

CONSOLIDATED VERSION as amended on 29.11.2017

DECISION BoA No1-2011

**Laying down the rules of organisation and procedure of the Board of Appeal of the
Agency for the Cooperation of Energy Regulators**

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators¹ (hereinafter “Regulation (EC) No 713/2009”), and in particular Article 13(3) and Articles 18 to 20 thereof,

WHEREAS:

- (1) Regulation (EC) No 713/2009 empowers the Agency for the Cooperation of Energy Regulators, hereinafter the "Agency", to take individual decisions in the specific cases referred to in Articles 7, 8 and 9, and establishes a Board of Appeal to decide on appeals against these decisions.
- (2) Since only basic rules are laid down in Regulation (EC) No 713/2009 regarding appeal procedures, it is necessary to provide for detailed rules on organisation of the Board of Appeal as well as for detailed rules of procedure applicable to appeals before that Board, pursuant to Article 19(6) of Regulation (EC) No 713/2009.
- (3) These Rules of Organisation and Procedure should apply also to all other cases where the Agency has been or may be empowered to take individual decisions, in particular pursuant to Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013, Art. 12(6)² and Commission Regulation (EU) 2015/1222 of 24 July 2015, Art. 9(11)³
- (4) To facilitate the handling of appeals, a rapporteur should be designated for each case and his tasks should be determined.

¹ OJ L 211, 14.8.2009, p.1.

² OJ L115, 25.4.2013, p.39

³ OJ L197, 25.7.2015, p.24

- (5) To ensure that the Board of Appeal can operate smoothly and efficiently, a Registry should be established under its auspices and properly resourced.
- (6) If necessary and on the basis of experience in the application of these Rules of Organisation and Procedure, the Board of Appeal shall review the effectiveness of the provisions and their operation in practice, and amend them where appropriate,

HAS ADOPTED THESE RULES OF ORGANISATION AND PROCEDURE:

CHAPTER I

Organisation of the Board of Appeal

Section 1

The Board of Appeal

Article 1

Composition

1. The Board of Appeal of the Agency shall comprise six members and six alternates. The alternates replace the members in the cases foreseen in these Rules of Organisation and Procedure.
2. The Board of Appeal shall designate a Chairman and a Vice Chairman from among its members. The term of office of the Chairman shall be for a renewable period of two and a half years. The term of office shall in any case expire when the Chairman ceases to be member of the Board of Appeal. These provisions apply mutatis mutandis to the Vice Chairman.

The designation of the Chairman and the Vice Chairman shall be by secret ballot unless the Board of Appeal decides otherwise by unanimity. In case of a secret ballot, a teller shall be designated amongst the members to assist in the counting of the vote.
3. The Chairman or the Vice Chairman, if the Chairman is not available, shall preside over all appeals. He shall ensure the quality and consistency of the decisions of the Board of Appeal.
4. Each appeal shall be decided by six members or alternates of the Board of Appeal.
5. At the latest within 15 working days from the submission of a notice of appeal, the Board of Appeal through the Registry shall inform the parties of the composition of the Board that will

hear the appeal, indicating also the alternates available to substitute the members of the Board should the circumstances so require. Those alternates are entitled to access the file of the case but may not discuss its content with the members of the Board of Appeal unless and insofar as the alternate will replace a member.

Article 2

Exclusion of members

1. Members or alternates of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings related to the decision under appeal, or if they participated in the decision under appeal.

If a member or alternate considers that he cannot participate in the appeal proceedings, for one of the reasons referred to in the above subparagraph or for any other reason, the member or alternate must communicate it without undue delay to the Board of Appeal.

2. A member of the Board of Appeal shall immediately inform the Board in the event that he or she, for one of the reasons referred to in paragraph 1 or for any other reason, considers that a fellow member or alternate should not take part in any appeal proceedings. Any party to the appeal proceedings may object to the participation of a member or alternate of the Board of Appeal on any of the grounds referred to in paragraph 1, or if suspected of bias. Such an objection shall be inadmissible if it is based on the nationality of a member or if, while being aware of a reason for objecting, the objecting party to the appeal proceedings has taken a procedural step in the appeal proceedings other than objecting to the composition of the Board of Appeal.

3. The member or alternate of the Board of Appeal concerned shall be invited to present his comments regarding the reasons for any objection before a decision is taken.

The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned. For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. If the alternate finds himself in a similar situation to that of the member or he or she is being excluded, the Chairman shall designate a replacement from among the available alternates.

4. The provisions contained in this Article in relation to members shall also apply to alternates replacing members pursuant to Article 3 of these Rules of Organisation and Procedure.

Article 3

Replacement of members

1. The Board of Appeal shall replace a member by his alternate where it decides to exclude him from the proceedings in accordance with Article 18 of Regulation (EC) No 713/2009 and/or Article 2 and/or 3(2) of these Rules of Organisation and Procedure.

If a member leaves before the end of its term, his alternate shall take place until the Administrative Board of the Agency appoints a new member or alternate of the Board of Appeal.

2. The Board of Appeal may replace any member of the Board, at the request of that member, by his alternate in the event of leave, sickness, unavoidable commitments of that member or where, for other reasons, that member is precluded from participating in the proceedings.

If a member is unable to ask for replacement, the Board of Appeal may replace him on its own initiative.

The Board of Appeal may reject a request for a replacement only by a reasoned decision.

3. In the event that an alternate called to replace a member is unable to participate in the proceedings due to any reason specified in Article 18 of Regulation (EC) No 713/2009 or to Article 2 and/or 3(2) of these Rules of Organisation and Procedure, the next available alternate following the order in which the corresponding members appear in the appointment decision by the Administrative Board shall be designated. The next alternate to the alternate corresponding to the member who appears as the last one in the order in which members appear in the appointment decision by the Administrative Board is the alternate corresponding to the member who appears as the first one in the order in which members appear in the same decision.

4. In case of replacement of a member pursuant to this Article, all rights and obligations of the member as laid down in Article 18 of Regulation (EC) No 713/2009 and in these Rules of Organisation and Procedure shall also apply to his/her alternate.

5. If a member or alternate is replaced, the alternate concerned shall be bound by any interim decision taken prior to that replacement.

6. The absence of a member after the Board of Appeal has taken a final decision shall not preclude the Board of Appeal from carrying out the remaining procedural steps.

If the Chairman is unable to sign the decision or to carry out other remaining procedural steps, the Vice Chairman shall carry out those steps on behalf of the Chairman.

Article 4

Independence

1. The members and alternates of the Board of Appeal shall undertake to act independently and in the public interest. They shall not be bound by any instructions.
2. For that purpose, the members and alternates shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be given annually and entered in the Registry and shall be accessible to the public.
3. At each meeting, the members and alternates shall declare any interest which could be considered to be prejudicial to their independence with respect to any point on the agenda. Anyone declaring such interests shall not attend any deliberations of nor participate in any voting on the relevant point.
4. Members and alternates shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators. This is without prejudice to the need for members and alternates to be kept up to date with the work of the Agency.
5. In implementing these provisions, due account will be taken of Decision AB No 02/2015 of the Administrative Board of the Agency of 31 January 2015 including, as an attachment, the document “Policy for the prevention and management of conflicts of interest”, and in particular Art 4(2) of that document. This document is available on the Agency’s website.

Article 5

Rapporteur

1. The Chairman shall designate one of the other members or, in case of replacement, alternates deciding an appeal as rapporteur for the case or fulfill that function himself, taking into consideration the need to ensure a balanced distribution of workload between all members and alternates.
2. The rapporteur shall carry out a preliminary study of the appeal.
3. The Chairman acting on behalf of the Board of Appeal may, upon a proposal from the rapporteur, prescribe any of the procedural measures provided for in Article 19.

The implementation of those measures may be entrusted to the rapporteur, with the assistance of the Registrar.

4. The rapporteur shall prepare a draft decision.
5. If the member or alternate designated as rapporteur is replaced at any stage during the appeal process, the Chairman designates another member or alternate deciding on the appeal as rapporteur.

6. The rapporteur will receive the necessary support for his or her work.

Article 6

Venue of Board of Appeal meetings

Save exceptional circumstances, meetings of the Board of Appeal shall be held at the seat of the Agency. Meetings can be also held by video-conference or by using other communication technology means.

Section 2

The Registry

Article 7

Registry and Registrar

1. The Board of Appeal shall be assisted in the exercise of its duties by the Registry headed by a Registrar, who shall be appointed by the Board on proposal of the Chairman.

The Chairman shall have the power to give directions to the Registrar on matters relating to the exercise of the functions of the Board of Appeal.

2. The Registry will provide the framework for the proper functioning of procedures and all related services.

3. The task of the Registry shall include the receipt, transmission and custody of documents, and the effecting of other services as provided for by these Rules of Organisation and Procedure. These services will also establish a source of analysis and knowledge relevant to the work of the Agency, but independent of the Agency.

4. A Register of appeals shall be kept in the Registry in which references to all notices of appeal and related documents are entered.

5. The staff of the Registry, including the Registrar, may not participate in any proceedings of the Agency relating to decisions which may be the subject of appeals under Article 19 of Regulation (EC) No 713/2009.

6. For every case the Registrar will without delay establish a detailed time schedule for the different stages of the procedure subject to the agreement of the Chairman and taking account of the time limits under Article 19.2 of the Regulation (EC) No 713/2009.

The Registrar shall verify that the time limits and other formal conditions relating to the lodging of appeals are complied with.

7. The Chairman of the Board of Appeal may delegate the power of signature to the Registrar for the purpose of setting or extending time limits and for other procedural measures which, pursuant to these Rules of Organisation and Procedure, fall to the Chairman to prescribe.

8. The Registrar will keep a file of the written declarations of commitment and the written declarations of interest and assist the members and alternates in fulfilling their obligations resulting from Article 4 of the present Rules of Procedure.

9. The Agency will provide the necessary resources for the operation of the Registrar and the Registry.

10. In the absence of the Registrar or, in the event of him/her being prevented from carrying out the relevant duties, those duties shall be performed by the officer designated as Deputy Registrar or, in the event of the latter being prevented from carrying out the relevant duties, by the subordinate member of staff of the Registry present in the highest function group with the highest grade or, in the event of equal grade, the subordinate with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest.

CHAPTER II

The procedure

Article 8

Notice of appeal

1. The notice of appeal shall contain:

- (a) the name and address of the appellant;
- (b) where the appellant has appointed a representative, the name and the business address of the representative;
- (c) an address for service, if different from those under points (a) and (b);
- (d) the reference of the decision which is being contested and the remedy sought by the appellant;
- (e) the pleas in law and the arguments of fact and law relied on;
- (f) where appropriate, the nature of any evidence offered and a statement explaining the facts for which the evidence is offered in support;

- (g) where appropriate, an indication as to what information in the notice of appeal is to be regarded as confidential. Sufficient information must however be made available for a meaningful announcement pursuant to Article 8(3);
- (h) an indication whether the appellant agrees that service is to be effected on him or, where appropriate, on his representative by telefax, e-mail or other technical means of communication.

2. Where the appellant is a legal person, the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law shall also be attached.

3. In order to facilitate the preparation of the announcement, the appellant shall attach to the notice of appeal a non-confidential summary of the dispute in the language of the case and in English. That summary should not exceed one page and shall include:

- (a) the name of the appellant;
- (b) the related disputed decision;
- (c) the particulars of the remedy sought by the appellant; and
- (d) a summary of the principal grounds relied on.

4. If a notice of appeal does not comply with the requirements set out in paragraph 1(a) to (e) or paragraph 2, the Registrar shall prescribe a reasonable period within which the appellant is to comply with them. The Registrar may prescribe such period only once.

During that period, time shall not run for the purposes of the time limit set out in Article 19(2) of Regulation (EC) No 713/2009.

5. If an irregularity is detected which is liable to make an appeal inadmissible, the Registrar shall send within one calendar week a reasoned opinion to the Chairman.

Where the Registrar prescribes a period in accordance with paragraph 4, he shall send such opinion after that period has expired if the irregularity has not been corrected.

6. The Registrar shall circulate the notice of appeal to the Board of Appeal and to the parties of the proceeding without delay.

7. Where the appellant is not the addressee of the contested decision, the Registrar shall inform the latter of the lodgment of an appeal against such decision.

Article 9

Announcement of the appeal

1. An announcement shall be published on the website of the Agency, indicating the date of registration of an appeal initiating proceedings, the names and addresses of the parties, the subject matter of the proceedings, the remedy sought by the appellant, a summary of the pleas in law and of the main supporting arguments; the date of publication of the announcement on the website of the Agency, the case number of the appeal to which it relates, and an indication of the language of the case.

The Chairman may decide that an announcement shall contain additional information relevant to the appeal case in question.

2. The announcement shall be published within one calendar week of receipt of the notice of appeal by the Agency.

The announcement is considered to be published when it is made available to the public on the website of the Agency.

3. The announcement shall be published in the language in which the notice of appeal has been lodged and also in English in case the said language is not English.

Article 10

Defence

1. The Agency shall lodge the defence within three calendar weeks after service of the notice of appeal.

The Chairman may, in exceptional circumstances, extend that time limit on a reasoned application by the Agency.

2. The defence shall contain:

(a) where the Agency has appointed a representative, the name and the business address of the representative;

(b) the pleas in law and the arguments of fact and law relied on;

(c) where appropriate, the nature of any evidence offered and a statement explaining the facts for which the evidence is offered in support;

(d) where appropriate, an indication as to what information in the defence is to be regarded as confidential, and the reasons for the claimed confidentiality;

(e) an indication whether the Agency agrees that service is to be effected on it or, where appropriate, on its representative, by telefax, by e-mail or other technical means of communication.

3. Where the Agency, despite being duly summoned, fails to lodge a defence, the proceedings shall continue without a defence.

Article 11

Intervention

1. Any person establishing direct and existing interest in the result of the case submitted to the Board of Appeal may intervene in the proceedings before the Board of Appeal.

2. An application stating the circumstances establishing the right to intervene shall be submitted within seven working days from the day of the publication of the announcement referred to in Article 9(2).

3. The intervention shall be limited to supporting or opposing, in whole or in part, the form of remedy sought by one of the parties. It shall not confer the same procedural rights as those conferred on the parties and, in particular, shall not give rise to any right to request that a hearing be held.

The intervention shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Board of Appeal as a result of a party's discontinuance or withdrawal from the proceedings, or where the notice of appeal is declared inadmissible.

The intervener must accept the case as he finds it at the time of his intervention.

4. The application to intervene shall contain:

(a) the name and address of the intervener;

(b) where the intervener has appointed a representative, the name and the business address of the representative;

(c) an address for service, if different from those under points (a) and (b);

(d) a statement of the circumstances establishing that the applicant is directly affected by the operative part of the contested measure and that it has an interest in the result of the case;

(e) a statement of the remedy sought by the intervener in support of or opposing, in whole or in part, the remedy sought by one of the parties;

(f) the pleas in law and the arguments of fact and law relied on;

(g) where appropriate, the nature of any evidence offered in support;

- (h) where appropriate, an indication as to what information in the application to intervene is to be regarded as confidential, and the reasons for the claimed confidentiality;
- (i) an indication whether the intervener agrees that service is to be effected on him or, where appropriate, on his representative by telefax, e-mail or other technical means of communication.
5. The application shall also bear the signature of the intervener or his representative. Where the applicant is a legal person, the instrument or instruments constituting and regulating that legal person or a recent extract from the register of companies, firms or associations or any other proof of its existence in law shall also be attached.
6. The Registrar shall circulate the request of intervention to the parties of the proceeding without delay. The parties may make observations to the application within the deadline prescribed by the Registrar.
7. The Board of Appeal shall decide whether or not to allow the applicant to intervene. The application for intervention not fulfilling the criteria set up in subparagraph 4 will be assessed as submitted, without any invitation for regularization.
8. Where the Board of Appeal decides to allow the intervention, the intervener shall receive a copy of every procedural document served on the parties provided for that purpose to the Board of Appeal by the parties or shall receive an access to those documents in other appropriate way. Confidential parts of documents shall be excluded from such communication.
9. The intervener can make one supplementary submission concerning paragraph 4 (e)-(h). This submission must be made within 5 working days after receipt of the procedural documents according to subparagraph 8.
10. Interveners shall bear their own costs, in accordance with Article 28.

Article 12

Representation

Where a party or intervener has appointed a representative, that representative shall provide an authority to act issued by the represented party or intervener.

Any change in representation must be notified to the Registry in writing without delay.

Article 13

Lodging of procedural documents

1. In accordance with Article 1(5), the Registry shall inform the parties of the composition of the Board that will hear the appeal and inform them that any communication concerning the appeal must be lodged with the Registry.
2. For the purposes of calculating time limits, a document shall not be considered to have been lodged until it is received at the Registry.
3. All pleadings shall be signed by the lodging party or his representative and shall bear a date.
4. A party may submit documents to the Registry by hand or by post. However, the Board of Appeal allows documents of a party to be lodged by telefax, e-mail or by any other technical means of communication.

Details with regard to submission of appeals by telefax, e-mail or other technical means of communication are set out in the Practice Directions published together with these Rules of Procedure.

Article 14

Confidentiality requests

1. A request for the confidential treatment of any information contained in a document filed in connection with proceedings before the Board of Appeal shall be made in writing at the time the document is lodged, under a separate heading of the procedural document in question or by a separate application lodged together with the principal documents.

The request shall indicate the relevant words, figures or passages for which confidentiality is claimed, together with the reasons for that request. For every confidentiality request sufficiently detailed reasons are required.

2. The Chairman acting on behalf of the Board of Appeal shall evaluate, with the assistance of the Registrar, the confidentiality request pursuant to the relevant provisions of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
3. After a confidentiality request has been accepted in its entirety or partially, “non-confidential” and “marked confidential” versions of the relevant document should be submitted to the Registry.

Article 15

Admissibility of the appeal

1. The grounds on which an appeal shall be ruled inadmissible shall include the following:

(a) the notice of appeal is not in compliance with the requirements set out in Article 8(1)(a) to (e), (2) and Article 13(3) of these Rules of Organisation and Procedure within the time-limit for submitting an appeal as set out in Article 19(2) of Regulation (EC) No 713/2009;

(b) the appellant has exceeded the time limit for submitting an appeal as set out in Article 19(2) of Regulation (EC) No 713/2009;

(c) the appeal is not brought against a decision referred to in Article 19(1) of Regulation (EC) No 713/2009, or where the Agency has been otherwise given the power to take individual decisions.

(d) the appellant is neither an addressee of the decision contested by the appeal nor able to establish direct and individual concern according to Article 19(1) of Regulation (EC) No 713/2009.

2. In order to avoid any unnecessary proceedings, the Chairman of the Board of Appeal assisted by the Registrar shall examine whether the appeal is admissible without undue delay of the appeal being filed in accordance with Article 19 of Regulation (EC) No 713/2009. In the negative, he shall submit a proposal for decision of inadmissibility to the Board of Appeal. The absence of any such proposal shall not prevent the Board of Appeal from still taking a decision on the admissibility.

Article 16

Examination of appeals

1. No further evidence may be introduced after the first exchange of written pleadings unless the Board of Appeal decides that the delay in offering the evidence is duly justified.

2. No new plea in law may be introduced after the first exchange of written pleadings unless the Board of Appeal decides that it is based on new matters of law or of fact that come to light in the course of the proceedings.

3. Where appropriate, the Chairman acting on behalf of the Board of Appeal shall invite the parties to the proceedings to submit observations on notifications issued by the Board of Appeal or on communications from the other party.

The Chairman shall set a reasonable period for submission of the observations, duly taking into account the time constraints provided in Article 19(2) of Regulation (EC) No 713/2009.

4. The Chairman acting on behalf of the Board of Appeal shall notify the parties of the closure of the written part of the proceedings.

Article 17

Hearings

1. The Board of Appeal shall hold a hearing if either or both parties request so.

The request shall be submitted within three working days from notification to the party of the closure of the written part of the proceedings. This period may be extended by the Chairman.

If the Board of Appeal decides to hear experts or witnesses, they have an obligation to testify and tell the truth according to best knowledge. The Board of Appeal notifies experts and witnesses of this obligation through the Registrar before the hearing taking place.

2. The summons to the hearing shall be communicated to the parties by the Registrar.

3. If a party which has been duly summoned to a hearing does not appear as summoned, the proceedings may continue without that party.

4. Hearings before the Board of Appeal shall be public, unless the Board of Appeal, of its own motion or at the request of a party, decides otherwise, for serious reasons. In order to allow proper time planning and compliance with the time constraint set in Article 19(2) of Regulation No 713/2009, the Registrar shall publish a possible schedule for a hearing for each appeal on the Agency's website as soon as the announcement of an appeal is published. This date will only be confirmed formally if the Board of Appeal decides to hold such a hearing in accordance with paragraph 1.

5. The hearing shall be opened and directed by the Chairman, who shall be responsible for its proper conduct.

The Chairman and the other members and alternates deciding on the appeal may put questions to the parties or their representatives. At the hearing where the parties communicate their final oral arguments, the Agency (as defendant) is heard last.

6. The Registrar shall be responsible for drawing up summary minutes of the hearing. A full audio record of the hearing may be recorded on an appropriate electronic device for the sole purpose of preparing the summary minutes. In that case, the parties and other persons participating in the hearing shall be duly informed in advance and offered a possibility and procedure to opt-out. Rights of the participants and other persons participating in the hearing pursuant to the European Union's legal framework on data protection will be fully complied with.

The minutes shall be signed by the Chairman and the Registrar and shall constitute an official record. The minutes shall be sent to the parties by the Registrar.

The Registrar shall keep the audio recordings for no longer than follow-up actions to the hearing are necessary and in any case no longer than 30 days following the last day of the hearing. After the expiration of that period the Registrar shall delete the audio record of the hearing.

7. The hearing may be held by video-conference or by using other communication technology if the technical means are available, as long as the identity of the intervening parties can be ascertained.

Article 18

Use of languages

1. The language in which the notice of appeal has been lodged shall be the language of the case on appeal.

If the appellant is the addressee of the decision against which the appeal is brought, the notice of appeal shall be lodged in the language of the decision or in one of the official languages of the Community appearing in the submission which gave rise to the decision.

The Chairman acting on behalf of the Board of Appeal may accept to change the language of the case to another official language of the Community, if this is jointly requested by both parties and if this is compatible with the time constraint set in Article 19(2) of Regulation No 713/2009. Any request to change the language of the case should be submitted within one calendar week after service of the notice of appeal to the parties of the proceeding in accordance with Article 8(6).

2. The language of the case shall be used in the written and oral proceedings and in the minutes and decisions of the Board of Appeal.

Any supporting documents in another language shall be accompanied by a translation into the language of the case.

In the case of lengthy documents, translations may be confined to extracts. However, the Board of Appeal may, of its own motion or at the request of a party, at any time require a more extensive or complete translation.

3. At the request of a party, and after the other party has been heard, the Chairman acting on behalf of the Board of Appeal may authorize the use of an official language of the Community other than the language of the case for all or part of the proceedings.

4. Where the Board of Appeal authorizes the use of a language other than the language of the case, the Registry shall arrange for translation or interpretation.

Article 19

Procedural measures

1. The Chairman acting on behalf of the Board of Appeal may prescribe procedural measures at any point in the proceedings, either at request of the rapporteur, or at the request of any other member, of his own motion or at the request of the parties.
2. The purpose of procedural measures shall, in particular, be to:
 - (a) ensure the efficient conduct of the proceedings and facilitate the taking of evidence;
 - (b) determine the points on which the parties must present further arguments;
 - (c) clarify the remedies sought by the parties, their pleas in law and arguments and the points at issue between them.
3. Procedural measures may, in particular, consist of:
 - (a) putting questions to the parties;
 - (b) inviting the parties to make written or oral submissions on certain aspects of the proceedings;
 - (c) asking the parties or third parties for information;
 - (d) asking for documents relating to the case to be produced;
 - (e) summoning the parties or their representatives to meetings;
 - (f) drawing attention to matters which seem to be of special significance, or to the fact that certain questions appear no longer to be contentious;
 - (g) making observations that may help to keep the focus on essentials during the proceedings;
 - (h) merging appeals on similar or connected subjects before the closure of written proceedings.

Article 20

Competence

1. The Board of Appeal may exercise any power which lies within the competence of the Agency.

If the Board of Appeal remits the case to the competent body of the Agency in accordance with Article 19(5) of Regulation (EC) No 713/2009, the latter shall be bound by the reasoning in the decision of the Board of Appeal save in so far as a change in circumstances occurs.

2. An appeal lodged pursuant to Article 19(1) of Regulation (EC) No 713/2009 shall not have suspensory effect. The Agency may, however, if it considers that circumstances so permit, suspend the application of the contested decision. The latter is without prejudice to the

provisions under Article 26 on suspension of the application of the contested decision by the Board of Appeal.

Article 21

Deliberations

1. Deliberations shall be and shall remain secret. This shall not prevent, with the Chairman's consent, other members or alternates attending the deliberations of those deciding the appeal.
2. During the deliberations, each member shall state his opinion and the reasons for it. The opinion of the rapporteur shall be heard first and, if the rapporteur is not the Chairman, the opinion of the Chairman last.

Article 22

Voting

1. If voting is necessary, votes shall be cast in the sequence provided for in the second subparagraph of Article 21(2). However, if the Chairman is also the rapporteur, he shall vote last.
2. Decisions shall be taken on the basis of a qualified majority of at least four of its six members/alternates.

Abstentions shall not be permitted.

3. The Chairman may propose a written procedure by sending an express or an electronic mail with the draft decision and relevant background information. Any member may, within seven calendar days, raise written objections or may request to convene an extraordinary meeting. The voting rules of paragraphs 1 and 2 apply *mutatis mutandis*. In case of urgency the Chairman may shorten that period to three working days.

In case of serious objections, the Chairman may decide whether the written procedure is suspended and an extraordinary Board of Appeal meeting should be convened, or whether the revised draft decision, together with the serious objections, should be re-circulated to all Board members and the written procedure should be continued. In the latter case, a new three working days period for objections shall be started.

Meetings can also be held by video-conference or by using other communication technology means.

Article 23

Decisions

1. The decision shall contain:

- (a) a statement that the decision is delivered by the Board of Appeal;
- (b) the date when the decision was taken;
- (c) the names of the members of the Board of Appeal who have taken part in the proceedings;
- (d) the names of the parties to the appeal and their representatives in the proceedings;
- (e) a statement of the remedy sought by the parties;
- (f) a summary of the facts;
- (g) the grounds on which the decision is based;
- (h) the operative part of the decision of the Board of Appeal.

2. The Chairman and the Registrar shall sign the decision. The signatures may be electronic.

The original of the decision shall be deposited at the Registry.

3. The decision shall be served on the parties in accordance with Article 24.

4. The decision shall be accompanied by a statement that it may be challenged pursuant to Article 263 of the Treaty on the Functioning of the European Union and Article 20 of Regulation (EC) No 713/2009. The statement shall include the time limit for commencing that action.

Failure to include that statement shall not render the decision invalid.

5. Final decisions of the Board of Appeal shall be published in full on the public website of the Agency, unless the Chairman decides otherwise on the reasoned request of a party. An associated press release may also be published.

Prior to publishing the final decision of the Board of Appeal, the appellant shall be granted the possibility to indicate whether certain information mentioned in the decision is confidential. The procedure as described in Article 14 shall in this respect be followed.

Article 24

Service of documents

The Registrar shall ensure that the decisions and communications of the Board of Appeal are served on the parties.

Service shall be effected by one of the following means:

1. registered post with a form for acknowledgement of receipt;
2. personal delivery of the copy against a receipt;
3. any technical means of communication available to the Board of Appeal which the party or its representative has agreed to accept for such purposes.

Article 25

Time limits

1. Any period prescribed by or set under Regulation (EC) No 713/2009 or these Rules of Organisation and Procedure for the purposes of appeal proceedings shall be calculated in accordance with paragraphs 2 to 6 of this Article.
 2. Where a period expressed in days, weeks, months or years is to be calculated from a day on which an event occurs or an action takes place, that day shall not be considered as falling within the period in question.
 3. A period expressed in days shall start at the beginning of the first hour of the first day and shall end with the expiry of the last hour of the last day of the period.
 4. A period expressed in weeks, months or years shall start at the beginning of the first hour of the first day of the period, and shall end with the expiry of the last hour of whichever day in the last week, month or year is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place.
- If, in a period expressed in months or in years, the day on which it should expire does not occur in the last month, the period shall end with the expiry of the last hour of the last day of that month.
5. Where a period is expressed in months and days, it shall first be calculated in whole months, then in days.
 6. Periods shall include official holidays of the Agency, Saturdays and Sundays, save where the periods are expressed in working days.
 7. If a period would otherwise end on a Saturday, Sunday or official holiday of the Agency, the period shall end with the expiry of the last hour of the first following working day.

Article 26

Suspension of the application of the contested decision

1. Upon application of a party to the proceeding or of its own motion, the Board of Appeal may suspend the application of the contested decision.
2. The application to suspend the application of the contested decision shall be admissible only if the applicant has challenged that decision in an action before the Board.
3. The application shall state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the suspension applied for.
4. The application shall be served on the opposite party, and the Chairman shall prescribe a short time-limit within which that party may submit written observations.

The decision on the application shall take the form of a reasoned order not subject to appeal. The order shall be served on the parties forthwith.

Article 27

Withdrawal of an appeal

Where an appeal is withdrawn, the Chairman shall close the proceedings. This closure will be published on the public website of the Agency.

Article 28

Allocation of costs

All parties and interveners carry their own cost that may result from the application of any provisions of these Rules of Organisation and Procedure

Article 29

Rectification

The Board of Appeal may, after hearing the parties, of its own motion or on application by a party made within one month after the decision has been served, rectify clerical mistakes, errors in calculation and obvious mistakes in the decision.

CHAPTER III

Final provisions

Article 30

Implementing measures

1. These Rules of Organisation and Procedure are adopted by the Board of Appeal on the basis of a qualified majority by two thirds of its members and alternates.
2. The Board of Appeal may adopt additional decisions containing measures which implement the provisions laid down in these Rules of Organisation and Procedure in further detail.

These Rules of Organisation and Procedure are published on the public website of the Agency upon their adoption.

Article 31

Entry into force

This decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 29.11.2017

For the Board of Appeal,

Andris Piebalgs

Chairman of the Board of Appeal