

**THE BOARD OF APPEAL
OF THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS**

– 1st Meeting –

– Extraordinary Session –

Wednesday, 24 November 2021, 17:00 — 18:30

Trg Republike 3, Ljubljana – Slovenia

- ONLINE MEETING -

MINUTES

I. LIST OF ATTENDEES

The following Members and Alternates of the Board of Appeal were present at the meeting:

Mr Miro PREK,	<i>Chair</i>	Prof. Piet ECKHOUT,	<i>Vice-Chair</i>
Prof. Andrea BIONDI,	<i>Vice-Chair</i>	Ms Karin WIDEGREN	<i>Member</i>
Ms Katerina SARDI,	<i>Member</i>	Mr Matti SUPPONEN,	<i>Member</i>
Ms Chiara PETRUZZO,	<i>Alternate</i>	Ms Ivona STRITOF,	<i>Alternate</i>
Ms Keelin O'BRIEN,	<i>Alternate</i>	Mr Alain MARIEN,	<i>Alternate</i>
Mt Timo PARTANEN,	<i>Alternate</i>	Mr Gábor SZÖRÉNYI,	<i>Alternate</i>

The Registrar was present at the meeting.

Ms Evelyne AMEYE, external expert, was present at the meeting for the presentation under point 2 of the Agenda.

II. OPENING

The meeting of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators was convened, in extraordinary session, on 24 November 2021. The meeting started at 17h00.

Upon invitation of the Chair to the present Members and Alternates of the Board of Appeal to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda, no actual or potential interest was declared nor reported.

The Agenda of the extraordinary meeting of the Board of Appeal was approved as follows:

AGENDA ITEMS	
1.	Report from the Chair and discussion on the working arrangements of the Board of Appeal after entry into service;
2.	Report on the past activities of the Board of Appeal – presentation by the Registrar
3.	Possible Amendments to the Rules of Procedure – presentation by the Registrar

(1) Report from the Chair and discussion on the working arrangements of the Board of Appeal after entry into service

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The Chair of the Board of Appeal recalled that the new Members and Alternates entered into service on 18 October 2021. On the same date, in order to ensure the functioning of the Board in light of two ongoing cases, the Board designated, via written procedure, by unanimity, its Chair and Vice-Chairs. The information was published on the Agency's website and it was given the necessary publicity. On 18 October 2021, the Board of Appeal also designated its Registrar.

The Chair reported about the informal meetings that took place respectively with the Registrar and the Vice-Chairs to discuss various aspects of the work of the Board of Appeal (organisation and composition of the Board of Appeal panels, deadlines, documentary flow, and administrative arrangements).

The Chair further reported that he conveyed his preliminary views on certain aspects of functioning of the Board of Appeal to the Chair of the Administrative Board and the Board of Appeal Chair was invited to make a presentation at the forthcoming Administrative Board meeting of 16 December 2021.

The Chair also reported that an introductory call is scheduled for 9 December with ACER Director.

The Chair mentioned two most pressing challenges: the Registry and access to documents, needed for the work on cases.

The Board of Appeal discussed the challenges faced in the course of the first month of activity.

After discussion, the Board of Appeal stressed, unanimously, the importance of being granted with additional human resources so as to:

- i) ensure adequate business continuity in the handling of appeal cases and the unhindered/full-functioning of the Board of Appeal;
- ii) minimise risks of procedural errors due to the existent heavy workload of the Registry and
- iii) allow for the continuous modernisation of the tools at disposal of the Board of Appeal to manage appeal cases and the necessary review of internal processes.

In this context, the Chair of the Board of Appeal recalled to have been informed by the European Commission of its proposal of attribution of one additional FTE (full time equivalent) (i.e. to complement the existing Registrar) to the Registry of the Board of Appeal.

The Board of Appeal unanimously maintained the need for such additional FTE to be assigned exclusively to the Registry, and to be functionally independent from the Agency, so as to ensure the full independence of the Board of Appeal and its unhindered functioning.

The Board of Appeal also indicated the need to ensure that the profile to be chosen has appropriate legal expertise to assist the Registrar in the performance of the duties entailed by that function.

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The Board of Appeal unanimously invited the Chair to convey these needs to the Administrative Board of the Agency in light of the imminent adoption of the Budget and Establishment Plan of the Agency for the year 2022 and expressed its willingness to assist the Chair further if the need arises.

(1) *Report on the past activities of the Board of Appeal – presentation by the Registrar*

The Registrar reported on the most recent decisions adopted via written procedure by the Board of Appeal since its last meeting, 8 December 2020, as follows:

- Decision A-008-2020 of 22 December 2020, *RTE v ACER*, adopted by unanimity.
- Decision A-009-2020 of 19 April 2021, *PSE v ACER*, adopted by unanimity.
- Decision A-001-2021 of 28 May 2021, *PSE and Others v ACER*, adopted by unanimity.
- Decision A-007-2021 of 28 May 2021, *TransnetBW GmbH and others v ACER*, adopted by unanimity.
- Decision A-011-2021 of 28 May 2021, *TransnetBW GmbH v ACER*, adopted by unanimity.
- Decision A-008-2021 of 31 May 2021, *Energieportfolio v ACER*, adopted by majority of four members.
- Decision A-001-2018_R of 4 June 2021, *Aquind v ACER*, adopted by unanimity.

The Registrar further reported about the working arrangements within the Registry and identified the list of services that the Board of Appeal may request from an external legal expert under FWC ACER/NEG/LS/13/2020, signed in the year 2020. The Registrar indicated the remaining level of budget available for the years 2021-2023.

The Registrar introduced the legal expert. The external legal expert briefly introduced herself and explained the working arrangements in place with the Board of Appeal in the past cases.

The Board of Appeal thanked the external legal expert.

The external legal expert left the meeting.

The Registrar further reported about his availabilities until the end of the year and his replacement in the course of his absences until January 2022.

The Registrar turned to the main priorities identified in the course of the year 2021 to be implemented in the course of the year 2022. In particular, the Registrar identified the need to improve the case-management tool of the Board of Appeal and reported about the efforts undertaken to assess the tools available in the market so as to procure the service needed for the year 2022. The Registrar indicated that the case-management tool will likely be available for testing in the second semester of the year 2022.

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In this regard, the Board of Appeal provided suggestions as regards the databases, the document flows, and external site to improve the accessibility and legibility of the documents.

The Registrar took note of the suggestions to be implemented in the relevant tender specifications.

(2) *Possible Amendments to the Rules of Procedure – presentation by the Registrar*

The Registrar was invited by the Board of Appeal to provide an update on the status of the procedure leading to a possible amendment of the Rules of Procedure of the Board of Appeal.

The Registrar provided insights into the review performed and the areas of potential review to be performed and discussed by the Board of Appeal once the assessment of the Registrar will be concluded.

III. CLOSING

In the absence of any other business to be treated, the Chair closed the meeting at 18h30.

For the Board of Appeal

M. PREK

The Chair