

MINUTES

25th ACER Administrative Board meeting
Thursday, 28 January, 9.30-12.00 (Part 2)
Berlaymont building (European Commission), meeting room WALTER
HALLSTEIN, Rue de la Loi 200, Brussels

Present:

Mr Rene Tammist, Member,

Ms Romana Jordan, Member,

Mr Guy Lentz, Member,

Mr Jochen Penker, Member,

Mr Georgios Shammass, Member,

Ms Agnieszka Kaźmierczak, Member, with proxy from Mr Dominique Ristori,

Mr Carlos Aguirre Calzada, Alternate member, with voting right,

Mr Uwe Leprich, Alternate member, without voting right,

Mr Jorge Vasconcelos, Alternate member, without voting right,

Mr Alberto Pototschnig, Director of ACER, Observer,

Lord John Mogg, Chair of the Board of Regulators, Observer,

Ms Marie-Christine Jalabert, Adviser.

Main conclusions of the meeting

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| 1.) Ms Romana Jordan was appointed, by unanimity, as AB Chair for the next two years. |
| 2.) Mr Penker was appointed, by unanimity, as AB Vice-Chair for the next two years. |
| 3.) The Board approved the Agency's request for derogation from the application by analogy of Commission Decision C(2015) 9151 of 17.12.2015 on the implementation of telework in Commission Departments (in line with Article 110 (2) of the SR). |
| 4.) The Board agreed to decide on the date of its 26th meeting by mail, and to keep the |

27th AB meeting on 22 September and 28th AB meeting on 15 December, both from 9.00-12.30. All meetings are going to take place in Ljubljana.

Approval of the Agenda

The following agenda of the 25th ACER Administrative Board meeting (Part 2) was approved:



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DRAFT AGENDA V4

PART 2 (28 January 2016)		
1. Appointment of the new Chair and Vice-Chair	/	AB member appointed by the Commission
2. Progress report	Oral update	ACER Director
3. Agency's request for derogation from the application by analogy of Commission Decision C(2015) 9151 of 17.12.2015 on the implementation of telework in Commission Departments (in line with Article 110 (2) of the SR).	For approval Doc 11.1 and 11.2 for information	ACER Director
4. Confirmation of AB meeting dates in 2016	Oral update	Newly elected AB Chair

1. Appointment of the new Chair and Vice-Chair

The AB member representing the Commission, Ms Kaźmierczak, chaired the AB meeting during the first agenda item. She invited nominations for the AB Chair. Mr Tammist, AB member appointed by the EP, submitted the nomination of Ms Jordan. He presented her short biography.

Action: Ms Romana Jordan was appointed, by unanimity, as AB Chair for the next two years.

Ms Kaźmierczak, then invited nominations for the position of the Vice-Chair. She proposed Mr Penker, Member appointed by the Council, for the new Vice-Chair.

Action: Mr Penker was appointed, by unanimity, as AB Vice-Chair for the next two years.

The new Chair and the Vice-Chair were congratulated by the members.

2. Progress report

The new Chair invited the Director to present an overview of ACER's history and report on the Agency's progress.

On the Agency's history, the Director provided an introduction to the Agency. He presented the Agency's mission, role and governance. He presented the Agency's progress towards the completion of the IEM and illustrated how the Agency's work fits in the Juncker's agenda, especially as regards the Energy Union and its activities on international cooperation. Finally, he presented the future challenges of the Agency, by providing an overview of the Bridge to 2025 conclusions. He underlined that cooperation with the BoR Chair was excellent since the beginning. This was instrumental for the achievements of the Agency, which resulted in receiving additional tasks.

The Director then reported on recent progress: personnel issues, the state of the Framework Guidelines and Network Codes, as well as other regulatory activities ex Regulation (EC) No 713/2009 and Commission Regulation No 838/2009. He also presented the state of play regarding the implementation of REMIT and activities emanating from the Infrastructure Package.

On the correction coefficient, he recalled that when the Agency started in Ljubljana the coefficient was 89%, while, since then, it has fallen to 81%. The lowering coefficient is a common issue with many agencies. There are some fundamental flaws in the way these coefficients are calculated. ACER is trying to solve the issue with the Slovenian authorities.

He then reported on the growing cooperation with the US Federal Agency Regulatory Commission (FERC) and underlined that the commitment of FERC to cooperate with ACER is a great recognition of the regulatory effort in Europe.

Several Members asked for an in-depth strategic discussion on presented issues at forthcoming AB meetings, which was welcomed by the Director.

Lord Mogg, the BoR representative, pointed out to some of the future challenges:

- 1.) He raised awareness of the coexistence of the Agency with the Council of European Energy Regulators (CEER), underlined the need to avoid rivalry between the two entities and the usefulness of having a common chair of the BoR and the CEER (a two-hat solution). He again invited the AB to hold meetings at the CEER premises in Brussels.

He drew attention to the AB appointing the BoR members, following nominations received from the NRAs. Emphasis was given to the ACER Working groups presented as the engines of the policy development, which are composed of ACER and the NRAs staff working together. A recent survey revealed that 150 FTEs (250 in numbers of staff) from the NRAs are involved in ACER work. He indicated that some regulators are small and have difficulties managing the international agenda of the regulators.

He said that the Agency has one staff member at its Brussels office providing the BoR secretariat, currently supported by a cost-free SNE.

2.) A major challenge is also the inadequate resourcing of the Agency, as well as those of the NRAs, which was recently reported by the European Court of Auditors. The EP was very supportive of the Agency's quest for resources in the past and the role of the Chair was instrumental in this respect. He said that in the beginning there were some tensions between the AB and the BoR over the competencies of each Board, when the AB tried to be involved in the policy. But these have been resolved.

3.) Another challenge is the Common Approach for the EU decentralised Agencies, which was agreed by the three EU institutions trying to introduce a fit-all approach on all EU decentralised agencies. In ACER's case, especially the governance part of this approach, is dangerous. He also briefly discussed possible new roles for the Agency. He concluded by saying that 2016 was going to be busy for all.

The AB member appointed by the Commission underlined 2 issues:

1.) All EU institutions are under pressure to cut resources, to do more with less staff (better organise oneself). She confirmed that the Commission is the most committed to implement the Common Approach, especially as regards the 5% cut for all EU institutions and bodies, which comes to the end by 2017. She explained that the cut was proposed due to the changed Staff Regulations, including the prolonged working hours (40 hours per week), which resulted in the smaller need for resources.

She further clarified the Commission's proposal for an additional 5% cut of resources for each decentralised EU agency, which would create a pool of resources to be allocated to the agencies receiving new tasks. This additional cut was proposed for 5 years, but in the meantime the developments have gone beyond what could have been expected. She explained the main principle of the pool and said that ACER was not seen that it would need more resources, although the REMIT resource requirements might have been underestimated from the beginning. A proper justification for resources is crucial.

2.) As regards the Common Approach, the ACER's governance is very close to the Common approach (a smaller AB), but some changes are to be expected when the Agency's Founding Regulation is going to be revised. As regards the governance, the aim is to keep the current structure to the extent possible.

The Director explained the reasons ACER was opposing the pool, suggesting that if a pool were to be considered, it would be more sensible that it included the Partner DG, which share responsibilities in the same field of operations. He also pointed out to the increasing difficulty in finding the NRAs readiness to second staff to ACER.

An AB Member commented that he has always been in favour of a European Regulation and to set up a European Energy Regulator. In terms of division of tasks between the two Boards, he said that the policy should not be discussed in the AB. The AB needs to match resources to the tasks of the Agency and to critically evaluate when new tasks are allocated to the Agency. The very fundamental mission of ACER is regulation at the European level, which is a necessity to ensure a well functioning European market. He underlined that the role of regulation at European level needs to modernise. ACER should promote this transformation and avoid defending old models. This role requires new resources (to cover research, development, and production of new ideas).

Action: The new Chair agreed that a discussion on the Strategy of the Agency will be held at one of future AB meetings.

3. Agency's request for derogation from the application by analogy of Commission Decision C(2015) 9151 of 17.12.2015 on the implementation of telework in Commission Departments (in line with Article 110 (2) of the SR).

The Director informed the members about the context of the Agency's request for derogation from the Commission decision on teleworking. Currently the Agency applies the Decision on the implementation of teleworking, as adopted by the AB on 9 October 2012.

In July 2014, the Agency requested a derogation from the Commission Decision C(2009)10224[1] and its amending decision C(2013)9045 (in line with Article 110(2) of the Staff Regulations), and proposed its own text, consulted with the Staff Committee.

On 4 January 2016 the Commission informed the Agency that on 17 December 2015 it adopted a Decision C(2015)9151 on the implementation of teleworking in Commission Departments, which entered into force on 1 January 2016, which should be applied to the Agencies by analogy. Following a consultation of the Agency's Staff Committee, the Agency would like to request the non-application of this decision and apply its current rules.

He explained that the Commission has regular or occasional teleworking possibilities. The Agency would however like to have only occasional teleworking as regular teleworking is incompatible with the activities of the Agency. Instead, the Agency would like to exploit occasional teleworking to a greater extent, due to the specifics of the staff working at the Agency who are often dislocated from their families.

The AB member representing the Commission supported this decision.

Action: The Board approved the Agency's request for derogation from the application by analogy of Commission Decision C(2015) 9151 of 17.12.2015 on the implementation of telework in Commission Departments (in line with Article 110 (2) of the SR).

4. Confirmation of AB meeting dates in 2016

The initial proposal for the next AB meetings taking place in 2016 envisaged the following dates:

26th AB meeting was to take place on 9 June, 27th AB meeting on 22 September and 28th AB meeting on 15 December, all from 9.00-12.30.

The Director asked about the possibility to change the date of the June AB meeting. This was requested by the Commission services to avoid overlapping with a high-level event organised by the Commission (Infrastructure Forum in Copenhagen).

Action: The Board agreed to decide on the date of the 26th AB meeting by mail, and to keep the 27th AB meeting on 22 September and 28th AB meeting on 15 December, both from 9.00-12.30. All meetings are going to take place in Ljubljana.

For the Administrative Board:

Dr. Romana Jordan

Chair of the Administrative Board