



**Board of Appeal**

**Decision of the Board of Appeal of the European  
Union Agency for the Cooperation of Energy  
Regulators laying down**

**Instructions to the Registrar**

**as amended on 05.10.2019**

## 1. Tasks of the Registrar

1. The Registrar shall, *inter alia*, be responsible for:
  - a) the establishment and maintenance of the Register of appeal cases of the Board of Appeal and the files of pending cases;
  - b) the receipt, transmission, service and custody of all relevant documents related to proceedings before the Board of Appeal;
  - c) all relevant correspondence relating to appeals brought before the Board of Appeal;
  - d) the announcements and publications of the Board of Appeal;
  - e) verifying that the time limits and other formal conditions relating to the lodging of appeals and other procedural documents are complied with;
  - f) arranging the translations and interpretation required by the Board of Appeal;
  - g) the treatment of applications for access to documents pursuant to Article 5 of Decision AB No 08/2010 *Procedures and practical measures for applying Regulation (EC) No 1049/2001 on access to documents of the Agency*;
  - h) assisting the Board of Appeal in the exercise of its duties;
  - i) keeping a record of the written declarations of commitment and the written declarations of interest and assisting the members and alternates in fulfilling their obligations in that respect.
2. In the absence of the Registrar or, in the event of him/her being prevented from carrying out the relevant duties, those duties shall be performed by the officer designated as Deputy Registrar or, in the event of the latter being prevented from carrying out the relevant duties, by the subordinate member of staff of the Registry present in the highest function group with the highest grade or, in the event of equal grade, the subordinate with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest.
3. The Registrar may authorise a member of staff of the Registry to perform any of the tasks mentioned in the second paragraph.
4. The Chairperson of the Board of Appeal may delegate the power of signature to the Registrar for the purpose of setting or extending time limits and for other procedural measures, which, pursuant to the Rules of Procedure, fall to the Chairperson or the Board of Appeal to prescribe.
5. The Registrar shall observe the directions given by the Chairperson on matters related to the exercise of the functions of the Board of Appeal.
6. The Registrar and the Deputy Registrar shall respect the confidentiality obligations, as it concerns information that they become aware of in the performance of their functions.

## 2. Admissibility of appeals

1. Where appropriate, the Registrar shall prescribe a reasonable period within which the appellant is to comply with the requirements laid down for a notice of appeal in Article 8(1) of the Rules of Procedure.
2. If the Registrar, after the expiry of the period referred to in the first paragraph, considers that the irregularity has not been corrected, he/she shall promptly send a reasoned opinion to the Chairperson.
3. If any other irregularity is detected which is liable to make an appeal inadmissible, the Registrar shall send, within one calendar week, a reasoned opinion to the Chairperson.

## 3. The Register

1. Relevant documents placed in the case file in cases brought before the Board of Appeal shall be entered in the Register of appeals in the order in which they are lodged. Irregular submissions which are not foreseen by Regulation (EU) 2019/942 or the Rules of Procedure of the Board of Appeal, shall not be registered.
2. Receipt, dispatch, and custody of documents addressed to and drawn up by the Board of Appeal and the Registrar are performed in accordance with Annex 1 of these Instructions.
3. The Register of documents of the Board of Appeal and the Register of Appeals are managed in accordance with Annex 2 of these Instructions.
4. Decisions and other documents drawn up by the Board of Appeal shall be registered on the day of issue.
5. Entries in the Register shall be numbered consecutively. They shall contain the information necessary for identifying the document, in particular:
  - a) the name of the sender or addressee;
  - b) the date of lodgement;
  - c) the date of registration;
  - d) the case number.
6. Where a correction is made to the Register, a note to that effect shall be made therein.
7. When a physical document has been registered, the Registrar shall make a note to that effect on the original. The registration number of each document drawn up by the Board of Appeal shall be noted on its first page.
8. If the Register is kept in electronic form, it shall be set up and maintained in such a way that no registration can be deleted therefrom or that following any amendment or rectification an audit trail of the amendment or rectification can be found.

#### **4. The case number**

1. When a notice of appeal initiating proceedings is registered, the case shall be numbered sequentially starting with '001'. The number shall be preceded by 'A-', and followed by an indication of the year that shall correspond to the date deemed to be the date of lodging of the document, for the purposes of compliance with the time limit set in Article 28 -of Regulation (EU) 2019/492.
2. If an appeal case is to be re-examined by the Board of Appeal following an action within the meaning of Article 29 of Regulation (EU) 2019/492, that case shall keep the number previously given to it when it was before the Board of Appeal.
3. In the event of consolidation of cases, the new case number shall be the one, with the marking 'consolidated', which was among the merged cases submitted the earliest. The appellants of the merged appeals shall be numbered sequentially starting with 'I.' in accordance with the time of their original submissions.

#### **5. The case file**

1. The case file shall contain the originals of the procedural documents produced by the parties, including their annexes, with the exception of those the acceptance of which was refused pursuant to Section 6 of these Instructions. Where electronic submission was used by the parties, or where service was made by electronic means, the case file will contain the corresponding electronic entries. It shall also contain the decisions taken in the case, including any decisions relating to refusal to accept documents, the minutes of the hearing, notifications served by the Registrar, and any other documents or correspondence taken into account in order to decide the appeal.
2. The documents contained in the case file shall be numbered in the order they are received.
3. Where it is decided by the Chairperson of the Board of Appeal that certain information shall be regarded as confidential, the confidential and non-confidential versions of submissions or other documents shall be kept in separate sections of the file.
4. At the close of the proceedings, the Registrar shall arrange that the case file be closed and archived in electronic format (whole case file) as well as in physical format (selected case documents).
5. The closed electronic file shall contain a list of the documents contained in the file as well as the date of submission and the date of registration of the documents.
6. The closed physical file shall contain the submissions made by the parties in physical form as well as the decisions, including the interim decisions, of the Chairperson and of the Board of Appeal.

#### **6. Non-acceptance of documents and regularisation**

1. The Registrar shall verify that documents lodged are in conformity with the provisions of the Rules of Procedure and the practice directions to parties to appeal proceedings before the Board of Appeal (hereinafter, the "Practice Directions"). If the documents lodged do not comply with the

requirements set out in the abovementioned documents, the Registrar shall, without prejudice to Article 8(4) of the Rules of Procedure, prescribe a reasonable period within which the lodging party is to comply with them.

2. If the party concerned fails to rectify the irregularity or challenges the request for regularisation, the Registrar shall refer the matter to the Chairperson for a decision to be taken.
3. The Registrar shall refuse to register documents that are not provided for by the Rules of Procedure. If in doubt, or in the event of a challenge by the parties, the Registrar shall refer the matter to the Chairperson in order for a decision to be taken.
4. Save in the cases expressly authorised by the Board of Appeal in accordance with Article 19(3) of the Rules of Procedure, the Registrar shall refuse to accept pleadings or procedural documents drawn up in a language other than the language of the case.

## **7. Service**

1. The Registrar shall ensure that, where the Rules of Procedure provide for a document to be served, the copy of the document is accompanied by a letter specifying the case number and a brief indication of the nature of the document. The signed original respectively a certified copy of that letter shall be kept in the case file. In the event of consolidation of cases, the parties of the consolidated case shall be served with each other's documents submitted under the separate case numbers.
2. Where a party has agreed that service is to be effected on him/her, or on his/her representative by telefax or other technical means of communication (preferably by e-mail with acknowledgement of receipt), service of the document to be served shall be effected, in accordance with Article 25 of the Rules of Procedure, by such means.

However, where service cannot, for technical reasons or on account of their nature or length be transmitted by such means, service shall be effected by registered post with a form for acknowledgment of receipt, by personal delivery to the addressee against a receipt or by telefax.

## **8. Observance of time limits**

Documents that are received at the Registry after the period prescribed for their lodgement has expired, without the party applying for an extension of the time limit, may be accepted only with the authorisation of the Chairperson of the Board of Appeal.

## **9. Hearings**

1. The Registrar shall ensure that the schedule of the hearings to be held before the Board of Appeal is published on the Agency's website in appropriate time prior to the hearing. If experts or witnesses will be heard, the Registrar shall notify them before the hearing of the obligation to present evidence and tell the truth according to best knowledge.

2. The Registrar shall inform in the invitation to the hearing the parties or third persons participating in the hearing that a full audio and/or video report of the hearings will be registered and electronically stored temporarily by the Registrar.
3. In accordance with Article 18(6) of the Rules of Procedure, the Registrar shall draw up summary minutes of the hearings. The minutes shall be sent to the parties. The Registrar shall send an abstract of the minutes at the request of an expert or witness concerning his/her oral presentation.

## **10. Information from third parties**

The Registrar shall take the measures necessary for giving effect to orders requiring information from third parties under Article 20(3)(c) of the Rules of Procedure.

## **11. Originals of decisions**

1. Originals of decisions of the Board of Appeal shall be kept in chronological order in the archives of the Registry, in the respective physical case files. The decisions may be signed electronically.
2. If the decision of the Board of Appeal is contested before the Court of Justice of the European Union within the meaning of Article 29 of Regulation (EU) 2019/942 or rectified in accordance with Article 30 of the Rules of Procedure, a note to that effect shall be made in the margin of the original decision concerned.

## **12. Publication of documents**

For the purposes of Articles 9 and 24(5) of the Rules of Procedure, the Registrar shall ensure that announcements of appeals and final decisions of the Board of Appeal are published on the Agency's website.

## **13. Advice for parties**

1. The Registrar shall make known to the parties the Practice Directions. This may be done by referring the parties to the place where the abovementioned document is published.
2. When requested by the parties, the Registrar shall provide them with information on the practice followed pursuant to the Rules of Procedure, the Practice Directions, and these Instructions.

## **Annex 1**

### **Receipt, dispatch and custody of documents addressed to and drawn up by the Board of Appeal and the Registrar**

1) Documents sent to the Board of Appeal by post or courier shall be received at the Agency's premises. These documents shall be opened only by a staff member of the Registry. The staff of the Registry shall not disclose the information that comes in his/her possession to any other member of the Agency's staff.

2) A dedicated functional mailbox ([BoA@acer.europa.eu](mailto:BoA@acer.europa.eu)) shall be created and hosted on the Agency's server. Electronic correspondence addressed to the Board of Appeal and its Registry shall be sent to that functional mailbox. The functional mailbox shall only be accessible to the members of the Board of Appeal and the Registrar and Deputy Registrar. The IT team of the Agency shall have access to the functional mailbox only for the purposes of providing technical assistance. It will be the responsibility of the Registrar to check on a daily basis the dedicated functional mailbox and dispatch and process e-mails addressed or drawn up by the Board of Appeal. The Registrar shall adopt the measures necessary to prevent the disclosure of confidential information.

## **Annex 2**

### **The Register of documents and the Register of Appeals**

1) A dedicated Board of Appeal section on the Agency's website as well as an intranet sharing platform shall be created and hosted on the Agency's server. Both the Board of Appeal section on the Agency's website and the intranet platform shall only be accessible to the members of the Board of Appeal and the Registrar and Deputy Registrar. The IT team of the Agency shall have access to the platform for the purposes of providing technical assistance. It will be the responsibility of the Registrar to manage the Board of Appeal section on the Agency's website and the intranet sharing platform; (s)he will draft and update their content and upload documents including the creation of non-confidential versions. The Registrar shall adopt the measures necessary to prevent the disclosure of confidential information.

2) Documents received and drawn up by the Board of Appeal shall be registered by the Agency electronically and, where received as a paper document, also in paper. Both the Register of documents of the Board of Appeal and the Register of Appeals will be kept at the Agency's premises.

3) Access to the Registers will be granted only to the members of the Board of Appeal and the Registrar and Deputy Registrar. The IT team of the Agency shall have access to the Registers only for the purposes of providing technical assistance.

4) The documents submitted to the Board of Appeal in paper version as well as the physical case file will be kept in a locked cupboard at the Agency's premises. It shall be accessible only to the members of the Board of Appeal and the Registrar and Deputy Registrar.

5) It will be the responsibility of Registrar with the support of registry staff to scan and file documents in the relevant register, and to inform accordingly the members of the Board of Appeal. The Registrar shall adopt the measures necessary to prevent the disclosure of confidential information. If applicable, training on the use of the Agency's document management system will be provided to the members of the Registry by the Agency.