

MINUTES

28th (Extraordinary) ACER Administrative Board meeting

Tuesday, 18 October 2016, 14.00 – 17.00

**Brussels, CEER premises in Brussels, Cours Saint-Michel 30a, box F (5th floor),
Securex building**

Present:

Dr Romana Jordan, Chair, Member,

Mr Georgios Shamas, Member, with proxy from Mr Jochen Penker,

Mr Piotr Woźniak, Member,

Mr Guy Lentz, Member,

Mr Rene Tammist, Member,

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

Mr António Jorge Viegas de 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 conclusion of the meeting

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| <p>1.) The Administrative Board adopted a decision on the appointment of Board of Appeal members and alternates (ANNEX 1).</p> |
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2.) The Board was updated on the 2017 budgetary process concerning the Agency. The Chair expressed concern over the budgetary situation.

Opening

1. Approval of the Agenda

The Director proposed the addition of two additional items - Work Programme 2018 and Staffing issues - to the agenda under AOB. The following agenda of the 28th (Extraordinary) ACER Administrative Board meeting was approved:



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DRAFT AGENDA V1

Agenda Topics	Accompanying documents	Rapporteur
Opening		
1. Approval of the agenda	Doc 1 for approval	AB Chair
General ACER work		
2. Appointment of BoA members	For decision Doc 2.1, 2.2, 2.3 for information	ACER Director
3. Budgetary developments 2017	Oral update	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
4. AOB: Work Programme 2018 and Staffing issues	Oral Update	ACER Director

2. Appointment of the Board of Appeal Members

The Chair recalled that the mandate of the previous Board of Appeal came to an end on 22 September. On 27 May 2016 the Commission, in accordance with Article 18 (2) of Regulation (EC) No 713/2009, adopted a proposal for the appointment of six members and six alternates of the BoA of the Agency for the Cooperation of Energy Regulators. On 21 July the BoR provided an opinion on the proposed list of candidates.

On 9 September the outgoing Chair of the Board of Appeal sent a letter to the AB Chair. The BoA also issued a press release, summarising its work during the 5-year mandate and thanked the Agency and the members for their work.

The AB's role is to adopt a decision on the formal appointment of the Board of Appeal members and alternates, based on the proposal of the Commission. At its last meeting, which took place on 22 September in Ljubljana, it did not decide on the appointment of the Board of Appeal due to absence of the relevant background documents (CVs).

Lord Mogg, the BoR representative, welcomed the decision to hold the AB meeting at the CEER premises, which he was pleased to host. In his letter to the Chair on 21 July he underlined the main criteria on the basis of which the BoR provided its opinion on the proposed list of BoA candidates. These criteria included: appropriate background of the candidates (legal), including knowledge of EU law and the regional diversity of the energy markets; the need for certain continuity of the Board of Appeal's work; and to safeguard Board of Appeal's independence. He regretted that the CVs of the candidates were not available to the Board members for the September AB meeting.

The Commission appointed AB member agreed with the criteria presented by the BoR regarding the appropriate background (legal), the need to safeguard the independence of the Board of Appeal, the need for certain continuity of the Board of Appeal's work, and added the seniority criteria to this list.

She also underlined that, in appointing the members and alternates of the Board of Appeal, the Administrative Board, within the list of candidates proposed by the Commission, may deviate, when justified, from the Commission's proposal in terms of which candidates are appointed as members and which as alternates.

The voting took place. The final list was supported with 7 votes in favour and 1 abstention.

Conclusion: The Administrative Board adopted a decision on the appointment of Board of Appeal members and alternates (ANNEX 1).

3. Budgetary developments 2017

The Director provided an update on the 2017 budgetary developments, where the requested 2017 budget for the Agency, as communicated to the Commission through the Administrative Board decision 02/2016 on the estimate of revenue and expenditure and the establishment plan, amounting to 19,114,138 EUR and 102 posts, has not been supported by the Commission. Instead, the Commission draft budget proposed 12,520,160 EUR and 68 posts, which is 17.44% lower than the budget approved for 2016 and one post cut from the establishment plan. The Commission appointed AB member noted that the position of the Commission in the draft budget was due to lack of satisfactory justification for the requested increase.

The budget reduction and the cut of one post have been agreed by the Council in their position towards the 2017 budget for the Agency. The Agency has filed (through the EU Network of Agencies) a budgetary amendment with MEP Jens Geier requesting the reinstatement of the one post as the Agency has already achieved the 5% cut by 2016. No other amendments were proposed by the European Parliament, even though the ITRE Committee Chair, Mr Buzek, sent a strong supporting letter to the Commission. The amendment on the reinstatement of one post was supported by the BUDG committee on 28 September.

The Director summarised that in 2017 the Agency will still be short of 33 posts, which will lead to deprioritisation of its work in the form of a revised Work Programme 2017.

Conclusion: The Board was updated on the 2017 budgetary process concerning the Agency. The Chair expressed concern over the budgetary situation.

AOB

2018 Work programme

In preparing the 2018 Single Programming Document, it was proposed that ACER takes a new approach regarding the budget and Work Programme preparations, given the resources constraints.

Lord Mogg, the BoR representative, presented his personal note, proposing that the AB, BoR and the Director take a fresh look on the Work Programme and budget preparations and the overall strategy of the Agency. The note was circulated to AB members for comments.

Staffing issues

The Board was updated on the Agency's staffing issues. The Commission appointed AB member called on the Director to take action on the note he had received following the discussion with the Commission (DG ENER and DG HR) on the establishment plan and past reclassifications.

ANNEX 1

DECISION AB n° 18/2016

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

of 18 October 2016

**on the appointment of the members and alternates of the Board of Appeal of the Agency
for the Cooperation of Energy Regulators**

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹
and, in particular, Article 18 thereof,

Whereas:

- (1) Pursuant to Article 18(1) of Regulation (EC) No 713/2009, the Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector.
- (2) Pursuant to Article 18(2) of Regulation (EC) No 713/2009, the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

- (3) Pursuant to Article 18(3) of Regulation (EC) No 713/2009, the term of office of the members of the Board of Appeal shall be five years.
- (4) The European Commission published a call for expression of interest on 19 January 2016. After duly assessing the applications, the Commission submitted its proposal for members and alternates of the Board of Appeal, laid down in Commission Decision C(2016) 3102 on 30 May 2016, to the Board of Regulators for consultation as well as to the Administrative Board for appointment.
- (5) The Board of Regulators discussed the EC proposal and the shortlisted applications in its 58th Meeting held on 13 July 2016 and submitted its opinion on 21 July 2016 to the Administrative Board.
- (6) When appointing the Members and Alternates of the Board of Appeal, the Administrative Board took into consideration the level of experience in the energy sector, including previous work on regulatory issues, the geographical balance of the candidates and an appropriate mix of relevant academic and professional backgrounds (technical, economical, legal). The Administrative Board also aimed to ensure a degree of continuity in the Board of Appeal membership and thus renewed the mandates of some members of the Board of Appeal in line with Article 18(3) of Regulation (EC) No 713/2009,

HAS ADOPTED THIS DECISION:

Article 1

The Administrative Board appoints as Members of the Board of Appeal (in alphabetical order):

- a) Mr Walter Boltz,
- b) Mrs Yvonne Fredriksson,
- c) Mr Jean-Yves Ollier,
- d) Mr Andris Piebalgs,
- e) Mr Mariusz Swora,
- f) Mr Michael Thomadakis.

Article 2

The Administrative Board appoints as Alternates of the Board of Appeal:

- a) Mr Viorel Alicus,
- b) Mr Miltos Aslanoglou,
- c) Mr Mariano Bacigalupo Saggese,
- d) Mrs Nadia Horstmann,
- e) Mr Erik Rakhou,
- f) Mr Dominique Woitrin.

Article 3

The term of the office of the Members and the Alternates is five years from the entry into force of this Decision.

Article 4

The Administrative Board gives mandate to the Registrar of the Board of Appeal to inform the appointed Members and Alternates of their appointment and to convene the first meeting of the new Board of Appeal in order to designate its Chairman and Vice-Chairman.

Article 5

This decision shall enter into force on the day of its adoption.

Done at Ljubljana on 18 October 2016.

For the Administrative Board:

Dr. Romana Jordan

Chairman of the Administrative Board