

61st Administrative Board Meeting**Ordinary session (hybrid mode)****Wednesday, 24 January 2024, 16:00 - 18:00****Thursday, 25 January 2024, 09:00 - 14:45**ACER premises, Trg republike 3, 1000 Ljubljana, 6th floor meeting room
and by videoconference**MINUTES**

Members and Alternates of the Administrative Board, present at the meeting:		Function
Mr Michel THIOLLIÈRE		Chair
Ms Edit HERCZOG		Vice-Chair
Dr Paul RÜBIG (present online on 24 and 25 January 2024)		Member
Dr Jurijs SPIRIDONOVŠ (present online on 24 and 25 January 2024)		Member
Mr Bogdan CHIRIȚOIU		Member
Ms Karin LUNNING		Member
Mr Václav BARTUŠKA		Member
Mr Christof LESSENICH (present online on 24 and 25 January 2024)		Alternate
Ms Rebecca HARMS (present online on 24 and 25 January 2024)		Alternate
ACER	Christian Pilgaard ZINGLERSEN, Olga BORISSOVA, Volker ZULEGER, Rafael MURUAIS GARCIA, Cristina VAZQUEZ HERNANDEZ, Seamus Cathal BYRNE, Rodica MANDROC, Valter ILIĆ, Silvia MANESSI, Paul MARTINET, Savvas SAVIDES, Tina VONČINA	
Board of Regulators	Clara POLETTI, Chair of the Board of Regulators	
European Commission	Michael SCHUETZ, Juan-Ignacio DE DIOS MORALES (both present online)	

Ms Anne MONTAGNON (the EC member) gave proxy to Mr Christof LESSENICH for 24 and 25 January 2024, while Mr LESSENICH is also the alternate of Ms Ditte JUUL-JØRGENSEN.

Mr Christian Pilgaard ZINGLERSEN (ACER Director) and Ms Clara POLETTI were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 24 January 2024.

The Secretariat was provided by the Agency.

SUMMARY OF CONCLUSIONS OF THE 61ST MEETING OF THE ADMINISTRATIVE BOARD

At the 61st meeting, the Administrative Board:

1) adopted by unanimity the fourth amendment to the 2023 ACER Budget and Establishment Plan;
2) was updated with the state of play of 2024 conflict of interest process and agreed to extend a date for the submission of relevant conflict of interest documents by 9 February 2024;
3) appointed the Vice-Chair Mr Chiritoiu as a rapporteur responsible for the appointment process of ACER Director and Mr Rübige as a co-rapporteur for budget;
4) was provided with key conclusions of the Agency's recent flagship Market Monitoring Report and current outcome of the legislative package on the Electricity Market Design;
5) took note of the activities of the Board of Regulators and suggested to organize a session with the Energy Community;
6) congratulated the Agency for the implementation of the 2023 budget and procurement plan;
7) requested to receive the 2024 operational procurement plan to follow its roll-out during the year;
8) asked for an evaluation of the pilot phase of the on-going process on simplification and decentralisation of the procurement procedures once it is completed;
9) welcomed the support the Agency has been providing to the Board of Appeal;
10) considers a structural solution preferable for the challenge of covering legal costs in particularly challenging 'spike cost' years and encourages such solutions to be further developed, though noting the potentially challenging context in the coming years;
11) expressed support for the outlined recruitment policy and HR projects;
12) called for a more structured approach of the Agency vis-a-vis Slovene authorities and different stakeholders;
13) was informed about the organigram of the Agency's reorganisation taking effect as from 1 February 2024;
14) was updated on the cyber incident and agreed on the suggested follow-up;
15) got acquainted with the current functioning of the Board of Appeal and reconfirmed its commitment for a regular and timely exchange of views with the Board of Appeal;
16) endorsed by unanimity the draft Single Programming Document 2025-2027.

1. OPENING

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

1.1 Approval of the agenda

The agenda of the 61st meeting was approved.

2. DISCUSSION AND DECISION-MAKING

2.1. Fourth amendment to the 2023 ACER budget and Establishment plan

Ms Olga Borissova, head of the Corporate Service Department, reported that the Agency had received on the 22 December 2023 additional revenue in form of a registration fee from one new Registered Reporting Mechanism whose application was processed during 2023. As the incoming payment of 4,500 EUR represented additional revenue for the Agency, the 2023 budget needed to be amended by the fourth amendment to reflect this revenue.

Decisions/ Conclusions

The Administrative Board adopted by unanimity the fourth amendment to the 2023 ACER Budget and Establishment Plan.

2.2. Launch of the 2024 conflict of interest annual cycle

The Chair underlined the importance of management and prevention of conflict of interest policy for ensuring the independence of the Administrative Board and for maintaining trust of stakeholders and citizens in the Agency's integrity. He recalled the obligation for Board members and alternates to submit their duly signed annual Declaration of Interests (DoIs), Declaration of Commitment and CVs for review by the Review Panel and publication on the ACER website.

To give more time to new members, the Administrative Board agreed to extend the deadline for submission of relevant conflict of interest documents from 31 January 2024 to 9 February 2024. It was agreed that the AB Secretariat should provide one more time all information on the 2024 conflict of interest cycle to members and alternates in writing.

The AB Secretariat also informed the Board about a follow-up to the conclusion of the 60th meeting in December 2023 that in case the Council of the EU does not report back to the Board its decision on conflict of interest situation of the two alternates, the Chair would write again to the Council. The Chair sent a letter addressed to the current Belgian Presidency of the Council on 5 January 2024 calling on the Council to resolve the issue of these two outstanding cases to enable the Administrative Board to function in 2024 with fully fledged members and alternates. The Council confirmed the receipt of the letter and replied it had been analysing the two cases.

Decisions/ Conclusions

The Administrative Board was updated with the state of play of 2024 conflict of interest process and agreed to extend a date for the submission of relevant conflict of interest documents by 9 February 2024.

2.3. Session with presence of members and alternates only

The incoming AB Chair Ms Edit Herczog informed the Board that she intends to keep a system of rapporteurs, responsible for following a certain file of key importance for the Board's mandate. She invited members and alternates to reflect on the areas they would like to work on.

She informed the Board that she had offered to the Board's Vice-Chair Mr Chiritoiu to be appointed as the rapporteur for nomination process of the ACER Director, as the completion of this process in timely, professional and fair manner would be one of the Administrative Board's key tasks in 2024. Mr Chiritoiu accepted the rapporteurship.

Ms Herczog invited new Member Mr Rübzig to reflect on taking from her the rapporteurship on the budget given his longstanding experience in the European Parliamentary budgetary committee. Alongside the other rapporteur for budget Mr Spiridonovs this would ensure the budget would be followed by members appointed by two institutions (the EP and the Council). Mr Rübzig agreed to the rapporteurship.

Ms Herczog also informed the Board that the next 62th meeting in March 2024 would be a hybrid one, giving possibility to meet in person and thus to build a cohesion in a year of significant membership changes.

The Administrative Board appointed the Vice-Chair Mr Chiritoiu as a rapporteur responsible for appointment process of the ACER Director and Mr Rübzig as a co-rapporteur for budget.

2.4. Energy market and regulatory developments – recent acer actions, efforts, perspectives and reflections

The Director and ACER colleagues updated the Board with key recommendations of the Agency's 2023 flagship Market Monitoring Report "on the demand response and other distributed energy resources" that was published on 15 December 2023 and presented to the energy ministers at the December 2023 Council. With energy transition and penetration of intermittent renewables, future flexibility needs will increase significantly and should double by 2030. While unlocking the demand response seems to be challenging, it provides also for many opportunities in balancing energy system (e.g., giving consumer a more active role and creating energy savings by responding to price signals, helping to solve network congestion, reducing the risk of grid overload, reducing peak prices, preventing blackouts, etc.). The report identifies different barriers that are holding back the potential of demand response and provides a set of recommendations for governments, regulators and system operators to remove regulatory barriers and restrictions.

In addition to this rather top-down approach aiming to increase flexibility in the system, also the retail sector has become more and more crucial for delivery of energy transition. Thus, the Agency has been contemplating – in cooperation with the Board of Regulators – how to make the established Retail Market Monitoring Report more impactful. ACER colleagues informed the Administrative Board about intentions of slicing the usual comprehensive volume into a bundle of reports that will be published throughout the year and inform better audiences by providing important data and information to stakeholders about market evolution, by enhancing the importance of retail, by serving as a key vehicle for advancing insights and showing best practices observed in the transition.

As a follow up to previous meeting in December 2023, the Board was also updated on the outcome of political agreement on the Electricity Market Design and was provided an overview of additional tasks this legislative package assigns to ACER. One of key new tasks is that ACER is asked to prepare the EU flexibility needs assessment (as complementary to national assessments) and to continue to report on barriers to flexibility. ACER will also have new tasks in areas relating to forward markets (regional hubs) aiming to smooth out price volatility and in the assessment on the market for PPAs based on the information from the data collection provided for in the REMIT regulation. To perform these tasks, the Agency was assigned throughout the legislative process additional human and budgetary resources. The Agency thanked the Commission for ensuring an increase from initial 4 posts to the current 15, which makes the resources commensurate with additionally allocated tasks.

Mr Václav Bartuška, the rapporteur for the developments in the Council, reported that in attempt to offset the Russian gas supply, the EU has become significantly dependent on the LNG. However, in 2024 it might be challenging in ensuring adequate LNG supply to the EU, especially from the Middle East and the US. Moreover, the LNG prices could remain significantly high compared to the US which might impact the competitiveness of the European economy. This requires a close vigilance of the Member States.

The Administrative Board welcomed the presentations on recent ACER reports, actions and assessment of possible developments in 2024. It inquired if the new tasks were in line with the mandate of facilitating cooperation of the NRAs or these tasks were bringing ACER more towards an European regulatory agency. Ms Clara Poletti, Chair of the Board of Regulators, admitted that while ACER was set-up to increase cooperation between the national regulators, the regulatory developments and needs gave gradually and with common agreement more powers to ACER. She

stressed that NRAs remain to be fully involved in all processes and the Board of Regulators was asked to provide a favourable opinion on all relevant decisions. The Commission added that all these additional tasks indeed confirmed a changing perception of ACER by the co-legislators. During the recent crisis the latter appreciated the technical expertise of the Agency and hence it was not unexpected that it assigned it many new tasks (e.g., Electricity Market Design).

**Decisions/
Conclusions**

The Administrative Board was provided with key conclusions of the Agency's recent flagship Market Monitoring Report and current outcome of the legislative package on the Electricity Market Design. The latter is the last of the three legislative packages that assigns the Agency many new tasks.

2.4. Board of Regulators – progress report

Ms Clara Poletti, Chair of the Board of Regulators, updated the Board with key outcomes of the Board of Regulators' meeting (24 January 2024). The NRAs received update by the European Commission on electricity market design reform, on the Commission's proposal for a mandate for the negotiations with Switzerland (on ensuring fair competition between EU and Swiss companies operating within the internal market) and on the EU Action Plan for Grids.

Among the decisions, the Board of Regulators discussed the ACER draft Single Programming Document 2025-2027 and it adopted it by consensus, thus giving its favourable opinion to the document that should be in the next step discussed and adopted by the Administrative Board.

It discussed also many other topics, like ongoing work on enduring electricity system in terms of key challenges and on the ACER decision on amended ID Capacity Calculation Methodology. It had an orientation discussion on the ACER decision on the European Resource Adequacy Assessment 2023. Members received updates on relevant Energy Community developments and on energy support activities in Ukraine.

Alternate member Mr Harms informed that she was going to Ukraine in the coming days and asked about the cooperation between Ukraine and ACER. The Director explained that the Ukrainian NRA had recently visited ACER and that since then, direct cooperation and communication were well established. The Director reported about that visit also to the Administrative Board at its 59th meeting in October 2023. In general, ACER has been accommodating and helpful vis-a-vis Ukrainian counterparts, however needs to comply with the institutional set-up according to which Ukraine is part of the Energy Community. While alternate member Ms Harms would report back on her mission to Ukraine at the next Administrative Board meeting, the Administrative Board suggested to organize a session with the Energy Community Secretariat at one of the following meetings.

**Decisions/
Conclusions**

The Administrative Board took note of the activities of the Board of Regulators and suggested to organize a session with the Energy Community.

2.6. Organisational developments (budget & procurement implementation, budgetary challenges, human resources management, European school)

Upon the invitation of the Chair, Ms Olga Borissova, head of the Corporate Service Department, provided the Board with the final implementation rate of the 2023 budget. Both obligatory targets a) on the 2023 commitment rate and b) on the implementation rate of 2022 funds were met and overpassed the 95% target. The first one reached 99,43% and the second one 97,55%. The internal target of achieving 75% payment rate was not reached, but was with 70,69% higher than in previous

year. Ms Borissova recalled also about the 2023 budgetary developments especially in the second half of the year that resulted in four amendments discussed and approved also by the Administrative Board.

The Board was updated also on the implementation of the procurement plan, which implements cca. 43% of the Agency's budget. By the end of 2023, 305 procurement procedures were concluded, surpassing the initial plan of 284 procedures. In addition, the Agency also managed to conclude in December all the procedures to implement the 800k EUR contributed by the Commission to strengthen the Agency's IT security systems. Ms Borissova explained that given the number of procedures and limitations in procurement staff, the Agency started in 2023 to implement a process of simplification and decentralisation of procurement procedures of low value. While such procedures represented only 8% of all procedures, the aim of this pilot project has been to disburden the procurement staff and enable them to focus on procedures of higher value and a more complex ones. The Agency would assess the pilot project in June 2024 and after that take further decisions.

Ms Borissova also informed the Board about the new 2024 budgetary developments since December meeting. Namely as a result of a political agreement on the legislative package on the Electricity Market Design, the Agency is expected to receive more staff and more financial resources as initially planned. Pending final approval of the relevant Regulation in late spring, a budget amendment might be required to align for the difference. Moreover, in 2024 the Agency would need to identify further savings to cover an increase in salaries that were announced by the latest Commission communication.

On the revenue side, the Agency has now better estimations about the amount of revenues generated by the collection of REMIT fees based on the volume of 2023 transactions. The REMIT revenue is expected to be higher than anticipated, thus lowering the gap with the estimated REMIT costs. It was stressed that any difference between REMIT revenue and costs would require reduction in fees related activities. Moreover, it is expected that the 2024 review of the REMIT fee model decision should result in better aligning the revenue and expenditure on the fee related activities.

In addition to the latter, Ms Borissova reminded the Board about the other budgetary challenges that make 2024 a difficult year and were presented and discussed by the Board at its previous meetings in October and December 2023. One of these challenges has namely been budgeting of 2024 employer pension contribution for staff whose salary is covered by REMIT fees. While the Agency is waiting for a DG BUDG decision on the 2021-2023 debt on that issue, it is also expected that from 2025 this expenditure would be structurally addressed by the REMIT fee model decision adjustments expected to be agreed in 2024. The second bigger budgetary challenge in 2024 are costs of lost legal cases for which the Agency has provisioned some reserve funds.

For the two lost legal cases in 2023, ACER had built some buffers with the 2023 budgetary savings which were carried forward to 2024 and should help paying the amount of legal costs once they are agreed by both parties. In addition to these two 2023 legal cases, the Board was informed again that 2024 could be quite extraordinary year in terms of expected Court decisions that could still go different ways: can have either big, medium or small budgetary impact on the Agency. The Director and Mr Paul Martinet, head of the Legal service, reported that the Agency had put some additional funds aside for legal costs, but it remained to be seen if this would be sufficient. Moreover, in a broader context, the Agency pointed again to the limitations of annual budget to cover such „spike“ years and called on addressing this challenge structurally as part of the 2024 evaluation of the ACER Regulation.

Moreover, Mr Martinet reported that the Agency has been further enhancing the support it provides to the Board of Appeal in order to make the Board of Appeal's decision as robust as possible and in that way lower the potential appeals. In addition to an external legal support, Mr Martinet informed that the Agency has provided recently additional support to the Board by appointing Deputy Registrar. The other key priority area to support the Board of Appeal are the ongoing efforts to develop a platform Appeal case management tool – hopefully still in 2024. Moreover, ACER ensures

access to trainings for the Board of Appeal members and involvement in litigation before Union Courts. To address procedural shortcoming, also the Board of Appeal rules of procedure were recently amended.

On the HR issues, Silvia Manessi, Team Leader of Human Resources Management, reported that the Agency has been ahead of the reorganisation that would start on 1 February 2024 by when also some HR procedural changes need to be prepared. In 2024, the Agency expects to fulfil 23 positions and the HR department has been working with relevant departments to prepare a recruitment plan and its roll out. The HR pointed to the fact that the Agency was growing at steady pace not just in terms of a number of staff but also in terms of new profiles (e.g., investigators). Therefore, in addition to several ongoing HR projects, the HR department has been in particular active in increasing employer branding and has joined the recruitment call with the European Medicine Agency in scouting new profiles.

On building project Ms Borisova explained that currently focus is on office reassignment due to the reorganisation and staff increase trajectory. In parallel, a more long-term solution has been in the pipeline and the Board will be regularly informed about these developments throughout 2024.

Ms Borissova reported that while on the European School no official reply or information update had been received since the Board's meeting in mid-December, informally the Agency could hear that the issue of European School has been discussed by the Slovene authorities.

Ms Borissova informed the Board also about the implementation of the Anti-fraud strategy 2022-2024 that was adopted by the Administrative Board via its decision 15/2021. Ms Borissova provided the overview of actions that had been taken to meet the three strategic objectives, which are: a) maintain and enhance an anti-fraud culture, b) strengthen measures for detection of suspicious behaviours and c) implement all actions necessary for fraud risk mitigation. The results - which are no OLAF investigations; no cases of potential conflict of interest identified and no evidence of ineffectiveness of the associated systems of internal controls - confirm that the actions taken so far prove to bring results.

The Administrative Board congratulated the Agency on implementation of the 2023 budget and achieved budgetary targets. The Board welcomed that the Agency managed to improve the budgetary trends during the last 5 years. The Board asked to be provided with the 2024 procurement operational plan to be able to follow actual procurement dynamic during the year and if necessary, discuss timely any deviations that might occur. While a decision for a streamlined and decentralised procurement for low value procurements could be reasonable in current circumstances, it was stressed that delegation of procurement procedures to the operational staff could not be a long-term structural solution. Thus, the Board emphasised that with the growth of the Agency more horizontal staff especially for procurement is needed. The Board welcomed that the Agency intends to make an assessment of this pilot phase of decentralised procurement by mid-2024 of which the Board would like to be informed. The Board also called on making clear distinction between the subsidy and REMIT-fee part of the budget.

On structural solution of high legal costs in a "spike years", some members of the Administrative Board considered important that a structural solution is sought, though the Board did not point to a concrete one. On the other hand, the Commission cautioned expectations that a structural solution was possible and therefore considers that also in the future ad-hoc solutions would need to be found. The Commission explained that it considered that revenues from administrative fees would be moderate compared to the possible amount of incurred legal costs, while it stressed that it might be difficult in the current inter-institutional context to open the ACER Regulation for proposing powers to raise such fees, which would often need to be paid by national regulatory authorities and TSOs. Moreover, the Administrative Board welcomed the support the Agency is providing to the Board of Appel, with an ultimate goal of preventing losing Court cases to the extent possible.

The Board expressed full support on the outlined recruitment policy. On the building file and the situation of the European school, the Board pointed that these two issues correlate with the visibility

and perception of the Agency in the hosting country. Therefore, it asked for a more structured approach and communication vis-à-vis Slovene authorities and society at large. The incoming Chair offered readiness to be involved in any of these two files if assessed by the Agency as bringing added value. She expressed readiness to take over the rapporteurship on the European School file after departure of the Slovene rapporteur.

The Director replied to some of the points raised by the Board. On the need for more staff dealing with horizontal tasks, he stated the Agency had been waiting for some additional posts of horizontal nature as part of the upcoming entry into force of the legislative packages. The Senior Management Team has been discussing what should be priority areas and given the current growth, the areas that are considered to need staff strengthening are cybersecurity, procurement and the HR. Once this horizontal staff is assigned, the Director would inform the Board about their concrete allocation areas.

On the issue of structural solution on legal costs, the Director underlined that in future years with significant 'spikes' in legal costs, a structural rather than an ad hoc solution would be highly preferable, per the uncertainty linked to the latter. It was not necessarily a question of additional financial resources for the Agency, but rather one of 'smoothing out' costs akin to a savings scheme or similar. Hence, this remained relevant in his view to consider for the upcoming ACER regulation evaluation.

The Director concurred with a more structural approach to Slovenia and relevant stakeholders' groups and confirmed it would be presented at one of the next Board's meetings.

Ms Borissova also agreed to share the 2024 procurement plan which is in preparation and assured that the Agency would regularly report to the Board on the process and budget absorbed.

Decisions/ Conclusions

The Administrative Board:

- 1. congratulated the Agency for the implementation of the 2023 budget and procurement plan;**
- 2. requested to receive the 2024 operational procurement plan to follow its roll-out during the year;**
- 3. asked for an evaluation of the pilot phase of the on-going process on simplification and decentralisation of the procurement procedures once it is completed;**
- 4. welcomed the support the Agency has been providing to the Board of Appeal;**
- 5. considers a structural solution preferable for the challenge of covering legal costs in particularly challenging 'spike cost' years and encourages such solutions to be further developed, though noting the potentially challenging context in the coming years;**
- 6. expressed support for the outlined recruitment policy and HR projects;**
- 7. called for a more structured approach of the Agency vis-a-vis Slovene authorities and different stakeholders.**

2.7. Update on the Agency organigramme effective as of 1 February 2024 per October Administrative Board meeting

Upon the invitation of the Chair, the Director provided further informational update to the planned reorganization of the Agency that he had outlined to the Board at the 59th Administrative Board meeting in October 2023. He repeated that these organizational adjustments are needed due to the

current and anticipated growth of the Agency, its newly assigned tasks, and the evolving context in which the Agency operates, with knock-on effects on the energy regulatory community more broadly. He stressed that also the lesson learnt from the energy crisis called for some reorganization alterations. The Director presented the Board a new organigram, explained the key tasks of each department and informed who would be heads of departments, including the ones who are appointed as acting until the completion of external recruitment selection.

**Decisions/
Conclusions**

The Administrative Board was informed about the organigram of the Agency's reorganisation taking effect from 1 February 2024.

2.8. Update on cyber incident - closed session

In a closed session, the Administrative Board was updated with the recent developments and agreed on the suggested follow-up.

**Decisions/
Conclusions**

The Administrative Board was updated on the cyber incident and agreed on the suggested follow-up.

2.9. Board of Appeal – report by the Board of Appeal Chair

The Chair invited Mr Miro Prek, the Chair of the Board of Appeal, to provide information on functioning of the Board of Appeal. Per shared statistics on the number of appeals during the last decade, Mr Prek reported that the steady increase in appeals from 2018 to 2021 (from 1 to 14 in 2021) has been slowing down over 2022 and 2023, whilst it still remained significant. In 2021-2023, the Board of Appeal took on average 6 decisions per year, which is according to Mr Prek the operational optimum. He reminded that "the 2020 Aquind ruling" impacted upon the workload of the Board of Appeal with a number of cases being re-opened before the Board of Appeal. While highlighting some 2023 cases, he stressed that the level of legal sophistication has increased and he mentioned the high potential of broadening the possible number of actors entitled to appeal before the Board of Appeal.

While expressing satisfaction with the current ACER administrative support to the Board, Mr Prek listed as 2024 priorities - inter alia - on-boarding of the Deputy Registrar appointed by the Agency, development of the Case Management Tool that would importantly facilitate and support the Board's functioning, full review/re-organisation of Rules of Procedure and revisit of current working arrangements in handling of appeals against Board of Appeal Decisions.

As challenges over a longer time horizon, Mr Prek identified a) the preservation of relative attractiveness of the Board of Appeal membership; b) inclusion of the Board of Appeal in the procedures and activities of ACER that concern the Board (e. g., Single Programming Document) and c) possible professionalisation of a part of the Board of Appeal and review of HR assignment to the Registry bringing inhouse the legal support needed for the BoA decision-taking and the management of the litigation before the EU Courts. He admitted that he was aware of Agency's limitations in addressing all these challenges.

The Administrative Board thanked Mr Prek for a comprehensive presentation. It informed that the Administrative Board asked in 2023 the Agency to discuss with each Board its own budget line, which is a sign of Board's independence. On the involvement in the Single Programming Document, it was acknowledged that the formal involvement of the Board of Appeal had not been envisaged by the founding Regulation contrary to the Board of Regulators and the Administrative Board who each have a distinctive responsibility, but the Director responded that the Agency would look into the possibility to involve the BoA to a certain extent in that process. On the discussion on the budget

lines, the Director underlined the need and understanding that this should be in a form of informal consultation in order to keep the Agency's budget uniform. The Chair of the Board of Appeal agreed with that and referred that it was more about being involved in the budgetary planning. Mr Prek also expressed readiness of Board of Appeal to provide an input on the planned evaluation of the ACER Regulation.

**Decisions/
Conclusions**

The Administrative Board got acquainted with the current functioning of the Board of Appeal and reconfirmed its commitment for a regular and timely exchange of views with the Board of Appeal.

2.10. Draft Single Programming Document for the years 2025 – 2027

Upon the invitation of the Chair, Ms Olga Borissova, head of the Corporate Service Department, presented the draft Single Programming Document (SDP) 2025-2027. Ms Borissova recalled that per the ACER Regulation, each year, the Director prepares a draft single programming document containing annual and multi-annual programming, and submits the draft programming document to the Administrative Board and to the Board of Regulators. She also recalled that the outline of the multiannual programming document 2025-2027 had been discussed by the Administrative Board already at the December 2023 meeting.

Ms Borissova explained that the draft SPD 2025-2027 outlines the context and multiannual programming 2025-2027 with all planned strategic goals and strategic action areas. It also contains the Work Programme 2025 with objectives and tasks for 2025. Based upon the recent lessons learned related to the rapidly changing context and fast evolving role of the Agency, the draft SPD reflects the need for flexibility, efficiency and agility, while ensuring the Agency's resilience in implementing tasks related to its mandate. To that end, the Agency has kept the strategic goal entitled "Resilience, efficiency and agility" which had been introduced in last year's programming document. It was explained that the support of the ACER governing boards has been recognized as part of that strategic goal. Moreover, Ms Borissova presented the anticipated impact of the entry into force of the three legislative packages on each of the five strategic goals and areas. She explained that the draft SPD 2025-2027 included the provisional draft estimate of revenue and expenditure of ACER for the financial year 2025 and a draft Establishment Plan which anticipated 18 additional posts in 2025.

Ms Borissova provided also the procedural context of the document. She informed that the Board of Regulators issued a favourable opinion to the document a day before (on 24 January 2024). After its discussion and endorsement by the Administrative Board, the Agency would submit the draft document to the three EU institution by the legal deadline of 31 January for its further deliberations. The procedure would resume in the second half of the year after receiving European Commission's comments on a draft document.

Mr. Bogdan Chirtioiu, the rapporteur for the programming document, reported to the Board that he held a discussion with ACER colleagues on the draft SDP 2025-2027. While he has found the document comprehensive and ready for endorsement, he pointed to two areas that in his opinion might require further reflection: 1) revisit of the current model of using external legal support for the legal cases in front of the ECJ and 2) the need to strengthen the role of ACER in assisting NRAs e.g. in interpreting the new rules on investigations. The Director responded to the first point by sharing the experience of one case in front of the ECJ which was defended by an internal ACER staff and turned out to be extremely burdensome. Given the time intensity and the inherently difficult planning aspect, the model of external support has been considered more impactful. On the second point, the Director confirmed that this would be indeed a new model of interactions with the NRAs that still needs to be set up.

**Decisions/
Conclusions**

The Administrative Board endorsed by unanimity the draft Single Programming Document 2025-2027 which can be transmitted to the EU institutions by 31 January.

3. CLOSING SESSION

3.1 Any other business

As the mandate of Administrative Board Chair Mr Thiollière was about to end on 27 January 2024, the Administrative Board and the ACER Director thanked the Chair Mr Michel Thiollière for esteemed contribution, great commitment, outstanding performance and impact he had demonstrated in his function as a Chair (2022-2024) and member of the Administrative Board during the last 6 years (2018-2024). The Administrative Board and the ACER Director thanked also to Ms Karin Lunning for esteemed contribution, great commitment, outstanding performance and impact she had demonstrated as member of the Administrative Board (2020-2024). Her mandate as a member finished on 27 January 2024; she continues as an alternate.

3.2 Next meetings

The next 62th meeting will take place on 19-20 March 2024 in Ljubljana (ACER premises) and will be chaired by the new Chair Ms Edit Herczog and the new Vice-Chair Mr Bogdan Chiritoiu.

It will be a hybrid meeting, giving possibility to meet in person and thus to build a cohesion in a year of significant membership changes.

The remaining meetings in 2024 are: 19-20 March, 18-19 June, 23-24 October, 11-12 December 2024.