

MINUTES

32nd ACER Administrative Board meeting
Thursday, 21 September 2017, 13.00 - 18.00 (DAY I) and
Friday, 22 September 2017, 9.00 – 13.00 (DAY II)
Ljubljana, Trg republike 3, 14th floor meeting room Irena Praček

Present:

Dr Romana Jordan, Chair, Member, with proxy from Mr Rene Tammist,
Mr Jochen Penker, Vice-Chair, Member,
Mr Georgios Shammias, Member,
Mr Piotr Woźniak, Member,
Ms Agnieszka Kaźmierczak, Member, with proxy from Mr Dominique Ristori,
Mr Rene Tammist, Member,
Mr Jurijs Spiridonovs, alternate member, with voting rights,
Mr Alberto Pototschnig, Director of ACER, Observer,
Mr Garret Blaney, the BoR Chair- elect, Observer, attended DAY I only,
Ms Marie-Christine Jalabert, Adviser.
Lord Mogg sent apologies.

Main conclusion of the meeting

- | |
|--|
| 1.) The Board requested that the Director reports back to the AB in December on his discussions with ECA on the two budget implementation options (differentiated versus non-differentiated appropriations). |
| 2.) The Board adopted the PD 2018-2020 with 6 votes in favour and 2 abstentions (Commission-appointed members). |
| 3.) On the selection of the new Director, the Board requested a note from the ACER legal service on the interpretation of article 13(1) of the Agency's founding Regulation, especially on whether the involvement of the BoR could be structured in two separate phases (consultation and opinion). |

4.) The Board adopted the AB Decision on the appointment of the new Accountant (outsourcing the accountant function to the Commission) (ANNEX 1) with 7 votes in favour and one abstention.
5.) The Board held a joint session with the ITRE Committee delegation (MEP Petersen).
6.) The Board unanimously adopted the AB Decision on appraisal (Amendment of the Commission's implementing rule on appraisal to be adopted by analogy) (ANNEX 2).
7.) The Administrative Board unanimously adopted the amended 2017 Indicative Procurement Plan for operational tasks (Annex IX of Work Programme 2017) (ANNEX 3).
8.) The Board unanimously adopted the AB Decision amending the budget and the establishment plan of the Agency for 2017 and repealing the AB Decision 20/2016 (ANNEX4).
9.) The Board took note of the presentation of the Staff Committee and welcomed their constructive approach with the Director.
10.) The AB requested to be consulted at the finalisation of the action plan, following the definitions on the Agency's vision, mission and values.
11.) The Members are requested to send proposals on the interpretation of criteria set in the Director's vacancy notice by email to the secretariat. A proposal will be prepared for the AB meeting in December.
12.) The Administrative Board endorsed the proposed dates for its meetings in 2018: 15-16 March, 7-8 June, 20 September, and 13 December.

Opening

The Chair greeted the members, especially the new BoR Chair-elect, Mr Garret Blaney and Mr Spiridonovs, alternate member, who was also attending the AB for the first time.

1. Approval of the Agenda

The Chair asked the members to declare any relevant interest and adopt the agenda. No interest was declared. The following agenda was adopted:

32nd ACER Administrative Board meeting
Thursday, 21 September 2017, 13.00 - 18.00 (DAY I) and
Friday, 22 September 2017, 9.00 – 13.00 (DAY II)
Ljubljana, Trg republike 3, 14th floor meeting room Irena Praček
DRAFT AGENDA V4

Agenda Topics	Accompanying documents	Rapporteur
DAY I (Administrative Board meeting from 13.00-18.00)		
Opening and reporting (13h-14.30)		
1. Approval of the agenda/declarations of interest	Doc 1 for approval	AB Chair
2. Minutes of the 31 st ACER Administrative Board	Doc 2.1 for approval Doc 2.2 for information	AB Chair
3. Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010	Doc 3.1 for information	AB Chair
4. Update on the selection of the new ACER Director/ Roadmap for the AB	Oral update Doc 18 for information	Commission AB Chair
Joint session with the ITRE Committee delegation (14.30-15.30) - Future prospects and resource challenges		
5. REMIT 2018 Budget- options paper	Doc 5 for discussion Doc 5.1 for information	ACER Director
6. Budget implementation- options	Doc 6.1 and 6.2 for discussion	ACER Director
Documents for adoption (15.30-18.00)		

Agenda Topics	Accompanying documents	Rapporteur
7. Programming document 2018-2020	Doc 7 for adoption Doc 7.1. and 7.2. for information	ACER Director
8. AB Decision on the appointment of the new Accountant (outsourcing the accountant function to the EC)	Doc 8 for adoption	ACER Director
9. AB Decision on appraisal (Amendment of the Commission's implementing rule on appraisal to be adopted by analogy)	Doc 9 for adoption	ACER Director
10. Amendment of the indicative procurement plan	Doc 10 for adoption	ACER Director
11. AB Decision 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 and repealing Decision AB 20/2016 of 15 December 2016	Doc 11 for adoption	ACER Director
12. Report on ACER developments, including budget implementation, and on the activities of the Board of Regulators	Oral update followed by discussion	ACER Director BoR Chair
DAY II (Administrative Board meeting from 9.00-13.00)		
13. Presentation of the Staff Committee representative	Oral update followed by discussion	AB Chair
14. Update on the conflict of interest panel	Oral information	AB Chair
15. EU Agencies Network	Oral information	ACER Director
16. Document management and archiving policy	Oral information	ACER Director
17. ACER's vision, mission and core values	Oral information	ACER Director
18. The IAS consolidated report on procurement	Doc 17 for information	ACER Director
19. Evaluation grid	Docs 19.1 and 19.2 for information and discussion	Commission AB Chair

Agenda Topics	Accompanying documents	Rapporteur
20. Calendar of 2018 meetings	Doc 20 for information	AB Chair

2. Minutes of the 31st ACER Administrative Board

The Chair reported that by the closing date for comments, 30 August 2017, the Agency had received comments from Ms Agnieszka Kaźmierczak and from Mr Edmund Hosker. Comments from Mr Hosker and most of the comments from Ms Kaźmierczak have been included in the final version of the minutes. However, a compromise text was found regarding the Director's remark on the European school, as well as his remark on REMIT. Members approved the proposed text. In addition to the above changes, Lord Mogg sent a comment proposing to delete a sentence under point 5, paragraph 4, which was unanimously accepted.

The Chair went through conclusions from the last meeting and concluded that all actions were realised. She is however still waiting for the letter of the Chair of the Board of Appeal to propose any actions.

Conclusion: The Administrative Board approved the final version of the 31st AB meeting minutes.

3. Report on AB Decisions, by delegation of the Administrative Board to the Chairman via Decision AB 05bis/2010 of 21 September 2010

The Chair reported on the appointment decisions she had recently taken, in line with the delegation of the AB to the Chair via Decision AB 05bis/2010 of 21 September 2010.

On 17 July 2017 she appointed Ms Clara Poletti as the Italian member of the Board of Regulators and Mr Francesco Cariello as the Italian alternate member of the Board of Regulators.

On 8 September she appointed Ms Irma Vasarytė as the Lithuanian alternate member of the Board of Regulators, Mr L'ubomír Jahnátek as the Slovak member of the Board of Regulators, and Mr Vladimír Outrata as the Czech member of the Board of Regulators.

Conclusion: The Administrative Board took note of these appointments.

4. Update on the selection of the new ACER Director/ Roadmap for the AB

The Chair recalled that the Board is required to appropriately plan its work in order to be able to appoint the new Director in time, so that the new Director can start his/her duties on 16 September 2018. Based on the information provided by the Commission at the March AB meeting and the Agency's legal advice, the first draft of the note was discussed at the June AB meeting. Based on some further deliberations, the AB was supposed to discuss and endorse the updated note. Since June 2017 she was trying to find a solution regarding the envisaged roadmap for the AB selection of the Director.

[She underlined the importance to agree on a process, which will be satisfactory for both Boards. She said that the AB intervenes after the pre-selection process, the AB interviews the candidates, however the AB also needs a favourable opinion from the BoR. However, the AB could also ask the BoR to provide technical advice to assess regulatory knowledge of the proposed candidates.

The Chair, together with the Commission-appointed member, prepared 3 options, which were proposed to the BoR Chair:

1. After the hearing of the candidates and voting in the AB, the BoR is informed about the selected candidate and invited to provide its opinion.

2. The BoR is following the hearing process through its representatives, selected among the BoR members. They are invited to follow the work of the AB as observers. Immediately after the hearing of the candidates, the AB will invite the BoR Chair to provide an assessment of the candidates. After voting in the AB, the BoR is invited to provide its opinion on the selected candidate.

3. The AB and the BoR organise a joint meeting, where the role of the BoR is to give technical advice to the AB members, namely:

- just before the interviews the two Boards discuss the questions to be asked and the AB votes on them,
- during the interviews the BoR acts as an observer,
- after the interviews, the BoR may have a separate session and the BoR Chair is invited to present the BoR's assessment of the candidates,
- after discussion the AB votes on the candidate,
- after the votes, the BoR is invited to provide its opinion on the selected candidate,

In the afternoon before the meeting they jointly propose the questions, the AB decides.

The Commission-appointed member said that for the Commission the most important aspect is a legally sound selection that cannot be objected. She has seen cases where there were reasons to appeal (Hristov v Commission and EMA case). This is why she insists the hearings need to be in front of the AB,

regardless which option is chosen. She admits, however, that the option 3 is a very complicated one (hearing in front of 40 people). She is in favour of option 2.

The Commission's advisor proposed a sub-option of 2, whereby the BoR members would be asking questions from the regulatory perspective agreed before in a joint meeting with the AB. Once the interview finishes, the BoR representatives would be asked to withdraw. She proposed that the follow up questions should be avoided. The advice of DG HR could be sought.

Mr Blaney, the BoR Chair-elect, while recognising the Commission's concerns about the need for legal certainty, underlined that from the BoR point of view it is important to reduce the risk of not achieving the favourable opinion. He admitted however that option 3 was an impractical option.

He proposed another option - a pre-discussion at the BoR - providing informal feedback without making a decision, simply supporting the AB, preferably on the same day. The BoR Chair would then provide informal feedback to the AB. The AB would take a decision and then ask a favourable opinion of the BoR. He said that this option is very close to the process that was run the last time. He warned to avoid deadlock between the AB and BoR. If the BoR is not involved in the process, there will be a risk of not getting the favourable opinion of the BoR.

The Director illustrated the process he went through the previous time. Following recommendations from the auditors, the questions need to be set in advance even before the list of at least 3 candidates is received, even though confidentiality of the questions should be preserved and this might be more challenging if they were set too long in advance.

One AB member explained the process when selecting the current director (he was chairing the AB at the time). He said that the questions should be sealed, but members should be able to ask additional questions, which is also stipulated in the AB's Rules of Procedure. He was against option 3.

The Commission-appointed member replied that the context has changed since the first election. The principle of cooperation between the two Boards should nevertheless be maintained.

One member, supported by the Director, suggested to reflect on article 13(1) of the Agency's founding Regulation, and see whether it could be read in two steps of consultation, first the AB could consult the BoR on the technical competence of all the candidates in the shortlist, and then the BoR would be asked for its favourable opinion on the selected candidate. The new Director will need to work closely with the BoR.

The Commission-appointed member said that the BoR should be consulted on one name, trying to avoid the situation, where the BoR would see 3 candidates and decide on the one. Also, it would be important to avoid any promises made informally.]*confidential part, which will not be published/secretary notes.

Following an open discussion on different options, the Chair concluded that a non-paper with possible options could be prepared for December, when a decision needs to take place.

Conclusion: The Board requested a note of the ACER legal service on the interpretation of article 13(1) of the Agency's founding Regulation, especially on whether the involvement of the BoR could be structured in two separate phases (consultation and opinion). On this basis, the two Chairs and the Commission-appointed member will seek to prepare a paper for the December meeting.

Joint session with the ITRE Committee delegation (MEP PETERSEN (ALDE), ITRE Secretariat and Political staff) - Future prospects and resource challenges

5.REMIT 2018 Budget- options paper

At its June meeting, the Administrative Board requested ACER to present the options paper regarding different budgetary scenarios for REMIT. The European Commission's draft budget proposal 2018 published in May 2017 does not accommodate the Agency's requested REMIT IT budget needs of 2.8 million EUR. Instead it only foresees a REMIT IT budget of 1.5 million EUR in 2018. In addition, the request for additional human resources for the Agency's REMIT tasks was also disregarded in the Commission's draft budget proposal 2018. Therefore, in 2018, the Agency will have to cut human resources by 1 post, due to the 5+5% staff reduction over 5 years applying to all agencies, as well as to work with a reduced REMIT IT budget.

The options note complements the note on budgetary developments 2018: REMIT IT Budget 2018 of 14 June 2017 which was presented in the 31st AB meeting. It compares the remaining options of a reduced REMIT IT budget more into detail, namely to compromise on operational reliability (Scenario A) or on market monitoring (Scenario B) or even both.

The Chair welcomed the ITRE Delegation. She underlined that the AB is striving for an increased Agency's budget. She recalled the letter she sent to the ITRE Committee regarding the AB's view on the Clean Energy Package (CEP), knowing that a discussion on CEP is currently being held. As regards the REMIT resources, the ITRE Committee has so far been supportive.

MEP Petersen thanked her for receiving the ITRE Delegation. He confirmed that the ACER founding Regulation has been discussed in the EP, making the meeting very timely.

Based on a request from the AB in June, the Director presented different options regarding REMIT implementation depending on the available budget.

He said that over the last years the Agency has been constantly asking for additional resources. Traditionally, these were meant for the implementation of

REMIT, however they are increasingly required also for the implementation of the network codes. The Agency is asking for additional 30 post (19 for Remit, 6 for the implementation of the codes, and 5 for horizontal activities).

However, the funding of REMIT operations is another issue. The IT tool has been established and it is collecting data. Once the data is collected, the data needs to be analysed. The ARIS platform collects the data, screens it and allows it to be shared with the NRAs. The platform needs to be maintained and upgraded, which costs around €2.8 million a year. This number has been confirmed with the experts from DG ENER.

He underlined that the amount is a fraction of what FERC (US) needs to operate its wholesale market monitoring system. Unfortunately, the draft EU budget envisages only €1.5 million for REMIT. Taking this amount into account, the Agency would need to decide how to prioritise - either the security of data collection or monitoring. He expressed hope that the choice between the two would nevertheless not be necessary.

Mr Blaney, the BoR Chair-elect, added that the BoR has done a lot of work on cyber security. The level of security is essential.

MEP Petersen commented that the issue of resources has a high priority at the ITRE Committee. Some shortages could be fixed. It is going to be reflected in the regulations, once they are adopted. The financial resources could be restored with the new CEP package, especially via the option of the Agency being able to raise fees.

The Director agreed that the specific problem could be resolved with fees, which could be raised on the registered reporting mechanisms (RRM). The Commission's early assessment was 200 RRM applications, now the Agency has 1500 applications, also due to the fact that these are free of charge.

However, he underlined that the problem was the timing, as at the earliest the Agency could collect fees would be in 2021 - there is a gap between 2018 and 2021 where the system needs to survive. Moreover, DG BUDG may decide to reduce the Agency's EU budget contribution if the option of the fees is confirmed.

Mr Kugi from the ITRE Committee secretariat said that the ITRE Committee provided an Opinion on the Agency's budget to the BUDG committee, asking for additional €6 million, which is going to be voted in the BUDG Committee a week later. He outlined the recent actions of the ITRE Committee Chair, Mr Buzek, who speaks greatly in favour of the Agency's request. The vote in the BUDG Committee will be followed by the EP Plenary and a trilogue with the Council.

The Chair reconfirmed a strong AB's support for the Agency to be able to raise fees.

The Director replied that the Agency is thankful for the continuous support of the ITRE Committee. He already provided some information to the rapporteur on the EU budget. He said that if the Agency were to reduce its monitoring

activities, some NRAs that rely on the Agency for the collection of the data which they need for monitoring would also be impacted.

Mr Blaney, the BoR chair-elect, confirmed that the NRAs rely on the Agency to provide the service. Therefore, the lack of ACER resources would importantly impact the NRAs. While the bigger NRAs have replicated the system, he stressed in particular the impact on the smaller NRAs, warning about their vulnerability, which could lead to potential abuse taking place on cross border trades. Consumers should be protected.

The Commission-appointed AB member confirmed that the original estimates about REMIT needs for ACER were largely underestimated. REMIT is a victim of its own success. Some measures could balance out the REMIT requirements. The Commission is open to the fees, but would require an analysis about their effect. Following DG ENER's review of the REMIT IT project, they confirm the solid IT management of the project and that the budget estimated by ACER is reasonable.

One member warned about the concerns by several Member States with regard to the transfer of new competencies to ACER.

The Director provided the comparison between the investment and the fines. While in Europe the Agency is aware of two cases, which led to sanctions, in FERC (US), three high-profile cases in 2012-13 identified unjust profit from market abuse activities in the order of €370 million, without including the imposed dissuasive penalties.

He added that earlier in the year the Agency has agreed with NRAs a surveillance strategy, based on a survey of NRAs' monitoring activities. This survey indicated that NRAs currently can cover less than one third of the market, and that they rely on ACER for the rest. Moreover, there is duplication of data submission/reporting.

Ms Laura Peralta Palacios (EPP political group) proposed a few ideas on how to highlight the issue to the member states.

The Director stressed that apart from the quantity of staff the Agency requires the adequate level of staff. Moreover, the issue of current staffing shortages for the current tasks, estimated at 30, should be separated from the future staffing for the new tasks under the CEP, where the Commission proposed 18 new staff, mainly contract agents.

MEP Petersen asked about any willingness from the NRAs to finance the market monitoring at EU level.

Mr Blaney, the BoR-elect, replied that the NRAs are already struggling to finance their own operations. There has been proliferation of additional tasks that require resources at NRA level. Asking NRAs to support ACER would be unhelpful. [He agrees with the Director that fees should be charged on the industry.]*secretary notes- will not be published

6. Budget implementation- options

At its June meeting the Administrative Board requested a presentation and an overview of differentiated budget appropriations.

The Agency prepared the document, presenting the definitions and the legal basis of differentiated and non-differentiated budget appropriations.

The Director explained the difference between the differentiated and non-differentiated appropriations, arguing that with differentiated appropriations one needs to plan long term, which is difficult in the case of REMIT, because it is still a relatively new project. Moreover, differentiated appropriations would reduce flexibility in budget execution. He admitted that, in recent years, the Agency was able to maintain the REMIT activities by using savings in other areas, something which would be impossible if differentiated appropriations were used. In fact, if the budget had non-differentiated (NDA) and differentiated appropriations (DA) it would be impossible to transfer from NDA to DA. In his view, DA should be considered when the implementation of REMIT reaches a steady state and the Agency can have more certainty on its budgetary prospects.

The Commission-appointed AB member recalled that the request for change comes from the European Court of Auditors (ECA) and from the Internal Audit Service (IAS). In fact, DA give much more flexibility because the Agency could plan activities knowing the budget will be there for certain. NDAs are used for activities that are regular and paid immediately. DA requires good budget planning.

She commented that due to the low level of the execution of payment appropriations last year DG BUDG decided that the Agency is not a reliable partner. She encouraged the Agency to properly plan and execute its budget. She said the Commission could offer assistance.

The Director clarified that only one budgetary target - the level of C8 payment appropriations - was not met in 2017. He justified the low execution due to the underperformance of a contractor, which led the Agency to cancel the contract. The Agency was thus penalised for saving EU money.

The Commission-appointed member replied that if the Agency had DA in place this would not have happened. She added that DG BUDG applied a second penalty (REMIT budget). She provided an example of EMSA, which is using NDA for Title I and DA on Title III, which could be a way forward. As long as the AB would agree to this going ahead, the Commission will not insist to introduce DA for 2019.

The real issue is that the Union has set aside financial resources that were not used.

One member argued that the Agency will have a new Director next year and the fees could come into play in 2021, therefore all budgetary changes should come into play in 2021.

The Commission-appointed member suggested that DA could be introduced in stages. A decision will need to take place whether the fees are introduced on Title II and III. They should not be introduced on Title I to allow for sufficient HR flexibility. The Agency should learn from EASA's case to avoid mistakes.

The Director proposed that the Agency waits until more clarity is provided regarding the fees. The Agency should also first reach cruising speed and avoid introducing changes before.

The Commission-appointed member agreed, but warned of the risk of not receiving the required resources. She said that the new Director will be in a difficult position on having to introduce the changes by 31 January 2018. She requested that the AB seriously analyses the issue and discusses how this change could be introduced.

Conclusion: The Board requested that the Director reports back to the AB in December on his discussions with ECA on the two budget implementation options.

7. Programming document 2018-2020

The Director recalled that, according to the Agency's founding Regulation, the AB is due to adopt, before 30 September each year, after consulting the Commission and after having received approval by the BoR, the work programme of the Agency for the coming year and transmit it to the EP, the Council and the Commission.

Following the Commission's Communication on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies of December 2014, as well as the entry into force of the Framework Financial Regulation (FFR) adopted in 2013, the work programme is a constituent part of the Agency's programming document (PD), submitted to the Commission for opinion by 31 January.

The Agency carefully considered the Commission's Opinion dated 17 July 2017 and submitted a revised version of the PD to the BoR, which subsequently endorsed it in written procedure. He underlined that the Agency took into account most of the comments except two: One was not to adapt the PD to the Commission's draft budget, because he would like to wait until the budgetary authority takes a final decision. The second was the proposal on closer cooperation with INEA; due to the scarcity of resources the Agency is not able to pursue non-mandatory activities.

He invited the AB to adopt the document that will be sent to the EP, Council and the Commission by 30 September.

The Commission-appointed member noted that as in the previous years, on budgetary matters, the Agency did not update their PD in line with the Commission's draft budget. They would understand such position only if there were two options on how this request will be aligned in the budgetary implementation. So far, there has not been any change related to the budgetary execution and they are of the view that the Agency does not show good management.

The Director explained that the Agency revises its PD at the beginning of the year. The Agency has already reduced the market monitoring activities, where the retail part has been significantly downsized. Also, the Agency's opinions on ENTSOs activities have been cut down in volume. The Agency will be deprioritising its activities as the year before.

Conclusion: The Board adopted the PD 2018-2020 with 6 votes in favour and 2 abstentions (Commission-appointed members).

8. AB Decision on the appointment of the new Accountant (outsourcing the accountant function to the EC)

The Director recalled that, at its meeting of 28 June 2017, the AB endorsed the outsourcing of the accounting services to the Commission and authorised the Director to accept the Offer of the Commission for the provision of Accounting Services to the Agency and conclude the Service Level Agreement for that purpose.

By means of Decision AB No 10/2017 of 28 June 2017, the AB appointed Mr Clement MARIN *ad interim* Accounting Officer of the Agency until the Accounting Officer of the Commission was assigned these duties.

Taking all the above into consideration, he invited the Board to appoint the Accounting Officer of the Commission to act as the Accounting Officer of the Agency as of 1 October 2017, while for reasons of legal certainty it was necessary to repeal Decision AB No 10/2017 of 28 June 2017.

As the position of the Commission Accountant was empty at the time, one AB member abstained, reasoning that the Accountant is a person, not a position. The Commission-appointed member clarified that the acting Accounting officer of the Commission at the time was Ms Rosa Aldea.

Conclusion: The Board adopted the AB Decision on the appointment of the new Accountant (outsourcing the accountant function to the EC) (ANNEX 1) with 7 votes in favour and one abstention.

9. AB Decision on appraisal (Amendment of the Commission's implementing rule on appraisal to be adopted by analogy)

The Director reported that the Board adopted Decision AB n° 23/2015 on the appraisal of Temporary Staff on 17 December 2015. In accordance with Article 9(2) of this Decision, the Commission Decision C(2013)8985 of 16 December 2013, with the same subject matter, does not apply by analogy to the Agency.

By note dated on 14 December 2016, the EU decentralised agencies were informed that the Commission Decision C(2013)8985 has been amended by the Commission Decision C(2016)7270, whose subject matter relates to the appraisal of the managerial performance of Middle Managers (Heads of Department in case of ACER).

By note dated on 16 March 2017, DG HR informed the EU decentralised agencies that the Commission Decision C(2016)7270 is suitable to be applied by analogy by the EU decentralised agencies, regardless of whether an agency adopted the Commission's Decision C(2013)8985 by analogy or instead adopted an implementing rule based on the model decision to which the Commission gave an ex-ante agreement by Decision C(2015)1513 of 4 March 2015.

In particular, DG HR provided an interpretation to the Directors of EU decentralised agencies, according to which if an agency had, following an (ex-ante) agreement of the Commission, adopted its own decision on the subject matter, the amending Commission Decision will apply by analogy and alongside the agency's existing decision.

It is therefore necessary to adopt the Commission Decision C(2016)7270 by analogy, by complementing and amending the current Decision AB n° 23/2015 (which was not adopted by analogy).

The Commission-appointed member explained that the main change was the appraisal of managerial competence of managers, which was previously less obvious. In the new Implementing Rule there will be a difference between the overall performance and the managerial performance.

One AB member was surprised that the managerial performance has not yet been included in the performance assessment of the EU officials. He asked whether any unsatisfactory performance is communicated to managers in writing to avoid any legal issues.

The Director explained that the managerial performance has already been implemented in the appraisal process intrinsically, and in case of managerial underperformance, the communication has to be done in writing. The Agency had one isolated case in the past.

Conclusion: The Board unanimously adopted the AB Decision on appraisal (Amendment of the Commission's implementing rule on appraisal to be adopted by analogy) (ANNEX 2).

10. Amendment of the indicative procurement plan

The Director remarked that the Indicative procurement plan serves as the financing decision of the Agency for any purchases that might occur in the course of a year. The Indicative Procurement Plan is part of the PD. Following the recommendations of the IAS on the procurement process in the Agency and in line with the Financial Regulation of the Agency, it has been updated.

In addition, the Agency has to ensure consistency between the indicative procurement plan included in the Work Programme and the detailed procurement plan in terms of number of procurement procedures and estimated budget.

To that end, the Agency has aligned the 2017 Indicative Procurement Plan for operational tasks to reflect the changes, namely the indicative number of contracts envisaged, the estimated value in EUR for global budgetary envelope reserved for procurement during the year 2017 and the total estimated value for procurement procedures for new framework contracts to be launched in the course of 2017.

The Director clarified that the main changes are some delays in procurement. Namely some of the studies were delayed, however the commitment targets should be achieved by the end of the year.

The Commission-appointed Board member said there were easier ways to update the indicative procurement plan. A certain level of flexibility is allowed, so that not everything needs to be submitted for approval of the AB, only if there are substantial changes.

Conclusion: The Administrative Board adopted the amended 2017 Indicative Procurement Plan for operational tasks (Annex IX of Work Programme 2017) by unanimity (ANNEX 3).

11. AB Decision amending budget 2017 on the establishment plan and repealing the AB Decision 20/2016 on the adoption of the budget for the financial year 2017 and of the establishment plan of the Agency

The Director recalled that the establishment plan for the Agency, adopted as part of the 2017 EU Budget on 1 December 2016, and subsequently by the AB on 15 December 2016 (Decision AB n° 20/2016) did not support the

implementation of a sound staff evolution, allowing for the reclassification of staff members according to the criteria laid down in the Staff Regulations and its Implementing Rules (budgetary appropriations, permanence in the grade, reclassification quotas and third language proficiency), nor did it reflect the responsibilities in the job profiles of some vacant positions. Moreover, the 2017 Establishment Plan, as adopted by the Budgetary Authority, did not cover the actual grades of staff in service.

To that end, on 31 January 2017 the Agency submitted a request for the amendment of its establishment plan for the financial year 2017, as adopted by the Budgetary Authority together with the general budget of the EU.

The proposed amendment is based on the adoption by the Administrative Board (Decision AB n° 02/2017) of the Programming Document 2018 - which includes the revised 2017 establishment plan.

The amended 2017 establishment plan of the Agency, reflected also in the 2018 Statement of Estimates of the European Commission, is part of the Amending Budget No 3/2017, which was voted in the European Parliament on 13 September 2017.

The Director said that this was good news, which will allow the Agency to proceed with the recruitment process and will put an end to the unfortunate situation it found itself in. Therefore, it was necessary to adopt the amended 2017 establishment plan and repeal Decision AB n° 20/2016 on the adoption of the budget for the financial year 2017 and of the establishment plan of the Agency.

One member asked about the impact of the situation. Another member commented that the entire affair was disturbing. He was pleased that the affair was resolved and asked about the mood amongst the staff.

The Director replied that some recruitment had to be put on hold, whereby some staff were not reclassified. He was happy that it was resolved with limited damage overall. The Agency managed to deal with it in a reasonable way.

Conclusion: The Board unanimously adopted the AB Decision amending budget 2017 on the establishment plan and repealing the AB Decision 20/2016 on the adoption of the budget for the financial year 2017 and of the establishment plan of the Agency.

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

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

On staffing, 109 positions are filled, 38 percent are female, 21 nationalities are represented. Current HR actions aim at updating and improving the quality of the current legal basis (Model Decisions (with DG HR), Director's Decisions), streamlining the HRM-related processes (with new Standard Operating Procedures), improving the quality of the HRM support function to the benefit of the Agency's current and future staffing needs (Winter Package), and increasing staff engagement.

He reported on his Decision of 1 August 2017 on Rules of Procedure for the Selection of TAs and CAs, aiming at re-aligning with the Model Decision TA 2(f), providing a clearer definition of the selection process and at improving the evaluation of applicants.

In addition, his Decision of 1 August 2017 on the allocation of posts and revision of the job titles updated the Agency's organisational chart, defined the entities, roles and responsibilities, and revised the job titles. He presented the new organisational chart.

Moreover, his Decision of 23 June 2017 on rules governing traineeship programme at ACER enabled an improved traineeship scheme (clearer profiles, possibility of running an open call, re-assessment of the traineeship grant). A new call was launched for the period September 2017 – August 2018 (15 positions) and an open call will be published on the ACER website.

He informed the members that the Agency joined the DG HR/DIGIT project on SYSPER (Commission's HR IT system) early this year and that the finalised the basic module foreseen in 2018.

Finally, he took a Decision on the duration and renewal of contracts for TAs and CAs, aiming at better defining and streamlining the management of employment contract in the Agency, updating contracts of employment, according to career evolution, revising internal timeline for the renewal of contracts and clarifying the reasons of (non)renewal (interest of the service, budgetary availability).

He reported on the follow-up on the away-day 2017 resulting in the following deliverables: 1.) Away Day – Final Report, 2.) Concept Paper on the ACER Competency Framework, 3.) Mission and Vision Statements, 4.) ACER Values and 5.) Action Plan.

He provided an update on the Model decisions/General Implementing Provisions and on the establishment of the European School. On the latter, he informed the Board that the school is going to be located at Šolski center, on Aškerčeva 1 in Ljubljana. The Government submitted the General Interest File on 18 August 2017; it is expected to be approved in December 2017.

The school will open on 1 September 2018. The accreditation is expected in January 2019. They will start with the English and the Slovenian section. Enrolment will take place in April 2018. He clarified the different categories of pupils that will be admitted to the school. The Agency will publicise the school on its website once the Director is selected.

The IAS conducted an HRM audit - the field work was carried out from 15 to 19 May and focused on all the main HRM areas: HR planning, staff policies, recruitment, performance appraisal, learning and development. The Advanced Draft Audit Report with the main findings, opinions and recommendations, was expected to be shared in September, however it was not yet received on 21 September.

He also reported that Eurostat conducted a EUROSTAT Family Budget Survey (FBS) 2017, which covered 14 duty stations.

He presented the state of play on recommendations received from the IAS and from ECA.

He presented an update on budget implementation, whereby by 20 September, C1 commitment appropriations reached 79.95% (target 95%) and payments appropriation 53.25% (target 75%). As regards C8 appropriations, the payments reached 51.23% (target 95%).

He announced that a budget transfer beyond 10% will be initiated requiring an AB Decision to achieve the most effective use of commitment and payment appropriations. The Chair declared the urgency allowing the use of written procedure.

She asked how the Director will ensure the level of commitments as well as C8 payments to reach the target. The Director replied that a number of major Remit-related projects were on the way. By the end of the year the Agency should be able to reach 95 % in commitments. The Commission-appointed member asked whether there is a C8 payment schedule in place. The Director replied that this year the Agency will be paying for licences committed last year. In addition, the transfer of the data centre to the headquarters, which was committed last year will be paid in 2017.

On regulatory activities, he provided an overview of the network code implementation actions. He reported that Mr Garrett Blaney, was elected the new Chair of the Agency's BoR on 18 September. He will take office on 6 November 2017, for a term of two-and-a-half years (renewable).

On other regulatory activities, during the summer the Agency issued its Opinion on the ENTSO-E Annual report 2016, its Informal Opinion on the Baltic NRAs' request on the capacity calculation methodology, its Opinion on ENTSOG's Summer Supply Outlook 2017 and issued a Report on the Progress in the implementation of Electricity and Gas Projects of Common Interest.

He briefly presented an overview on the appeals to the General Court.

On REMIT, he informed the participants that the Agency is organising its first REMIT Forum on 11 October 2017 in Ljubljana. If successful, it may become an annual event.

As for key figures, data collection (ARIS tier 1&2) and data sharing (ARIS tier 4) are very stable. The market surveillance solution SMARTS (ARIS tier 3) is work in progress. 2 NRAs (OFGEM and EI) have sublicensed SMARTS. 12,519 Market Participants were registered so far in the European Register of Market Participants. Data has been reported for 11,684 Market participants. There are 116 approved RRM.

Furthermore, he reported that the Agency has decided to buy the currently used equipment from the outgoing hosting provider and host in-house with the support of IT consultants mainly from joined Commission FWCs from DG DIGIT. Therefore, ARIS Primary and Disaster Recovery sites have been migrated to the internal ACER Data Centre and the environments of the previous two sites have been integrated into one to optimize and advance performance and address increasing space requirements. For budgetary reasons, the previous Disaster Recovery site had to be abandoned. This will increase the risk of unavailability of ARIS. Business continuity of ARIS operations (market participant registration, data collection and sharing, market monitoring, case management) can no longer be ensured. A new tender for System Integrator Services and IT Consultancy was launched during summer 2017 to transition from the current programme management/IT service model to a REMIT information management model. The evaluation is currently ongoing. In addition, a negotiated procedure to extend the current use of the Agency's market surveillance solution beyond summer 2018 is currently ongoing.

He said that the number of accumulated open cases has reached 120. In 2017 there were 60 opened cases and 17 closed. Finally, he provided an update on SMARTS.

One members asked about an option of the Agency's role in ETS (emissions trading scheme). The Director replied that the Agency was approached by DG CLIMA. He confirmed that the Agency could use SMARTS to monitor ETS allowance trading, but this would require additional resources and therefore, for the time being, contacts with DG CLIMA are on hold.

DAY II

13. Presentation of the Staff Committee (SC) representative

The Chair reported that the Staff Committee elections took place on 22 March 2017. The following staff members were elected as permanent members: Alina Hossu, Thomas Querrioux and Aleksandra Zgorzak. Riccardo Galetta, Matthias Jakob and Alexandros Kaltsogiannis have been elected as alternate members.

This was the first presentation of a staff committee representative at the AB meeting.

The staff committee chair, Ms Alina Hossu presented the role of the staff committee and staff committee's priorities in 2016 and 2017, following a survey:

1. Building /air quality/air temperature
2. Social and sport activities
3. European School and Integration of interimaiores
4. Re-negotiation of the Seat Agreement (VAT exemption for staff) and CAs (contract renewal) and
5. Correction coefficient/Social measures

The Director commended the work of the SC, which has played a very constructive role in the management of the Agency. He mentioned the staff room, which has been made available to the staff on 16th floor.

One member asked about any sport activities organised at the Agency.

Ms Hossu replied that the SC is providing some support to several sport clubs, mostly team sports. The newest club established is the sailing club. The sailing team was competing in the inter-agency regatta. Moreover, the Agency won one prize in a football tournament (mixed teams).

Another member asked about the SC's involvement in the selection panels and in the promotion of the staff. He was also interested whether the three SC members were relieved from other duties.

Ms Hossu replied that the SC members sit on the panels or they delegate this task to other staff members. They play a greater role in the reclassification, where they are consulted by the Director on the proposed list for reclassification, they are also a member of the JRC (Joint reclassification committee). She added that with the new model decision on the SC, their work is evaluated as part of appraisal.

One member asked about the negotiation of the Seat Agreement. Ms Hossu replied that the SC is not directly involved with the authorities. The Agency staff would like to expand their level of benefits, similar to the Seat agreements concluded between the EU decentralised agencies and Portugal.

The Commission-appointed AB member was pleased with the constructive relationship between the SC and the Director. The priority topics are important not only for the staff, but also for the Agency. She suggested to the AB to have regular updates from the SC to help identifying important issues. She underlined that the Seat agreement is signed by the Director and the host country after approval by the AB.

The Chair viewed the opening of the Seat Agreement as unrealistic and warned about opening the Pandora's Box. She was curious about staff's views on the correction coefficient. Ms Hossu replied that the SC cannot influence it, their role is just to provide communication and explanation to the staff. In practice the SC are active particularly in sport activities. An option for catering inside the building is being explored.

Conclusion: The Board took note of the presentation of the Staff Committee and welcomed their constructive approach with the Director.

14. Update on the conflict of interest panel

The first AB Conflict of interest review panel 2017 took place on 16 March. The follow-up AB Conflict of interest review panel took place on 28 June. Consequently, on 4 July the Chair sent a letter to the Council Presidency regarding a potential conflict of interest case. The Agency received information that a discussion was held at the Energy Working Party on 24 July. Another discussion was envisaged for September. The Chair has been waiting for the reply from the Presidency.

The Chair reported that after the last reminder, the remaining members have provided their replies and submitted their documents during the summer. In order to evaluate the documents, another Col panel was scheduled to take place on the day, after the AB meeting.

Conclusion: The Board took note of the presentation.

15. EU Agencies Network

The Director recalled that at one of the previous AB meetings the Vice-Chair proposed to explore synergies of possible cooperation between the Administrative Board and the Network of the EU Agencies.

The Director explained that the EU Agencies Network was created by the Heads of Agencies to provide a forum for coordination, information exchange and agreement of common positions on issues of common interest. Membership in the Network is voluntary and open to Decentralised Agencies and Joint Undertakings.

The Network promotes good governance and strengthens the voice of the EU Agencies notably vis-à-vis the EU institutions while respecting the subsidiarity principle. It encourages the sharing of services in all its forms among the EU Agencies and works towards increasing the visibility of the EU Agencies both towards the EU citizen and towards other key actors at the EU institutional and national level, as a complement to individual Agencies' communication. It promotes voluntary collaboration among the members of the Network operating in related policy/thematic areas and the sharing of knowledge in order to create added value for EU citizens. The Network works in the interest of the EU citizens to enhance the efficiency and effectiveness of EU Agencies providing services in various policy and regulatory fields in the EU.

The Network is currently chaired by the European Food Safety Authority-EFSA, based in Parma. The Chair is the head of a "Troika" consisting of the previous Chair and the elected next Chair. The Troika and the Coordination are supported in their work by the Permanent Secretariat of the EU Agencies Network. The Network works in different formats (Heads of Agencies, Heads of Administrations, Communication network, Legal network, Performance development network etc.). He presented a short film on the Agencies.

The Director explained the importance of the network and how it is increasingly praised by the Commission. He underlined that the EU coordination activities represent a growing workload for the small agencies, such as ACER. However, it also relieves the Agency from many direct contacts with the institution on purely administrative/budgetary matters. For this reason the Network asked for an additional horizontal position from the Commission. He confirmed that there is no sub-network dealing with the Management Boards, as there is a great diversity of Management Boards among the agencies.

The Commission-appointed member said that there was an interinstitutional working group organised by the Secretary-General of the Commission, who deals with the coordination of the EU decentralised agencies. She asked about the experience gained through the EU coordination work and requested a report from the Head of Administration.

The Director replied said that the Agency is unable to attend all the sub-networks, which is becoming an issue for the smaller agencies. He has insisted that any dissenting opinion will be published on the minutes.

Ms Borissova, the Head of Administration department explained that she has been participating in the network of the Heads of Administration since the Agency's beginning. She admitted to have learnt immensely. She said that initially ACER was helped a lot by the shared services from other EU Agencies (Frontex, EUROJUST), however this trend has turned and now ACER is helping other Agencies. She said that ACER is among the first Agencies that function paperless on many processes.

The Agency is also a member of the Network's Working Group on the European School, where she has learnt about the accredited European schools in practice.

She was also very active on the correction coefficient (with other Agencies), but the problem could not be solved, even though she met the Slovenian Statistical office.

She provided further examples of collaboration with other EU agencies (e.g. a MoU with EUIPO on the hosting of the disaster recovery service) and provided a complete overview of activities dealt with by the EU Network of the Agencies.

The Commission-appointed member was pleased with the work of the Agency within the EU Network, very commendable and useful.

Conclusion: The Board took note of the presentation.

16. Document management and archiving policy

The Director presented the policy and said that In accordance with the Commission Decision¹ on document management, a document drawn up or received by the Commission must be registered if it contains important information which is not short-lived and/or may involve action or follow-up by the Commission or one of its departments. In addition, Regulation 1049/2001² on public access to documents applies to documents drawn up or received by the institution and in its possession, in all areas of activity of the EU, concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility.

Director Decision 2016-13 of 22 June 2016 on Adopting the Document Management Policy of the Agency for the Cooperation of Energy Regulators, foresees that the Agency will set-up an Inter-Departmental Document Management Group (IDMG) which, based on an action plan, will define the necessary steps to align the Agency's management of documents to that of the Commission as per the Commission Decision mentioned above and moreover, will develop a set of standard rules and procedures to ensure the uniform application of the present Policy across all Agency departments.

The IDMG is currently in the process of finalising the Filing Plan and Retention Rules with the aim of submitting it for adoption to the management team by the end of the year. The group is also in contact with the IT team in order to identify and implement the necessary functionalities for the upgrading of the tool.

He said the Agency almost finished its work.

Conclusion: The Board took note of the presentation.

¹ Decision 2002/47, art 4

² Regulation 1049/2001, art 2.3 and 3a)

17. ACER's vision, mission and core values

The Director informed the Board that on 9 June the Agency organised an away day where its staff discussed the mission, the vision and the values of the Agency.

7 core values were identified:

- *Cooperation*
- *Transparency*
- *Integrity*
- *European*
- *Professionalism*
- *Respect*
- *Excellence*

With regard to the mission and the vision of the Agency, a discussion on a baseline text took place during the away day; the text was revised by the management of the Agency, and the final version resulted in the following texts:

Short version: *"The European Union Agency for the Cooperation of Energy Regulators fosters a fully integrated and well-functioning Internal Energy Market"*.

Long version: *"The European Union Agency for the Cooperation of Energy Regulators fosters a fully integrated and well-functioning Internal Energy Market, where electricity and gas are traded and supplied according to the highest integrity and transparency standards, and EU consumers benefit from a wider choice, fair prices and greater protection. For this purpose, we work with European Institutions, NRAs and stakeholders"*.

The ACER vision defines what the Agency strives to achieve:

"Our vision is to be a leading agency for independent, high-quality regulation in Europe to implement the Internal Energy Market and the Energy Union".

He explained that the Agency is currently working on an action plan which focuses on the areas where it should develop in respect of the values defined at the away day: a first draft document was prepared by the organisers and moderators of the away day and revised by the management.

The definitions of values will also feed the Agency competency framework, currently under preparation.

The Commission-appointed member said it was important to discuss the mission, vision and the values with the staff. She said that this should be a part of communication internally and externally. She underlined that the Board members would have preferred to be more consulted during the process than they were.

Conclusion: The Chair concluded that the AB needs to be consulted at the finalisation of the action plan.

18. The IAS consolidated report on procurement

The Director reported that in June 2017 the IAS issued its Consolidated Report on Procurement audits in the EU decentralised agencies and other bodies performed by the IAS in the course of 2015-2016.

The purpose of this report is to present a summary of best practices and recurrent issues the IAS identified in the area of procurement in several entities audited in 2015-2016, and the related lessons learnt and recommendations that could also be taken into account by the EU decentralised agencies.

The IAS issued recommendations to improve the agencies' procurement processes in the following areas:

- Planning and monitoring;
- Staffing of the procurement function;
- Guidance or training on procurement procedures and process;
- Ex-ante control on the procurement procedure;
- IT tools to adequately manage procurement procedures.

The IAS Consolidated report explicitly mentions the positive practice of ACER with its policy on management of conflict of interests (p.4), where any actor involved in the procurement process has to sign a declaration of absence of conflict of interest.

Another positive example of ACER, presented in the report, concerns the formalised ex-ante review (p.4 and p.10). The Agency has developed a close cooperation between the procurement and the legal teams, involving the legal team in the revision of the tender documentation, the notifications to tenderers and the drafting of the award decision to improve the quality of procurement documentation and reduce the risk of irregularities, especially where exceptional procedures are used.

The Commission-appointed Board member said that ACER is one of the best agencies in procurement that she is showing to others as model. The Commission is developing an IT tool for managing procurement – E-procurement. In the Commission they have an e-publication and e-submission. She believes these two tools will be used in the EU Agencies in the future.

Conclusion: The Board took note of the report.

19. Evaluation grid

The Chair reported that on 30.8.2017 the vacancy for the next Director of the Agency was published in the Official Journal of the EU. The Agency published the vacancy announcement on its website, as well as in Politico, Financial Times and in the Economist. The Commission's evaluation grid/template, used for the pre-selection of senior managers in the Commission, was circulated for information to the members.

The Commission's adviser explained that they have circulated the empty template. The selection panel still needs to prepare the grid. They provided details on the pre-selection process. Their intention is to submit 3 names to the AB in February – mid-March. She said that the Chair of the AB will be invited to attend the pre-selection panel.

One member commented about the age limit (above 61 would not be eligible). Also, he said that the Commission is supposed to propose at least 3 candidates, but it could be more.

The Commission-appointed member replied that according to the Staff regulations any person above 61 would not be eligible. This rule is valid for the Directors as well as for the senior management. The rule ensures business continuity. She mentioned that 66 is the age of retirement.

One member commented on the need for a thorough reflection of the soft skills.

Conclusion: The Members are requested to send proposals on the interpretation of criteria set in the vacancy notice by email to the secretariat. A proposal will be prepared for December.

20. Calendar of 2018 meetings

The Chair presented her proposal for the dates of the AB meetings in 2018: 15-16 March, 7-8 June, 20 September, and 13 December. She underlined they were scheduled back to back with the BoR meetings, when they take place in Ljubljana. Depending on the timing of the received list of candidates for the Director, additional extraordinary meetings may be scheduled.

Conclusion: The Administrative Board endorsed the proposed dates for its meetings in 2018: 15-16 March, 7-8 June, 20 September, and 13 December.

Ljubljana, 14 December .2017

For the Administrative Board:



Dr Romana Jordan

Chair of the Administrative Board

ANNEX 1

DECISION AB n° 16/2017

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

of 21 September 2017

**on the appointment of the Accounting Officer of the European Commission
as the Accounting Officer of the Agency for the Cooperation of Energy
Regulators and repealing Decision AB No 10/2017 of 28 June 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 Regulators³, and, in particular, Article 13(7) thereof,

Having regard to Decision AB No 22/2013 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 12 December 2013 on the adoption of the Financial Regulation of the Agency for the Cooperation of Energy Regulators (hereinafter 'Agency's Financial Regulation'), and, in particular, Article 50(2) thereof,

Having regard to the acceptance of European Commission's Offer of 7 July 2017 for the provision of Accounting Officer Services between the Directorate General for Budget of the European Commission and the Agency for the Cooperation of Energy Regulators,

Whereas:

- (1) In accordance with Article 50(2) of the Agency's Financial Regulation, the Agency for the Cooperation of Energy Regulators (hereinafter 'the Agency'), may agree with the European Commission that the Accounting Officer of the Commission also acts as the Accounting Officer of the Agency.
- (2) The transfer of accounting officer tasks to the Accounting Officer of the European Commission would ensure business continuity. Therefore, at its meeting of 28 June 2017, the Administrative Board of the Agency endorsed the outsourcing of the accounting services to the European Commission and authorised the Director to accept the Offer of the Commission for the provision

³ OJ L211, 14.8.2009, p.1.

- of Accounting Services to the Agency and conclude the Service Level Agreement for that purpose.
- (3) By means of Decision AB No 10/2017 of 28 June 2017 appointing in *ad interim* capacity the Accounting Officer of the Agency for the Cooperation of Energy Regulators and repealing Decision AB No 23/2011 of 22 September 2011, the Administrative Board appointed Mr Clement MARIN *ad interim* Accounting Officer of the Agency until the Accounting Officer of the Commission is assigned these duties.
- (4) Taking all the above into consideration, it is deemed appropriate to appoint the Accounting Officer of the Commission to act as the Accounting Officer of the Agency as of 1 October 2017, while for reasons of legal certainty it is deemed necessary to repeal Decision AB No 10/2017 of 28 June 2017, as of the same date.

HAS DECIDED AS FOLLOWS:

Article 1

The Accounting Officer of the European Commission is appointed as the Accounting Officer of the Agency as of 1 October 2017.

Article 2

Decision AB No 10/2017 of 28 June 2017 is repealed and the appointment of Mr Clement MARIN an *ad interim* Accounting Officer of the Agency is revoked as of 1 October 2017.

Article 3

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

Done at Ljubljana, on 21 September 2017.

For the Administrative Board

*Dr Romana Jordan,
Chair of the Administrative
Board*

ANNEX 2

DECISION AB n° 15/2017

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

of 21 September 2017

amending Decision AB n° 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff,

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 Regulators⁴ (hereafter 'Agency'), and, in particular, Article 28(2) thereof,

HAVING REGARD to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the Union (hereafter 'CEOS') as laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council⁵, and, in particular, Articles 43 and 44 of the Staff Regulations and Article 15(2) of the CEOS, HAVING REGARD to Decision AB n° 24/2011 of the Administrative Board of the Agency for the Cooperation of Energy of 22 September 2011 on middle management staff,

HAVING REGARD to Decision AB n° 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff,

After consulting the Staff Committee on 17 August 2017,

WHEREAS

- (1) The Administrative Board adopted its Decision AB no 23/2015 laying down general provisions for implementing Article 43 of the Staff Regulations and
-

implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff on 17 December 2015. In accordance with Article 9(2) of this Decision, Commission Decision C(2013)8985 of 16 December 2013 does not apply by analogy at the Agency;

- (2) By note dated 14 December 2016, Agencies were informed of Commission Decision C(2016)7270 amending Decision C(2013)8985 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations, in application of Article 110(2) SR;
- (3) By note dated 16 March 2017, the Directorate-General Human Resources and Security of the European Commission (hereafter: 'DG HR') communicated its position that Commission Decision C(2016)7270 is suitable to be applied by analogy to Agencies, regardless of whether they adopted Commission's Decision C(2013)8985 by analogy or instead adopted their own decision following the ex-ante agreement of the Commission;
- (4) By note dated on 5 July 2017, DG HR provided an interpretation to the Directors of Decentralised Agencies, according to which if an Agency has, following an (ex-ante) agreement of the Commission, adopted its own decision on the subject matter, the amending Commission Decision will apply by analogy and alongside the Agency's existing decision;
- (5) It is, therefore, necessary to ensure compliance with Commission Decision C(2016)7270 by analogy, along with the amendment of Decision AB n° 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff;

HAS ADOPTED THIS DECISION:

Article 1

Decision AB n° 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff (hereinafter: 'AB Decision') shall be amended as follows:

"Article 2/A

Appraisal of managerial performance

For a jobholder occupying a function of Head of Department, the report shall, in addition, include a conclusion on whether the jobholder's managerial performance has been satisfactory. The conclusion that the jobholder's managerial performance has been unsatisfactory shall be based on factual elements."

Article 2

The report form used for the management of performance appraisal within the meaning of Article 6(2) of the AB Decision shall be amended accordingly.

Article 3

This Decision shall enter into force on the day following its adoption and shall apply to reports related to future appraisal exercise.

All other provisions of Decision AB n° 23/2015 of the Administrative Board of the Agency for the Cooperation of Energy of 17 December 2015 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for temporary staff shall remain unchanged.

Done at Ljubljana, 21 September 2017

For the Administrative Board:

Dr Romana Jordan

Chair of the Administrative Board

ANNEX 3

Done at Ljubljana, on 21 September 2017.

For the Administrative Board

Dr Romana Jordan,

Chair of the Administrative Board

ANNEX IX: 2017 INDICATIVE PROCUREMENT PLAN FOR OPERATIONAL TASKS - REVISED

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ⁶	Indicative number of contracts envisaged ⁷	Estimated value in EUR ⁸	Estimated value in EUR ⁹
IT system integration services and IT	service	new framework	Q4	6		25,000,000

⁶ Indicative timeframe for launching new procurement procedure or for signing specific contracts/order forms under the existing framework contracts.

⁷ Order forms throughout the year are counted as one contract.

⁸ Estimated commitments 2017.

⁹ Estimated value for procurement procedures for new framework contracts.

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ⁶	Indicative number of contracts envisaged ⁷	Estimated value in EUR ⁸	Estimated value in EUR ⁹
consultancy services for the Agency		contract				
IT hosting services for the Agency	service	specific contracts based on an existing framework contract	Q3	1	20,000	
IT consultancy services for the implementation of the Agency's REMIT Information System (ARIS)	service	specific contracts based on an existing framework contract	Q4	1	345,000	
Market monitoring system for the Agency's REMIT information system (ARIS)	service	new framework contract	Q4	1		10,000,000
Market monitoring system for the Agency's REMIT information system (ARIS)	service	specific contracts based on an existing framework contract	Q4	1	450,000	
Acquisition of Oracle licences and associated services	service	specific contracts based on an existing framework contract	Q3-Q4	2	665,000	
Servers and associated equipment and maintenance, upgrades and associated services	service	specific contracts based on an existing framework contract	Q3-Q4	3	700,000	
Software for innovation, diversity and evolution (SIDE) and the related maintenance and support	service	order forms based on an existing framework contract	Q1-Q4	1	175,000	
Provision of legal and economic assistance in the field of energy regulation for the Agency	service	new framework contract	Q4	10		1,000,000

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ⁶	Indicative number of contracts envisaged ⁷	Estimated value in EUR ⁸	Estimated value in EUR ⁹
Provision of economic assistance in the field of energy regulation for the Agency	service	specific contracts based on an existing framework contract	Q4	2	300,000	
Provision of catering services for the Agency's events	service	order forms based on an existing framework contract	Q1-Q4	1	60,000	
Provision of printing services for the Agency	service	order forms based on an existing framework contract	Q1-Q4	1	15,000	
Provision of legal services in appeal cases to the Board of Appeal of the Agency	service	new framework contract	Q1	1		400,000
Provision of legal services in appeal cases to the Board of Appeal of the Agency	service	specific contracts based on an existing framework contract	Q1	1	24,750	
Agency's website set-up and maintenance services	service	specific contracts based on an existing framework contract	Q3-Q4	1	88,000	
Provision of consultancy services regarding the production of the Monitoring Report of the Agency on the Implementation of the Network Code on Gas Balancing	service	direct contract	Q1	1	15,000	
Provision of design services for the Agency	service	order forms based on an existing framework contract	Q1-Q4	1	15,000	

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ⁶	Indicative number of contracts envisaged ⁷	Estimated value in EUR ⁸	Estimated value in EUR ⁹
Provision of design services for the Agency	service	new framework contract	Q4	1		60,000
Provision of general legal support in Slovenian law for the Agency	service	new framework contract	Q2	1		60,000
Provision of legal advice services to the staff of the Agency	service	specific contracts based on an existing framework contract	Q3	1	4,000	
Purchase of a software with the maintenance licence for calculating load flows for the Agency	supply	direct contract	Q1	1	70,000	
Maintenance, support and development services for the SharePoint applications	service	specific contracts based on an existing framework contract	Q4	1	30,000	
Maintenance, support and development services for the Java/PHP applications	service	specific contracts based on an existing framework contract	Q4	3	150,000	
Online business media monitoring tool for the Agency	service	new framework contract	Q4	1		30,000
Provision of consultancy services in the areas of security, business continuity and data protection for the Agency	service	new framework contracts	Q3-Q4	3		460,000
Provision of consultancy services in the area of business continuity for the Agency	service	specific contracts based on an existing	Q4	1	35,000	

Subject matter of the contracts envisaged	Type of procurement	Type of contract	Indicative time-frame ⁶	Indicative number of contracts envisaged ⁷	Estimated value in EUR ⁸	Estimated value in EUR ⁹
Provision of consultancy services in the area of data protection for the Agency	service	framework contract specific contracts based on an existing framework contract	Q4	1	35,000	
TOTAL PLANNED PROCUREMENT 2017						
					3,196,750 ¹⁰	37,010,000 ¹¹

¹⁰ The global budgetary envelope reserved for procurement during the year 2017.

¹¹ Total estimated value for procurement procedures for new framework contracts to be launched in the course of 2017.

ANNEX 4

DECISION AB n° 17/2017

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

of 21 September 2017

**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 and repealing Decision AB
20/2016 of 15 December 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 Regulators¹²
and, in particular, Article 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, Article 34 thereof,

Having regard to Decision AB No 20/2016 of the Administrative Board of the Agency for the
Cooperation of Energy 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,

Having regard to general budget of the European Union for the financial year 2017, as
adopted on 1 December 2016¹³,

Having regard to amending budget No 3/2017 to the general budget of the European Union
for the financial year 2017, as adopted on 13 September 2017,

WHEREAS:

- (1) In accordance with Article 23(5) of Regulation (EC) No 713/2009, the budget of the
Agency for the Cooperation of Energy (hereinafter referred to as the 'Agency') shall
be drawn up by its Administrative Board. The budget becomes definitive after the
adoption of the general budget of the European Union and, where necessary, should be
adjusted accordingly.

¹² OJ L 211, 14.08.2009, p. 1.

¹³ OJ L 51, 28.2.2017.

- (2) Following the adoption of the general budget of the European Union on 1 December 2016, the Administrative Board adopted, by Decision AB No 20/2016, the budget of the Agency for the financial year 2017 including its establishment plan.
- (3) Pursuant to Article 34 of Decision AB No 22/2013 (hereinafter 'Financial Regulation'), any amendment to the budget of the Agency, including its establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget of the Agency, in accordance with the provisions of the constituent act and Article 33 of the Financial Regulation.
- (4) On 13 September 2017 the budgetary authority adopted amending budget No 3/2017 to the general budget of the European Union for the financial year 2017. In order to fulfil the requirements for the reclassification of staff members according to the criteria laid down in the Staff Regulations and its Implementing Rules, to cover the actual grades of staff in service and reflect the responsibilities in the job profiles of some vacant positions, this budgetary amendment updated the 2017 establishment plan of the Agency. At the same time the overall budget and the total number of posts allocated to the Agency remained unchanged.
- (5) In light of the above it is deemed appropriate that the Administrative Board adopts the 2017 budget of the Agency, including the establishment plan. For reasons of legal certainty, Decision AB No 20/2016 of 15 December 2016 should be repealed,

HAS ADOPTED THIS DECISION:

Article 1

- (1) The budget for financial year 2017 of the Agency and the establishment plan, as detailed in Annex I, are hereby adopted as final.
- (2) Decision AB No 20/2016 of 15 December 2016 is hereby repealed.

Article 2

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

Done at Ljubljana, on 21 September 2017

For the Administrative Board:

Dr Romana Jordan
Chair of the Administrative Board