Appeal, by their alternates listed in the following order:

- a) Mr Walter Boltz, to be replaced by d by Mr Mariano Bacigalupo Saggese,
- b) Mrs Yvonne Fredriksson, to be replaced by Mr Dominique Woitrin,
- c) Mr Jean-Yves Ollier, to be replaced by Mrs Nadia Horstmann,
- d) Mr Andris Piebalgs, to be replaced by Mr Erik Rakhou,
- e) Mr Mariusz Swora, to be replace Mr Viorel Alicus,
- f) Mr Michael Thomadakis. to be replaced by Mr Miltos Aslanoglou.

Article 2

This decision shall enter into force on the day of its adoption.

Done at Ljubljana on 15 December 2016.

For the Administrative Board:

Dr. Romana Jordan

Chairman of the Administrative Board