



**Administrative arrangement for ensuring the
support by the
Agency for the Cooperation of Energy Regulators
for the Agency's Board of Appeal**

Considerations

1. Regulation (EC) No 713/2009 establishes a Board of Appeal to review decisions of the Agency in all areas where the Agency is empowered to take individual decisions.
2. The Board of Appeal is a constituent part of the Agency and its governance system but operates independently of the Agency when reviewing Agency decisions subsequent to an appeal brought forward.
3. The Agency must provide the necessary support for the Board of Appeal in exercising all tasks provided for by the Board's Rules of Procedure, Practice guidelines and Instructions to the Registrar. The financial implications of such support shall be consistent with the budget of the Agency.
4. The Registrar function must be allowed to operate with full support of the Agency and in full independence as far as case proceedings are concerned.
5. The Agency should provide all other resources and means of support to allow the efficient operation of the Board of Appeal, consistently with the budget of the Agency.
6. An efficient representation of the Board by the Agency in case of action before the Court of Justice against a decision of the Board of Appeal following Article 20 of Regulation (EC) No 713/2009 must be ensured.
7. It is appropriate to set the necessary arrangements out in more detail below.

Agreed Arrangements

I) Registrar

1. The Agency provides the Board of Appeal with the Registrar services, as required in the Board of Appeal's Rules of Procedure. For this purpose,

- the Agency recruits a legal Officer to act as Registrar for the Board of Appeal.
2. The legal officer proposed as Registrar is appointed by the Board of Appeal after review of his qualifications and credentials, in line with the Board of Appeal's Rules of Procedure.
 3. The legal officer appointed as Registrar reports exclusively to the Chairman of the Board of Appeal as far as his activities as Registrar for the Board of Appeal are concerned. The Registrar must be available with priority for his Registrar activity as set out in the Board's Rules of Procedure, the Practice directions and the Board's Instructions to the Registrar. This does not exclude activities for the Agency in other fields. Those fields however must not be activities of the Agency that could lead to appeals brought before the Board and his activity as Registrar for the Board must be securely walled off. The job description of the legal officer must set this clearly out.
 4. The legal officer appointed as Registrar in practice shall fulfil the general working conditions of Agency staff, and shall enjoy the same rights in his performance appraisal exercise as other staff members in the Agency. In this respect, the Chairman of the Board of Appeal shall be consulted by the reporting officer on the probationary period report and the annual assessment report, as far as the activities of the legal officer as Registrar are concerned. The Chairman of the Board of Appeal is also invited to provide comments on the performance of the legal officer as Registrar throughout the year to the reporting officer, when appropriate.
 5. In order to set out the walling off of Registrar services for the Board of Appeal to appellants and securing safe separation during case proceedings, the Registrar for the Board of Appeal shall be indicated as a separate entry in the organisational chart of the Agency.
 6. The Agency provides full support to the Registrar for carrying out all of the functions set out in the Board's Rules of Procedure, the Practice directions and the Board's Instructions to the Registrar. This concerns in particular full support by the Agency's general registry, IT support for services such as electronic registry and website services, and administrative support for services such as organisation of meeting

facilities, mission support, and budgetary and contract facilities. In order to allow efficient monitoring of the support towards the Board of Appeal, the legal officer shall be given the responsibility of operational verifier of the budget line of the Board of Appeal.

7. The Agency indicates to the Board of Appeal a legal officer who serves as deputy Registrar and fulfils the functions set forth in the Board's Rules of Procedure, the Practice directions and the Board's Instructions to the Registrar for the deputy Registrar whenever the services of the Registrar are not available. Paragraphs 3 and 4 apply mutatis mutandis to the deputy Registrar.

II) Contractual support

1. The Agency puts in place the necessary arrangements to provide the Board of Appeal with support by independent outside expertise for case proceedings in case of need.
2. For this purpose, the Agency, with the support of the Registrar, in particular maintains a multiannual multiple framework contract(s) for specialised legal assistance and advice on which the Board can draw during appeal cases. The framework contract(s) provide(s) for individual work mandates through specific contracts which will be directly launched by the Agency upon request of the Chairman of the Board, in line with the Agency's public procurement procedures, within a very short time period. The Agency makes the necessary provisions within the procurement procedures of the Agency, including preparing in advance templates for the specific requests for services.
3. When establishing the framework contract(s) referred in paragraph 2 above, the Agency shall seek endorsement by the Board for the tender specifications of the Call for tender, prior to launching the open call. The Call includes the definition of different products of legal advice, each to be provided at a flat rate, so that the Board can choose which ones to request, also taking account of possible conflict of interest of the contractor(s).
4. In line with the general procurement procedures of the Agency, the decision to whom to award the framework contract(s) is taken by the

Authorising Officer, on the basis of a recommendation given by the evaluation committee. The Chairman of the Board (or another designated member of the Board) and the Registrar shall participate in the evaluation committee. A limited number of other Board members may also support the evaluation committee as technical experts or observers.

III) Budget

1. The Agency inserts into its annual budget a budget line sufficient to support the efficient operation of the Board of Appeal. The amount is based on the estimated resources required for the respective period on the basis of the joint planning exercise set out below. The appropriations posted in the Board of Appeal's budget line are approved by the Administrative Board as part of the adoption of the Agency's budget and in line with it.
2. The Agency consults the Chairman of the Board on the planned budget resources for the Board before the beginning of the respective budget cycle.
3. Resources from the budget line are made available by the Agency upon request of the Chairman of the Board. Whenever possible, the Head of Administration of the Agency acts as Authorising Officer by delegation for the budget line, both as regards the contractual support set out under Section II), as well as other use of the budget foreseen for the purposes of the Board, such as for covering travel/allowances for meetings of the Board.
4. The support provided by the Agency as referred to in Sections I(6), II, IV(2) and V shall remain consistent with the provisions made in the Agency's Budget according to paragraph 1 above.

IV) Joint consultation / planning

1. The Director of the Agency consults the Chairman and the Vice chairman at least once a year, in order to discuss all matters relating to the efficient operation of the Board of Appeal. The consultation shall include the discussion of a planning perspective for the Board for the subsequent

period, in order to guarantee that the Board of Appeal's administrative, financial and organisational needs are effectively met.

2. The Agency shall do the necessary to allow the Board of Appeal to meet once a year physically outside the framework of appeal related meetings, in order to discuss the results of the consultations under paragraph 1 as well as to take any related decisions required. The meeting should also serve to ensure the necessary coherence and update the Board members on Agency developments.

V) Representation of the Board of Appeal before the Court of Justice

1. In case a party brings an action before the Court of Justice against a decision of the Board of Appeal, the Agency shall represent the Board of appeal with best efforts and ensure an efficient defence of the Board's decision.
2. The Chairman of the Board of Appeal is consulted on the defence by the legal services of the Agency. The Board of Appeal may seek additional specialised legal advice on the matter. The Agency makes the necessary arrangements for such advice, as far as not covered by the contractual support set out above.
3. In case that the decision in question of the Board of Appeal ruled against the original decision by the Agency, or if the Chairman has doubts about possible conflict of interests with regard to the decision by the Board of Appeal within the services of the Agency, the Board of Appeal may request that the scope for the specialised legal advice is extended. The Board of Appeal and the Director should seek an amicable solution as to the legal representation of the Agency before the Court with regard to the court action in question. Paragraph 2 applies mutatis mutandis.
4. The Agency makes suitable budgetary provisions for costs covering paragraphs 1. – 3.

VI) General support

The Agency takes due account of the Board's role in its decision making practice. Wherever the Agency has the right to take individual decisions, it makes explicit reference in those decisions to the rights of appeal before the Board in line with Art 19(1) of Regulation (EC) No 713/2009. It also gives the Board due coverage on its website and access to publication of Board announcements and decisions via its press release and infoflash facilities, and any other facilities which may be required.

Done at Ljubljana, on 6 July 2016

Signed for the Agency

SIGNED

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Signed for the Board of Appeal

SIGNED

Dr. Herbert Ungerer

Chairman of the Board of Appeal