

63rd Administrative Board Meeting

Ordinary session (hybrid mode)

Tuesday, 18 June 2024, 16:00 - 20:00

Wednesday, 19 June 2024, 09:00 - 14:30

ACER premises, Trg republike 3, 1000 Ljubljana, 8th floor meeting room
 and by videoconference

MINUTES

Members and Alternates of the Administrative Board, present at the meeting:		Function
	Ms Edit HERCZOG	Chair
	Mr Bogdan CHIRIȚOIU	Vice-Chair
	Dr Jurijs SPIRIDONOVŠ (present online on 18 and 19 June 2024)	Member
	Mr Václav BARTUŠKA	Member
	Mr Tomasz DĄBROWSKI	Member
	Ms Rebecca HARMS (present online on 18 and 19 June 2024)	Alternate, replacing Member Mr Rübzig
	Ms Britta THOMSEN	Alternate
	Mr Boris MAKŠIJAN	Alternate, replacing Member Ms Narodoslowsky
ACER	Christian Pilgaard ZINGLERSEN, Olga BORISSOVA, Martin GODFRIED, Bart VEREECKE, Volker ZULEGER, Csilla BARTOK, Rodica MANDROC, Silvia MANESSI, Paul MARTINET, Patrick LUICKX, Joaquin GARCIA GIMENEZ, Valter ILIĆ, Peter MEZE, Tina VONČINA	
Board of Regulators	Rafał GAWIN, Vice-Chair of the Board of Regulators (present online on 18 June 2024)	
European Commission	Anne MONTAGNON (present online on 18 June) and Christof LESSENICH (present online on 19 June 2024) Juan-Ignacio DE DIOS MORALES (present online on 18 & 19 June 2024)	

Ms Ditte JUUL-JØRGENSEN granted a proxy to Ms MONTAGNON for 18 June 2024 and Ms Anne MOTAGNON granted a proxy to Mr LESSENICH for 19 June 2024.

Mr Christian Pilgaard ZINGLERSEN (ACER Director) and Mr Rafał GAWIN (Vice-Chair of the Board of Regulators) were present at the meeting, acting as observers. They were not present at the Administrative Board closed session on 18 June 2024. The Secretariat was provided by the Agency.

SUMMARY OF CONCLUSIONS OF THE 63RD MEETING OF THE ADMINISTRATIVE BOARD

At the 63rd meeting, the Administrative Board:

- 1) was updated with the findings of the two recent Agency's key market monitoring reports (on the 70% rule in the electricity and on the LNG developments in the EU markets). The Board welcomed the data-based analysis and the fact that per recommendation from the ECA Special Report 03/2023, ACER pointed to the insufficient progress of "the 70% requirement" also through a formal Opinion/approach;
- 2) took note of several strands of Agency's preparations for implementing REMIT II Regulation and stressed the need for continuous strong cooperation with NRAs on the new tasks;
- 3) took note of the activities of the Board of Regulators that is recently focused on infrastructure and grid developments;
- 4) discussed the process pursuant to Article 23 of the ACER Regulation (EU) 942/2019 on the extension of the mandate of the ACER Director, detailed the actions expected by the Administrative Board and other bodies involved in this process and the likely timeline to conclude the process in time;
- 5) took note of the current situation of the European School and emphasized the importance of ensuring the government continues to prioritize improvements, including providing adequate security. The Board expressed readiness to engage in any activity that might be found useful;
- 6) acknowledged the operational updates and progress on the building file and endorsed the outlined strategic aspects highly relevant for ensuring long-term building for the Agency. The Board asked to be regularly informed about the progress and reconfirmed its full support in the approval process vis-à-vis the European institutions;
- 7) expressed support to the ongoing Agency's recruitment policy and emphasized the importance of fair and professional procedures throughout all stages of the selection process. The Board welcomed issuance of the Staff Engagement Survey, whose results should be presented to the Board at the next meeting;
- 8) took note of the implementation of the 2024 budget and welcomed the strengthening of the procurement team. While some of the 2024 budgetary challenges are not likely to materialize, the Board encouraged the Agency to continue discussing with the relevant Commission services and EU bodies the structural issue of legal costs to be covered by the Agency's annual budget;
- 9) welcomed the information of no new appeals lodged against the ACER decisions;
- 10) underlined the value of audit work and reiterated its intention to strengthen cooperation with the Internal Audit Service (IAS);
- 11) adopted by unanimity the Agency's Consolidated Annual Activity Report for the year 2023;
- 12) adopted by unanimity AB Opinion No 1/2024 on the final accounts of the Agency for the financial year 2023;
- 13) adopted by unanimity - via AB Decision No 03/2024 - by analogy Commission Decision C(2024) 1038 of 21 February 2024 amending Decision C(2011)1278 final on the General Implementing Provisions for Articles 11 and 12 of Annex VIII Staff Regulations on the transfer of pension rights;
- 14) adopted by unanimity - via AB Decision No 03/2024 - an opt-out from Commission Decision C(2023) 8630 of 12 December 2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006)1624/3 (in view of model decision);

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| 15) adopted by unanimity AB Decision No 05/2024 on the first amendment to the 2024 ACER budget and establishment plan; |
| 16) received an update on the IT infrastructure and agreed on the suggested policy implementation, that should consider needed budgetary and HR aspects. The Board requested to be involved in trainings to increase security culture that are to be organized for the staff. The Board asked to be regularly informed of developments; |
| 17) took note of the progress made within the Energy Community and its contracting parties; |
| 18) adopted the report of the 2024 Review Panel, assessing the conflict of interest situation of Board's members and alternates. |

1. OPENING

The Administrative Board Chair Ms Herczog informed that the Council of the EU appointed two outstanding alternates on 24 May 2024 (Mr Wouter Raab and Mr Jean-Laurent Lastelle). The Secretariat provided an onboarding call to both and invited them to submit the conflict of interest documents at the earliest coincidence.

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 63rd meeting was approved.

2. DISCUSSION AND DECISION-MAKING

2.1 Energy market and regulatory developments – recent ACER actions, efforts, perspectives and reflections

The ACER Director and ACER colleagues updated the Board with the outcomes and recommendations from the two important ACER Market Monitoring Reports (MMR): 1) on capacities for cross-zonal trade of electricity (including the progress in reaching the so-called '70% requirement') and congestion management and 2) European LNG market developments in 2023.

The first MMR complements the ACER Opinion by which the Agency alerted in April 2024 the European Parliament and the European Commission about the urgency for Transmission System Operators (TSOs) to meet their obligation of making 70% of transmission capacity available for cross-border electricity trading by the end of 2025. The urgency relates to the approaching legal deadline and the delays with many of the necessary steps to reach the 70% transmission capacity rule that is needed also to achieve the ambitious political objectives set for renewable generation. The MMR findings and ACER Opinion make clear that without significant uptake in progress on the "70% rule", such ambitions will be hard to achieve and that meeting the 70% requirement needs a unified approach – each Member State's actions (or inactions) impact others and ultimately EU consumers. It was stressed that with issuing a formal Opinion on 70% rule to the Commission and the Parliament on possible measures to foster market integration, the ACER also addressed observations from the European Court of Auditors (ECA) Special Report 03/2023 on Internal electricity market integration, which stated that in recent past the Agency had not sufficiently resorted to this possibility.

The second MMR is the first ACER LNG market monitoring report, which analyses the European LNG market developments in 2023, describes the most recent dynamics in the global LNG market, provides insights into the latest trade developments and EU LNG contractual arrangements; and sets out recommendations on the future role of gas and regulation of LNG terminals. It was stressed this has been the most downloaded ACER MMR volume ever, which proves how topical the issue is. The report highlights that the market remains tight as many projects are under construction, however the EU's increased reliance on LNG is likely to reach its peak already in 2024 due to reductions in structural gas demand driven by the EU's ambitious decarbonisation goals. Contrary to the general belief, the report also reveals that the EU remains more dependent on long-term than on spot LNG contracts.

On the 70% requirement, Mr Bartuška, the rapporteur for the developments in the Council, welcomed the report and the Opinion. He highlighted that the Agency, through its Opinion, successfully brought the importance of this topic to the attention of the governments and the new European Parliament. Moreover, he stressed that the report emphasised the importance of trust management in further integrating the energy markets, noting it should be at least in par with the risk management. The Administrative Board members also pointed to the need of synchronization of deployment of renewables (capacity) and of grid development. The importance of locational element in the tariff structure was underlined and suggested that ACER could be helpful for Member States (e.g. exchange of good practices). On the LNG report, the Administrative Board complimented the analysis, including risks ahead, and welcomed the ACER's added value in providing data-based analysis.

Decisions/ Conclusions

The Administrative Board was updated with the findings of the two recent Agency's key market monitoring reports (on the 70% rule in the electricity and on the LNG developments in the EU markets). The Board welcomed the data-based analysis and the fact that per recommendation from the ECA Special Report 03/2023, ACER pointed to the insufficient progress of "the 70% requirement" also through a formal Opinion/approach.

2.2 Update on REMIT II implementation

Mr Bart Vereecke, acting Head of Market Information and Transparency Department, and Mr Martin Godfried, Head of Market Surveillance and Conduct Department provided the Board with the update on the implementation of the REMIT II Regulation, which entered into force on 7 May 2024. The Agency continues with internal preparations to be well and timely prepared for the new tasks and powers (the new REMIT investigations department to be set up in 2025, recruitment of staff to take place between 2025 and 2027, ACER's cross-border investigations to start in Q4 of 2026).

Mr Vereecke and Mr Godfried presented to the Board the updates concerning the human resources, budget, IT support, legal support and multifaceted stakeholder engagement (as the regulation applies to many stakeholders and among others increases reporting requirements with new data). They outlined also increased cooperation with EU institution like ESMA (per overlaps between REMIT & Market Abuse Regulation as some wholesale energy products are also financial instruments) and above all with the NRAs, which after some concerns during the legislative process now demonstrate a high degree of collaborative spirit. Given the legal and operational framework, as approved by the EU co-legislators based on the EC financial statement, the Board took note of the available HR resources, budget (with a need for high upfront IT investments) as well as planned arrangement for legal support.

Decisions/ Conclusions

The Administrative Board took note of several strands of Agency's preparations for implementing REMIT II Regulation and stressed the need for continuous strong cooperation with NRAs on the new tasks.

2.3. Board of Regulators – Progress report

Rafal Gawin, Vice-Chair of the Board of Regulators (BoR), updated the Administrative Board with key outcomes of the Board of Regulators' meetings in April and June. As per discussion under the agenda point 2.1. of the meeting, he confirmed that the recent BoR discussions focused on the infrastructure, including offshore, and grids as well as on the EU network tariff principles. Among important recent decisions, Mr Gawin stressed the BoR favourable opinion on the ACER decision on the European Resource Adequacy Assessment 2023 aiming to model and analyse possible events over the next 10 years which can impact the balance between supply and demand of electric power.

Mr Gawin reported that ACER provided the BoR with the results of ACER 2023 NRA survey, focusing on external communication and internal collaboration. The ACER Director complemented that the points raised in the NRA survey are to be addressed in a broader NRA-ACER collaboration framework aiming to face the most pressing joint challenges ahead (e.g, tight resources in some NRAs). Ms Montagnon added that on the other hand the recently adopted legislative packages should have a positive impact on the Agency's resources.

Mr Gawin also informed that the BoR is soon expected to discuss a revised guidance on the Administrative Arrangements between ACER and the UK regulatory authority, which is to incorporate comments received by the Specialised Committee on Energy (SCE) established under the Trade and Cooperation Agreement.

Decisions/ Conclusions

The Administrative Board took note of the activities of the Board of Regulators that is recently focused on infrastructure and grid developments.

2.4. Session with presence of members and alternates only: Chair and Vice-Chair regular report to the Board since last meeting

The Administrative Board Chair recalled that the Director's current five-year term ends on 31 December 2024 and underlined the Administrative Board's competence in the appointment of the ACER Director.

The European Commission representative Ms Anne Montagnon explained that pursuant to Article 23(3) of the ACER Regulation 2019/942, the mandate of current Director is being assessed by the European Commission, which in addition to his performance over the mandate should provide also assessment of ACER's duties and requirements in the coming years. This assessment could initiate the procedure outlined in Article 23(4) of the ACER Regulation, which allows for a single, five-year extension of the Director's mandate. According to the ACER Regulation, this process involves several actors and steps as it stipulates that the Administrative Board, acting on a proposal from the Commission, must first consult on the Commission's proposal the BoR. Pursuant to the Regulation, the Administrative Board has to give the utmost consideration to the assessment and opinion of the BoR. If then the Administrative Board supports the BoR opinion, it should inform the European Parliament of its intention to extend the Director's term of office. The European Parliament may then invite the Director to make a statement in the European Parliament. Only after that, the Administrative Board can take a formal decision. The members discussed the likely timeline of different steps available per current information and stressed the need to keep well informed the BoR Chair and the newly elected ITRE Committee Chair of the process so they can plan in advance the necessary steps. In case of any delays, it was agreed that extraordinary meeting(s) might need to be convened to meet the deadline. The EC representatives and the Administrative Board Chair emphasized their commitment to keeping Board's members promptly informed about the procedure.

The Administrative Board Chair informed that in line with the agreement reached at the Board's 62nd meeting, she had invited the Director General of the European Commission Internal Audit Service (IAS) Ms Agnieszka Kazmierczak to attend the Administrative Board meeting in October to discuss further cooperation between the Administrative Board and IAS.

The Board also discussed the recommendation on improving ACER transparency and accountability from the ECA Special Report 03/2023 and in this context reconsidered the Board's conclusions adopted at its 58th meeting in June 2023. The Board agreed to start publishing the background documents (e.g. list of different ACER and EC documents discussed, cover notes supporting the draft Administrative Board decisions) in addition to the agenda and minutes.

Members were invited once more to assess their readiness to serve as rapporteurs, with the role of overseeing key tasks of the Administrative Board in greater depth.

**Decisions/
Conclusions**

The Administrative Board discussed the process pursuant to Article 23 of the ACER Regulation (EU) 942/2019 on the extension of the mandate of the ACER Director, detailed the actions expected by the Administrative Board and other bodies involved in this process and the likely timeline to conclude the process in time.

2.5. Organisational developments (European school, human resources management, budget & procurement implementation, budgetary challenges, recent legal developments, audits)

Upon the invitation of the Chair, Ms Olga Borissova, Senior Advisor, provided an update on the European School in Ljubljana. She underlined that the Agency continues to address the two outstanding issues - lack of appropriate school facilities and quality of schooling not up to the expectations of parents – given that modern, quality-driven schooling is a very important factor of retention and attraction of staff. Ms Borissova informed the Board about a recent change of school management - she had already met with the new Headmaster appointed as of 1st May, while the Staff Committee will hold such a meeting in autumn. She reported about several meetings with different stakeholders, including the European Commission Representation, organised in order to move the file, especially on providing an appropriate new building, from the current standstill. She reported that after March meeting of the AB Chair and ACER Director with Minister for Foreign Affairs, the school building has been brought to the attention of the government and the Prime Minister, who tasked ministries to find a solution. However, no decision has been taken yet to secure the financing at the national level (also per recent internal government shake-up due to controversial purchase of a court building). Ms Borissova explained that ACER aims for one school in one location also to ensure adequate security. She underlined Agency's commitment to keep Slovene government prioritizing improvements of situation.

Ms Silvia Manessi, Team Leader of Human Resources Management, provided the update on recruitment. The Agency has been hiring many new staff, including at the management level, in line with the resources provided by the recently adopted packages and following the reorganisation. It was reported that Ms Csilla Bartok has successfully completed the selection procedure and has been appointed as the head of Gas, Hydrogen and Retail department, while the selection procedure for the other three heads of department positions is ongoing since May and expected to be concluded by autumn with the aim for new colleagues to start turn-of-year. The management expressed commitment to pay utmost attention to the gender balance in the selection procedures. Ms Manessi explained that the new legislative packages include provisions for assistant posts, which will help

reduce the reliance on interim staff; the latter should only be used for short-term employment and to cover maternity leaves.

In June, a Staff Engagement Survey was launched in cooperation with the University of Ljubljana, incorporating input from management, the HR team, and the Staff Committee. This survey included dimensions from the 2020 survey to ensure comparability and identify trends, as well as new elements such as hybrid work, reorganization, the new building, schooling, onboarding, staff retention, etc. The Agency will present to the Board the results of the Staff Survey at the October meeting. The Board was also informed that over summer a reallocation of staff per floors in line with the new teams established by the 2024 reorganization will take place. The aim of this exercise is to create proximity and higher cohesion among the teams.

Mr Volker Zuleger, Head of the Coordination Operations and Legal Department, provided the Board the implementation of the 2024 budget by 1 June. It slightly improved compared to the same 2023 period for payments, commitments and payment of funds carried forward. However, it is expected that the additional budget resources stemming from the legislative packages that are supposed to be transferred from the EU budget to the ACER budget in the middle of the year (after the Administrative Board approval) would by default drop these implementation rates. Given the size of additional funds, Mr Zuleger explained that efforts would be needed to reach the mandatory 95% target of commitment implementation by the end of the year, while the internal target of 75% payments might not be reachable.

Mr Zuleger informed the Board that the Agency proposes to the Board a first 2024 budget amendment to allow receipt of additional funds stemming from the Electricity Market Design package and to align the planned eligible REMIT costs to the level of generated REMIT fees (see agenda point 2.10 below). While REMIT fees are again lower than the REMIT-related costs, the Agency expects from the ongoing revision of Commission decision on fees - to be concluded this year -, that a new model from 2025 onwards will generate sufficient fees to cover the eligible costs. Among the expected events with budgetary impact Mr Zuleger pointed to some savings that will be generated by a lower than anticipated indexation of salaries and that the Agency is still waiting for a decision from DG BUDG on the 2021-2023 debt created by the non-payment of employer pension contribution for staff whose salaries are covered by REMIT fees. On the procurement, an important novelty is that the team had been reinforced with two colleagues who should help to speed up the procedures and provide support on larger procurement files.

Mr Paul Martinet, Team Leader of Legal Services, reported about the recent legal developments. A very good news is that no new appeal to the ACER Decision has been launched in last months. The ongoing files in front of the Court moved to hearing phase. As reported already several times, a very difficult case on the so-called redispach cost-sharing decisions of the Agency (with seven different appeals going in very different directions) is currently with the European Court of Justice, however still with no indication on the date of judgement. While the concrete decision could have high budgetary implications (as reported already on several previous meetings possible cost claims might be totalling 2-6 million €), it now looks like that the structural challenge of planning legal costs has been moved more towards 2025. While in line with good budgetary planning the Agency would plan for a financial reserve to cover legal costs, it is unrealistic to expect to cover such high amounts in a year. The Agency thus continues to request a discussion on a viable solution to mitigate such spikes and volatility (to have a possibility of something like a loan or reserve). Mr Martinet also explained that any carry-forwards to the following year create even higher risks, if these funds are then not spent.

On the two cases lost in 2023 where ACER has to pay recoverable costs, the Agency reached an agreement on recoverable costs with one appellant, while no agreement can be so far found with the second one, requiring that likely ACER will decide to file a case on level of recoverable costs in front of the General Court. Since the last meeting, the Agency also reflected on ensuring greater

involvement of the Board of Appeal (BoA) in some programming documents. Several options are to be discussed with the BoA Chair in autumn.

Mr Zuleger reported also on the ongoing audits. The Agency received the European Court of Auditors unqualified opinion on the 2023 accounts at the end of May 2024, concluding that the revenue and payments for the year 2023 are legal and regular in all material aspects, and the accounts present fairly ACER's financial position as on 31 December 2023. Four observations were made. One is already addressed as the duties of the Accounting Officer were in the meantime segregated, the others are also looked into and will be addressed, though the observation on high level carry overs is a recurrent one given it is linked with the duration of contracts. Several agencies have been trying to address this structural issue in a separate procedure with the ECA. Mr Zuleger also presented the list of IAS audits on which the implementation is ongoing or the Agency is waiting for a final IAS report. The Board was informed that the IAS is to conduct in June/July the 2025-2027 risk assessment for ACER, to be followed by a proposal on the ACER Strategic Audit Plan for 2025-2027.

The Administrative Board thanked the Agency for information provided on these matters and:

- on the European School, the Administrative Board emphasized that the dossier has financial implications. It stressed the need to demonstrate the added value of the EU budget spent and highlighted the importance of ensuring adequate security to pupils. The Board endorsed the Agency's efforts to engage with the Slovene authorities, but it also suggested to be involved in any discussions and if needed to have at the next Board meeting discussion(s) with relevant interlocutors – e.g. new Headmaster of school. The Agency agreed that if there is no breakthrough by autumn, the Board should define next steps in October meeting.
- The Board congratulated on the 2024 budget implementation and approved the proposal to proceed with the first amendment of the 2024 budget. It welcomed the strengthening of the procurement team and underlined the importance of the administrative support to the daily operational work that could be sometimes less visible. It however also pointed to the fact that in the first half of the year, the number of concluded procedures is lower than planned, thus it is important to keep track on the accumulated delays and to factor them in the workload for the second half.
- The Board welcomed the fact that, so far, the potential budgetary peaks for 2024 (these peaks could have been due to legal costs from a possible ECJ decision on a major legal case and a debt incurred from 2021 to 2023 due to non-payment of the pension contribution fee for employees under REMIT) have not materialized. However, on the structural issue of legal costs to be covered within Agency's annual budget, the Board encouraged a discussion among DG ENER, DG BUDG, ECA and the Agency how this issue could be taken forward, so that a possible framework is in place in time in case of necessity.
- The Board expressed support to the implementation of the recruitment trajectory and stressed the importance of fair and professional procedures throughout all stages of the selection process. As a recognition of this process, it reiterated its intention to discuss the hiring policy with the Director, HR department and Staff Committee in October meeting. The Board reminded the Agency to pay attention to the gender balance and congratulated on the appointment of Ms Bartok as part of the management team. It considered the staff engagement survey as a very good initiative and expressed interest in presentation of the results at the meeting in October.
- The Board expressed appreciation of the work of audits, as they assist both the Agency and the Administrative Board in mitigating potential risks, and consequently reiterated its intention to strengthen the cooperation with the IAS. For his reason, the Chair had invited

the Director-General of the IAS to attend the October meeting and present the findings of its 2025-2027 risk assessment for ACER and proposed ACER Strategic Audit Plan for 2025-2027 as well as to discuss any other useful formats of cooperation.

**Decisions/
Conclusions**

The Administrative Board:

- 1. took note of the current situation of the European School and emphasized the importance of ensuring the government continues to prioritize improvements, including providing adequate security. The Board expressed readiness to engage in any activity that might be found useful;**
- 2. expressed support to the ongoing Agency’s recruitment policy and emphasized the importance of fair and professional procedures throughout all stages of the selection process. The Board welcomed issuance of the Staff Engagement Survey, whose results should be presented to the Board at the next meeting.**
- 3. took note of the implementation of the 2024 budget and welcomed the strengthening of the procurement team. While some of the 2024 budgetary challenges are not likely to materialize, the Board encouraged the Agency to continue discussing with the relevant Commission services and EU bodies the structural issue of legal costs to be covered by the Agency’s annual budget;**
- 4. welcomed the information of no new appeal cases lodged against the ACER decisions;**
- 5. underlined the value of audit work and reiterated its intention to strengthen cooperation with the Internal Audit Service (IAS).**

2.6. Consolidated Annual Activity Report 2023

Mr Volker Zuleger, Head of Coordination, Operations and Legal department, and Valter Ilić, Quality Management Assistant, presented the draft Consolidated Annual Activity Report, providing an overview of the activities of the Agency for the year 2023. It contains a) an independent section on the regulatory activities of the Agency, approved on 5 June 2024 by the Board of Regulators, as well as b) a section on financial and administrative matters.

Despite the significantly increased monitoring activities and many ad-hoc tasks necessitated by the energy crisis and its aftermath, the Agency achieved its objectives and key performance indicators (KPIs) as outlined in the 2023 work programme (notable achievements include: establishing daily LNG price assessments and benchmarks, and implementing the Market Correction Mechanism (MCM), ensuring the daily dissemination of the EU gas reference price; conducting high-level analyses of energy emergency measures; publishing a policy paper on the further development of the EU electricity forward market, producing a report on the drivers of energy prices, conducting analyses on congestion and its management in the most congested parts of the EU; mapping national gas storage filling regulations). On the financial and administrative matters, the Agency met its mandatory budget implementation targets and enhanced human resource management to address the growing hiring needs.

The Administrative Board welcomed the Report and concluded that the Agency had successfully implemented the 2023 work programme.

Decisions/ Conclusions

The Administrative Board adopted by unanimity the Agency's Consolidated Annual Activity Report for the year 2023, which is to be submitted by 1 July to the European institutions (European Parliament, the Council, the Commission, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions).

2.8. Opinion on ACER final account – year 2023

Ms Rodica Mandroc, the Accounting Officer, drew up the final accounts of the Agency upon receiving the observations on the provisional accounts from the European Court of Auditors and after the external audit firm, Baker Tilly, concluded their audit of the 2023 budget. Based on these external auditing, Ms Mandroc presented to the Board the information on the expenditure and revenue side and declared her 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.

Decisions/ Conclusions

The Administrative Board adopted by unanimity the AB opinion No 1/2024 on the final accounts of the Agency for the financial year 2023, which is to be sent by 1 July to the European institutions.

2.9. Implementing provisions of two European Commission Decisions

Ms Silvia Manessi, Team Leader of Human Resources Management, informed the Board that ACER received two notifications from the European Commission on the adoption of the HR-related implementing provisions of the Staff Regulation:

- Commission Decision C(2024) 1038 of 21 February 2024 amending Decision C(2011)1278 final on the General Implementing Provisions for Articles 11 and 12 of Annex VIII Staff Regulations on the transfer of pension rights
- Commission Decision C(2023)8630 of 12 December 2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006)1624/3

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

To ensure legal certainty, ACER asked the Administrative Board to adopt

- by analogy the first Commission's decision, which sets out rules and method to calculate the years of pensionable service
- opt-out from the second Commission's decision, as agencies were informed, that in coordination with the Commission a specific model decision adapted to agencies will be developed, which will better suit the needs of the agencies.

The Administrative Board agreed with the proposed action. It reiterated that the prevention of and fight against psychological and sexual harassment does not remain non-covered until the adoption of the model decision, as some rules governing this area (e.g. network of confidential counsellors) are already in place.

Decisions/ Conclusions

The Administrative Board adopted by unanimity:

- **by analogy Commission Decision C(2024) 1038 of 21 February 2024 amending Decision C(2011)1278 final on the General Implementing Provisions for Articles 11 and 12 of Annex VIII Staff Regulations on the transfer of pension rights - via the AB Decision No 03/2024;**
- **opt-out from Commission Decision C(2023) 8630 of 12 December 2023 on the prevention of and fight against psychological and sexual harassment, and repealing Decision C(2006)1624/3 (in view of model decision) – via the AB decision No 04/2024.**

2.10. 2024 ACER budget amendment

As explained already under point 2.5. by Mr Volker Zuleger, Head of Coordination, Operations and Legal department, the Agency proposed to the Administrative Board an amendment to the 2024 ACER budget as adopted by the AB Decision No 17/2023 on the budget and the establishment plan of the Agency - Financial Year 2024.

The aim of this amendment is to align the collected amount of REMIT fees with the REMIT costs. This action is needed as amount of REMIT fees planned in December 2023 was higher than then actually collected fees in January 2024. Consequently, the total revenue of the Agency needs to be reduced by the difference (EUR 800k) between the initially planned REMIT revenue and the revenue established. Mr Zuleger explained that the reduction is to be absorbed by de-prioritising some REMIT related activities. These projects could be reinstated once resources become available, as the revision of Fees decision is expected to offer the possibility to realign the resources needed.

Moreover, it was proposed to incorporate in the ACER budget also the financial resources (EUR 2,65 mio) allocated to the Agency by the revision of the Electricity Market Design (EMD) Regulation to enable the ICT implementation of the additional EMD tasks. As the package allocates 11 additional posts– seven (7) temporary agents and four (4) contract agents – the amendment also modifies the 2024 establishment plan.

Decisions/ Conclusions

The Administrative Board adopted by unanimity the first amendment to the 2024 ACER budget and establishment plan – via the AB decision No 05/2024, amending Decision No 17/2023 of the Administrative Board of the Agency of 13 December 2023.

2.11. Update on ACER IT infrastructure

In a closed session, the Administrative Board was updated with the recent IT developments and agreed on the suggested implementation of enhanced security policy. The later should apply also for the Board and its work.

**Decisions/
Conclusions**

The Administrative Board received an update on the IT infrastructure and agreed on the suggested policy implementation, that should consider needed budgetary and HR aspects. The Board requested to be involved in trainings to increase security culture that are to be organized for the staff. The Board asked to be regularly informed of developments.

2.12. Update on building project

Ms Olga Borissova, Senior Advisor, presented updated of the agreed process and timeline for a new long-term lease for its seat in Ljubljana – Slovenia as endorsed by the Administrative Board in March 2024. In addition to the operational updates, Ms Borissova outlined several strategic aspects that are of high importance for the successful implementation of securing suitable office premises in 2026– above all, the need of synchronizing procedure timeline with anticipated market availabilities in Ljubljana, while handling the situation of current premises (that provide very limited space for the rapidly growing staff) with lower risk exposure. Furthermore, the Administrative Board was asked to provide its support in the approval process vis-à-vis the European institutions.

The Administrative Board took note of the organisational updates of the process and endorsed the three strategic elements outlined by the Agency as crucial for the timely and successful implementation of this process. The Board reconfirmed its full support in the approval process vis-à-vis the European institutions (the Chair as the building file rapporteur and the two budget rapporteurs to be closely involved in the process and if needed available for meetings in Brussels).

**Decisions/
Conclusions**

The Administrative Board acknowledged the operational updates and progress on the building file and endorsed the outlined strategic aspects highly relevant for ensuring long-term building for the Agency. The Board asked to be regularly informed about the progress and reconfirmed its full support in the approval process vis-à-vis the European institutions.

2.13. Energy Community presentation

Upon invitation of the Chair, Mr Andrej Juris, from the Energy Community Secretariat presented the current state of play of the transposition of the EU acquis related to the EU internal energy market in the contracting parties. Mr Juris reported that in electricity markets, the countries are witnessing delays in meeting the agreed deadlines of the Electricity integration Package. Mr Juris recalled that this package demonstrates that even though the Energy Community NRAs are of different size and resources, all lack expertise and need capacity building. ACER Director complemented that once the acquis/package is transposed, ACER will have competences in cross-border cases. On the other hand, the countries do comply with the gas storage targets. One of the key topics for these countries is also REMIT. They now try to implement REMIT light with the aim to proceed to REMIT full implementation (the system compliant with the EU framework) by end 2025.

It was reported that ACER and Energy Community Secretariat are currently developing process to ensure involvement of ACER in the approval process of regional/Energy Community Terms and

Conditions or Methodologies (TCMs). The TCM preparation and implementation is an area that is new for the Energy Community countries, thus according to Mr Juris this is an area where close cooperation with ACER is considered as the most valuable. The other two areas for closer cooperation are a) REMIT implementation and b) work on energy poverty and consumer empowerment.

The Administrative Board welcomed the progress update since the 50th Board meeting hosted by the Energy Community Secretariat in Vienna in 2021. It considered the sectorial/energy market integration as crucial for the concurrent enlargement process and expressed readiness if any of the Board's activities can add to this process and goal (e.g. to engage in discussions within the Commission/DG NEAR). It was acknowledged that in some areas (e.g. CACAM regulation) the cooperation with Energy Community is already envisaged, thus it would be in the EU interest to provide the needed support to the electricity market/trade also to decrease high electricity prices in this area. The Board nevertheless also pointed to budgetary and human resource implications of any greater ACER involvement that needs to be reflected broader as well as (cyber)security aspects (e.g. in REMIT) that require strong vigilance.

The Energy Community Secretariat thanked the ACER for all the support and to the Administrative Board for support expressed for the accession and expressed readiness to reflect on further opportunities for cooperation.

**Decisions/
Conclusions**

The Administrative Board took note of the progress made within the Energy Community and its contracting parties.

2.14. 2024 Conflict of interest policy: implementation

Ms Tina Vončina, Administrative Board Secretariat, reported that the 2024 Review Panel concluded its conflict of interest assessment and prepared the draft report that is about to be published on the Agency's website if there is no further comment by any member or alternate. She explained that the two recently appointed alternates were invited to provide documents to enable the Review Panel to reconvene, make the assessment and assign the risk level.

All members and alternates who had not yet done it were reminded to submit 2024 conflict of interest documents also electronically via platform by the end of summer break.

**Decisions/
Conclusions**

The Administrative Board adopted the report of the 2024 Review Panel, assessing the conflict of interest situation of Board's members and alternates. The report will be published on the Agency's website.

3. CLOSING SESSION

3.1 Any other business

The members were informed about the Agency's plan to support from autumn onwards Board members and alternates with personalized ACER e-mail accounts. This would address also the recent IAS recommendation on the use of professional e-mail accounts. A short demonstration by the IT officer Mr Peter Meze was provided.

3.2 Next meetings

The next 64th meeting will take place on 23-24 October 2024 in Ljubljana (ACER premises).

The remaining meeting in 2024 is scheduled for 11-12 December 2024.