



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

***– 54th Meeting –
– Ordinary Session –***

Thursday, 16 June 2022, 9:00 — 13:30

**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:

Mr Michel THIOLLIERE,	<i>Chair</i>	Ms Edit HERCZOG,	<i>Vice-Chair</i>
Dr Jurijs SPIRIDONOVŠ	<i>Member</i>	Ms Romana JORDAN,	<i>Member</i>
Mr Bogdan CHIRIȚOIU,	<i>Member</i>	Ms Karin LUNNING,	<i>Member</i>
Mr Vaclav BARTUSKA,	<i>Member</i>	Ms Kristina ČELIĆ,	<i>Alternate</i>
Ms Cristina CUADRA GARCIA,	<i>Alternate</i>		

Ms Cristina QUADRA GARCIA submitted proxy by Ms Anne MONTAGNON and Ms Ditte JUUL-JØRGENSEN.

Mr Christian Pilgaard ZINGLERSEN (*Director*) and Ms Clara POLETTI (*Chair of the Board of Regulators*) were present at the meeting, acting as observers.

Mr Juan-Ignacio DE DIOS MORALES (European Commission) was present acting as advisor.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 54th MEETING OF THE ADMINISTRATIVE BOARD

At the 54th meeting, the Administrative Board:

- (1) took note of the needs reported by the Chair of the Board of Appeal, such as a better exchange of information with the Agency, additional resources, and an enhanced infrastructure to guarantee the operational stability of the Board of Appeal, and suggested to include them in the Programming Document of the Agency;
- (2) took note of the Director's proposal to re-organise the secretariat function of the Administrative Board, in order to link more closely the secretariat function with the broader strategic strands and coordination processes across the Agency, favouring better synergies, and freeing up resources for the Legal Services Team. In this context, the Administrative Board provided the Director with recommendations related to the arrangements for the organisation of the Administrative Board secretariat, invited to propose measures for an adequate management of conflict of interests in the exercise of the secretariat function and reiterated its request of improving the workflows and processes in place to enable the Administrative Board to receive information on a timely manner enabling rapporteurs to contribute in their assigned area;
- (3) took note of HR developments, current diversity ratios, the progress of key organizational projects, the status of budget implementation and procurement procedures, as well as the progress with the communication strategy;
- (4) took note of ECA's opinion on the reliability of the Agency's accounts for the year 2021, ECA's observations on the weakness of the Conflict of Interests Policy of the Agency in relation to staff leaving the EU civil service, as well as on interim staff and carry-overs, and considered the steps undertaken by the Agency to address those observations;
- (5) took note of ECA's Clearance Letter received by ACER on 13 April on the Performance Audit on Energy Union, the position of ACER's Director on the substance of the ECA's findings and the proposed actions to correct the perceived inaccuracies and limitations included in the clearance letter. The Administrative Board also requested to be kept informed on any development on the matter;
- (6) having considered the progress of the building file, the outcome of the market research and the market prospection, welcomed the Agency's proposal to postpone the launching of the procurement procedure for ACER future premises in so far as that the Agency can actually remain in the current premises;
- (7) reflected on the workplace strategy envisaged by the Agency and the actual employees' opinion on the matter, requesting the Agency to provide access to relevant surveys, presentations, as well as to the external contractor's recommendations;
- (8) adopted:
 - the Consolidated Annual Activity Report for the year 2021;
 - Opinion No 1 – 2022 on the final accounts of the Agency for the financial year 2021;
 - Decision No 8 - 2022 - on the adoption by analogy of Commission Decision C(2021) 8179;
 - Decision No 9 - 2022 - on the conduct of administrative inquiries and disciplinary proceedings;
 - Decision No 10 - 2022 - on the adoption by analogy of Commission Decision C(2022) 1715.
- (9) took note that in relation to the annual assessment of conflict of interests for the Administrative Board, the Review Panel did not identify conflict of interest pertaining directly to the field of competence of the Board. It also endorsed the decision to suspend two Alternate Members, due

to their failure to provide the requested documentation for the purpose of the exercise, despite several attempts made by the secretariat;

- (10) agreed to publish the Minutes of the annual conflict of interest assessment related to the Members and Alternates of the Administrative Board and invited also the Board of Appeal and the Board of Regulators to consider this opportunity in the interest of transparency and integrity of the decision-making process. It invited also the secretariat to propose the necessary amendments to the policy on the management of conflict of interest following the experience gathered so far in its implementation and the most recent developments across the Union's institution, bodies and agencies.

III. MINUTES

SESSION I

SECTION I – OPENING

The 54th meeting of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators was convened, in ordinary session, on 16 June 2022. The meeting started at 9h00.

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

(1) *Approval of the Agenda*

The Agenda of the 54th meeting of the Administrative Board was approved as follows:

OPENING
9:00 - 9:05 **Opening of the 54th Meeting of the Administrative Board**
Adoption of the Agenda and Declaration of Interests

*REPORTING,
INFORMATION
, AND
INTERNAL
FUNCTIONING
OF THE
AGENCY*
9:05-13:25 **Board of Appeal – Progress Report**
Presentation by Miro PREK, Chair of the Board of Appeal
Roundtable Discussion

Administrative Board Secretariat – Organisational Aspects
Presentation by Christian ZINGLERSEN, ACER Director
Roundtable Discussion and Definition of consequential actions

Agency's Progress Report
Regulatory Developments
Organisational Developments (HR, Budget, ACER Premises, Communication, Audits)

Staff Engagement Survey Action Plan – Follow-up

Rapporteurs – Question Time and Roundtable Discussion

Board of Regulators – Progress Report

Presentation by Clara POLETTI, Chair of the Board of Regulators

Roundtable Discussion

Consolidated Annual Activity Report – Year 2021

Adoption of the Annual Activity Report

- *Presentation by ACER*
- *Roundtable Discussion and Adoption*

Opinion on ACER Final Account – Year 2021

Adoption

- *Presentation by ACER*
- *Roundtable Discussion and Adoption*

General Implementing Provisions of the Staff Regulation

Adoption:

- *Commission Decision C(2021) 8179 of 16 November 2021 laying down general*
- *implementing provisions regarding the payment of the education allowance (by analogy);*
- *General implementing provisions on the conduct of administrative inquiries and disciplinary proceedings (Model Decision);*
- *General implementing provision on home leave for officials, temporary staff and contract staff serving in a third country and repealing Commission Decision C(2013) 9035 final of 16 December 2013 (by analogy)*

Presentation by ACER

Adoption

Conflict of Interest – Annual Assessment and Suspension of two Alternates of the Administrative Board

Presentation by AB Secretariat

Roundtable Discussion and adoption of consequential actions

SECTION II – REPORTING, INFORMATION, AND INTERNAL FUNCTIONING OF THE AGENCY

(1) Board of Appeal – Progress Report

Upon invitation of the Chair, Mr Miro PREK, Chair of the Board of Appeal, reported about the challenges faced by the Board of Appeal in the exercise of its duties and the identified needs to be addressed in order to face those challenges. In particular, Mr PREK indicated that the Board of Appeal reiterated at its annual meeting of 15 June 2022 the need for an enhanced inclusion in the structure of the Agency to enable a better exchange of information, as well as the need for more stability with respect to the operational conditions of the Board of Appeal, especially in terms of stability of IT infrastructures and human resources.

Mr PREK recalled that according to the ACER Regulation, there is a budget line for the Registry of the Board of Appeal and in the view of the Board of Appeal, the Agency is responsible for making sure all measures are in place to ensure business continuity. He highlighted that the arrangements currently in place did not yet provided the expected benefits. In particular, he indicated that the Board of Appeal still encounters a problem with the availability of resources and reported that the Board of Appeal believes that additional stability and support in its functioning could be achieved by assigning additional human resources.

With regard to inclusion and better exchange of information, Mr PREK recalled that the IT and document management system were already discussed, with the aim to address the cumbersome processing of information. He opined that at this stage, the best solution would be to involve people on a permanent basis to design an efficient system; in addition, he expressed the wish of the Board of Appeal to be included in all the stages of quality control operations.

Mr PREK commented that although possible solutions to overcome the above-mentioned issues were already discussed and identified, the discussion needs to be reopened again, in order to identify new options and solutions.

The Administrative Board asked clarifications on the workload of the Board of Appeal. Mr PREK informed that for the moment, the Board of Appeal is not overloaded, but it cannot predict the situation from September onwards; he underlined that should the Board of Appeal be faced with the overload of cases experienced back in 2020 and 2021, than its operations would experience serious issues, as there is currently no infrastructure in place to deal with such scenario. For this reason, he emphasised that coordination and a central point of contact are essential to guarantee an efficient functioning of the Board of Appeal.

The Director explained that the support to the Board of Appeal has been recently discussed internally, and a need for additional agility in providing the support function was identified. With regard to a better exchange of information, the Director mentioned that there could be a possibility to open an institutional discussion for receiving information also from EU Courts, in addition to the information provided by the Agency; in relation to IT and document management, he informed that there is an option to procure wider IT systems, but this will not be immediate.

The Administrative Board suggested to include the requests put forward by the Board of Appeal in the Programming Document of the Agency, to enable it to deal with the challenges identified. It then enquired on the expectations for future cases.

Mr PREK informed that the Board of Appeal is expecting more cases, including some complex ones; therefore, the Board of Appeal wishes to streamline better the process of the review of the decisions of the Agency before the Board of Appeal and before the General Court and the Court of Justice.

Upon request by the Administrative Board, Mr Paul MARTINET, Team Leader of the Legal Services, clarified that external counsels are representing the Agency before the General Court and the Court of Justice of the European Union and clarified that all the appeals from 2020 and 2021 are now before the General Court; he also informed that in the last six weeks, there have been more than 15 submissions before the General Court.

The Administrative Board further enquired about the independence of the Board of Appeal and the role played by internal staff and external services in supporting the Board of Appeal. The Director explained that there is a contract in place for the provision of support to the Registrar, working part-time, and an additional internal part-time administrative support function.

Mr PREK stressed the need to ensure the functional independence of the Board of Appeal and its Registry and pointed out that, in the view of the Board of Appeal, independence might be put at risk in so far as the Registry is performed by one single person working for the Board of Appeal and the Director, possibly working on the same cases that are then appealed before the Board of Appeal itself. In this respect, the relationship with the Agency (represented by the Director) can become potentially conflictual.

Mr MARTINET informed that the resources to support the Board of Appeal have increased in comparison with the past, but the objective is still to make the process more efficient. With respect to the use of external counsels, he explained that this is needed because of their required expertise in litigation before the General Court, something missing in-house, as well as because the Agency is employing its limited human resources in the Legal Team to try to avoid appeals in the first place and to make decisions more robust.

Conclusion:

- (1) The Administrative Board thanked the Chair of the Board of Appeal for reporting on the Board of Appeal's operations and outstanding issues.
- (2) The Administrative Board took note of the needs of the Board of Appeal and suggested to include them in the Programming Document; it also invited the Agency to report regularly on the status of appeals, Agency's decisions and cases before EU Courts. The Agency agreed.

(2) Administrative Board Secretariat – Organisational aspects

The Chair introduced the agenda item related to the organisation of the Administrative Board secretariat by referring to the current set-up with the secretariat acting under the Administrative Board itself and also handling the registry of the Board of Appeal, being the two Boards independent from ACER.

The secretariat left the meeting and the Chair invited the Director to take the floor and present his proposal for an evolution of the secretariat function of the Administrative Board.

The Director presented his proposal to reorganise the secretariat function of the Administrative Board by assigning it to a staff member within the Strategy Delivery and Communication Team ('SDC'). In particular, he clarified that the proposal fits in the wider process which the Agency has started, identifying possibilities to create efficiencies and synergies. Having both of these in the current context, the proposal is expected to reduce workload for the AB secretariat. Indeed, the proposal would enable to link more closely the secretariat function with the broader strategic strands and coordination processes across the Agency improving the overall quality of ACER deliverables, eventually ensuring that they are looked at from all the relevant angles. The proposal would also favour synergies with the Board of Regulators both in the function and for some priority regulatory

updates and discussions reported during the meetings of the Administrative Board. It could also help freeing up resources for the Legal Services Team (while still drawing on specific legal support when required) to meet the internal demand for legal support, especially in a situation in which hiring new resources became more challenging. The proposal could also enhance resilience by increasing the back-up function and possible peak-time assistance provided by the wider SDC team, possibly also drawing on input or advice from senior staff when needed – including experience drawn from the support function of the Board of Regulators. The Director further reassured the Administrative Board that the proposal would foresee also a transitional phase, with an adequate handover from the current secretariat to SDC over the time needed to ensure a free of risks transfer.

The Vice-Chair raised a point of order, highlighting that the Director invited the Strategy, Delivery and Communication Team Leader to stay in the course of the discussion of the proposal, a proposal which would see him playing a key role. The Vice-Chair therefore asked the Director to consider inviting the Strategy, Delivery and Communication Team Leader to leave the meeting. The Strategy, Delivery and Communication Team Leader exited the meeting.

The Chair thanked the Director for the explanation provided. The Chair stressed the importance of the decision on the future organisational arrangements of the secretariat of the Administrative Board, as the secretariat represents the gateway of the Administrative Board both for the Board towards ACER and for ACER and the Director towards the Administrative Board. He also expressed the high appreciation of the Members of the Administrative Board for the work performed by the current secretariat. He identified the need for ACER to ensure a timely submission of documents and the timely involvement of Rapporteurs to enable them to perform their role in supporting ACER services. In this context, he regretted that in past occasions the submissions of documents was last-minute.

The Vice-Chair was invited by the Chair to report to the plenum about the recommendations that the Administrative Board considers important to be respected in the organisation of the secretariat function, as discussed during the Administrative Board closed session of 15 June 2022.

The Vice-Chair started by highlighting that the recommendations inspiring the organisation of the secretariat function are enshrined in the ACER Regulation.

She recalled that the secretariat function shall be provided by ACER. However, the organisation of the secretariat function is shaped in light of the role and mandate of the Administrative Board and, therefore, in addressing its organisation, a number of measures shall be put in place. In particular, the Vice-Chair mentioned the importance of the secretariat being based in Ljubljana, where ACER has to perform its statutory functions. It was highlighted that the location is particularly important also in light of the role of the Administrative Board in exercising supervision over administrative, budgetary and managerial matters. To exercise at best this function and considering that the secretariat is the gateway of the Administrative Board, being close to ACER operations ensures i) the necessary openness vis-à-vis staff, therefore reinforcing trust with staff, and ii) a transparent flow of information towards the Administrative Board.

It was also indicated that, due to the fact that the tasks attributed to the Administrative Board have significant legal implications, the secretariat function shall be performed by a senior legal profile. In this regard, she indicated that, at first sight, moving the task away from the legal service did not appear to reduce workload.

Moreover, the Vice-Chair further stressed that, in the organisation of the secretariat function, measures shall be put in place to ensure that the Administrative Board can act independently both at governance level and in the exercise of its duties. With regard to governance, the Vice-Chair, stressed the requirement of independence and total separation from the Board of Regulators in the conduct of its activities at secretariat level, indicating instead that sharing the secretariat function with the Board of Appeal does not pose problems of conflict of interest, as the two Boards do not interact. With regard instead to the exercise of the duties of the Administrative Board, the Vice-Chair indicated that measures should be put in place so that the person performing the secretariat function is not connected to the Director, as the Administrative Board, whose activity is in practice prepared by its secretariat, assesses the Director in its activity.

In this respect, the Administrative Board invited the Director to indicate how the proposal would meet the above reported requirements.

The Director clarified that the proposal would foresee that the secretariat function would still be based in Ljubljana. He clarified that the person will have EU exposure (possibly with executive boards), and at least some legal understanding, and the Legal Services Team would still remain available to provide advice, limiting the involvement on what is needed. With regard to potential conflict of interests, the Director explained that the secretariat function would remain independent from the Board of Regulators. In particular, he clarified that, while ensuring the independence from the secretariat of the Board of Regulators, the proposal would enable peak-time assistance and ensure synergies on substance at least in those instances where the Administrative Board discusses the direction and broader strands in the regulatory activity of ACER, where the Board of Regulators plays a role.

With respect to the independence of the Secretariat function from the Director, the latter clarified that from a hierarchical point of view there would be perfect symmetry in approach as the secretariat function is currently administratively reporting to the Team Leader of the Legal Team, reporting in turn to the Director. According to the proposal, the staff member to be assigned to the secretariat function would report to the Strategy Delivery and Communication Team Leader, reporting in turn to the Director. The Director stated that, in his view, he could not identify instances in which the integrity of the decision-making process was put at risk so far. He explained that a similar dynamic is also in place for the Board of Regulators. He also reassured the Administrative Board that the secretariat will still have direct interaction with the Administrative Board, as per the current setting.

The Chair invited the Administrative Board to discuss the proposal. In the discussion, it was indicated the need to be realistic in terms of the efficient management of resources, enabling synergies while ensuring the proper functioning of the Board and continuity of operations, and allowing the possibility for change over time. It was pointed out that the activities of the Administrative Board cover also the management of resources, budget and finance dimensions, beyond the legal dimension. It was also remarked that it falls into the remit of the Director to make the arrangements necessary to perform the duties of secretariat while respecting the independence of the Administrative Board and ensuring the absence of conflict of interest.

Members remarked the resilience and excellence of the current secretariat function providing the Administrative Board with great support also in the recent crisis (such as Covid-19).

Members raised the need to strengthen the ability of the Administrative Board to receive independent information. In this regard, it was clarified that the information provided to the Administrative Board are crucial especially in those instances in which there are principal decisions to be taken and possibly

diverging views, such as those decisions involving the Director. Furthermore, Members raised the attention to the fact that, having had the experience with the secretariat function at ACER being performed by staff members with different backgrounds, it proved that the secretariat function being performed by an experience lawyer serves best the interests of the Administrative Board. Members raised also the attention to the possible need to improve the measures in place to minimise conflict of interests in practice in the administrative reporting of the secretariat to the Director.

The Administrative Board therefore invited the Director to i) clarify the need for synergies with the Board of Regulators, ii) identify more concretely the benefits or cost-saving reasons supporting the proposal, and iii) explain the relevance of a direct involvement of SDC in light of the mandate of the Administrative Board.

The Director clarified that the Strategy Delivery and Communication Team is responsible for the more strategic, holistic coordination across the Agency, reason why this change would, in his view, be beneficial. The Director reiterated that the new person covering the secretariat function would be a profile with some legal understanding, embedded in SDC, and relying, when needed, on ACER Legal Team for specific legal advice. The alternative of having the secretariat function being performed within the Corporate Service Department was considered. However, it was concluded that it looked suboptimal in light of the need to bring the Administrative Board closer to ACER strategic dimension. He also added that, in order to minimise conflict of interests in practice in the administrative reporting of the secretariat to the Director, the Director proposed the Administrative Board to be involved in the appraisal, development and promotion of the secretariat, where the Administrative Board could provide its input.

In light of the clarification provided, the Chair indicated that the Administrative Board had two options: 1) changing the organization of the secretariat as per the proposal of the Director; or 2) remaining with the current secretariat, with improvements in terms of timely and prior involvement of the Administrative Board and Rapporteurs in those domains in which they are involved.

The Chair suggested to remain with the current secretariat and insisted on improving the workflows and processes in place to enable the Administrative Board to act according to the ACER Regulation. The Chair also indicated that due to the recent changes in the working arrangement of the Administrative Board with the appointment of Rapporteurs, changing the secretariat would bring risks. He then asked the Administrative Board to express its views on the matter.

In the course of this conclusive part of the discussion, some Members indicated that they were happy to stay with the current secretariat, although they acknowledged that ACER provides the organisation of the secretariat, and is, thus, ACER duty to organise it and to ensure adequate resources and the independence; some Members indicated that they preferred to stay with the current secretariat, highlighting the difficulty in understanding the rationale and the expected benefits of the proposed change, compared to the risks identified in the course of the discussion. Other members indicated that they were in favour of the proposed change, although expressing that they were happy with the current set-up. Another member acknowledged ACER role and indicated that was happy both ways, and that maybe this decision should be postponed until later.

The overall majority of the Administrative Board members expressed the desire to maintain the current arrangement of the secretariat.

The Chair therefore invited the Director to reflect upon the outcome of the discussion, the recommendation provided for the organisation of the service, as reported by the Vice-Chair, and the risks identified.

The Director took note of the points raised in the course of the discussion. He stressed that when joining ACER he noted the need to increase internal synergies creating added value in ACER deliverables. He indicated that the proposal put before the Administrative Board is designed to contribute to this trajectory and he highlighted the intention to gradually move in the direction envisaged building upon the points indicated in the course of the discussion, reassessing over time the advances made and reconsidering, if need be, in due course.

Conclusion: The Administrative Board:

- (1) provided the Director with recommendations related to the arrangements for the organisation of the Administrative Board secretariat;
- (3) invited to reinforce the measures to ensure adequate management of conflict of interests in the exercise of the secretariat function;
- (4) reiterated its request of improving the workflows and processes in place to enable the Administrative Board to receive information on a timely manner enabling rapporteurs to contribute in their assigned area.

(5) Agency's Progress Report

I. Regulatory Developments

The Director provided an update on the progress of regulatory matters within the Agency, especially on the ACER's Assessment of Europe's high energy prices and the current wholesale electricity market design, complemented by the activities of the Board of Regulators, as per the information provided by its Chair.

II. Organisational Developments (HR, Budget, ACER Premises, Communication, Audits)

Ms Olga BORISSOVA, Head of Corporate Services, provided an overview on HR developments. She informed that the new recruitment procedures are progressing well, with the exception of recruitment of seconded national experts (hereinafter 'SNEs') for which suitable options are currently being discussed.

She reported on diversity of staff and informed that at present, one third of staff, one fourth of team leaders and one fifth of management staff are women; in this respect, she informed that the Agency is taking measures to improve current diversity ratios, including amending the wording of vacancy notices, increasing internal awareness and promoting diversity aspects.

Ms BORISSOVA then mentioned key organisational-cultural projects, explaining that the feedback culture and cross-departmental collaboration are already in the implementation phase; she added that the ACER 2.0 project, the future workplace project, as well as the 'less bureaucracy/more empowerment' project are a top-priority for the Agency, while the appraisal and contract extension project, the leadership pipeline project and the Acer Academy project are in the mid priority category.

With regard to implementation of commitments and payments, Ms BORISSOVA reported that the Agency is close to last year's levels; on the other hand, there is a good record of collection of fees (around 40 per cent of the budget) and everything is on time.

In relation to budget implementation, Ms BORISSOVA mentioned a comparison of the indexation of the salaries, requested by the Commission because of inflation. She informed that usually a 2.2% indexation was applied, while there is now an expectation of 8 %; as a result, she explained that there is a gap in the budget implementation that needs to be filled (there is a possibility to request a budget amendment, but for the moment, the Agency is trying to cope with its own funds). With respect to revenues from REMIT, she informed that these will be updated because the costs must be covered, and indexation will be applied in the next fall for 2022-2023.

Ms BORISSOVA proceeded by introducing Ms Mateja VAVTAR, Finance and Contracts Assistant (Procurement) in Corporate Services, who is leading the procurement efforts of the Agency, and reported that 40% of the procurement plans have already been concluded, while another 20% is in operation and the remaining 40% is planned for August to the end of the year.

Ms BORISSOVA also informed that 80% of procurement procedures are with a value below 15.000,00 Euros, and a new contract agent will join the Agency by 1 August 2022, who will be assigned half time to commercial matters and half time to procurement matters below the 15.000,00 Euros threshold, so that the rest of the team can concentrate on bigger procurement procedures.

Mr Bart VEREECKE, Team Leader in the Strategy Delivery and Communication, presented the communication developments within the Agency, especially the market design project, highlighting the valuable energy expertise among communication officers, the very demanding stakeholder management efforts and the de-prioritisation of some initiatives, which were moved to the second half of 2022 (e.g. stakeholder management tools).

Mr VEREECKE also pointed out the unprecedented participation of stakeholders to the February webinar (836 participants) and the organizational efforts behind the event. He mentioned communication improvements, including very high growth of LinkedIn and Twitter followers, as well as the updates to the website of the Agency, and informed that the team is continuing to work on the communication strategy.

Ms BORISSOVA then reported on the preliminary observations of the European Court of Auditors (hereinafter 'ECA') with respect to the Agency's annual accounts, such as the ECA's opinion on the reliability of the Agency's accounts and the legality and regularity of revenues and payments, in all material aspects, for the year ending on 31 December 2021.

She also mentioned ECA's observations on the weakness of the Conflict of Interests Policy of the Agency in relation to staff leaving the EU civil service (so called 'revolving doors'), whereby, according to ECA, the Agency has to make sure to start the process earlier and to have adequate back-up capacity in place, in order to carry out the entire procedure and necessary consultations on time.

Ms BORISSOVA reported also ECA's observation regarding the high-rates of carry-overs, which contradict the budgetary principle of annuality, suggesting structural issues in the implementation of the budget. She informed that this point was clarified, as the Agency initially adopted a very conservative approach with regard to starting new procurement procedures before receiving money from REMIT fees, which led to delays and carry-overs. She further informed that in relation to the current year, procurement procedures started on time and the deadline for the REMIT fees was moved forward, which allowed for a more safe implementation of the budget.

Ms BORISSOVA explained that some of the outstanding ECA's observations from the previous year were closed, while there are still three on-going observations, which relate to the qualified opinion in relation to the Framework Contract, the use of interim workers and the high level of carry-overs. In relation to the use of interim workers, Ms BORISSOVA informed the Administrative Board that with the introduction of the Gas Package, 5 new statutory posts will replace interim positions from 2023 to 2027.

With regard to the ECA Performance Audit on Energy Union 2021, Ms BORISSOVA reported that the focus was on the followings: 1) electricity market rules, 2) surveillance and market abuse and transparency, 3) how the Agency is monitoring the implementation of Network Codes and Guidelines, 4) whether the Agency's activities had a positive impact on the integration of the energy market, and 5) the role of the Commission in fulfilling its mandate. She added that the audit will result in a Special Report adopted by ECA and published on their website.

Ms BORISSOVA informed that a Clearance Letter was received by the Agency on 13 April 2022, which presented the facts as identified by ECA. She further informed that the Agency responded, in coordination with DG ENER, stating its disagreement with the observations; nonetheless, the Agency had a high-level preliminary meeting with ECA before submitting the detailed replies on 18 May 2022. She explained that ECA should now provide a Special Report to the Agency and the Commission (which have then four weeks to reply); Ms BORISSOVA commented that if there is no agreement with the content of the Special Report, the Agency can start an adversarial procedure.

The Director clarified that this is a different type of audit and highlighted that the vast majority of the observations raised by ECA are wrong; he explained that the underlying message was that there was little value in the Framework Guidelines and Network Codes' work over the past seven to eight years for the integration of the EU energy market. The Director informed that the substance of the Report will be challenged, along with DG ENER, and that the Agency requested ECA to perform another review concerning the substance of its observation; he added that the Agency asked also for a technical meeting on the matter, along with the leadership team in the Commission, and invited ECA to perform an industry survey, to verify the industry opinion on the matter.

The Administrative Board noted that the findings of the ECA Report refer to the last seven to eight years, and during this timeframe, the Agency was under a different leadership. It then enquired on whether the content of the ECA's Report will be disclosed before publication and what is the Agency's strategy in this respect. The Director explained that the timeframe is uncertain and if ECA will decide to undertake a second review on substance of the Report, it may be that the publication of the document will be postponed; he clarified that once the Agency will have more information on the matter, it will communicate this to the Administrative Board.

With regard to the building project, Ms BORISSOVA informed that a market research was completed on 09 May 2022, showing many category B and C buildings (existing buildings, though not likely to have 4,500 to 6,000 m² available by November 2023); on the other hand, category A seems to be limited, with only 10 new building projects ready by 2024-2025 and onwards. She also mentioned several new building projects coming into the market, which may be ready by 2025-2026, depending on how the construction will move on.

Ms BORISSOVA reported also that the market prospection (finalised on 18 May 2022) showed interest only from three realties, all of them being in the construction phase (also the current landlord did not indicate an interest). On the other hand, she informed that the contract with the engineering services was signed.

Furthermore, Ms BORISSOVA explained that the Agency is also working on the concept of dynamic collaborative space, which has been already discussed with the Commission, Slovene institutions and NRAs.

Ms BORISSOVA proceeded by providing an overview of the growth trajectory of the Agency, reporting that additional 25 FTEs were approved for the period 2022-2027, while according to the draft proposal for the Gas Package, additional 22 FTEs are expected to be assigned to the Agency. She also informed that under TEN-E legislation, one FTE was approved for 2022.

In relation to statutory staff and SNEs, Ms BORISSOVA mentioned a growth of 41% by 2027, with 157 staff members; she also informed the Administrative Board that at present, 30% of staff are interims.

In light of the above, Ms BORISSOVA emphasised that there is currently not sufficient building supply in the market, and that the Agency has specific demands in terms of size (4,500 to 6,000 m²), location of the building (within the Ljubljana ring road) and building properties (a high degree of privacy is required).

She then presented three building costs scenarios that the Agency may face in case of: 1) moving to a new location as of 1 February 2024; 2) negotiating an extension of the current contract for three additional years; 3) remaining at the current premises, if CEEREF would be the winning tender. She highlighted that in the first scenario, the removal cost is close to 500,000.00 Euros, while for the last scenario, the maintenance costs in the current building would be higher in comparison to a new building.

Ms BORISSOVA commented that the best option for the Agency would be to receive at least 5 offers (with building permit), and to have at least three potential tenderers (to give the Agency some space of manoeuvre in the negotiations), as well as to consider buildings with a space above 6000 m² (which would allow for expansion, if needed, as the Agency is planning to rent for the next 20 years) and to be centrally located.

In light of the above and considering the outcome of the market research and market prospection, Ms BORISSOVA reported that the Agency is proposing to postpone the launching of the procurement procedure to June 2023 (to be verified by March 2023 to see how new building projects are progressing). In this respect, she informed that in order to proceed with the extension of the current contract and the launch of the related procurement procedure, the Administrative Board's approval would be required.

Moreover, Ms BORISSOVA presented the Workplace Strategy Survey Results Report, highlighting that 61% of colleagues work on individual tasks, reason why working in open space may be difficult; on the other hand, they seem to go to the office because of the collaboration and interaction with colleagues. She explained that employees hosting meetings with external stakeholders would require, most of the time, meeting rooms with the capacity to welcome at least five people, reason why collaboration aspects needs to be considered.

The Director stressed the organizational and cultural benefit to be gained from a modern and open environment, in order to enhance cross-departmental interactions and collaborations.

The Administrative Board thanked the Agency for the presentation.

III. Rapporteurs – Question Time and Roundtable Discussion

The appointed Rapporteur acknowledged the growth trajectory envisaged for the Agency, security, IT and data aspects, as well as employees' satisfaction and sustainable standards for new buildings. With regard to freezing for one year the procurement procedure for the new building, the Rapporteur commented that this would provide additional time to discuss and consider the project, but at the same time the Administrative Board needs to be assured that the Agency can stay in the current premises, and it recommended to start negotiations with the current landlord as soon as possible. The Rapporteur also requested a comprehensive information on the number of employees that will join the Agency in the future.

With regard to the workplace strategy, the Rapporteur requested to have access to the work undertaken by the external contractor and his final recommendations on the matter. In addition, the Rapporteur requested access to the entire results of the Workplace Strategy Survey and related presentations, and to invite representatives of the Staff Committee, as there is an impression that employees are not very enthusiastic about temporary workstations. The Rapporteur also enquired on the amount of space that would be saved by implementing the workplace strategy.

Furthermore, the Rapporteur asked explanation as to why only central buildings are being considered, as a location outside the Ljubljana ring road could still be appropriate, as long as there is a suitable transport connection. In terms of risks, the Rapporteur recommended to discard buildings that do not have a permit yet, as it is lucky that they would not be ready by 2025. In this respect, the Administrative Board mentioned the need for a road map with milestones which go beyond 2025, to ensure that the money are allocated in the right year for the correct budgetary planning, including also inflation considerations.

In relation to the workplace strategy, the Director explained that the space requirement would be more collaborative; he mentioned that based on the experience and exchanges with other agencies, at the beginning there is always a tendency to preserve the current settings; therefore, the workplace strategy needs to be a dynamic process, while still incorporating the needs of employees. With regard to the location, he explained that staff members seem to prefer a central location.

Ms BORISSOVA clarified that the Agency is looking into a negotiated procedure with the current landlord, which may hopefully start in September and be concluded by the end of 2022 (should the budgetary authority be involved, then the process may continue up to June 2023). She pointed out that the Administrative Board needs to agree on freezing the building procedure for one year, and subsequently, the Agency can start the negotiated procedure with the current landlord. With regard to the workspace environment, she clarified that the Agency is currently calculating a space of around 5000 m², but all details about the calculation and the exact spaces will be provided at the next Administrative Board meeting.

- Conclusion:*
- (1) The Administrative Board welcomed the freezing of the building procurement procedure, provided that the Agency can remain in the current premises; it also invited the Agency to discuss again the building file and related issues at the next Administrative Board meeting.
 - (2) The Administrative Board invited the Agency to provide additional information at the next meeting with regard to the Agency workplace strategy, such as relevant surveys, presentation and the external contractor's recommendations on the matter.

IV. Staff Engagement Survey Action Plan – Follow-up

The Chair invited Mr Daniel IHASZ-TOTH, Policy Officer (Adequacy) in the Electricity Department, to present the developments on the Staff Engagement Survey Action Plan.

Mr IHASZ-TOTH explained that the Staff Engagement Survey Action Plan is part of an organisational development cycle that started with the Staff Engagement Survey, whereby staff members were asked about satisfaction and workplace engagement; he recalled that the results indicated key areas to develop, such as cooperation, trust building and professional development.

Mr IHASZ-TOTH informed that the Action Plan is addressing the results of the Staff Engagement Survey; in this respect, a staff working group, along with representatives of departments and the HR support, collected ideas which resulted in a proposed action list. He reported that some projects have been already implemented, for example the publication of ACER contact points, the sharing of senior management meetings agendas, as well as revision of transport policy and administrative support to staff and their families. He then explained that pulse surveys have been used to consult staff on specific topics, for example on the return to work from the office.

Mr IHASZ-TOTH further informed that projects such as a knowledge-sharing platform, cross-departmental project teams and transfers, workload (and remuneration) analysis, as well as the ACER Academy are currently in progress, and clarified that for transparency reasons, the progress of those projects is published on the intranet page of the Agency.

Overall, Mr IHASZ-TOTH indicated that fifty per cent of the projects have been implemented, while the remaining projects are expected to be finalised by the end of 2022. He informed that there is already an ongoing discussion as to whether there should be another engagement survey for the first half of 2023, possibly targeting the first quarter of the year, which may provide new insights and information on the way in which staff members perceive their work environment.

Conclusion: (1) The Administrative Board thanked Mr IHASZ-TOTH for providing an update on the Staff Engagement Survey Action Plan and moved to the next topic.

(4) Consolidated Annual Activity Report – Year 2021

Upon invitation of the Chair, Mr Andrej BELOGLAVEC, Team Leader of Planning, Reporting and Horizontal Policies, presented the Consolidated Annual Activity Report, providing an overview of the activities of the Agency for the year 2021.

Mr BELOGLAVEC informed that the Consolidated Annual Activity Report contains an independent section on the regulatory activities of the Agency, approved last 8 June 2022 by the Board of Regulators, as well as a section on financial and administrative matters.

Mr BELOGLAVEC explained that the Administrative Board is called to adopt and publish the Consolidated Annual Activity Report, on the basis of the draft annual report referred to in Article 19(1)(k) of the Agency's funding Regulation. He clarified that the Report shall be further 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.

Mr BELOGLAVEC further informed that the Consolidated Annual Activity Report is structured according to the template foreseen in the Communication from the Commission on the guidelines for programming document for decentralised agencies and the template for the Consolidated Annual Activity Report for decentralised agencies as revised in 2020.

For future purposes, the Administrative Board requested to have the Consolidated Annual Activity Report in advance, along with a summary of the document, especially for new members. It also congratulated the management of the Agency for reaching the planned objectives.

Conclusion: (1) The Administrative Board thanked Mr BELOGLAVEC for the presentation.

(2) The Administrative Board adopted the Consolidated Annual Activity Report for the year 2021.

(5) Opinion on ACER Final Account – Year 2021

Upon invitation of the Chair, Ms Rodica MANDROC, Team Leader of Budget, Finance and Procurement, presented the Annual accounts for the year ending 31 December 2021.

Ms MANDROC explained that in accordance with Article 102 of the Financial Regulation of the Agency, the Accounting Officer shall draw up the final accounts of the Agency upon receiving the observations on the provisional accounts from ECA. The final accounts shall be sent by the Director to the Administrative Board for an opinion.

She explained that ECA adopted the opinion on the provisional accounts of the Agency on 25 May 2021 and the provisional version of the final accounts were received from the accounting services of DG BUDG on 19 May 2021.

Ms MANDROC informed that the accounting officer of the Agency has certified that the annual accounts of the Agency for the year 2021 have been prepared in accordance with the Financial Regulation and the accounting rules applicable, and declared that he has a reasonable assurance that the accounts present fairly, and in all material aspects, the financial position, the results of the operations and the cash-flow of the Agency.

She further informed that ECA and the external audit firm, have audited the accounts of the Agency and expressed their opinion that these accounts present fairly, in all material aspects, the financial position of the Agency at 31 December 2021, including the results of its operations, its cash flow, and the changes in net assets for the year 2021.

Conclusion: (1) The Administrative Board adopted Opinion No 1/2022 on the final accounts of the Agency for the financial year 2021.

(6) General Implementing Provisions of the Staff Regulation

Upon invitation of the Chair, Ms BORISSOVA informed the Administrative Board about the implementing provisions and model decision to be endorsed by the Agency pursuant to Article 110 of the EU Staff Regulations, subject to the Administrative Board's adoption:

- 1) Implementing provisions on the adoption by analogy of the Commission Decision laying down general implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations to staff members for the duration of temporary assignments to the seat of the institution or any other place of employment in the Union – notified to ACER on 9 February 2022;
- 2) Implementing provisions on home leave for officials, temporary staff and contract staff serving in a third country and repealing Commission Decision C(2013) 9035 final of 16 December 2013 – notified to ACER on 5 May 2022;
- 3) Model decision laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

She explained that the first two implementing provisions are to be adopted by analogy as pro forma, according to the EC guidelines on the implementation of Article 110 of the Staff Regulation, and they do not have implications nor impact on the Agency's staff.

Ms BORISSOVA also informed that the model decision on the conduct of administrative inquiries and disciplinary proceedings has been prepared by the Standing Working Party together with the Commission's IDOC, to fit better the updated EC process into the agencies' structures. In more details, she explained that the text further defines the rules of all actors in the context of an administrative inquiry and the management of data according to the GDPR rules.

Conclusion: (1) The Administrative Board adopted the above-mentioned Implementing Provisions of the Staff Regulation.

(7) Conflict of Interest – Annual Assessment and Suspension of two Alternates of the Administrative Board

Upon invitation of the Chair, the secretariat introduced the topic, explaining that on 27 January 2022, after the designation of the Conflict of Interest Review Panel, the Agency launched the Conflict of Interest exercise for the year 2022.

The secretariat explained that the declarations of interest, declarations of commitment and Curriculum Vitae for the year 2022 were published on the Agency website; where necessary, Members and Alternates of the Administrative Board were requested to provide clarifications in relation to their documentation.

The secretariat reported that on 1 June 2022, the Review Panel finalised the assessment for each Member and Alternate Member, in accordance with the procedure and rules established by the Administrative Board with Decision No. 2 of 31 January 2015 laying down the policy for the prevention and management of conflict of interest. The Review Panel found that no Member or Alternate Member who submitted the declarations indicated interests pertaining directly to the field of competence of the Administrative Board, and no conflict of interest was found.

The secretariat further reported that despite several reminders and additional attempts to provide support, two Alternate Members, Mr Péter KADERJÁK and Mr Zhecho Donchev STANKOV, failed to submit their declaration of interest, declaration of commitment and Curriculum Vitae. Therefore, the secretariat informed the Administrative Board about the Review Panel's proposal to suspend Mr KADERJÁK and Mr STANKOV and to inform the Council, being their appointing authority.

In relation to the Minutes of the Review Panel, the secretariat informed that ECA would like more transparency, in order to prove to the public that an actual assessment of conflict of interest has been performed; therefore, the Review Panel is proposing to publish the Minutes containing all the assessments. The secretariat explained that the publication of the assessments is also relevant for the Board of Appeal, as it would be a better way to prove to the public that an actual assessment of conflict of interests has been performed, and that the relevant Board is aware of the risks and it can control them.

The secretariat mentioned also the proposal to disclose the Minutes of the assessment conducted by the Review Panel of the Board of Appeal and of the Administrative Board to both Boards respectively. The secretariat explained that this does not apply to the Board of Regulators, as the latter does no longer have to issue a conflict of interest policy vis-à-vis the Board of Regulators. Hence, it would be for the Board of Regulators to decide upon the publication of the Minutes.

Conclusion: (1) The Administrative Board agreed to inform Mr KADERJÁK and Mr STANKOV about the decision to suspend them, and to provide them with a maximum of ten working days to respond to the communication; in the absence of any reaction by the established deadline, the next step would be to inform their appointing authority.

(2) The Administrative Board agreed to publish the Minutes of the annual assessment of conflict of interest carried out by the Review Panel and to disclose the Minutes to the Board of Appeal.

CONCLUSION

The Chair recalled that the Administrative Board met on 15 June 2022 in closed session to prepare the 54th meeting. The meeting started at 17h30 and ended at 19h30.

The Chair invited the Administrative Board to the 55th Meeting, which will take place on 27 October 2022 in Ljubljana.

In the absence of any other business to be treated, the Chair closed the 54th meeting at 14h30.