

DECISION No 2/2023

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

of 25 January 2023

amending Decision No 7/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 17 June 2020 on the adoption of the Rules of Procedure of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators,

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

Having regard to Regulation (EU) No 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹, and in particular Article 19(1)(l) thereof,

Having regard to Decision No 16/2022 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 14 December 2022 laying down the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators,

Whereas:

- (1) On 14 December 2022, the Administrative Board adopted Decision No 16/2022 2022 laying down the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators.
- (2) By way of this decision, the Administrative Board introduced specific provisions with regard to remedial actions in case of failure to submit the annual declarations according to the rules for the prevention and management of conflict of interest applicable at the Agency, or in case of provision of false or incomplete information.
- (3) It is therefore appropriate to amend Decision No 7/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 17 June 2020 on the adoption of the Rules of Procedure of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators by including relevant provisions with regard to the suspension of Members or Alternates in case of failure to comply with the obligations stemming from the provisions on the prevention and management of conflict of interest at the Agency,

¹ OJ L 158, 14.6.2019, p. 22.

HAS DECIDED AS FOLLOWS:

Article 1

Decision No 7/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 17 June 2020 on the adoption of the Rules of Procedure of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators, is amended as follows:

(1) Article 13 is amended as follows:

(a) In footnote 4 of paragraph 1 the following sentence is added:

‘and Decision No 16/2022 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 14 December 2022 laying down the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators.’

(b) the following paragraph is added:

‘3. In case of failure to submit the annual declarations according to the rules for the prevention and management of conflict of interest applicable at the Agency, or in case of provision of false or incomplete information, the Member and Alternate concerned shall be automatically suspended until the obligations according to the above rules for the privacy have been fulfilled, upon notification by the Chair.’

Article 2

(1) The consolidated version of Decision No 7/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 17 June 2020 on the adoption of the Rules of Procedure of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators is annexed to this Decision under Annex I and it shall be published on the website of the Agency.

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

Done at Ljubljana, 25 January 2023.

For the Administrative Board

The Chair

M. THIOLLIERE

ANNEX I

RULES OF PROCEDURE OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

Article 1 Composition

1. The Administrative Board is composed of nine Members with voting rights and one Member without voting rights appointed by the national regulatory authorities of the EFTA States.
2. Each Member shall have an Alternate Member ('Alternate'). The Administrative Board shall decide which Alternate is assigned to which Member with voting rights.
3. The duration of the term of office, as set by Article 18(2) of Regulation (EU) No 2019/942, is four years, renewable once.
4. One year before the term of office of a Member expires, the Chair of the Administrative Board (the 'Chair') shall inform the appropriate institution about the need for either renewal or appointment of new Members, in line with Article 18(1) of Regulation (EU) No 2019/942. If a Member leaves before the end of its term, his/her Alternate shall take the place unless the appropriate institution designates a different replacement.
5. In event of an appointment that concerns a Member who had been appointed by the Council, the Chair shall, in the letter referred to in Article 1.3, invite the Council to appoint a new Member or Alternate from a Member State that has not yet nominated a Member in the Administrative Board. If the Council so wishes, it can nominate an Alternate to become Member and appoint a new Alternate.

Article 2 Chair and Vice-Chair

1. In line with Article 18(3) of Regulation (EU) No 2019/942, the Administrative Board shall appoint a Chair and a Vice-Chair from among its Members.
2. The term of office of the Chair and the Vice-Chair shall be two years, renewable once. The term of office shall expire when they cease to be Members.
3. Nominations for the Chair and the Vice-Chair shall be submitted either by the candidates themselves or by other Members.
4. The elections shall be by secret ballot unless the Administrative Board decides otherwise by unanimity. In case of a secret ballot, a teller shall be designated amongst the Members to assist in the counting of the vote. The voting will take place through a series of rounds. After each round, the candidate with the lowest number of votes shall be withdrawn. Voting shall continue until one candidate receives a two-thirds majority of favourable votes of the Administrative Board members.

5. The Vice-Chair shall automatically take the place of the Chair if he/she is prevented to perform his/her duties. If both the Chair and the Vice-Chair are unable to attend a meeting, the meeting shall be chaired by the longest serving Member of the Administrative Board or, in the event of equal length of service, by the oldest of the longest serving Members.
6. If the office of the Chair or the Vice-Chair falls vacant before the end of the term of office, the Vice-Chair or Chair as the case may be shall convene a meeting to elect a successor, which shall be held within three months of the post falling vacant. The elected Member shall serve as Chair or Vice-Chair for the remainder of his predecessor's term or until the end of his membership of the Administrative Board, whichever is earlier.
7. The Chair or, where relevant, the Vice-Chair, shall be mandated to sign the acts as adopted or approved by the Administrative Board. The signed copy of such acts shall be kept in the archives of the Agency.

Article 3

Meetings of the Administrative Board

1. The Administrative Board shall meet, at least twice per year, in ordinary session.
2. The date of each ordinary meeting shall be decided by the Administrative Board at least two meetings in advance.
3. In addition to its meetings in ordinary session, the Administrative Board shall meet in extraordinary session at the initiative of its Chair, following a request from the European Commission or at least a third of its members.
4. When the Administrative Board is to meet in ordinary session, the Chair shall send the agenda, accompanied by the relevant material for decision making, at least fifteen calendar days prior to the meeting.
5. When the Administrative Board is to meet in extraordinary session, the Chair shall send the invitation to the meeting within six weeks of receipt of the request. The agenda, accompanied by the relevant material for decision-making, shall be sent at least fifteen calendar days prior to the meeting.
6. When the Administrative Board is convened in extraordinary session to discuss urgent business as defined in Article 9 of these Rules of Procedure, the Chair shall send the agenda, accompanied by the relevant material for decision making no later than the tenth calendar day prior to the meeting, except in cases of 'force majeure'.
7. Every Member and Alternate of the Administrative Board shall notify the Administrative Board secretariat, no later than fifteen calendar days prior to the date of a meeting, whether he/she will attend it. The notification should be effected through the dedicated web tool.

If no notification is received by the deadline indicated above, the Member or Alternate is deemed not to attend the meeting. Within three working days after the

deadline referred to above, the Administrative Board secretariat informs all Members and Alternates about the Members who will attend the meeting and of the alternates who, according to the provisions of Article 1 of Decision No 10/2018², will represent members not attending the meeting, indicating the member each alternate will represent.

If no Alternate is available to represent a Member according to the provisions of Article 1 of Decision No 10/2018, the Administrative Board secretariat will inform the concerned Member accordingly, so that the Member can provide a proxy.

In the case of extraordinary sessions of the Administrative Board convened to discuss urgent business, according to Article 9(1) of these Rules of Procedure, the deadline indicated above is extended to one week prior to the date of the meeting. The Administrative Board secretariat informs Members and Alternates on attendance and representation within two working days after such deadline.

The above procedure does not affect in any way the right of Members and Alternates to attend the meetings of the Administrative Board and, in the case of Members, to exercise their rights.

8. The Chair of the Board of Regulators, or the nominee of the Board of Regulators, and the Director shall participate, as observers (i.e. without the right to vote), in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Chair of the Board of Regulators (or the nominee of the Board of Regulators) and the Director may be accompanied by an adviser.
9. The Administrative Board may invite any person who has a relevant expertise to attend its meetings for specific points in the capacity of an expert.
10. Upon authorisation of the Chair, the Members of the Administrative Board may be assisted by their advisers. The Chair may restrict participation for specific points on the Agenda to the Members and Observers that are referred to in paragraph 7.
11. An Alternate may attend a meeting of the Administrative Board without voting right where the Member, whom he or she is assigned to, is present.
12. The Chair of the meeting may briefly introduce any point that is submitted for discussion. He/she may also ask that another Member, the Director, an invited expert or adviser, or the Administrative Board secretariat carries out this function. The Chair shall introduce and conclude on each agenda point. The Chair may take part in the discussions insofar as it does not compromise his/her position as Chair.

Article 4

Venue of the Meetings

² Decision No 10/2018 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 September 2018 on the participation of the Alternates in the meetings of the Administrative Board of the Agency for the Cooperation of Energy Regulators and the attribution of voting rights.

1. Unless decided otherwise, in particular in order to simplify the conduct of its business, the meetings of the Administrative Board shall be held at the seat of the Agency.
2. Meetings can be also held by video-conference or by using other means of communication.

Article 5 Agenda

1. A provisional agenda shall be drawn up by the Chair in consultation with the Director. Members can submit issues to be included on the provisional agenda to the Chair not less than six weeks before the meeting. The agenda shall include those items the inclusion of which is requested by the Director. The Chair of the Administrative Board approves the final agenda of every meeting.
2. The provisional agenda shall be finalised and agreed at the beginning of each meeting.
3. If the Administrative Board so decides, urgent issues may be added to the agenda at any time prior to the end of the meeting. Items on the agenda may be deleted or carried forward to subsequent meetings.
4. As required by Article 14(4) of Regulation (EU) No 2019/942, the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board meetings shall be made public on the website of the Agency.

The Administrative Board will ensure that the Board of Regulators and the Board of Appeal respect this provision of the Regulation.

When publishing the agenda, the background documents to the agenda and the approved minutes or any other documents of the Administrative Board, due regard should be given to the exceptions from access to documents set out in Article 4 of Regulation (EC) No 1049/2001³.

Article 6 Selection and Appointment of the Director

1. The Administrative Board shall, after consulting the Board of Regulators and obtaining its favourable opinion, select and appoint the Director in accordance with Article 19 (1)(a) of Regulation (EU) No 2019/942.
2. Immediately after the submission of the Commission's shortlist, the Chair shall write to the candidates inviting them for the interview with the Administrative Board. In his/her letter, the Chair should invite the candidates to send if they so wish, an updated curriculum vitae and motivation letter in sufficient time before the interview.

³ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, p. 43.

3. In advance of the interviews, the Administrative Board shall agree on an evaluation grid and the basic questions that will be put to the candidates. To ensure the equal treatment of all candidates the same set of standard questions shall be put to all candidates. Members shall have the opportunity to ask additional questions related to the candidate's presentation or to the answers given to the standard questions. The evaluation grid and the questions should enable the Administrative Board to select the best candidate on the basis of merit as well as skills and experience relevant to the energy sector. They should also focus on the vision for the future of the Agency as well as on their leadership and communication skills, as defined in the relevant vacancy notice.
4. In the discussion following the interviews the Chair of the Board of Regulators shall have the opportunity to explain the opinion of the Board of Regulators.
5. The voting should take place on the same day as the interviews. The voting shall be by secret ballot. A teller, acting under the authority of the Chair shall be designated to assist in the counting of the vote. The teller should preferably not be of the same nationality as any of the short listed candidates. If none of the candidates receives the necessary majority of two-thirds in the first ballot, further rounds shall be held. At the end of each round, the candidate with the lowest number of votes shall be withdrawn. When it is not possible to determine the candidate with the lowest number of votes due to equality, there shall be a special ballot to determine the remaining candidate. Voting shall continue until one candidate receives the required majority of two-thirds of favourable votes.

Article 7 Quorum

1. The quorum necessary for the meeting to be valid shall be achieved when at least two thirds of the members with voting rights are present or represented by their alternate or by a proxy.
2. If this quorum, necessary for the meeting to be valid is not met, the Chair shall immediately convene a new meeting of the Administrative Board to be organised within two weeks. At this new meeting, the quorum necessary for the meeting to be valid shall be achieved when at least four members with voting rights (or their alternates) are present.
3. This special quorum cannot be applied in cases where the Administrative Board decides on the nomination or removal of the Director from office, nor in cases where the Administrative Board is adopting or changing its Rules of Procedure.

Article 8 Voting of the Administrative Board

1. All decisions of the Administrative Board shall be adopted by a two-thirds majority of the members present or represented, unless provided otherwise Regulation (EU) No 2019/942.

2. Each Member or his/her Alternate shall have one vote unless they have been allocated a proxy vote from another Member or Alternate.
3. In case both a Member and his/her Alternate are unable to participate in a vote, the Member or Alternate may transfer by proxy his or her voting right to another Member or Alternate. In addition to his/her own vote, each voting member may cast a maximum of one vote that he or she has received by proxy. The proxy shall be notified to the Chair at the beginning of the meeting and shall be recorded in the minutes.
4. Unless a secret ballot is requested by at least one-third of the members present, votes shall be taken by the show of hands.
5. For each decision adopted by the Administrative Board, figures for the votes cast shall be recorded. A statement of the views of the minority may be entered in the minutes along with the decision, if the minority so requests.
6. The Chair may authorise a member to speak briefly in explanation of a vote that he/she has cast.

Article 9

Urgent business and written procedure

1. Urgent business that is important for the functioning of the Agency or the internal market may be submitted to the Administrative Board either by convening an extraordinary Administrative Board meeting in accordance with Article 3.4 of these Rules of Procedure or by written procedure.
2. A written procedure may be proposed by the Chair, in consultation with the Director, for matters that have already been addressed during previous meetings, unless the Chair declares the issues to be urgent and important for the functioning of the Agency or the internal market. To start the written procedure the Chair shall inform Members by sending, via express or electronic mail, a draft decision and any relevant background information to the members.
3. Members with voting rights may comment the draft decision and raise written objections within seven calendar days of the date of this mail.
4. After the closure of the time for submitting comments or rising objections, the Chair shall launch the voting procedure explaining to which extent the comments and objections(s) have been taken into account. The quorum and voting rules of Article 7 and 8 of these Rules of Procedure apply *mutatis mutandis*. The Chair of the Board of Regulators shall be informed of the outcome of the written procedure.
5. In case of serious objections, the Chair, in consultation with the Director, may decide whether the written procedure is suspended and an extraordinary Administrative Board meeting should be convened, or whether the draft decision, together with the serious objections, should be re-circulated to all Members and the written procedure is followed. In the latter case, a new seven days period for objections shall be started.

6. A full report on the outcome of the written procedure shall be made at the following meeting.

Article 10
Impossibility to convene meetings

1. In case the meetings of the Administrative Board cannot be convened due to circumstances outside the control of the Agency, the Chair, in consultation with the Director, shall initiate written procedures on matters where an absence of a decision would have harmful consequences to the functioning of the Agency or to the functioning of the gas and electricity market.
2. These decisions shall be adopted in accordance with the procedure outlined in Article 9.2 to 9.4.

Article 11
Minutes

1. Minutes of each meeting shall as a general rule indicate in respect of each item:
 - (a) the documents submitted to the Administrative Board;
 - (b) a summary record of the proceedings;
 - (c) the decision taken or the conclusions reached by the Administrative Board;
 - (d) the list of attendees.
2. The draft minutes shall be forwarded to all members, as well as to the observers referred to in Article 3.7 having attended the meeting in question.
3. The final text of the minutes shall be considered as being approved if none of the attendees of the meeting in question informed the Chair of any objections to the minutes within 15 calendar days from the date of receipt of the minutes. If any objection is raised, the Chair will either circulate new draft minutes (in which case the same procedure applies) or he or she may submit it to the next meeting of the Administrative Board.
4. Once approved, the minutes shall be signed by the Chair. The signed copy of the minutes shall be kept in the archives of the Agency.

Article 12
Access to Agency documents by Members or Alternates

In the execution of its tasks specified in Regulation (EU) No 2019/942, the Administrative Board shall have access to all Agency documents. After receipt of a request for obtaining access to documents, the Director shall ensure that all Members or their Alternates can consult these documents within a reasonable time period.

Article 13
Conflict of interest

1. Members and Alternates shall comply with the rules for the prevention and management of conflict of interest as laid down in the relevant provisions applicable at the Agency⁴.
2. At each meeting of the Administrative Board, Members, Alternates, and observers, as well as advisors or experts, shall declare any interest which could be considered to be prejudicial to their independence with respect to any point on the agenda. Anyone declaring such interests shall not attend any discussion, deliberations nor participate in any voting on the relevant point.
3. In case of failure to submit the annual declarations according to the rules for the prevention and management of conflict of interest applicable at the Agency, or in case of provision of false or incomplete information, the Member and Alternate concerned shall be automatically suspended until the obligations according to the above rules for the privacy have been fulfilled, upon notification by the Chair.

Article 14 **Duty of confidentiality**

Members, Alternates, and observers of the Administrative Board, as well as any other attendant of the meetings of the Administrative Board shall be required, even after their duties have been ceased, not to disclose information covered by professional secrecy.

Article 15 **Secretariat of the Administrative Board**

The Agency shall be responsible for providing the secretariat for the Administrative Board. The secretariat shall report to the Chair and act under his/her supervision.

Article 16 **Reimbursement of expenses**

1. Unless expenses are covered by other means, travel and subsistence expenses incurred by the Members and the Chair of the Board of Regulators (or the nominee of the Board of Regulators) in connection with the meetings of the Administrative Board shall be paid by the Agency in accordance with the scales laid down by the Staff Regulations of Officials of the European Communities. Indemnities shall be paid in compliance with the Financial Regulation of the Agency, and in particular, the rules for reimbursement of non-remunerated experts thereof⁵.

⁴ Decision No 02/2015 of the of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 31 January 2015 laying down a policy for the prevention and management of conflicts of interest and Decision No 16/2022 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 14 December 2022 laying down the Guidelines on the prevention and management of conflict of interest for the Administrative Board and the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators.

⁵ Article 94, Decision No. 8/2019 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 21 June 2019, on the Financial Regulation of the Agency for the Cooperation of Energy Regulators.

2. Expenses incurred by Alternates attending the meetings of the Administrative Board pursuant to Article 3(6) and (10) of these Rules of Procedure shall be paid by the Agency in accordance with paragraph 1 of this Article.
3. Subject to the prior authorisation of the Director, paragraph 1 of this Article also applies to Members and Alternates who are called to represent the Administrative Board at meetings or events in connection with its tasks.
4. Where the Administrative Board invites experts to attend its meetings, the costs incurred by the experts for the above purpose shall be reimbursed according to the applicable provisions at the Agency.

Article 17
Communication to the Administrative Board

All correspondence with the Administrative Board and the Chair shall be addressed to the Agency.

Article 18
Rules of Procedure

1. These Rules of Procedure shall be signed by the Chair and published on the website of the Agency. Once amended, a consolidated version of the Rules of Procedure shall be published on the Agency's website.
2. The Rules of Procedure can be amended according to the rules specified at Article 7.