



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

***– 42nd Meeting –
– Ordinary Session –***

Thursday, 26 September 2019, 11:30 — 14:30

Trg Republike 3, Ljubljana - Slovenia

MINUTES

I. LIST OF ATTENDEES

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

Ms Britta THOMSEN,	<i>Alternate</i>	Dr Jochen PENKER,	<i>Vice-Chair</i>
Prof Uwe LEPRICH,	<i>Alternate</i>	Mr Martin HANSEN,	<i>Member</i>
Mr Jurijs SPIRIDONOVs,	<i>Member</i>	Mr Michel THIOLLIERE,	<i>Member</i>
Ing Ľubomír KUČHTA,	<i>Alternate</i>	Mr Florian ERMACORA,	<i>Alternate</i>
Mr Diego VAZQUEZ,	<i>Alternate</i>		

Ms Britta THOMSEN, Prof Uwe LEPRICH and Ing Ľubomír KUČHTA were granted voting rights pursuant to Decision No 10/2018 of the Administrative Board of 6 September 2018 on the participation of Alternate Members.

Mr Florian ERMACORA submitted proxies of Ms Anne MONTAGNON and Ms Ditte JUUL JØRGENSEN.

Mr Alberto POTOTSCHNIG (*Director ad interim*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

The secretariat was provided by the Agency.

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

At the 42nd meeting, the Administrative Board:

- (1) designated Mr ZINGLERSEN as Director of the Agency with effect as of 1 January 2020;
- (2) expressed concerns for the lack of adequate human resources despite the increase of tasks, the complexity of deliverables and the urgency under which the Agency will need to act to implement the Clean Energy Package;
- (3) authorised the Director to proceed with the signature of the amendment of the Administrative Arrangement signed on 2 November 2016 with the Energy Community Secretariat;
- (4) invited each Member and Alternate to raise awareness, both within their national constituencies and with the Council and the European Parliament, of the benefits that the Agency delivers to European consumers and to the overall competitiveness of each Member State as well as of the potential negative effects on the Union and on the individual Member States, deriving from the lack of sufficient resources attributed to the Agency itself;
- (5) invited the BoR and the Director to involve the Administrative Board at an early stage in all dimensions of the recast Agency's Regulation requiring the adoption of decisions by the Administrative Board itself;
- (6) adopted, by unanimity, Decision No 15/2019 on the request to opting-out from the general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings;
- (7) adopted, by unanimity, Decision No 16/2019 governing the conditions of employment of contract staff employed under the terms of article 3a thereof;
- (8) adopted, by majority voting, Decision No 17/2019 on the reimbursement of travel and subsistence expenses incurred by the Members and Alternate Members of the Board of Appeal and the recognition of indemnities for the participation in appeal cases.

III. MINUTES

SESSION I

SECTION I – OPENING

The 42st meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 26 September 2019. The meeting started at 11h30.

Upon invitation of the Vice-Chair to 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 actual or potential interest was declared nor reported.

(1) *Approval of the Agenda*

The Agenda of the 42nd meeting of the Administrative Board was approved as follows:

Agenda Topics		Accompanying Documents	Rapporteur
<i>Welcome Coffee</i>			11:20
Start			11:30
(1) Approval of the Agenda and Declarations of Interest	Doc. A	<i>for approval</i>	AB Vice-Chair
(2) Approval of the minutes of the 41 st meeting of the Administrative Board	Doc. A	<i>for approval</i>	AB Vice-Chair
Items for reporting			11:40
(3) Report on Decision by Delegation and by Written Procedure	Doc. A-G	<i>for information</i>	AB Vice-Chair
(4) Report on the Review of the Conflict of Interests Declarations of Members and Alternates of the Administrative Board	-	<i>oral update</i>	AB Vice-Chair
(5) Report on Agency's developments, budget implementation, Audit Results, and the regulatory activity	-	<i>oral update</i>	Director <i>ad interim</i>
(6) Report on budgetary developments and the Action Plan to improve the communication of the Agency's bodies with other stakeholders involved in the budgetary cycle.	Doc. A	<i>for information</i>	Director <i>ad interim</i>
(7) Report on the activities of the Board of Regulators and on the opinion of the prospective candidate for the post of Director of the Agency	-	<i>oral update</i>	BoR Chair
Items for decision			13:00
(8) Decision consequential to the opinion of the Board of Regulators on the prospective candidate for the post of Director of the Agency	-	-	AB Vice-Chair

(9)	Staff Regulations Implementing Rules – Request to opt-out – Conduct of administrative inquiries and disciplinary proceedings	Doc. A <i>for adoption</i> Doc. B <i>for adoption</i> Doc. C <i>for information</i>	Director <i>ad interim</i>
(10)	Staff Regulations Implementing Rules – Model Decision Rules – Contract Staff	Doc. A <i>for adoption</i> Doc. B <i>for information</i>	Director <i>ad interim</i>
(11)	Decision on the establishment of indemnities – Board of Appeal	Doc. A <i>for adoption</i>	Director <i>ad interim</i>
AOB			14:20
(12)	Confirmation of dates of AB Meetings for the year 2020	- -	AB Vice-Chair
Closing			14:30

The Administrative Board decided to post-pone the discussion of the Communication Strategy for the Agency at a later meeting. Similarly, the adoption of the revised Single Programming Document for the years 2019-2021 was decided to be discussed at the 43rd meeting of the Administrative Board in the await for the opinion of the European Commission.

(2) Adoption of the Minutes of 41st Meeting of the Administrative Board

The Vice-Chair went through the conclusions of the 41st meeting of the Administrative Board, confirming the achievement of the outstanding actions with the exception of the submission to the Administrative Board of two reports to be rendered at the next meeting.

The Vice-Chair further reported that, by the closing date for comments on the minutes of the 41st meeting, the Agency received minor comments, which were included in the draft for adoption.

Conclusion: The Administrative Board adopted, by unanimity, the minutes of the 41st meeting of the Administrative Board.

SECTION II - REPORTING

(3) Report on the decisions adopted by written procedure and by delegation

The Vice-Chair reported about the adoption by the Administrative Board of several decisions after its 41st meeting of the 13 June 2019.

The Vice-Chair first illustrated the decisions adopted via written procedure, pursuant to 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 Procedures of the Administrative Board, and, in particular, Article 9(2) thereof.

In particular, on 21 June 2019, the Administrative Board adopted, Decision No 8/2019 on the Financial Regulation of the Agency for the Cooperation of Energy Regulators.

On 4 July 2019, the Administrative Board adopted:

- Decision No 9/2019 on the establishment of the Working Groups of the European Union Agency for the Cooperation of Energy Regulators for Electricity and for Gas, and

- Decision No 10/2019 on the establishment of the internal Rules of Procedure for the functioning of the Working Groups of the European Agency for the Cooperation of Energy Regulators.

On 29 August 2019, the Administrative Board adopted Decision No 13/2019 granting permission to Mr Alberto Pototschnig to engage in outside activities.

Finally, on 14 September 2019, the Administrative Board, after having launched the necessary inter-service consultation with the European Commission, adopted Decision No 14/2019 on the delegation to the Director of the European Union Agency for the Cooperation of Energy Regulators of the powers conferred by the Staff Regulations on the Appointing Authority and by the Conditions of Employment of Other Servants of the European Union on the Authority Empowered to Conclude Contracts of Employment.

The Vice-Chair clarified that all the above-mentioned decisions were adopted by unanimity of the voting members.

To conclude, the Vice-Chair finally reported about the following two decisions adopted by the Chair via delegation:

- Decision No 11/2019 of 5 August 2019 on the appointment of one Member of the Board of Regulators in representation of Urząd Regulacji Energetyki, the national regulatory authority of Poland;
- Decision No 12/2019 of 29 August 2019 on the appointment of one Alternate Member of the Board of Regulators in representation of Úrad pre reguláciu sieťových odvetví, the National Regulatory Authority of Slovakia.

The Vice-Chair recalled that the legal basis for the adoption of decisions via delegation is Decision No 5bis/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 21 September 2010 the Delegation to the Chairman of the powers to appoint new members of the Board of Regulators.

Conclusion: The Administrative Board took note of the decisions adopted by written procedure and via delegation since its last meeting of the past 13 June 2019.

(4) Report on the Review of the Conflict of Interests Declarations of Members and Alternates of the Administrative Board

The Vice-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 Vice-Chair recalled that the Review Panel, after reviewing the declarations of interests and information provided by Members and Alternates, did not detect any interest that could be considered critical (level 3). However, he highlighted that the Review Panel considered necessary to request additional information to Mr Kovacs so as to complete the assessment of his Declaration of Interest.

Conclusion: The Administrative Board took note of the conclusion of the review of the Conflict of Interests Declarations of Members and Alternates of the Administrative Board with the exception of one Alternate, whose position was detached and is still pending.

(5) *Report on Agency's developments, budget implementation, Audit Results, and the regulatory activity*

5.1 *Human Resources*

As regards the Agency's human resources, the Director *ad interim* presented the latest statistics identifying the number of human resources subdivided by contract type and amounting to 125 FTEs, 2 of which in the Brussels office of the Agency. The Director *ad interim* highlighted that the Agency has completed its Establishment Plan (100% implementation) as all the available positions have been filled. The Director *ad interim* drew the attention of the Administrative Board to the fact that 21.6% of the available resources is covered through traineeship agreements and interim agency workers. Those temporary solutions, for their very nature, can only partially cover the needs of the Agency as they cannot provide the necessary level of expertise to face the structural lack of resources in key positions to fulfil the Agency's mandate at optimal level and therefore deliver the necessary efficiency gains for the Union and its Member States.

The Director *ad interim* further reported on the efforts put in place by the Agency to ensure a timely filling of the contract agents functions assigned to the Agency for the year 2020 with the establishment of reserve lists to be employed once the budgetary procedure will be closed.

The Director *ad interim* provided details on the reclassification procedure for the year 2019 and the competency framework project to assess the competences needed within the Agency. He also provided an update on the process for the release of SYSPER, the Commission's tool for the management of human resources.

The Director *ad interim* concluded by updating the Administrative Board on the European School in Ljubljana, which was finally accredited. The Director *ad interim* highlighted that the European School will be offering a complete primary educational cycle (classes P1 – P5) starting from the school year 2019-2020, where already 26 pupils are enrolled in the English language section and 19 in the Slovene one. The secondary educational cycle (S1 – S7) is instead foreseen to be offered in the school year 2020-2021 to be finally completed for the school year 2023-2024.

5.2 *Internal Control Mid-term Assessment, Implementation of the Anti-Fraud Strategy, Implementation of the Action Plan following the Staff Engagement Survey, and the IAS Audit on the HRM, IT and REMIT functions of the Agency*

Internal Control Framework Mid-term Assessment

The Director *ad interim* reported that the Internal Control Framework of the Agency, adopted by the Administrative Board on Decision No 17/2018, is effective and the mid-term assessment of its implementation did not highlight deficiencies besides a minor deficiency in IC Principle No 11 (control over technology). The Director *ad interim* explained that the adoption of a new ICT Strategy has been delayed until the end of the year due to changes in the IT team and new developments at Agency level. The Director *ad interim* reassured the Administrative Board about the effectiveness on the substance of the Internal Control Framework over technology. In particular, the Director *ad interim* stressed that the currently applicable ICT Strategy is implemented in light of the new Internal Control Framework and, therefore, the ICT Steering Committee exercises oversight and provides strategic directions in the ICT domain in light of Internal Control Framework of the Agency.

Implementation of Decision No 6/2019 for the Administrative Board on the Anti-Fraud strategy

The Director *ad interim* reported that the area of information security has been subject to the implementation of a series of measures in accordance with the Audit Action Plan. As regards the improvement of the document management system at the Agency, the migration to ARES is expected to take place on 2 October 2019. Furthermore, following the adoption of the new Financial Regulation, a Director Decision on engagement and reimbursement of non-remunerated experts was adopted in July alongside the Standard Operating Procedure on the management of non-remunerated experts. The Director *ad interim* therefore provided an overview of the decision explaining the categories of experts invited by the Agency, the management of conflict of interest and the methods for reimbursement. He highlighted that this decision was presented to all staff on 3 September.

The Director *ad interim* concluded by reporting that the Agency would have adopted by the end of the month of September a Standard Operating Procedure on cooperation with OLAF and follow-up on investigations.

Staff Engagement Survey

The Director *ad interim* recalled that in the year 2018 the Agency undertook a staff engagement survey. The overall participation rate was 76% with an overall satisfaction rate of 57%. The Director reported in detail on the action plan adopted by the management of the Agency to address the results of the Staff engagement survey covering 30 actions in four dimensions (Internal processes, Staff matters, Internal communication and leadership, and External communication). The Director recalled that 13 out of the 30 actions were fully implemented, 12 were partially implemented as of 5 September 2019, and for the remaining 5 implementation was on-going.

IAS Audit on the HRM, IT Security and REMIT functions of the Agency

As regards the HRM function, the Director *ad interim* stressed that two “very important” recommendations (on Recruitment and management of Col and on Appraisal and reclassification exercises) have been fully implemented. He also recalled that the critical recommendation was also downgraded to “very important”, to reflect the progress made by the Agency in the implementation of the action plan. The Director *ad interim* further reported that the remaining recommendations (one “very important” recommendation on Guidelines, Document Management, Job Descriptions and Sharing of Information and the other “important” on Setup and management of the HR function and on Planning of resources and monitoring) will be fully implemented by Q4 2019.

As regards the implementation of the Action Plan following the IAS Audit on IT security in ACER and Information Security in the “REMIT” domain, approved by the IAS on 11 March 2019, the Director *ad interim* stressed that the recommendations on the implementation of the Information Security policy and on IT security governance had been already partially implemented. The Director *ad interim* provided an overview of the implementation of the two recommendations going through the milestones and the foreseen timeline. The Director *ad interim* concluded by highlighting that the implementation of all other recommendations will be performed in the year 2020.

The Director *ad interim* finally reported that the IAS Audit on the Implementation of REMIT would have taken place on 4-8 November 2019. To that end a preliminary visit took place on 9-10 September 2019. The Director *ad interim* provided a detailed overview of the scope of the audit identifying the main areas subject to assessment.

5.3 Budget Implementation

As regards the Budget Implementation for the year 2019, the Director *ad interim* reported that commitments for C1 appropriations reached 89.13% (target 95%) while C1 payments 55.10% (target 75%). As regards the C8 appropriations-carry-over, payments reached 79.07% (target 95%).

As regards the C1 appropriations under Title II and Title III (REMIT), the Director *ad interim* reported that the total appropriations amounted to EUR 3,658,405 with commitments for 72% (EUR 2,633,979) and Payments 24.59%. The Director *ad interim* clarified that according to the planning, the commitment appropriations would have reached 99.77% (EUR 3,649,978) by end of September.

The Director *ad interim* warned the Administrative Board that the Agency is facing delays and quality issues in the implementation on the Framework Contract for System Integrators and, therefore, the Agency might face the possibility of not reaching the target for payments for C8 appropriations.

5.4 Regulatory activities

The Director *ad interim* provided an overview on the most recent regulatory tasks to be performed by the Agency in the last semester of the year 2019 and the first semester of the year 2020.

The Director *ad interim* stressed the degree of complexity of the decisions that the Agency is expected to adopt and, most importantly, the impact that the Clean Energy Package will have on the Agency, where all decisions on common terms and conditions or methodologies with a Union-wide scope will fall directly under the competence of the Agency itself.

In particular, the Director *ad interim* highlighted the number of deliverables that the Agency is expected to fulfil within the framework of the implementation of Capacity Allocation and Congestion Management, Forward Capacity Allocation and Balancing.

The Director *ad interim* reported, for instance, that more than twenty decisions will be taken by the Agency in the course of the year 2020. In this regard explained that the amount of decisions to be taken by the Agency in the implementation of network codes should not be considered only in terms of a single occurrence, and therefore be discounted as a negligible task attributed to the Agency. The level of complexity of the issues raised and, therefore, the high potential for appeals, the need for translation in other official languages of the Union, and the possibility for amendments make those decisions constituting a significant burden for the Agency in light of the limited financial and human resources that have been assigned by the Budgetary Authority.

In this regard, and as a way of example, the Director *ad interim* highlighted the Union-wide reports that the Agency has issued in the course of the year 2019 on the analysis on the national tariff consultation documents. Those reports foreseen by Article 27 of the Tariff Network Code, have been issued or were in the process to be issued for each of the Member States. Those reports provide an insight on the status of the implementation of the Network Code with the result that they could reveal contentious issues and therefore have been drafted at times without the necessary degree of cooperation by national authorities, eventually increasing the overall burden for the Agency in performing its mandatory activities. The Director *ad interim* has therefore highlighted the resource intensity of those activities that are instead perceived as on-going and less demanding in terms of resources, as in this case.

In addition, the Director *ad interim* provided insights on the most important decisions adopted by the Agency providing details on the difficulties encountered due to the shortage of human resources that the Agency is constantly facing and the need to maintain its recognised role of qualified actor in the energy sector.

Furthermore, the Director *ad interim* reported that the Agency in addition to its mandatory deliverables is also called to issue other acts upon request of third parties. In this respect, he mentioned the adoption of Recommendation No 1/2019 on the implementation of the minimum margin available for cross-zonal trade, requested by the Electricity Cross-Border Committee.

The Director *ad interim* further reported about the appeals currently pending against the decisions adopted by the Agency, pointing to a multiplication of actions both before the Board of Appeal of the Agency and the Court of Justice.

5.5 Administrative Arrangements – Energy Community Secretariat – Amendment

The Director *ad interim* recalled that, on 2 November 2016, the Agency and the Energy Community Secretariat ('EnCS') entered into an Administrative Arrangement for the participation of the EnCS in the Agency's Working Groups. This Administrative Arrangement is based on the Working arrangement established by the Agency and the European Commission on the relations with third countries.

The Director *ad interim* explained that the Administrative Arrangement should have been amended to be aligned with the newly established legal framework introduced by the Clean Energy Package.

The Director *ad interim* further explained that the EnCS should have been allowed to attend the Market Integrity and Transparency Working Group of the Agency as REMIT has entered the Energy Community *acquis*.

The Director *ad interim* stressed that all other provisions of the existent administrative arrangements would have been maintained. He further recalled that the participation of the NRAs of an Energy Community's Contracting Party remains subject to having made satisfactory progress towards meeting the criteria laid down in Article 43 of Regulation (EC) No 2019/942.

Upon request for clarification from the Administrative Board, the Director *ad interim* and the Chair of the Board of Regulators clarified that the Board of Regulators does not object the amendment and the participation of the EnCS and its contracting parties. They also explained that no issue of confidentiality might raise as no access to REMIT data is provided in the Market Integrity and Transparency Working Group. They clarified that this Working Group constitutes rather a fora for sharing best practices and adequate interpretation to and enforcement of REMIT provisions.

The Director *ad interim* clarified that the recast Agency's Regulation foresee the adoption by the Administrative Board of Rules of Procedure for relations with third countries. In the await for the definition of the scope of application of those rules, which appear to be directed to cover more mainstream cross-border EU-Non EU relations, the Director *ad interim* invited the Administrative Board to authorise the signature of the amendment to the existent administrative arrangement with the EnCS.

5.6 REMIT Implementation

The Director *ad interim* provided an overview of the key figures of REMIT implementation. In particular, he highlighted that 14,426 Market Participants have been registered in the European Register of Market Participants, the number of approved RRM reaches 122 (50 Third party RRM, 59 TSO/LSO/SSO and 13 other MPs), and the Agency is currently collecting more than 3 million records of transactions, including orders to trade, on average per day.

The Director *ad interim* further drew the attention of the Administrative Board to the restrictions that the Agency is facing in the implementation of REMIT due to the obsolescence of the IT infrastructure and IT software at its disposal.

As regards the IT infrastructure, the replacement of equipment has started only in Q4/2019 due to the insufficient funding of last year to replace the IT equipment. However, the obsolete IT equipment available at the Agency to support REMIT data collection and storage is meanwhile causing sporadic disruptions to ARIS operations. As a way of example, the Director *ad interim* reported about a recent disruption by which the Agency could ensure data collection but not the related storage.

As regards IT software, the Director *ad interim* warned the Administrative Board about the increasing risks deriving from the aged software currently available at the Agency with the potential for the current situation to worsen if the Budgetary authority is not sufficiently made aware of the financial needs to ensure adequate REMIT IT software development. In particular, he reported also that the Agency has experienced severe issues in August 2019 with several days of downtime for ARIS data collection.

The Director *ad interim* also highlighted once more his concerns about the status of the transition to the new service provider for IT system integration services, where the quality of the services is not at the expected level.

The Director *ad interim* further recalled that, contrary to the Agency's estimates for annual REMIT IT operational costs (including costs for licences) of EUR 3.5 million, the budget proposal for the financial year 2020 considers REMIT IT costs at EUR 2.8 million as estimated by the Agency and validated by DG ENER in 2016. He clarified that the 2016 estimate was based on a different basis that could not take into consideration the evolution of REMIT with reported records that had tripled since then. The Director *ad interim*, therefore expressed his outmost concern for the draft MFF 2021-27 that seems to envisage a EUR 1.5 million annual allocation for REMIT operations, eventually forcing the Agency to discontinue market surveillance.

In light of the current budgetary restraints under which the Agency will be called to act in the year 2020, the Director *ad interim* reported about the planned de-prioritisation of activities concerning REMIT Implementation to ensure at least basic ongoing operations in 2020.

In this regard, he reported that the Agency will have to postpone the establishment of a disaster recovery site and the full implementation of recommendations regarding information security. The Director *ad interim* explained that the above-mentioned actions are unfortunately necessary and they will increase the Agency's risks on operational reliability. Furthermore, the Agency will no longer be able to provide updates of REMIT Q&As and FAQs on transaction and fundamental data reporting despite a high number of stakeholder questions. In addition, the Agency has ceased stakeholder roundtable meetings with Associations of Energy Market Participants, Organised Market Places and Inside Information Platforms. The Director *ad interim* also reported that there will be very limited capacity to resolve remaining issues with our systems (e.g. performance, architecture, etc.) that require reworking of certain ARIS components (e.g. data sharing solution with NRAs, national financial regulators and DG COMP). The Agency will also limit to the minimum the establishment of cross border investigatory groups created for the assessment of potential REMIT breaches, despite the increasing number of cross border cases. Moreover, the Agency announced the refusal of all requests of assistance by NRAs on REMIT investigations (NRAs expected to send more than 800 request in the upcoming 2 years).

Finally, the Director *ad interim* explained that although the Agency had planned software development activities in 2020, also to implement in ARIS the market design changes due to network codes (e.g. 2nd phase of XBID, unit based bidding), it will not be able to implement any such changes.

The Director *ad interim* concluded by stating that, as a result of the budget constraints foreseen for the year 2020, there is a high risk of REMIT data collection and market monitoring becoming meaningless as they will no longer be up to date with market design changes and market developments. In addition, those activities that have been planned to be de-prioritised proved in the past to be useful in sharing a common understanding of REMIT across the market. He, therefore, maintained that the necessary planned de-prioritisation will, in his view, increase unease among market participants and put at risk REMIT Implementation.

5.7 Budget Constraints and the entry into force of the Clean Energy Package

In addition to the considerations reported above at point 4.4, the Director *ad interim* expressed concerns for the lack of alignment of the financial statement of the Agency with its extended mandate by the Clean Energy Package. The Director *ad interim* explained that certain newly attributed tasks require expertise going beyond the current framework of the Agency's activities as for instance the issuing of the opinion on technical guidance for the calculation of CO2 emission limits.

He also drew the attention of the Administrative Board that other newly attributed tasks, such as providing operational assistance to NRAs regarding REMIT investigations, upon NRA request, would require the dedication of a significant amount of human resources, currently not available in the Agency's establishment plan. In this regard, the Director *ad interim* highlighted that on the basis of a recent survey of NRAs, 20 additional FTEs would be needed to accomplish this new task. He explained that those resources were not mirrored in the draft Budget 2020.

As reported in detail at the 41st meeting of the Administrative Board, the Director *ad interim*, further recalled the additional tasks assigned by the Clean Energy Package. He highlighted the large number of deliverables of complex nature to be concluded within the first six months of its entry into force, and recalled that the Agency has not been provided with the necessary human resources to cover its needs in light of the short time-frame to fulfil its extended legal mandate.

The Director *ad interim* also highlighted that most of the positions related to the Clean Energy Package have been authorised as CAs, rather than TAs, despite the technical complexity of the tasks assigned to the Agency. At the same time, the Director *ad interim* expressed concerns should the possibility for the Agency to raise fees for REMIT be mirrored by a reduction of appropriations deriving from the budget for the Union.

- Conclusion:**
- (1) The Administrative Board took note of the report and expressed concerns for the lack of sufficient resources to ensure that the Agency meets its mandate.
 - (2) The Administrative Board authorised the Director to proceed with the signature of the amendment of the Administrative Arrangement signed on 2 November 2016 with the Energy Community Secretariat.

(6) Report on budgetary developments and the Action Plan to improve the communication of the Agency's bodies with other stakeholders involved in the budgetary cycle

The Director reported about his attempts to increase awareness within the European Parliament and the Council of the impact of the lack of sufficient human and financial resources on the Agency's operation within the framework of the adoption of the budget 2020.

The Administrative Board discussed at length possible strategies to increase visibility of the EU added value of the Agency's activities while looking at possible ways to manage scarcity in the meantime.

- Conclusion:**
- (1) The Administrative Board invited each invited each Member and Alternate to raise awareness, both within their national constituencies and with the Council and the Parliament, of the benefits that the Agency delivers to European consumers and to the overall competitiveness of each Member State as well as of the potential negative effects on the Union and on the individual Member States, deriving from the lack of sufficient resources attributed to the Agency itself;
 - (2) The Administrative Board invited the Agency to support this mandate by providing up to date information on a rolling basis in the course of the budgetary process.

(7) Progress Report from the Board of Regulators

The BoR Chair reported on the recent activities of the Board of Regulators, with particular regard to the terms and conditions and methodologies foreseen in the Network Codes. The BoR Chair highlighted the wish of the NRAs to cooperate closely with the Agency's staff via the working groups to ensure a timely adoption of the necessary decisions.

The BoR Chair reported further on the activities undertaken at BoR level to ensure that all measures are in place so as that the Agency will be able to act according to the new legal framework in which the Agency will be called to act upon with the entry into force of the recast Agency Regulation. In this respect, the BoR Chair reported that a Rules of Procedure group has been set up to that purpose. This group is currently looking at the Rules of Procedure of the Agency and the rules concerning the interaction between the bodies of the Agency.

Conclusion: The Administrative Board took note of the report of the BoR Chair and invited the BoR and the Director to involve the Administrative Board at an early stage in all dimensions of the recast Agency's Regulation requiring the adoption of decisions by the Administrative Board itself.

SECTION III – ITEMS FOR DECISION

(8) Decision consequential to the opinion of the Board of Regulators on the prospective candidate for the post of Director of the Agency

The Vice-Chair recalled that on 25 September 2019 the Administrative Board concluded the interviews for the post of Director of the Agency. After the interview of the three candidates shortlisted by the European Commission with the framework of the selection procedure No. COM/2018/20031, the Administrative Board invited the Board of Regulators to provide an opinion on the candidate selected by the Administrative Board in accordance with Article 23(2) of the Agency Regulation.

The Chair of the Board of Regulators therefore conveyed the favourable opinion of the Board of Regulators, delivered on 26 September 2019.

As a result of the above, the Administrative Board designated Mr Christian Pilgaard ZINGLERSEN as next Director of the Agency with effect as of 1 January 2020 for a duration of five years and subject to the conditions set in the Staff Regulations.

The Vice-Chair explained that before appointment, the candidate selected by the Administrative Board shall make a statement before the competent committee of the European Parliament and answer questions put by its members. For the purpose of concluding the contract with the Director, ACER shall be represented by the Chair of the Administrative Board.

The Administrative Board, the Chair of the Board of Regulators and the Director *ad interim* welcomed the designation of Mr ZINGLERSEN.

The Administrative Board recalled that the next Director will be called to act in the interest of the Union and his role will be crucial to ensure the fulfilment of the Agency's growing mandate following the Clean Energy Package for all Europeans and its effectiveness in contributing to the development and evolution of the internal energy market.

Conclusion: (1) The Administrative Board designated Mr ZINGLERSEN as Director of the Agency with effect as of 1 January 2020.

(9) Staff Regulations Implementing Rules – Request to opt-out – Conduct of administrative inquiries and disciplinary proceedings

The Director *ad interim* reported that, on 17 June 2019, the Commission informed the Directors of EU Agencies and Joint Undertakings on the adoption of the general implementing provisions of the Staff Regulation laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings as per Commission Decision C(2019) 4231 of 12 June 2019.

According to Article 110(2) of the Staff Regulations, implementing rules shall apply by analogy to agencies nine months after their entry into force at the Commission, unless an opt-out is requested and granted.

The Director *ad interim* explained that the Agency cannot avail from a full service of the Investigation and Disciplinary Office of the Commission (IDOC), as this is not envisaged in the Service Level Agreement currently in place with DG HR. For this reason, Commission Decision C(2019) 4231 of 12 June 2019 cannot be implemented to the Agency's reality.

The Director *ad interim* concluded that the Standing Working Party has informed the Agency that it is in the process of developing a model decision regarding the conduct of administrative inquiries and disciplinary proceedings at the Agencies. The Agency will therefore adopt the model decision following the prior agreement of the European Commission.

The Director *ad interim* therefore highlighted that it is therefore necessary to opt-out from Commission Decision C(2019) 4231 of 12 June 2019.

Conclusion: After discussion, the Administrative Board adopted, by unanimity, Decision No 15/2019 on the request to opting-out from the general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

(10) Staff Regulations – General Implementing Provisions – Model Decisions Governing the Conditions of Employment of Contract Staff Employed under the terms of Article 3a thereof

The Director *ad interim* reported that on 16 October 2018, the Commission adopted new implementing provisions on Contract staff (Commission Decision C(2017) 6760), suitable to be applied to EU agencies once adapted to their peculiarities. For this reason, the Standing Working Party prepared a Model Decision concerning the conditions of employment of contract staff working for the European agencies.

Once adopted by the Administrative Board, the new Model Decision on Contract staff will repeal the rules currently in force at the Agency (Decision No 11/2011), bringing more flexibility and new elements. In particular, the Director *ad interim* explained that the main changes concern i) the

selection and recruitment of contract staff; ii) the grading of contract staff at the entry into service; iii) the policy on duration of contracts; and iv) contract staff career and mobility.

As regards the selection and recruitment of contract staff, the Director *ad interim* explained that, in exceptional cases, where justified in the interests of the service, the Director may recruit as contract staff a candidate who is successful in a selection of Temporary staff 2(f), if such selection is considered appropriate to the duties to be performed. To this end, the Agency may also engage as Contract staff a Temporary staff 2(f) who has been granted leave on personal grounds.

As regards the grading of contract staff at the entry into service, the Director *ad interim* highlighted that, under the new grading scale, applicable at the entry into service, a Contract staff could be classified in a higher grade, compared to the current system. Under the new rules the professional experience requirement for a higher grade becomes five years, instead of seven years, as per the existing rules. For example, in order to be classified as FGIV grade 14, a Contract staff member needs more than seven years of experience according to the current rules. Under the new provisions, the required experience for FGIV grade 14 is five years.

As regards the policy on duration of contracts, the Director *ad interim* highlighted that under the model decision, it will be compulsory for the Agency to have in place a policy on duration of contracts, which should be in line with the Condition of Employment of Other Servants (CEOS). In this regard, the Director *ad interim* Agency explained that the Agency already comply with this requirement (DD 2017-23), although the current rule could be revised to comply with the new Model Decision and accommodate the additional flexibility given by it, i.e. the possibility to offer indefinite contract at the first renewal (subject to the completion of five years' service).

Finally, as regards career and mobility, the Director *ad interim*, concluded by explaining that, by way of exception, the Agency could organise an exercise enabling Contract staff to advance to the next function group, by taking part in a general selection organised in accordance with an adopted procedure. In addition, vacant Contract staff positions could also be published by the Agency or by a group of agencies, and be accessible to Contract staff working in other European Union agencies and institutions at the same time (similarly to the Interagency Job Market for Temporary staff)..

Conclusion: After discussion, the Administrative Board adopted, by unanimity, Decision No 16/2019 governing the conditions of employment of contract staff employed under the terms of article 3a thereof.

(11) Decision on the establishment of indemnities – Board of Appeal

The Director *ad interim* recalled that, at its 34th and 36th meeting, the Administrative Board discussed the invitation of the Chair of the Board of Appeal of the Agency to address the significant increase of workload of the Board of Appeal, which proved to be time intensive. At the 36th meeting, the Administrative Board acknowledged the importance of the role of the Board of Appeal and recognised the need to ensure that the Board of Appeal can perform its role at an optimal level. As a result, it invited the European Commission and the Agency to explore the practices of other European Agencies.

The Director *ad interim* further recalled that the call for expression of interest of 18 January 2016 issued by the European Commission, for the appointment of the Members and Alternates of the Board of Appeal establishes that “participation in the Board of Appeal's work as a member or alternate is an unpaid honorary function”. As a result, Members and Alternate Members of the Board of Appeal are only reimbursed for travel and substance costs only if they participate in physical meetings. In this case, the reimbursement of travel and subsistence expenses is governed by Decision No 29/2011 of the Administrative Board, explicitly applying by analogy the same reimbursement rules of members and alternates of the Administrative Board.

The vast majority of the activities of the Board of Appeal is performed remotely and therefore remains not subject to any form of consideration, even for the reimbursement of expenses incurred for the performance of the activities entailed by the treatment of appeal cases.

The Director *ad interim* explained that the Agency's service revised the practice in other European Agencies and the vast majority of those ensure a form of consideration to Members and Alternates to the Board of Appeal involved in the handling of appeal cases.

As a result, the Director *ad interim* proposed to establish a flat rate indemnity for the Members and Alternate Members of the Board of Appeal involved in the handling of appeal proceedings. The Director *ad interim* explained that the indemnity would mirror the system in place for Members and Alternates of the Administrative Board and therefore would be weighted with the level of responsibilities assigned to each Member or Alternate Member, the financial constraints under which the Agency acts, and the overall duration of an appeal (120 days).

In light of that, the indemnity proposed to be granted to the Rapporteur would amount to EUR 1,500.00. The Chairperson instead would receive an indemnity of EUR 1,200.00. In case the Chairperson would hold also the charge of Rapporteur, a single indemnity of EUR 2,000.00 will be granted. Finally, the other Members and Alternate Members of the Board involved in appeal proceedings would receive an indemnity of EUR 700. Such indemnities would be granted once for all the appeal stemming from the same decision of the Agency.

The Director *ad interim* maintained that those amounts would remain within a range comparable to the per diem granted by the Agency, in case the members of the Board would perform the work physically present at the Agency, hence as mission. Such indemnity would contribute in ensuring that Members and Alternate Members involved in the handling of appeal cases do act independently not seeking material administrative support from sources other than those provided by the Agency.

The Administrative Board expressed different views with regard to the financial treatment of Members and Alternate Members of the Board of Appeal. In particular, Mr Spiridonovs expressed the view that the conditions for paying indemnities should have been known already in the call for expression of interest for the appointment of the Board of Appeal.

The Director *ad interim* clarified that the measure proposed represent a bridging solution until the new call for the selection of candidates for the post of Member and Alternate Member of the Board of Appeal would be published.

Conclusion: After Discussion, the Administrative Board adopted, by majority voting, Decision No 17/2019 on the reimbursement of travel and subsistence expenses incurred by the Members and Alternate Members of the Board of Appeal and the recognition of indemnities for the participation in appeal cases. Mr Spiridonovs abstained.

SECTION V – ITEMS FOR INFORMATION

(12) Confirmation of dates of AB Meetings for the year 2020

The Secretariat of the Administrative Board invited Members and Alternates to take note of the dates of the next meetings of the Administrative Board, in ordinary session, as follows: Thursday, 12 December 2019, Thursday, 30 January 2020, Tuesday, 30 June 2020, Thursday, 8 October 2020, and Thursday, 17 December 2020.

CLOSING

In the absence of any other business to be treated, the Chair closed the 42nd meeting at 14:00.