

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

**– 58th Meeting –
– Ordinary Session –**

**Tuesday 21 June 2023, 9:00 — 18:15
Wednesday 22 June 2023, 9:00 — 12:30**

**ACER
– Trg republike 3, Ljubljana – Slovenia –**

MINUTES

I. LIST OF ATTENDEES

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

<i>Mr Michel THIOLLIÈRE,</i>	<i>Chair</i>	<i>Ms Edit HERCZOG,</i>	<i>Vice-Chair</i>
<i>Dr Romana JORDAN,</i>	<i>Member</i>	<i>Dr Jurijs SPIRIDONOVs,</i>	<i>Member</i>
<i>Mr Bogdan CHIRIȚOIU,</i>	<i>Member</i>	<i>Ms Karin LUNNING,</i>	<i>Member</i>
<i>Mr Václav BARTUŠKA,</i>	<i>Member</i>	<i>Ms Anne MONTAGNON,</i>	<i>Member</i>
<i>Ms Cristina CUADRA GARCIA,</i>	<i>Alternate</i>	<i>Mr Péter KADERJÁK,</i>	<i>Alternate</i>

Ms Cristina CUADRA GARCIA submitted proxy by Ms Ditte JUUL-JØRGENSEN for 21 June 2023 morning.
Ms Anne MONTAGNON submitted proxy by Ms Ditte JUUL-JØRGENSEN for 21 June 2023 afternoon
and for 22 June 2023.

Mr Christian Pilgaard ZINGLERSEN (ACER Director) and Ms Clara POLETTI (Chair of the Board of Regulators) were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 21 June 2023.

Mr Juan-Ignacio DE DIOS MORALES and Mr Michael SCHUETZ (both European Commission) were present acting as advisors.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 58th MEETING OF THE ADMINISTRATIVE BOARD

At the 58th meeting, the Administrative Board:

- (1) appointed Ms Romana Jordan as a rapporteur for following situation in the European School Ljubljana;
- (2) was provided with the latest energy markets and regulatory developments as well as with the implementation of the ACER new tasks (the LNG assessment/benchmark and Market Correction Mechanism), with the state of play of current Commission's legislative proposals on the Electricity Market Design and REMIT revision and with the upcoming key ACER reports to be issued by the end of summer;
- (3) was acquainted with the implementation of the current Agency's Communications Strategy (2021-2023) and welcomed the tangible progress and good results of the Agency's communication work during the reporting period;
- (4) approved the indicated timeline of the adoption process for the next Agency's Communication Strategy (2024-2027);
- (5) took note of the activities of the Board of Regulators, still impacted by the context of the crisis;
- (6) took note of the implementation of the 2023 budget and of the procurement plan and was acquainted with the ECA report of the Agency's 2022 financial year;
- (7) was informed of the 2023 and 2024 Administrative Board budget lines and its breakdowns. Being an independent body, the Board decided to state in future its opinion on the Administrative Board budget line and recommended such a process also to the other two Agency's Boards;
- (8) requested at one of the next meetings, a presentation of the technically improved E-platform to see if the Board can use it for its deliberation and decision-making process;
- (9) expressed support for the Agency's efforts to improve the situation of European School Ljubljana - also by appointing a Board's rapporteur – in order not to put at risk the current retention and future recruitment and an overall growth of the Agency. In that context, the Administrative Board took note of the Director Decision to financially support secondary school fees in other international schools for a limited period of time in order to address the current unsatisfactorily quality of the European School's secondary level;
- (10) was informed about the outcome the Commission's Internal Audit Service (IAS) on the decision-making process under Article 2(d) of Regulation (EU) 2019/942 and noted the proposed actions to meet the recommendations. To contribute to the higher cybersecurity levels, the Board decided that its members and alternates should be provided with the secure ACER e-mail accounts enabling access to the Extranet;
- (11) was informed about the key elements of the new contract for the Agency's current premises, lessons learned throughout the process and about indicative timeline for the next long-term contract;
- (12) adopted by unanimity the Agency's Consolidated Annual Activity Report for the year 2022, which is to be submitted by 1 July to the European institutions;

- (13) adopted by unanimity opinion No 1/2023 on the final accounts of the Agency for the financial year 2022, which is to be sent by 1 July to the European institutions;
- (14) adopted Decision No 8/2023 on the appointment of the Accounting Officer of the Agency and repealed its Decision No 15/2017;
- (15) took note of the Agency's Action Plan addressing recommendations from the ECA Special report "Internal electricity market integration";
- (16) took note of the outcome of the conflict of interest exercise for the year 2023 performed by the Administrative Board Review Panel; the report is to be published on the Agency's website;
- (17) decided by unanimity that the three alternates whom the Administrative Board's Review Panel assigned risk level 3 are given two (2) months to remedy the conflict (by 23 August 2023) and that during this period they are suspended from the Board;
- (18) asked the Secretariat to inform again the respective Appointing Authorities (the Council and the European Parliament) of the Guidelines on the prevention and management of the conflict of interest policy so that they are taken into consideration when selecting candidates for the forthcoming appointments;
- (19) welcomed the presentation on the analysis of appeals and advised to check with the Commission how to address the budgetary impact of possible lost appeal cases which may represent a structural challenge for the Agency's budget.

III. MINUTES

SECTION I – OPENING

The first session of the 58th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators (ACER) was convened, in ordinary session, on 21 June 2023. The meeting started at 9h00 and finished by 18h15.

Upon invitation of the Chair to the present Administrative Board Members and Alternates to declare any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda, no Member or Alternate declared or reported any actual or potential interest.

The Chair however noted that during the annual conflict of interest assessment one of the present Alternates Mr Kaderják was assigned a risk level 3. Thus, the Chair reminded him of the duty to declare a conflict of interest should the discussion rise such a situation. Mr Kaderják agreed to do it.

Approval of the Agenda

The agenda of the first session of the 58th meeting of the Administrative Board was approved as follows:

<p>OPENING 09:00 - 09:15</p>	<p>Opening of the 58th Meeting of the Administrative Board <i>Adoption of the agenda and declaration of interests</i></p>
<p>FOR INFORMATION 09:15 - 10:45</p>	<p>Progress Report – Energy Market and Regulatory Developments - recent ACER actions, efforts, perspectives and reflections <i>Presentation by Mr C. ZINGLERSEN, ACER Director and select ACER colleagues</i> <i>Roundtable discussion</i></p>
<p>FOR INFORMATION 11:00 - 11:45</p>	<p>Progress Report on ACER Communications and Outreach Strategy 2021-2023 and timeline for the new strategy <i>Presentation by Mr B. VEREECKE and Ms U. SHORTALL, both from Director’s Office - Strategy Delivery and Communications</i> <i>Roundtable discussion</i></p>
<p>FOR INFORMATION 11:45 - 12:15</p>	<p>Board of Regulators – Progress Report <i>Presentation by Ms C. POLETTI, Chair of the Board of Regulators</i> <i>Roundtable discussion</i></p>
<p>FOR INFORMATION 13:15 - 14:15</p>	<p>Organisational Developments (Budget & Procurement Implementation, ECA’s draft annual report on EU agencies for the 2022 financial year; 2023 and 2024 AB budget line, Human Resources Management, European School in Ljubljana; Audit of Internal Audit Service) <i>Presentation by Mr C. ZINGLERSEN, ACER Director, Ms O. BORISSOVA, Head of Corporate Services and Mr V. ILIĆ, Quality Management Assistant</i> <i>Roundtable discussion</i></p>
<p>FOR INFORMATION 14:15 - 15:00</p>	<p>Up-date on premises <i>Presentation by Mr C. ZINGLERSEN, ACER Director and Ms O. BORISSOVA, Head of Corporate Services</i> <i>Roundtable discussion</i></p>
<p>FOR ADOPTION 15:15 - 16:00</p>	<p>Consolidated Annual Activity Report 2022 <i>Presentation by Ms O. BORISSOVA, Head of Corporate Services and Mr V. ILIĆ, Quality Management Assistant</i> <i>Roundtable discussion and adoption</i></p>
<p>FOR ADOPTION 16:00 - 16:40</p>	<p>Opinion on ACER Final Account – Year 2022 <i>Presentation by Ms O. BORISSOVA, Head of Corporate Services and Ms R. MANDROC, Budget, Finance and Procurement- Team Leader</i> <i>Roundtable discussion and adoption</i></p>
<p>FOR ADOPTION 16:40 - 17:15</p>	<p>Appointment of the Accounting Officer of the Agency <i>Presentation by Ms O. BORISSOVA, Head of Corporate Services and Ms R. MANDROC, Budget, Finance and Procurement - Team Leader</i> <i>Roundtable discussion and adoption</i></p>

SECTION II – DISCUSSION AND DECISION-MAKING

Appointment of a new rapporteur: Ms Romana JORDAN as a new rapporteur for the European School Ljubljana

The Chair informed that following the difficulties related to the functioning of the European School Ljubljana that were reported to the Board at several previous meetings, Ms Romana Jordan was requested to become the Administrative Board rapporteur for the European School. Ms Jordan accepted the appointment.

(1) Agency's Progress Report – Part I

Energy Markets and Regulatory Developments – recent ACER efforts, perspectives and reflections

Upon invitation of the Chair, the Director Christian Zinglensen and ACER colleagues presented the overview of the current energy market situation. It was reported that after the 2022 high volatility, the wholesale prices of gas and electricity kept falling. Nevertheless, the high vigilance was still required as demand and supply remained tight. The drop in the Russian pipeline supply continued to be offset by rising LNG imports and lower gas consumption (mainly by the industry); the latter being higher than the targeted 15%. This in conjunction with mild weather resulted in lower than anticipated gas storage outflows during the winter. The current level of gas stocks in June stood already close to 70% and seem to be well on track to meet the 90% target. Such storage levels should alleviate price competition for injections in the summer and help to stabilize markets. The LNG receiving bottlenecks were improving by setting-up more LNG terminals within considerably shorter periods of time than before. However, it was still expected that the global LNG supply would remain tight the next two years as the EU would compete for LNG volumes with Asia, in particular China, which might be adding tension to EU gas prices. In parallel, important turning trends had been witnessed in the electricity market, as for the first time in the EU, wind and solar generations produced more electricity in 2022 than gas. Thus, in 2023 renewables and nuclear power generation are anticipated to rise, while coal and gas fired generation had been projected to sizeably drop. In such a context, the political level has been facing dilemma of how to reconcile the near term needs and long-term efficiency.

The ACER colleagues presented to the Board the recent activities related to the two newly assigned tasks to the Agency: Market Correction Mechanism (MCM) and LNG assessment/benchmark.

MCM represents an unprecedented temporary intervention of the EU which aims at limiting episodes of excessive gas prices in the EU, while ensuring security of energy supply and stability of financial markets. The mechanism was set-up by ACER in a record time. The Agency now publishes every working day/evening the MCM reference price and monitors if the two concurrent conditions of activating the mechanism are met. While in September 2022 there was a short period when the conditions for the activation would have been met, the current gas price drops and foreseeable market conditions nevertheless make the MCM activation unlikely. In addition to the daily task, ACER produced together with ESMA for the European Commission also an assessment of the MCM effects and its design. The report which was published on 1 March 2023 was unable to identify significant impacts, either positive or negative, of the mechanism. Namely after the MCM adoption the gas prices had dropped by 70%, driven by supply and demand fundamentals, while demand reduction and mild weather conditions had contributed to ensuring the security of supply.

Similarly to the MCM, also the set-up of the LNG price assessment was concluded in a short time due to high level of anticipation, as period between the adoption of the relevant Regulation and the go-live period was extremely short. The LNG price assessment aims to provide for an objective price assessment of the EU's LNG imports by collecting real-time LNG market data, which has to be now reported by the market operators to ACER on a daily basis. To support this task, ACER had prepared detailed guidance on reporting LNG market data, set-up dedicated IT tool called Terminal, developed price assessment methodology and publishes the information at the dedicated ACER webpage on a daily basis. This task would remain in place as it looks to be incorporated in the future revision of the REMIT regulation.

Moreover, the ACER experts provided the Board with the review of the ongoing legislative proposals, put forward by the European Commission, related to the Electricity Market Design (EMD) and REMIT revision, and their potential impact on the ACER resources. Though it was anticipated that the EMD proposal was much more consensual for Member States compared to the REMIT revision, the EMD has remained open in the June Council negotiations, while Member States already agreed on the common position on REMIT revision on which the European Parliament is to discuss in autumn.

The REMIT revision is more impactful for the Agency. It foresees five areas of reform: alignment of the REMIT legal framework with the EU financial market legal framework; adaptation of the scope of REMIT to current and evolving market circumstances; improvements to REMIT data quality, reporting, transparency and monitoring; harmonising the level of fines imposed under REMIT at national level; and strengthening of REMIT for cross-border cases with the EU dimension. On the latter, the Commission's proposal stipulates to give ACER investigatory powers limited to EU dimension complex cross-border cases in order to address the jurisdictional challenges. According to the Commission's assessment, over 10% of REMIT breach cases are closed as no NRA or combination of NRAs can sanction. In such cases ACER should only complement NRA powers and not replace them. On that point Clara Poletti, chair of the Board of Regulators, explained the NRAs position which was that ACER should intervene only if such an intervention was more efficient.

On the EMD, it was underlined that whilst the current market design has over many decades delivered an efficient, increasingly integrated market, the energy crisis had highlighted a number of shortcomings. The Commission's proposal aims at a) enhancing stability and predictability of energy costs, which automatically lead also to the two other priorities of b) boosting of renewable energy investment and c) increasing protection of consumers. It was emphasised that ACER had been involved in the process preceding the Commission's legislative proposal (e.g. April paper on market design and the Forward market policy paper; ACER together with CEER also provided the input to the Commission's consultation process) and that it continues to contribute to the current discussions through different channels. Some elements of the proposal (e.g. power purchase agreements; support to integration of renewable energy in the system) are expected to require considerable involvement of ACER.

Following the ACER presentation rapporteur Mr Bratuška provided a debrief on the energy related discussions in the Council. The measures taken during the recent months to keep prices under certain level proved that the EU reaction to the energy crisis had been similar to the previous financial crisis ("whatever it takes"). However, in context of current favourable market developments, more incremental steps rather than quick fundamental reforms could be expected.

During the debate the Administrative Board asked for further clarification on some points raised (e.g. range of infrastructure investments needs in Europe, developments on previously reported gas congestion due to changed flows from the West to the East, state of play on cross-border cooperation in electricity; discussed format of Power Purchase Agreements, near-term (this winter) and future assessments of energy needs in Europe, legal implications of investigating REMIT powers). Director pointed to several upcoming reports that the Agency would issue before summer exactly on the topics raised (Special report on addressing congestion in North-West European gas markets; Report on cross-zonal capacities and the 70% margin available for cross-zonal electricity trade; ACER report on unit investment costs indicators and corresponding reference values of European energy infrastructure).

Administrative Board members thanked the Agency for providing a broad and rich-in- information context in which the Agency had been operating, as it helps the Board to understand the impact on the Agency's functioning. It appreciated very much also the presentations on the new tasks and the ones that could be stemming from the on-going legislative package as it has huge impact on the staff and re-prioritization of the work. It reiterated the importance of having such a presentation regularly on the agenda and for allocating it sufficient time.

Conclusion: (1) The Administrative Board was provided with the latest energy markets and regulatory developments as well as with the implementation of new tasks (the LNG assessment/benchmark and Market Correction Mechanism) that were assigned to the Agency at the end of 2022 and are being implemented in 2023. The Board was also acquainted with the current Commission's legislative proposals on the Electricity Market Design and REMIT revision and upcoming key ACER reports to be issued by the end of summer.

2) Progress Report on ACER Communications and Outreach Strategy 2021-2023 and timeline for the new strategy

Upon invitation of the Chair, Bart Vereecke, Team Leader of Strategy Delivery and Communication, and Una Shortall from the same department, reported on the implementation of the current ACER Communications and Outreach Strategy (2021-2023) and presented the starting points and timeline for the new strategy (2024-2027). The plan is that the new strategy would be discussed by the Administrative Board and Board of Regulators in autumn and adopted by the Administrative Board at the December 2023 meeting.

The input for the next strategy would stem to a large extent from the assessment of the current one. It was underlined that in the past two years the Agency's broader communication has changed tremendously. The main achievements are new visual identity, strong social media presence, increased interaction with press, constant rise of the website visitors, news and social media subscribers (the latter has so far been organic) and enhanced internal communication. There are however some other areas where progress had been tangible, but there has been still room for further improvements like website, stakeholder's management and crisis communication. These would be the focus area for the future Agency's strategy.

It was stressed that during the 2021-2023 period the Agency had increased in general the number of its deliverables (events, reports, consultations) which resulted in an increased communication. The energy crisis and recently assigned tasks have also provided additional attention to the Agency's work (e.g. analysis of national energy emergency measures received a lot of visibility and triggered positive impact). Good cooperation with NRAs on communication has been sustained, though the Agency has been also fostering interaction with national press. It was reported that ACER also aimed to redesign and tailor its deliverables in order to better meet their stakeholders expectations (e.g. in 2023 the traditional Market Monitoring Report will be split into 8 different individual assessments to give visibility to different topics). All communication channels are also used to solicit feedback.

The Administrative Board thanked for a very good visual presentation of the main achievements of the current Communication and Outreach Strategy. It congratulated the Agency for excellent work despite crisis period and for tangible progress brought by the Strategy's implementation. Despite visible improvements of the website during the reporting period, it agreed that for the upcoming period the latter should become more user friendly, have improved search tool and should be adequately protected against cyberattacks. This should apply also for the Extranet that is used by the Agency's stakeholders. It was also recommended that the communication policy should be an integral part of the decision-making process, thus the importance of internal communication and organisation of relevant trainings for staff was underlined. It was also suggested to make the next Communication Strategy an external document, publicly accessible.

- Conclusion:*
- (1) The Administrative Board was acquainted with the implementation of the current Agency's Communications and Outreach Strategy (2021-2023) and welcomed the tangible progress and good results of the Agency's communication work during the reporting period.
 - (2) The Administrative Board approved the indicated timeline of the adoption process for the next Agency's Communication Strategy (2024-2027).

3) Progress Report – Board of Regulators

Ms Clara POLETTI, the Chair of the Board of Regulators, provided an update on the most important deliberations and decisions taken by the Board of Regulators at the three meetings (February, March and May) that took place since the last Administrative Board meeting. During this period, Board of Regulators amended several methodologies as proposed by ACER. It had focused on the ongoing negotiations on the electricity market design adjustments and REMIT revisions. A topic of investments (including lack of investments) has come more to the centre of debate. In the current context when National Regulatory Authorities (NRAs) had been trying to implement quickly what the governments had decided at the political level, the cooperation between NRAs had visibly strengthened and Board of Regulators had become a relevant forum enabling NRAs to exchange information and share good practice.

Ms Poletti also informed that in May Board of Regulators discussed the European Court of Auditors (ECA) Special report on the Internal Electricity Market and shared many concerns that were already raised by ACER (e.g. including on recommendation 5 to improve ACER governance by enhancing independencies from NRAs and national interests). The Board of Regulators also discussed the findings of its Review Panel concerning 2023 Conflict of Interest for its members/alternates, chairs of working groups and taskforces. It concluded that no further action was needed but recommended to make further efforts to conclude the annual exercise faster and earlier.

To strengthen the cooperation between Board of Regulators and Administrative Board, Ms Poletti extended invitation to the Administrative Board Chair and members to meet at the next occasion in Milan, at the headquarters of the Italian Regulatory Authority for Energy, Networks and Environment (ARERA). The Chair thanked for the invitation and announced that the discussion on the invitation was to be tabled for the closed session.

Conclusion: (1) The Administrative Board took note of the activities of the Board of Regulators, still impacted by the context of the crisis.

4) Progress Report - Organisational Developments (Budget & Procurement Implementation, ECA's draft annual report on EU agencies for the 2022 financial year; 2023 and 2024 AB budget line; Human Resources Management; European School in Ljubljana; IAS (Internal Audit Service) audit)

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, provided the Board with the update on several aspects of the Agency's organisational developments. Ms Borissova stated that the implementation of 2023 budget was on track (by end May 50% of the budget committed, payment rate at 21%). On the revenue side, one third of revenues stemming from REMIT fees was expected in the second half of the year. She also noted that the overall 2023 REMIT fee collection would be lower than anticipated when establishing a draft 2023 budget. This would require a) de-prioritization of some projects and b) an amendment of the 2023 budget to be adopted by the Administrative Board towards the end of the year. The implementation of payment appropriations carried-over from 2022 was at 41% and was expected to meet the 95% target by the end of the year. Ms Borissova also provided the update on the implementation of the procurement plan. 39% of the procurement plan had been executed by end of May. The monthly planning of procurement procedures anticipated that all procedures should be finished by end November.

Upon the request of the Board, the Administrative Board Secretariat provided a more detailed breakdown of the relevant Administrative Board budget lines, namely for years 2023 and 2024. Concerning the budget line for 2023, it was explained that in addition to regular costs related to the organization of the meetings, including the indemnities, its overall volume incorporated also plans to develop a new IT tool to support the work of the Boards. However due to the decision taken in 2022 to upgrade

the existing IT tool “E-platform” instead of developing a new one, the estimated costs foreseen for such a project were already transferred out from the 2023 budget line in first quarter. The 2023 budget line however still bears the costs of upgrading and maintaining the above-mentioned E-platform (these costs are shared with the BoR budget line in 50:50 proportion). The draft 2024 Administrative Board budget line encompasses the costs related to the organization of the meetings, including the indemnities, and maintenance of the E-platform (again with a planned splitting (50:50) of costs with the Board of Regulators budget line). For 2024 budget line, a certain increase was factored in to be able to cover higher travel costs and an increase of the indemnities.

Ms Borissova reported about the outcome of the ECA annual report of the Agency’s 2022 financial year. It was explained that in its draft report that was shared with the Agency, ECA confirmed the legality and reliability of the payments, but issued one draft observation related to the reliability of accounts. The latter applied to one framework contract (related to the new version of an IT tool) which ECA considered to be a tangible asset, while it was booked by the Agency as an expense. This rather technical matter was immediately addressed by the ACER Accounting Officer (European Commission) and corrected. Based on this overall positive outcome, the final 2022 accounts were ready for the Board’s adoption envisaged at the same/58th Board’s meeting. Ms Borissova also informed that in its report ECA pointed to some outstanding observations, that were being addressed. For instance, a) criticism of using one particular framework contract which had been multiannual and would expire next year when this would no longer be applicable; b) the decision on updating the Conflict of Interest policy is in the process of adoption; c) the use of interims for long-term tasks should be resolved with the additional posts the Agency is in the process of acquiring; d) the criticism on high-levels of carry overs which is linked with the fact that payments of an multiannual contract are transferred to next year is addressed by aiming to have contracts that would start and end in one/same financial year. As a mitigating measure, a special monthly monitoring of these forecasted payments from previous year had been put in place.

Regarding the human resources management, Ms Borissova provided the state of play of the 2023 recruitment plans, which were well on track. The Agency has published all the selection notices for the 2023 vacant positions and many of them have been on-going in the first half of the year.

As a follow-up to discussions at several previous Board’s meetings, Ms Borissova also informed about the situation in European School Ljubljana which has been one of the most important factors for both the retention of existing staff and attraction of new staff. Staff/parents had namely reported to the management about multiple issues, mostly linked with an unsatisfactorily quality of the education in the school’s secondary level (given lack of premises and teachers), which are leading to the loss of trust in the school. As a consequence, some ACER parents are taking or considering to take their children out of the school. Ms Borissova informed that given the importance of this issue, ACER had increased efforts and cooperation with the school itself and the Ministry of Education to secure a decision for a new adequate premises/building for the school. It has also involved other actors (like European Commission Representation) to increase pressure on the Slovenian side to tackle the issue urgently. In the meantime, and drawing on past practices, the draft Director’s Decision had been prepared to financially support ACER staff for choosing, if they wish so, a different secondary school for their kids. The decision which was beforehand consulted with the Staff Committee is proposed to be limited (meaning applies only for a certain group - pupils at the secondary school level) and temporary (for a limited period of 3 years during which the long-term solution of the school should be secured).

Ms Borissova presented also the outcome of the Commission’s Internal Audit Service (IAS) on the decision-making process under Article 2(d) of Regulation (EU) 2019/942. The document was already shared with the Administrative Board ahead of the meeting. The aim of the audit was to assess the adequacy of the design and the effectiveness and efficiency of the decision-making process, and compliance with the applicable regulations, procedures and guidance for the audited processes. The audit concluded that the processes related to individual decision-making under Article 2(d) of

Regulation (EU) 2019/942 were supported by adequately documented procedures, guidelines and templates and that roles and responsibilities were assigned to relevant staff in relation to the Agency's mandate. While IAS also concluded that that internal control system related to individual decision-making was overall effective and efficient, it however pointed to a significant weakness related to the security of access rights to ACER's extranet (e.g. use of some private e-mail accounts was noted). On that it issued a very important recommendation to develop a policy to define who is eligible to get access and under what terms, to cross check regularly and validate the access rights and to introduce a two-factor authentication. In addition to this, two other "important" recommendations were issued: ACER is namely also advised a) to develop the exchange of confidential information and b) to review the stakeholder's relations and communication. Ms Borissova informed that the Agency acknowledged the identified risks and had prepared the dedicated action plan to address the findings and recommendations with the existing budget and human resources. Design of solutions for quite a few of them had namely been already included in the ongoing consultancies on the Extranet/E-platforms revamp.

The Administrative Board considered that presented figures on the 2023 budget implementation were well on track and noted the successful correction of draft ECA report on 2022 financial year. It pointed to the high level of procurement procedures and asked for further reassurance that they would be concluded within envisaged timeline. The Director and Ms Borissova explained that given a significant increase of procedures and a disproportionate level between low- and high-value procedures, the Agency's management had initiated the plan of decentralization of low- value procedures in order to allow the procurement team to focus more on high-value and more complex procedures. The Board asked to be informed at one of the next meetings about the decentralization of the procurement procedures and streamlining of the financial producers and the impact of both processes. It also suggested to plan more procurements in parts of the year when the workload is expected to be lower (e.g. in the beginning of the year). Related to that the Board raised the concern that the growth of the Agency demanded also an allocation of posts that could support the horizontal/administrative functioning of the Agency and that such posts could not rely on interim positions.

On the presented 2023 and 2024 Administrative Board's budget lines, the Board expressed position that as a sign of its independence it should state an opinion on its own draft budget line and that this should be part of the Boards's agenda. Moreover, the Board suggested to be provided with the overall costs that would include also the running and availability of the Board's Secretariat, and have the opportunity to ask for budget to cover any other need (e.g. ordering an independent analysis). On that, Director shared the practice of the other two boards (Board of Regulators and Board of Appeal) who have been so far informed by e-mail on the budget break down and given no further reaction such workstream was considered be to satisfactorily. He expressed readiness to accommodate the Board's decision and needs that were in the end to be discussed among the members. For the provision of Secretariat's costs, it was explained that these costs are part of the salaries heading and hence could not be placed under the Board's budget line. In the near-term it would be however possible to deduct time allocated to support boards, as the Agency was planning to introduce Activity Based Costing (ABC) and Activity Based Management (ABM).

As part of the discussion of the budget line breakdown, the Board expressed interest to have in near-term a dedicated presentation of the entire E-platform, as so far it uses only the module E-declaration (supporting annual conflict of interest process), while the other module E-voting (enabling the electronic voting) was not offered to the Administrative Board. The Secretariat confirmed that so far the Administrative Board had been using only the E-declaration module, while E-voting was initially developed during the covid-19 crisis to support the electronic voting of the Board of Regulators. Since the tool turned out to be useful, the Agency decided in 2022 to improve it technically in order to address the existing limitations of some functionalities. As this process had been on-going, the Secretariat suggested to make a dedicated presentation on the use of the E-voting module towards the end of year. This would enable the Board to decide if this module could support also its decision-

making. The Board also questioned if the overall E-platform costs that was only partially used by the Administrative Board should be borne by 50% within its budget line and if not proportionally by the number of each Boards' users. It was agreed that the decision on that would be taken once the Board decides to which extent it would use the tool. The Director stated that the Agency aimed to keep the tool as it had become indispensable for its work, but agreed that for the sake of transparency the costs (they are fixed regardless of the number of users) can be transferred out of the Administrative Board budget line should it decide so.

On the situation in European School Ljubljana, the Board unanimously supported the Agency's endeavours to solve the situation as school had been considered to be one of the key factors to support also the expected growth of the Agency. This support had been underpinned also by the appointment of a special rapporteur Ms Jordan who would liaise with the Agency on this file and help design the approach vis-à-vis the Slovene government. The latter had clear commitments on school by the Seat Agreement. It was advised to consider broader mobilization of potential actors who might use the school and contribute to its costs (e.g. other EU/international organizations in Slovenia like EIB, EBRD) and through multiple channels within the government (Ministry of Foreign Affairs, Ministry of Infrastructure ...). The rapporteur Ms Jordan announced readiness to discuss the situation also directly with the ACER parents. The Board took note of the Directors Decision on the financial support for secondary schools as it was a transitional measure (limited in time, target group and amount).

The Administrative Board discussed also the outcome of the IAS report and especially an identified risk of the use of private e-mails. It endorsed the foreseen actions to meet the recommendations and decided for the Administrative Board's members and alternates to be provided with the secure ACER e-mail accounts to be used for the access to the Extranet.

- Conclusions:
- (1) The Administrative Board took note of the implementation of the 2023 budget and procurement plan. It was acquainted with the ECA annual report of the Agency's 2022 financial year.
 - (2) The Administrative Board was informed of the dedicated 2023 and 2024 budget lines and its breakdowns. Being an independent body, the Board decided to state in the future an opinion on its own draft budget line and recommended such a process also to the other two Agency's Boards. It also requested at one of its next meetings, a presentation of the technically improved E-platform to see if it can support its deliberation and decision-making process.
 - (3) The Administrative Board expressed strong support for the Agency's efforts to improve the situation of European School Ljubljana - also by appointing a rapporteur - in order not to put at risk the current retention and future recruitment. It stressed that the well performing European School was also an important factor to support the future growth of the Agency. In that context, the Administrative Board took note of the Director Decision to financially support secondary school fees in other international schools for a limited period of time in order to address the current unsatisfactorily quality of the European School's secondary level.
 - (4) The Administrative Board was informed about the outcome the Commission's Internal Audit Service (IAS) on the decision-making process under Article 2(d) of Regulation (EU) 2019/942 and noted the proposed actions to meet the recommendations. To contribute to the higher security levels, the Board decided that its members and alternates should be provided with the secure ACER e-mail accounts enabling access to the Extranet.

5) Up-date on premises

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, presented the Board with the key elements (price, duration, office and meeting space available, flexibility clauses related to the earlier termination of the contract) of the new contract for the Agency's current premises.

Ms Borissova stated that during demanding negotiations that took much longer than anticipated, the Agency had learnt many lessons which would be taken into consideration when negotiating next long-term contract. In order to ensure sufficient timing for such a complex process, the Agency had already set-up an indicative timeline for the two parallel procedures: premises and outsourcing of data centre, which has specific requirements. Moreover, the adequate budget has to be considered within the current financial period/until 2027. The Director also mentioned that the current contract can accommodate the growth of the Agency with a changed type of working (teleworking regime and hot-desking). As the system "one desk-one person" was in general no longer applicable, a dedicated group within the Agency has been working on the proposal for the reorganisation of office space.

The Administrative Board congratulated the Director, Ms Borissova and the entire negotiating team for the achieved outcome as the Board could observe the negotiations were much more difficult than envisaged. According to the Board, the negotiations nevertheless brought about valuable lessons learnt. One of them was that for next procedure much more flexibility needs to be built in as that seemed to be a weak point. The Board also pointed that the current contract required from the Agency a timely following of the landlord's activities.

Conclusions: (1) The Administrative Board was informed about the key elements of the new contract for the Agency's current premises, the lessons learned throughout the process and about the indicative timeline for the next long-term contract.

6) Consolidated Annual Activity Report 2022

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, and Valter Ilić, Quality Management Assistant, presented the Consolidated Annual Activity Report, providing an overview of the activities of the Agency for the year 2022.

They informed that the Consolidated Annual Activity Report 2022 contains a) an independent section on the regulatory activities of the Agency, approved on 29 March 2023 by the Board of Regulators, as well as b) a section on financial and administrative matters.

On the regulatory activities, it was underlined that the unfolding energy crisis and exceptional market circumstances largely affected the work of the Agency which had to cope with additional tasks that were not envisaged in the Single Programming Document for the 2022-2024 period. While this required some reprioritisation and deprioritisation of certain tasks, ACER still succeeded in meeting its mandate by displaying high level of organisational agility and flexibility.

Several 2022 regulatory achievements in electricity market (e.g. ACER Final Assessment of the EU Wholesale Electricity Market Design), gas market (e.g. LNG price assessment methodology, Market Correction Mechanism), its cross-sectorial developments (e.g. TEN-E Scenario Guidelines, Unit investment costs) and REMIT (market monitoring, set-up of cross border investigatory group) were highlighted.

On the financial and administrative matters, it was underlined that the Agency achieved both of its two mandatory budget implementation targets: a) in 2022 the execution of commitment appropriations was 99.26%, (95% target) and b) payment appropriations from the funds carried forward were at 4,41% (target: below 5%). However, it was noted that the Agency did not meet its internal budgetary target, as the execution of payment appropriations was 70.12% (the internal 75 % target), though a progress compared to the 2021 payment execution had been observed. Among others deliverables, it was underlined that the Agency implemented 97,4% of its 2022 establishment plan, continued with the implementation of projects strengthening the Agency's Human Resources Management, concluded 246 procurement procedures of different types and improved the efficiency and effectiveness of the ex-ante and ex-post control.

Ms Borissova recalled that the Administrative Board was called to adopt the Consolidated Annual Activity Report, which should then be published and transmitted to the European Parliament, the Council, the Commission, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions by 1 July of each year.

The Administrative Board welcomed the Report and concluded that the Agency had successfully implemented the 2022 work programme despite a very challenging energy crisis that tasked the Agency with many additional assignments not initially anticipated.

Conclusion: (1) The Administrative Board adopted by unanimity the Agency's Consolidated Annual Activity Report for the year 2022, which is to be submitted to the European institutions by 1 July.

7) Opinion on ACER Final Accounts – Year 2022

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, and Rodica Mandroc, Team Leader of Budget, Finance and Procurement, presented the Annual accounts for the year ending 31 December 2022.

Ms Mandroc explained that in accordance with Article 102 of the Financial Regulation of the Agency, the Accounting Officer (currently still European Commission) had to draw up the final accounts of the Agency upon receiving the observations on the provisional account from the European Court of Auditors. In parallel, the accounts were audited also by the external audit firm, Baker Tilly. After all these steps, the final accounts are sent to the Administrative Board for an opinion.

Ms Borissova explained that the ECA sent the draft report on the provisional accounts of the Agency on 26 May 2023 and that the final accounts were received from the accounting services of DG BUDG on 7 June 2023. The European Court of Auditors expressed the opinion that the accounts present fairly, in all material aspects, the financial position of the Agency at 31 December 2022, the results of its operations, its cash flow, and the changes in net assets for the year 2022, apart from one issue (related to recognition and capitalisation of internally generated intangible assets) that was presented already under point 4 of the meeting. As it had been already explained to the Board it had been in the meantime closed and reflected in the final accounts.

In conclusion, Ms Mandroc informed that the Accounting Officer of the Agency has certified that the annual accounts of the Agency for the year 2022 have been prepared in accordance with the Financial Regulation and the accounting rules applicable, and declared a reasonable assurance that the accounts presented fairly, and in all material aspects, the financial position, the results of the operations and the cash-flow of the Agency.

Conclusion: (1) The Administrative Board adopted by unanimity Opinion No 1/2023 on the final accounts of the Agency for the financial year 2022, which is to be sent by 1 July to the relevant European institutions (Court of Auditors, the Council, the European Parliament and the Commission).

8) Appointment of the Accounting Officer of the Agency

Upon the invitation of the Chair, Ms Olga Borissova, Head of Corporate Services, and Rodica Mandroc, Team Leader of Budget, Finance and Procurement, informed the Board about the appointment of the Agency's Accounting Officer. This had to be done as in July 2022 the European Commission Directorate General for Budget (DG BUDG) informed the Agency that the accounting services outsourced to them would cease to be provided by the end of 2023. The Agency informed DG BUDG on 21 March 2023 that the Agency would proceed with the appointment of its own accounting officer and requested the amendment of the Service Level Agreement (SLA) in place to retract the accounting services but keep the management of treasury as service provided under this SLA. The Agency proposed Ms Mandroc, the leader of the Budget, Finance and Procurement team to re-assume this position that she had already held before as she had the relevant experience, qualifications and knowledge. It was further explained that due to this position which needs to be independent, Ms Mandroc would no longer be part of any Agency's financial circuit and would report directly to the Director and the Administrative Board.

Administrative Board welcomed the nomination of Ms Mandroc, but asked for clarification if she could still appear as a Team Leader of the budget team. It was explained that this was already checked with DG BUDG which confirmed that this was possible provided she has no longer possibility to create any transaction in ABAC (dedicated system), to which Ms Mandroc would no longer have access. The Board noted that with an own accounting officer, the Agency's budget team would lose one person and since the workload was not decreasing, strengthening the administrative support of the Agency should be on the cards.

Conclusion: (1) The Administrative Board adopted by unanimity Decision No 8/2023 on the appointment of the Accounting Officer of the Agency and repealed its Decision No 15/2017.

9) Administrative Board Discussion – Closed session (Members only)

SESSION II

SECTION I – OPENING

The second session of the 58th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 22 June 2023. The meeting started at 9h00.

Upon invitation of the Chair none of present Members and Alternates declared any actual or potential interests that could be considered prejudicial to their independence with respect to the items on the agenda. Mr Kaderják (risk level 3) was again reminded of the duty to declare a conflict of interest should the discussion rise such a situation.

REPORT ON CONCLUSIONS OF CLOSED SESSION

The Chair reported that during the closed session the Board decided to respond positively to the invitation of Ms Poletti to have in October 2023 a back-to-back meeting with the Board of Regulators. The 59th Administrative Board meeting would thus take place in Milan. The Board had further deliberations on the Board's budgetary powers and how this should be reflected in being consulted on its own budget line. Moreover, it was noted that in January 2024 the mandates of a considerable number of members and alternates was to finish though some of them still have the possibility of renewal. The need to discuss in near term the appointment procedure of Agency's Director was raised and the European Commission was alerted about the timely launch of the procedure.

Approval of the Agenda

The agenda of the 58th meeting of the Administrative Board was approved as follows:

OPENING 09:00 - 09:15	Opening of the 58th Meeting of the Administrative Board - Session 2 <i>Adoption of the agenda and declaration of interests</i> <i>Report on conclusions of closed session</i>
FOR INFORMATION 09:15 - 10:15	ECA report on the EU internal electricity market – action plan on implementation <i>Presentation by Mr C. ZINGLERSEN, ACER Director, Ms O. BORISSOVA, Head of Corporate Services and Mr V. ILIĆ, Quality Management Assistant</i> <i>Roundtable discussion</i>
FOR DISCUSSION AND DECISION 10:15 - 11:00	Conflict of Interest policy – report of the 2023 review panel, lessons learnt <i>Presentation by members of the Review Panel and AB Secretariat</i> <i>Roundtable discussion</i>
FOR INFORMATION 11:15 - 12:00	Analysis on the appeals <i>Presentation by Mr C. ZINGLERSEN, ACER Director and Mr P. MARTINET, Legal Service – Team Leader</i> <i>Roundtable discussion</i>
CLOSURE 12:00-12:30	AOB and Closure of the 58th Meeting

1) ECA report on the EU internal electricity market – action plan on implementation

The Chair reminded that this topic was put on the agenda by the request of the Administrative Board at the videoconference call that took place in February 2023 at which the Agency had briefed on the first very limited media and stakeholders' reactions to the publication of the "ECA Special report: Internal electricity market integration". At that point it was agreed to discuss the report also at the next regular Administrative Board meeting to see if any further developments warrant any action.

The Director stressed that since then, the reaction to the report remained low-key and did not influence the intense discussions on the electricity market design benefits and implications that was tabled by the Commission relatively soon after the publication of the ECA Special report. He presented that out of seven ECA recommendations, three are directly addressed to ACER and pertain to: 1) enhancing ACER's surveillance of wholesale markets integrity; 2) speeding up the use of REMIT fees to address shortcomings in ACER's market surveillance, and 3) improving ACER's transparency and accountability. The Director and the team then pointed to the actions from the Single Programming Document 2023-2025 that address the two recommendations related to the wholesale market. It was also stressed that the current draft REMIT revision included measures that should lead to strengthening this surveillance. The most directly operational recommendation for the Boards was the one (recommendation 6) on the improving ACER's transparency and accountability. The Director informed the Administrative Board that the recommendation was already discussed by the Board of Regulators at its May meeting and thus he invited its Chair Ms Poletti to present the conclusions of that discussion. Ms Poletti explained that the discussion had showed that the current practice of publishing agenda and minutes provided relevant information on the overall context, topics discussed and the final outcome. She also reminded that many public consultations that are conducted ensure transparency and enable participation in the decision-making process. Thus it was agreed that where any improvements can be made, (e.g. website improvements, faster revision of conflict of interest policy, ..) , they should be made, but in general the current setting was sufficiently transparent. Ms Poletti also diluted the report's argument on the lack of market integration as the current crisis was a proof that the market worked and supplied the consumers (the fear from the start of the crisis that Member States would close the borders as they would be better off did not materialize).

In addition, also the Commission represented its view on this special audit, as ECA audited simultaneously ACER and the Commission. Both institutions closely collaborated in that process. The Commission concurred with the opinion that it was a difficult audit. Despite its great efforts to improve the report, the outcome was still a report to which the Commission disagreed. Nevertheless, the Commission intends to implement the recommendations to the extent possible, as there were anyway limits set by current legislation of what could be done.

Ms Borissova explained that per established procedure, ACER was not obliged to define and submit to ECA an action plan addressing the recommendations. However, a decision has been made to prepare such a plan for internal purposes.

The Administrative Board in principle welcomed the audits as they should point to the areas of improvement, but in this particular case regretted many inaccuracies in the report and pointed to the lack of understanding of the Agency's role and mandate. The Board welcomed the approach of the Agency's reaction to the report and also of the fact that the Agency had prepared the action plan and had linked it to the Single Programming Document. On the transparency recommendation, the opinion prevailed that the current publication of documents after each Administrative Board meeting (agenda and minutes) was sufficient. It was mentioned that the ECA recommendations could represent a relevant argument that could be used by the Commission during the inter-institutional negotiations on the next financial period for sufficient financial and human resources support for the overall energy policy.

Conclusion: (1) The Administrative Board took note of the Action Plan addressing recommendations from the ECA Special report “Internal electricity market integration”.

2) Conflict of Interest policy – report of the 2023 review panel, lessons learnt

The Chair asked the present Alternate Mr. Kaderják not to participate at the discussion given his conflict of interest risk level 3, thus Mr. Kaderják left the room for that agenda point.

Upon invitation of the Chair, Ms Tina Vončina, Administrative Board Secretariat, presented the outcome of the 2023 assessment of the conflict of interest for the Administrative Board members and alternates. She reminded of the two novelties of the 2023 exercise: 1) it took into account for the first time the provisions of the “AB Decision N° 16/2022” (so-called Guidelines). The Guidelines which complement the 2015 Agency’s overall policy (AB Decision N° 02/2015) introduced more stringent rules to be followed by the members and alternates in fulfilling their duties as well as by the Review Panel when assessing annually the declared situation of each member and alternate 2) for the first time both the submission of documents by the members and alternates and the assessment by the designated Review Panel took place through the E-platform.

The appointed Review Panel concluded the 2023 assessment procedure for each member or alternate that had submitted the required documents by assigning him/her one out of three possible risks levels defined by the Conflict of Interest Policy. The relevant information was captured in a detailed minutes of the Review Panel published on the Agency’s website.

Ms Vončina explained that the Review Panel assessed majority of members and alternates with the risk levels 1 and 2, which do not require further action. However, based on the assessment of the information declared by the three alternates (Ms Ludwiniak, Mr Pikus and Mr Kaderják), the Panel attributed to them risk level 3 (concrete potential risks per alternate are mentioned in the Review Panel’s minutes). For these three cases, a further procedure stipulated by the article 11.5 of the Guidelines was applied. The concerned alternates were notified of the assigned risks level and were given opportunity to provide the Panel with additional information or further observations on the assigned risk level. Since no further information was provided by none of them within the indicated deadline of 14 calendar days, the Review Panel reconfirmed the assigned risk level 3 for all three alternates.

According to the article 11.5 of the Guidelines, this completed the assessment process of the Review Panel. The next step of assessment process is reverted to the Administrative Board by informing it about the cases of assigned risk level 3 and calling to take decision on further steps. Thus, the Board was asked to decide at the meeting if in these three cases further procedure according to Article 11 or the one of Article 13 of the Guidelines was to be pursued. Article 11 stipulates that the Board would give the three alternates two (2) months to remedy the conflict. During these two months the member is suspended. In case the conflict is not remedied, the Board informs the appointing institution in order to clarify the situation. Article 13 however describes the Transparency Obligations and would enable the alternates to participate at the Board, but they would need to state the conflict of interests at the meetings, and it would be for the Chair to decide if the conflict materializes and what action to take. The Board took unanimously decision to follow the Article 11 procedure, giving the three alternates 2 months period until 23 August 2023 to provide information on the remedy of identified conflict of interests.

To avoid as much as possible such cases in the future and to facilitate upcoming appointments, the Administrative Board asked the Secretariat to promote the Guidelines on the prevention and management of the conflict of interest to the Council and the European parliament.

The Board's Secretariat reminded the members that the minutes of the Review Panel would be published at the Agency's website. It informed that the Board of Appeal - to which the Guidelines also apply - concluded the 2023 exercise in time (by end of March).

- Conclusions: (1) The Administrative Board took note of the results of the conflict of interest exercise for the year 2023 performed by the Administrative Board Review Panel; the report is to be published on the Agency's website.
- (2) The Administrative Board decided by unanimity that the three alternates whom the Review Panel assigned risk level 3 are given two months to remedy the conflict (by 23 August 2023) and that during this period starting on 23 June 2023 they are suspended from the Board. The suspension is to be published on the Agency's website.
- (3) The Administrative Board asked the Secretariat to inform again the respective Appointing Authorities (the Council and the European Parliament) of the Guidelines on the prevention and management of the conflict of interest policy so that they are taken into consideration when selecting candidates for the forthcoming appointments.

3) *Analysis of Appeals*

Mr. Kaderják rejoined the meeting.

Upon invitation of the Chair, the Director reiterated that the presentation on this topic was requested by the Administrative Board at its 56th Administrative meeting in December 2022.

Mr Paul Martinet, Legal Service – Team Leader, provided trends of appeals, reasons for them and their budgetary impact. He explained that the peak of appeals (achieved in 2020-2021) seemed to be behind the Agency. Currently there are 11 ongoing cases in front of the Court (out of which 7 appeals relate to the RDCTCS/ROSC decisions), while during the 2011-2023 period 16 cases had been closed by the Court. In half of those cases, the Court upheld the challenged Board of Appeal (BoA) decisions. So far, there has been a relatively limited amount of Court cases in which the Agency decisions themselves were substantially flawed. In recent cases, the Court has been examining in depth the technical complexity of the electricity market underlying the various pleas, which is a positive trend and is likely to be reflected in the content of the future judgments taken by the Court.

The Board of Appeal as the Agency's internal review body functions as a gateway, offering parties the possibility to challenge an Agency decision before lodging an appeal before the General Court. The BoA decisions to which the Agency is bound have contributed much to make its decisions more robust and of higher quality. It was acknowledged that over the years the Board of Appeal has become more professionalised. For the Court cases, the Agency has mostly been relying on external legal resources. This is currently deemed an adequate model, as it has become difficult to accommodate internally the needed flexibility that the appeal cases before the Court require in terms of human resources, due to the non-predictability and high variability of appeal cases. Moreover, with such an approach, different law firms can be chosen depending on the expertise needed for the case at hand.

Mr Martinet pointed also to the budgetary implications of the appeals. Apart from the cost of its own legal representation, the Agency may also be ordered to pay the legal costs of the successful appellant. Depending inter alia on the technical and/or procedural complexity of the case and the amount of successful appellants, these losses could have a potential (high) budgetary impact. Yet it is very difficult to budget such costs in advance, given the uncertainty both in terms of timing of the judgment, its outcome, and, in case of loss, the level of recoverable legal costs of the successful appellant. The principle of annuality of the Agency's budget represents in this respect a considerable challenge, as any unspent budget or carry-over would be considered contrary to sound financial management.

The Administrative Board concurred that the budgetary issue of the appeals was relevant. It suggested to check with the Commission (DG BUDG) if it was possible to have a vehicle/multiannual arrangement aimed at covering costs caused by lost appeals which would be outside the budget and would thus not impact the Agency's annual budgetary targets. According to the Agency, an alternative mitigating measure to cover higher legal costs could be also an acknowledgement of a request for a global transfer within the Union's budget.

Conclusions: (1) The Administrative Board welcomed the presentation on the analysis of appeals and advised to check with the Commission how to address the budgetary impact of possible lost appeal cases which may represent a structural challenge for the Agency's budget.

CONCLUSION

The Chair Mr Thiollière invited the Administrative Board to the 59th ordinary meeting that will take place on 25 and 26 October 2023. Upon the invitation of Ms Clara Poletti, BoR Chair and director of ARERA, the meeting will take place in Milan/Milano (at ARERA headquarters).

The meeting closed at 12h30.