



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

***– 38th Meeting –
– Ordinary Session –***

Thursday, 6 September 2018, 09:00 — 12:45

Trg Republike 3, Ljubljana - Slovenia

MINUTES

I. LIST OF ATTENDEES

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

Dr Romana JORDAN,	<i>Chair</i>	Ms Edit HERCZOG,	<i>Member</i>
Dr Jochen PENKER,	<i>Vice-Chair</i>	Ms Britta THOMSEN, (without voting right)	<i>Alternate</i>
Mr Diego VAZQUEZ TEIJEIRA	<i>Member</i>	Mr Georgios SHAMMAS	<i>Alternate</i>
Mr Ľubomír KUCHTA,	<i>Alternate</i>	Ms Agnieszka KAZMIERCZAK,	<i>Member</i>
<i>with voting rights</i>		<i>and proxy of Mr Dominique RISTORI</i>	

Mr Alberto POTOTSCHNIG (*Director*) and Mr Garret BLANEY (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Mr Dennis HESSELING (*Head of the Gas Department*), acting as adviser, and Ms Ioana Alina HOSSU and Mr Thomas QUERRIOUX, Staff Committee representatives, were present for the discussion of Items 5 to 7 of the Agenda.

Ms Olga BORISSOVA (*Head of Administration*), acting as adviser, was present for the discussion of Items 9 to 11 and 12 to 15 of the Agenda.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 36th MEETING OF THE ADMINISTRATIVE BOARD

At the 36th meeting, the Administrative Board:

- (1) welcomed the absence of interests that could impair the integrity of the Agency at all levels of its decision-making process;
- (2) invited the Management and Staff Committees to report in detail on the implementation of the action plan following the staff engagement survey at the next meetings of the Administrative Board;
- (3) adopted, by unanimity, Decision No 10/2018 on the participation of Alternates and the attribution of voting rights
- (4) adopted, by unanimity, Decision No 11/2018 on Middle Management;
- (5) adopted, by unanimity, Decision No 12/2018 on the function of Adviser;
- (6) adopted, by unanimity, the Single Programming Document of the Agency for the Cooperation of Energy Regulators for the years 2019-2021;
- (7) appointed, by unanimity, Mr Alberto Pototschnig as Director *ad interim*, without this constituting an extension of his mandate, subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union;
- (8) adopted, by unanimity, Decision No 13/2018 granting permission to the Director *ad interim* of the Agency for the Cooperation of Energy Regulators to engage in outside activities for the period 16 September 2018 – 15 September 2019;
- (9) invited the Agency to provide at the next meeting of the Administrative Board an assessment of the possible solutions to face the lack of financial resources in the attempt to establish a disaster recovery system for REMIT, taking into consideration the distinction between disaster recovery systems and disaster recovery arrangements;
- (10) invited the Agency to provide, at the next meeting of the Administrative Board, an assessment of the impact of BREXIT on the operations of the Agency;
- (11) expressed concerns regarding the budgetary developments for the year 2019 and the Multiannual Financial Framework and once again stressed the need to ensure that the Agency is provided with adequate resources to perform its mandate;
- (12) invited National Regulatory Authorities (NRAs) to support the Agency in translating the Agency's act in other languages, when needed, and invited the Director and the BoR Chair to report at the next meeting of the Administrative Board about the results of the consultations with NRAs in the Board of Regulators;
- (13) invited the Board of Regulators to support the Agency in the course of the negotiations for the budget 2019, so that it is provided with the necessary financial resources to fulfil its mandate;
- (14) fixed the next meetings of the Administrative Board, in ordinary session, as follows: 13 December 2018; 21 March 2019; 13 June 2019; 26 September 2019; 12 December 2019.

III. MINUTES

SESSION I

SECTION I – OPENING

The 38th meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened in extraordinary session on 6 September 2018. The meeting started at 9 hours.

The Chair invited the present Members and Alternates of the Administrative Board to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda. No relevant interest was declared.

(1) *Approval of the Agenda*

The Agenda of the 38th meeting of the Administrative Board was approved as follows:

Agenda Topics		Documents	Rapporteur
Welcome Coffee			
Opening			9:00
(1)	Approval of the Agenda and Declaration of Interest	Doc. A <i>for approval</i> Doc. B <i>for information</i>	AB Chair
(2)	Minutes of the 35 th AB Meeting Minutes of the 36 th AB Meeting	Doc. A <i>for approval</i> Doc. B <i>for approval</i>	AB Chair
Items for Reporting			9:20
(3)	Report on the Declaration of Interest of AB Members and Alternates	- <i>oral update</i>	AB Chair
(4)	Report on Agency's developments, budget implementation, and on the activities of the Board of Regulators, Audit Results.	- <i>oral update</i>	Agency Director BoR Chair
(5)	Report on the results of the Staff Engagement Survey and the Action Plan established to address the concerns raised	- <i>oral update</i>	Agency Director
(6)	Presentation of Staff Committee on the results of the Staff Engagement Survey	- <i>oral update</i>	Staff Committee
Items for Adoption			11:00
(7)	Decision on the participation of Alternates and the attribution of voting rights	Doc. A <i>for adoption</i>	Agency Director
(8)	Staff Regulations Implementing Rules – Model Decision - Middle Management	Doc. A <i>for adoption</i> Doc. B <i>for information</i>	Agency Director
(9)	Staff Regulations Implementing Rules – Model Decision – Function of Adviser	Doc. A <i>for adoption</i> Doc. B <i>for information</i> Doc. B <i>for information</i>	Agency Director

(10)	Programming Document 2019-2021	Doc. A <i>for adoption</i> Doc. B <i>for information</i> Doc. C <i>for information</i> Doc. D <i>for information</i>	Agency Director
(11.1)	Designation of the Director at interim and consequential acts	Doc. A <i>for adoption</i>	AB Chair
Items for Discussion			11:30
(11)	Budgetary Developments - 2019	Doc. A <i>for information</i> Doc. B	Agency Director
(12)	Update on the Multiannual Financial Framework	- <i>oral update</i>	Agency Director
(13)	Language Regime of the Agency	Doc. A <i>for discussion</i>	Agency Director
AOB			12:30
(14)	Confirmation of Dates of AB Meeting for the years 2018 and 2019	- <i>oral update</i>	AB Chair
End of Meeting			12:45

The Administrative Board invited the Agency to submit an assessment of the possible solutions to face the lack of financial resources for the reestablishment of a disaster recovery arrangements for REMIT at the next meeting of the Administrative Board, taking also into account the distinction between disaster recovery site and disaster recovery arrangements.

(2) Approval of the Minutes of the 35th and 36th meeting of the Administrative Board

The Chair went through the conclusions of the 35th and 36th meetings of the Administrative Board, confirming the achievement of the outstanding actions.

With regards to the minutes of the 35th and 36th meetings, the Chair reported that, by the closing date for comments of 3 September 2018, the Agency received textual comments on the minutes related to the 36th meeting only. The comments were included in the final version of the minutes submitted to the Administrative Board for approval.

Conclusion: The minutes of the 35th and 36th meetings of the Administrative Board were approved by unanimity.

SECTION II - REPORTING

(3) Report on the Declaration of Interest of AB Members and Alternates

The Chair reported that the review of the Declaration of Interests of the Members and Alternates of the Administrative Board has been finalised.

The Chair briefly recalled that Decision No 02/2015 of the Administrative Board establishes three levels of risks: Level 1 – where no relevant interest is detected; Level 2 -- where a relevant interest (e.g. in the energy sector) exists, but which does not have any (and, for the year following the declaration, is not expected to have any) direct influence on the decision-making process of the Board or which is not directly impacted by the Board's decision-making process; and Level 3 – where instead there is an interest pertaining directly to the field of competence of the Board.

The Review Panel, after reviewing the declarations of interests and information provided by the remaining two Members for which a full assessment was still pending, did not detect any interest that could be considered critical (level 3).

- Conclusion:*
- (1) The Administrative Board took note of the report on the review of the Declarations of interests of the Members and Alternates of the Board of Regulators;
 - (2) The Administrative Board welcomed the absence of interests that could impair the integrity of the Agency at all levels of its decision-making process.

(4) Report on Agency's developments, budget implementation, and on the activities of the Board of Regulators, Audit Results

4.1 Progress Report on Human Resources

As regards the Agency's human resources, the Director presented the latest statistics identifying the number of staff members subdivided by contract type and amounting to a total of 118 FTEs. The Director highlighted that roughly a quarter of the FTEs is composed by interim agency workers and trainees in an attempt to address, at least partially, the severe shortage of human resources that the Agency is suffering from.

The Director further reported on the current vacancies at the Agency and the reclassification exercise for temporary and contract staff for the year 2018. In addition, the Director briefed the Administrative Board on the recently adopted general implementing provisions of the Staff Regulations and on the decisions to be adopted in the next meetings.

Finally, the Director further reported on the opening of the European School in Ljubljana on 3 September 2018 and explained that the Agency is cooperating with the European School to ensure the future opening of French and German sections.

4.2 Budget Implementation

As regards the Budget Implementation for the year 2018, the Director reported that, by the end of August, commitments of C1 appropriations reached 81.77% (target 95%) while payments 50.50% (target 75%). As regards the C8 appropriations, payments reached 64.76% (target 95%).

The Director also provided details on the Budget implementation for REMIT with particular regard to C1 appropriations under Title II and Title III, with a total appropriations of EUR 1,860,000, and commitments at 86.13% (by the end of September they are expected to reach 98.48%) and payments at 26.45%.

4.3 Annual Conference

The Director reported on the 7th Annual Conference of the Agency of 5 July 2018. The Annual Conference focused on Smart Energy, Coupling the Sectors and Pricing in the EU Energy Sector. The number of participants increased, compared to the previous editions, by about 25% and the feedbacks received confirmed by and large the satisfaction of the participants.

4.4 Document Management and IT Developments

The Director reported also about the developments concerning the implementation of the Document management policy of the Agency. In particular, in order fully to align with the best practices in terms of document management, the Agency will apply to be part of the next group of Agencies to migrate to HAN (the document management system of the European Commission). The migration to HAN and will ensure that the Agency aligns with the document management principles set in the EC Document Management policy (considered as best practice for EU institutions) and benefits from an easier management of the archives in the future. In addition, HAN will ensure that the Agency benefits from effective and efficient document management processes and procedures, also in light of the implementation of access to documents and data protection requirements related to document management.

The Director also informed the Administrative Board that, following the path of EC with DIGIT and other EU Institutions and Bodies, the Agency is migrating to Windows 10 operating system with its latest version of Office applications. The migration will be done in steps and will be finalised by February 2019. It is expected that the Agency will benefit from increased security and safety of the ICT environment and from more user-friendly tools.

4.5 Overview on Regulatory Activities

As regards the regulatory activities of the Agency, the Director provided a detailed outlook of the main challenges that the Agency is facing in electricity and gas. In electricity, they concern the terms and conditions or methodologies ('TCM') envisaged for the implementation of the Capacity Allocation and Congestion Management ('CACM'), the Forward Capacity Allocation ('FCA'), the System Operation ('SO') and Electricity Balancing ('BAL') Guidelines. He underlined that it is estimated that almost 200 decisions¹ on TCM need to be adopted by NRAs, and that many of them, encompassing the most contentious and complex issues, are likely to be referred to the Agency. In this respect, the Director highlighted that the Agency has been referred already ten decisions. The Director stressed, in this regard, that the adoption of a decision entails a number of procedural steps, including consultations, which entail a significant workload.

The Director stressed, once again, that the increase of tasks attributed to the Agency in the context of the implementation of the network codes and guidelines has not been mirrored in the level of budgetary appropriations and human resources required to perform those tasks.

The Director briefed the Administrative Board on the adoption of Decision No 5/2018 of 19 June 2018 on the exemption request for the AQUIND interconnector. The exemption request was referred to the Agency by CRE and OFGEM on 19 December 2017. The Agency was not able to identify, with the required certainty, a level of risk for the AQUIND interconnector such that the investment in this project would not take place unless the requested exemptions were granted. The decision has been appealed before the Board of Appeal and the decision is expected by 18 October 2018.

With respect to the regulatory activities in gas, the Director informed the Administrative Board about the issuing of the Report on the Implementation of the Balancing Network Code (3rd edition). In this respect, the Director highlighted the complexities that the Agency faced in the drafting of the Report due to the different approaches adopted by the Member States to implement the Balancing Network Code, in some cases jeopardising the aim to introduce a harmonised approach to balancing at Union level.

¹ Those decisions are to be taken by all National Regulatory Authorities ('NRAs'), or in case of regional TCM, by the NRAs of the concerned region. However, if these NRAs do not agree, or upon their joint proposal, the Agency is called to decide.

The Director also highlighted the challenge that the Agency is facing in reviewing the national consultation documents of the Reference Price Methodology for Gas and in producing the corresponding reports. So far the Agency has issued reports for the Netherlands and Sweden, but more than 10 are expected before the end of the year. The Director stressed, once again, that this additional task assigned to the Agency by the Gas Tariffs Network Code has not been accompanied by an increase in the level of human resources.

Finally the Director recalled that there are still appeals pending before the General Court with regard to the decision of the year 2016 on the capacity calculation regions adopted by the Agency and by the Board of Appeal respectively. In this regard, the Director reported that, since Germany and Austria appear to be in the process of implementing congestion management on their border, the results of the ruling may well have limited practical impact.

4.6 REMIT

The Director provided the key figures on the performance of the REMIT Information System (ARIS). Data collection (ARIS tier 1&2) and data sharing (ARIS tier 4) are very stable. The market surveillance solution SMARTS (ARIS tier 3) is operational for monitoring wholesale energy trading. The Director highlighted that 13,464 Market Participants have registered so far at national level and are listed in the European Register of Market Participants. The number of Market Participants for which data has been reported amounts to 12,875.

118 RRM have so far been registered (49 Third party RRM, 56 TSO/LSO/SSO and 13 other MPs). The number of records of transactions, including orders to trade, that are being reported, has reached 2 million per day (500 thousands more compared to the year 2017). The Director highlighted that data is now being employed for surveillance purposes. Data sharing is in place with NRAs. In addition, contacts are in place with DG COMP and DG FISMA to establish forms of data-sharing.

The Director recalled, once again, that this amount of reporting per day highlights even more the risks related to the absence of a disaster recovery site and the potential impact on business continuity.

The Director briefly recalled that a new Framework Contract for System Integrator Services (lot 1) was assigned in December 2017 and for IT Consultancy services (lot 2) in early-2018 to transition from the previous programme management model to a REMIT information management model. The Director informed the Administrative Board that the Agency is experiencing delays in the implementation of the Framework Contract, and therefore is putting in place contingency measures to ensure the operation of the system. The Agency is considering resorting to contractual measures for the delays that are under the responsibility of the contractor.

A negotiated procedure to extend the current use of the Agency's market surveillance solution SMARTS was concluded at the end of 2017.

The Director informed the Administrative Board about the updated timeline for the implementation of the remaining REMIT activities, which will be delayed to the year 2019, or beyond, for budgetary reasons.

The Director finally briefed the Administrative Board on the progress in the implementation of the surveillance strategy adopted by the Agency to implement REMIT, providing statistics on the detection of potential breaches of REMIT. The Director highlighted that without the monitoring activity of the Agency and data reporting to the Agency, most NRAs, which rely on data sharing by the Agency, would not be able to perform their investigation and enforcement activities.

4.7 Progress Report from the Board of Regulators

The BoR Chair reported on the contribution of NRAs to the activities performed by the Agency. The BoR Chair highlighted three dimensions which require adequate consideration. The first dimension concerns the implementation of the third energy package representing the most important challenge in terms of overall activities of the Agency. The second dimension relates to the outcome of the negotiations of the Clean Energy Package and in particular, the role of the Agency and the governance structure that will result from the negotiations. The third dimension represents the developments on the Gas sector, digitalisation and decentralisation, developments that have to be addressed in the future. In light of the above, the BoR Chair stressed the need to ensure adequate resources for the Agency to fulfil its mandate and being a leading actor in the energy sector of the future.

Conclusion: The Administrative Board took note of the progress report on the activities of the Agency delivered by the Director and the BoR Chair.

(5) Report on the results of the Staff Engagement Survey and the Action Plan established to address the concerns raised.

The Director gave the floor to Dennis Hesseling, Head of the Gas Department, to provide an overview on the results of the staff engagement survey and the suggested measures to address the concerns raised through the survey. Mr Hesseling therefore provided an overview on the main areas for improvement as well as the principal actions developed by the Management Committee of the Agency to be implemented to improve the working conditions at the Agency.

The Director clarified that the principal actions identified to address the concerns highlighted by the staff engagement survey are to be considered as part of an ongoing process to improve the working environment at the Agency.

Conclusion: The Administrative Board took note of the reports on the results of the Staff Engagement Survey and the Action Plan established to address the concerns raised and stressed the importance of maintaining an engaging working environment especially in a multicultural environment, where cultural differences require additional efforts to ensure a welcoming, attractive and successful working environment.

(6) Presentation of Staff Committee on the results of the Staff Engagement Survey

The Staff Committee representatives welcomed the staff engagement survey and clarified the process leading to it, which saw the direct involvement of the Staff Committee. They provided comments to the actions identified to address the concerns raised as a result of the staff engagement survey. The Staff Committee representatives highlighted the need for commitment on the side of the management by establishing clear action points and a structured and auditable approach with a timeline for implementation.

In the course of the discussion, the Administrative Board stressed the importance of staff engagement for the Agency's development and therefore invited the Management of the Agency to work more closely with staff to improve the working environment conditions, also by employing external facilitators if needed.

The Administrative Board also invited the Management of the Agency to present a more detailed Action Plan, identifying critical points and implementing actions.

Conclusion: (1) The Administrative Board took note of report on the concerns and proposals of Staff Committee to address the results of the Staff Engagement Survey;

- (2) The Administrative Board invited the Management and Staff Committees to report in detail on the implementation of the action plan.

SECTION III – ITEMS FOR ADOPTION

(7) *Decision on the participation of Alternates and the attribution of voting rights*

The Chair recalled that at the 36th meeting of the Administrative Board, it was decided to repeal Decision No 1/2010 of 22 March 2010 of the Administrative Board to reflect more accurately the attribution of voting rights particularly in light of the appointment decisions of the European Parliament, the Council and the European Commission respectively. The Chair further recalled that the Administrative Board decided formally to adopt the decision amending Decision No 1/2010, at the current meeting of the Administrative Board.

The Chair explained that the Decision proposed for adoption establishes that in case a Member of the Board cannot assist to a meeting, the Member concerned will be replaced:

- (1) by her/his Alternate, as designated by his/her appointing institution; or
- (2) in case the appointing institution has not designated an Alternate specific to the Member:
 - (a) by the Alternate occupying the same position in the alphabetical order of the Alternates appointed by the same institution as the Member in the alphabetical order of Members appointed by the institution; or
 - (b) in case the Alternate identified according to point (a) cannot join the meeting either, by the next available Alternate, following the alphabetical order, within the group of Alternates appointed by the same institution. In this case, the last Alternate in alphabetical order is followed by the first Alternate in alphabetical order.

The Chair highlighted that In case no Alternate of the group appointed by the same appointing institution is available, the Member can give a proxy to another Member or Alternate of the Administrative Board.

The Chair explained that the amendment of Decision No 1/2010 of 22 March 2010 makes necessary to amend Article 6 of Decision No 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure where the words 'Article 1 of Decision AB No 01/2010' is replaced by 'Decision No 10/2018'.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Chair, adopted by unanimity Decision No 10/2018 on the participation of Alternates and the attribution of voting rights.

(8) *Staff Regulations Implementing Rules – Model Decision – Middle Management*

The Director reported that on 8 July 2016, the Commission informed the Agency on the adoption of Decision C(2016)3288 of 15 June 2016 on middle management staff. The Director stressed that Commission Decision C(2016)3288 is suitable to apply to the Agency if it is adapted to its specificities. Those specificities concern in particular: (i) the parties involved in the selection procedures of middle managers; (ii) the differentiation between an internal, inter-agency and external publication; (iii) the non-compulsory mobility.

The Director reported that, in light of the above, on 26 April 2018, the Agency has received the Commission's *ex-ante* agreement for a Model Decision, which takes into account the specificities of

EU Agencies and establishes new rules concerning middle management staff.

The Director clarified that the purpose of the Model Decision is to establish a legal framework setting out the internal rules of the Agency concerning: (i) the procedure for the selection and appointment of middle managers; (ii) the role and position of middle managers; (iii) the arrangements for reassigning middle managers to non-management functions in certain circumstances; and (iv) the trial period for staff appointed to a middle management function in the Agency for the first time.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 11/2018 on middle management.

(9) Staff Regulations Implementing Rules – Model Decision - Function of Adviser

The Director reported that, on 8 July 2016, the Commission informed the Agency on the adoption of Decision C(2016)3214 of 7 June 2016 concerning the function of adviser. The Director highlighted that the Decision concerns staff members having special expert knowledge and/or special experience, who are assigned to duties of a horizontal nature – such as coordination, representation, analysis and advice – to provide guidance of a high benefit for the institution or body concerned.

The Director confirmed that Commission Decision C(2016)3214 is suitable to apply to the Agency if it is adapted to its specificities. Those specificities concern in particular (i) the eligibility of temporary staff to the function of advisers; and (ii) the actors involved in the selection procedure of advisers.

The Director, therefore, reported that, in light of the above, on 13 April 2018, the Agency has received the Commission's *ex-ante* agreement for a Model Decision, which takes into account the specificities of EU Agencies and establishes new rules concerning the function of adviser.

The Director highlighted that the purpose of the Model Decision is to establish a legal framework setting: (i) the duties of advisers; (ii) the position of advisers in the organisational structure of the Agency; (iii) the procedures for the selection and appointment of advisers; and (iv) the arrangements for reassigning advisers to functions not appearing in the organisational chart or to the function of Senior Expert in certain circumstances.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Director, adopted by unanimity Decision No 12/2018 of the function of Adviser.

(10) Programming Document 2019-2021

The Chair recalled that, in line with the Agency's Founding Regulation, the Administrative Board is due to adopt, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators, the work programme of the Agency for the coming year and transmit it to the European Parliament, the Council and the Commission.

The Director recalled that, following the Commission's Communication on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies of December 2014, as well as the entry into force of the Framework Financial Regulation (FFR) adopted in 2013, the work programme is a constituent part of the Agency's programming document (PD), a draft of which was submitted to the Commission for opinion in January.

The Director reported that the Board of Regulators approved the PD 2019-2021 on 18 July. On 16 August, the Agency received the Commission's Opinion (dated 14 August). The Agency carefully took into consideration the Commission's Opinion in finalising the Programming Document. In addition, on

28 August 2018, the European Commission submitted comments on the draft Programming Document 2019-2021. The comments have been addressed in the version for adoption.

The Administrative Board, while taking note that the single programming document is not adjusted to the draft budget proposed by the Commission, welcomed the approach taken by the Agency to introduce the prioritisation of the deliverables. In light of that and considering that the single programming document constitutes the Agency financing decision, the Administrative Board invites the Agency to adapt the programming document once the budget is adopted before the end of the year.

The Administrative Board, on the basis of the assessment provided by the Director, briefly discussed the content of the Programming Document and welcomed the prioritisation of the Agency's deliverable. In this context, the BoR Chair stressed the need to ensure an adequate level of financial resources to ensure the fulfilment of the mandate of the Agency, given the added value of the Agency in the completion of the internal energy market.

- Conclusion:*
- (1) The Administrative Board adopted by unanimity the Single Programming Document for the years 2019-2021. The Single Programming Document for the years 2019-2021 might need to be revised in the future , following the adoption of the 2019 EU Budget by the Budgetary Authority.
 - (2) The Administrative Board invited the Agency to report on the foreseen impact of BREXIT on the Agency.

(11) Designation of the Director *ad interim*

The Chair recalled that at the 37th meeting of the Administrative Board of 23 July 2018, the Administrative Board closed the selection procedure for the selection of the Director of the Agency as unsuccessful. The Administrative Board also mandated the Chair to invite the European Commission to launch a new selection procedure with the aim to appoint the Director of the Agency as soon as feasible.

At the same meeting, in order to bridge the gap between the term of offices of the current and next Director and to ensure business continuity in light of the exceptional circumstances that the Agency is facing due to the pending negotiations on the recast of the Agency's funding Regulation in the Clean Energy Package, the Administrative Board further mandated the European Commission and the HRM Team to explore the conditions for appointing the current Director, Mr Alberto Pototschnig, as Director *ad interim*. To this purpose, the Administrative Board invited to consider using the post AD15 available in the establishment plan to maintain Mr Pototschnig in service. In addition, the Administrative Board requested to ensure that this decision does not entail an extension of the current mandate of the Director. Finally, the Administrative Board invited to ensure that the decision would have been subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union.

The representative of the European Commission, informed the Administrative Board members that a revised Vacancy Notice for the post of Director will be published in the Official Journal on 28 September, the first step for the new selection procedure. Invited to report on the outcome of the assessment, she reassured about the legality of the appointment of Mr Pototschnig as Director *ad interim* and of the consequential decisions, opinion and recommendations adopted in the exercise of the interim functions. The Administrative Board was therefore reassured about the risks in the adoption of this decision.

The Chair of the Board of Regulators fully supported the designation of Mr Pototschnig as Director *ad interim* and welcomed this decision which is strengthening the position of the Agency, in the absence

of a new Director, in the pending negotiations on the Clean Energy Package and the recast Agency's funding Regulation.

- Conclusion:**
- (1) The Administrative Board appointed, by unanimity, Mr Alberto Pototschnig as Director *ad interim*, without this constituting an extension of his mandate, subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union.
 - (2) The Administrative Board decided that the termination, by either side, of the contract of employment of Mr Pototschnig will be subject to a ten-month notice period.
 - (3) The Administrative Board mandated the Chair to undertake all the administrative steps necessary to implement this decision.

(11.1) Authorisation on Outside Activities

The Chair recalled that the Administrative Board, with its Decision AB no 34/2011 of 2 December 2011, granted permission to Mr Pototschnig to engage in academic cooperation with the Florence School of Regulation. The Chair further recalled that since then, the Administrative Board granted permission to Mr Pototschnig to continue in his role of adviser to the Director of the Florence School of Regulation and with his activities of instructor at the Florence School of Regulation on a yearly basis. Last year the permission was granted for the period from 1 January 2018 to 15 September 2018. The Chair also noted that, given the governance and mission of the Florence School of Regulation, the activities for which permission is granted do not raise any conflict of interest.

As of 16 September 2018, Mr Pototschnig will be Part-time Professor at the Florence School of Regulation. In this capacity, Mr Pototschnig will participate in teaching and other educational, academic and research activities organised by the Florence School of Regulation.

The AB specifically requested that:

- the activities for which permission was granted shall be carried out for a maximum of two hundred (200) hours during the period 16 September 2018-15 September 2019;
- the activities for which permission is granted, to the extent that they are carried out during working hours with a limit of 100 hours, are considered to be carried out in the interest of the service;
- permission is granted subject to the condition that no costs shall be incurred by the Agency;
- Mr Pototschnig shall receive no remuneration in connection with the activities for which permission is granted to the extent that they are carried out during working hours. To the extent that these activities are carried out outside working hours, Mr Pototschnig shall hand over any remuneration received in excess of EUR four thousand five hundred (4,500). Such limit shall apply to net remuneration and shall exclude any royalties or similar utilities received for publications, as well as any reimbursement of expenses;
- Mr Pototschnig will report to the Administrative Board on his activities at the Florence School of Regulation at the end of the period.

Conclusion: The Administrative Board adopted, by unanimity, Decision No 13/2018 granting permission to the Director *ad interim* of the Agency for the Cooperation of Energy Regulators to engage in outside activities for the period 16 September 2018 – 15 September 2019.

SECTION IV - REPORTING

(12) Report on Budgetary Developments for the financial year 2019

The European Commission reported that the Council proposed the cut of the budget for the year 2019 for the Agency. The European Commission is working internally to ensure that the budget is maintained to a total of EUR 16.1 million, ensuring EUR 3.5 million for REMIT as it represents the minimum amount needed to fulfil the basic needs of the Agency for the implementation of REMIT. DG ENER will provide EUR 500,000 to ensure that the amount of EUR 16.1 million is maintained.

The Director reported that the European Parliament supports the requests of the Agency for EUR 19.1 million. The Director expressed concerns with regard to the limited additional human resources included in the Commission's proposal, well short of what the Agency should be provided to fulfil its mandate. In particular, the Director reported that the proposal of the Commission included 8 CAs despite the requests of the Agency for 31 TAs and 6 CAs. The Director stated that, in his view, it also unclear whether the proposed additional CA position would be an advance allocation of the additional resources envisaged for the Clean Energy Package. In this respect, the Director warned the Administrative Board about the fact that, in this view, given their grading, the additional resources would not be suitable for the implementation of the Clean Energy Package.

The Administrative Board discussed therefore the need to take into consideration at the time of revising the establishment plan of the Agency, the underestimation of resources that the Agency has suffered from since the inception of REMIT.

The Administrative Board invited the BoR Chair to channel to the Board of Regulators a request to support the Agency within their own respective constituencies and in particular with the relevant ministries, highlight the relevance of the Agency in ensuring consumer protection and security of supply and given the impact upon the working of NRAs and the BoR due to the financial shortage the Agency is suffering from.

- Conclusion:*
- (1) The Administrative Board took note of the report on the budgetary developments and once again stressed the need to ensure that the Agency is provided with adequate resources to perform its mandate;
 - (2) The Administrative Board invited the Board of Regulators to support the Agency in being provided with the necessary resources to fulfil its mandate.

(13) Update on the Multiannual Financial Framework

The Director reported that the MFF will not be finalised before the forthcoming European Elections. The current draft establishes for the Agency an envelope for the next seven years of EUR 91 Million – EUR 13 Million per year. The Director highlighted how the draft envelope is well below the threshold that is currently discussed for the year 2019 and it clearly would entail the impossibility to ensure the REMIT operations.

The Administrative Board confirmed full support in ensuring that the envelope for the Agency will be brought at the necessary level to ensure adequate fulfilment of the mandate of the Agency especially in light of the limited amount of additional budget needed per year to ensure operations.

- Conclusion:* The Administrative Board took note of the report on the draft Multiannual Financial Framework and once again stressed the need to ensure that the Agency is provided with adequate resources to perform its mandate.

(14) *Language Regime of the Agency*

The Director introduced the topic recalling that, pursuant to Article 33(1) of Regulation (EC) No 713/2009 (the Agency's founding Regulation), the Agency is subject to Council Regulation No 1 of 15 April 1958. According to Article 4 of the latter Regulation, regulations and other documents of general application shall be drafted in the official languages of the Union. As a result, the decisions issued by the Agency should be translated in all the official languages of the Union. Translation shall be provided by the Translation Centre of the Bodies of the Union ('CdT').

Due to the limited financial resources at the disposal of the Agency, the practical solution adopted so far by the Agency was to adopt decisions in English only, as in the case of the implementation of REMIT. In addition, the Agency invited addressees, as far as possible, to waive their right to receive a decision in the official language of the Member State in which they are resident.

The Director noted that the language regime to which the Agency is subject to is increasingly becoming relevant from a budgetary perspective, in light of the decisions of general applications that the Agency is called to take in the framework of the implementation of Network Codes.

The Director highlighted that if the Agency were to issue decisions in all the official languages of the Union, this would have both procedural and budgetary implications, given the fact that the CdT requires on average 4 to 5 weeks for the translations and the significant costs of such translations.

The language regime of the Agency's decisions was discussed at the Network Code Implementation Monitoring Group (NC IMG) meeting on 8 March 2018. At that meeting, it was suggested a pragmatic approach according to which the Agency would issue its decisions only in English, but would be prepared to translate them into other languages if required by a court proceeding.

In this respect, the Director reported that discussions are taking place at the level of the Board of Regulators to ensure a viable solution, but that a number of NRAs have rejected the proposed pragmatic solution, claiming that such a solution would make the Agency's decisions not enforceable in their jurisdictions.

Therefore, the Administrative Board discussed the impact of Council Regulation No 1 of 15 April 1958 in the current framework, where NRAs may need a translation of the Agency's decision in their respective official language so as to ensure adequate enforcement. Moreover, the Administrative Board invited NRAs to support the Agency with regard to the translation of the agency's decisions, where this is required for their enforceability.

- Conclusion:*
- (1) The Administrative Board recognised the importance of ensuring the full application of Council Regulation No 1 of 15 April 1958;
 - (2) The Administrative Board expressed concerns for the financial impact of the translation on the budget of the Agency and the legal certainty of the acts of general application issued by the Agency;
 - (3) Therefore the Administrative Board invited NRAs to support the Agency with regard to the translation of the agency's decisions, where this is required for their enforceability;
 - (4) The Administrative Board invited the Director and the BoR Chair to report at the next meeting about the results of the consultations with the Board of Regulators.

SECTION V – AOB

(15) Confirmation of dates of meetings for the years 2018 and 2019

The Chair recalled that the meeting of the Administrative Board in ordinary session of the 20th of September is cancelled and invited Members and Alternates to take note of the dates of the meetings of the Administrative Board in ordinary sessions for the rest of the year 2018 and the year 2019 as follows:

- Thursday 13 December 2018;
- Thursday, 21 March 2019;
- Thursday, 13 June 2019;
- Thursday, 26 September 2019;
- Thursday, 12 December 2019.

The meetings will all start at 9 a.m.

Conclusion: Members and Alternates took note of the dates of the next meetings of the Administrative Board for the rest of the year 2018 and the year 2019.

CLOSING

In the absence of any other business to be treated, the Chair closed the 38th meeting at 13:05.