

ADMINISTRATIVE ARRANGEMENT ON THE SUPPORT TO THE BOARD OF APPEAL OF THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

THE DIRECTOR OF THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF
ENERGY REGULATORS

AND

THE CHAIRPERSON OF THE BOARD OF APPEAL OF THE EUROPEAN UNION AGENCY FOR
THE COOPERATION OF ENERGY REGULATORS

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators, and, in particular, Articles 25 and 26 thereof,

Having regard to the need to undertake all the internal organisational measures necessary to mobilise the resources available in order to ensure that the Board of Appeal performs its duties in line with Regulation (EU) 2019/942 and the relevant case-law,

Having regard to the need that the means and support allocated to the Board of Appeal must be sufficient to ensure that the Board of Appeal can guarantee effective protection for parties affected by the Agency's decisions, and

Having regard to the importance of the impartiality and independence of the Board of Appeal as emphasised by the European Institutions in the "Joint Statement and Common Approach on decentralised agencies" adopted on 19 July 2012.

Have reached the following understanding:

I. Purpose and Scope

1. This Arrangement intends to provide the Board of Appeal with the necessary support in exercising effectively its duties and responsibilities, ensuring its independence and adequate functioning, including of its Registry.
2. The financial implications of such support shall be consistent with the budget of the Agency, while ensuring that the above principles are adequately implemented over the years.

II. Registry

1. The Agency guarantees that the Registry of the Board of Appeal is at all times adequately staffed to ensure the necessary organisational, administrative, procedural and legal support to the Board of Appeal. For this purpose, the Agency assigns to the Registry of the Board of Appeal at least two staff members with legal background and one staff member to provide support with secretarial, administrative and linguistic tasks.
2. The staff members proposed for assignment to the Registry are appointed by the Board of Appeal after review of their qualifications and credentials, in line with the Board of Appeal's Rules of Procedure. The Board of Appeal appoints the Registrar and its Deputy

amongst the staff members proposed.

3. The staff members assigned to the Registry (hereinafter 'the Staff') report exclusively to the Chairperson of the Board of Appeal as far as their activities in the Registry of the Board of Appeal under Article 28 of Regulation (EU) 2019/942 are concerned.

In exercising their functions, priority is given to the activities pertaining to the Registry of the Board of Appeal as set out in the Board's Rules of Procedure, the Practice directions and the Board's Instructions to the Registrar. In line with the Board's Rules of Procedure and the Board's Instructions to the Registrar, as the Staff is not involved in the deliberations of the Board of Appeal, the Staff, in the interest of the service, can also perform other tasks at the Agency.

Those other tasks are performed under the supervision of the Director and, until the workload of the Board of Appeal would entail the assignment of full-time human resources, the Staff may be called to advise on challengeable acts of the Agency. In this case, the Staff member involved in those Agency acts will not assist the Board of Appeal in the proceedings regarding that act.

To this end the Staff shall be subject to the same obligations as the members of the Board of Appeal regarding conflict of interests as laid down in Article 27 of Regulation (EU) 2019/942.

4. The Staff shall fulfil the general working conditions of Agency's staff, and they shall enjoy the same rights in their performance appraisal and reclassification exercise as all other staff members in the Agency. The Chairperson of the Board of Appeal shall be consulted by the reporting officer on the probationary period report and/or the annual assessment report, as far as the activities in the Registry of the Staff are concerned. The Chairperson of the Board of Appeal is also invited to provide comments on the performance of the Staff throughout the year to the reporting officer, when appropriate.
5. In order to set out the walling off of the Registry services for the Board of Appeal to appellants and securing safe separation during case proceedings, the Registry of the Board of Appeal shall be maintained as a separate entry in the organisational chart of the Agency.

III. Organisational and IT support

1. The Agency provides full support to the Registry and the Board of Appeal for carrying out all of the functions set out in the Board's Rules of Procedure, the Practice directions and the Board's Instructions to the Registrar. This entails providing the Registry and the Board of Appeal with the equipment and means necessary to carry out effectively and efficiently the activities of the Board of Appeal as per the requirements set by the Board of Appeal.
2. The Agency provides full support for IT services such as, inter alia, electronic registry, Board and case management, website services, IT maintenance and administrative support for services such as organisation of meeting facilities, trainings, mission support, and budgetary and contract facilities.
3. The Agency provides the same level of organisational and IT support, in line with the applicable ACER internal policies and procedures, to the Board of Appeal and its Registry as to the operational and horizontal units. This includes, for instance, support on ICT, communication activities, financial assistance and interim placements.

IV. Contractual support

At the request of the Board of Appeal, the Agency puts in place the necessary contractual arrangements to provide the Board of Appeal with support by independent outside expertise in those areas deemed necessary by the Board of Appeal.

V. Budget

1. The budget line for the financing of the Registry of the Board of Appeal needs to support the efficient operation of the Board of Appeal and its Registry. The amount is based on the estimated resources required for the respective period on the basis of the joint planning exercise set out below. The appropriations posted in the budget line are approved by the Administrative Board as part of the adoption of the Agency's budget and in line with it.
2. The Agency consults the Chairperson of the Board of Appeal on the planned budget resources for the Board before the beginning of the respective budget cycle. To this end, the Registry, in consultation with the Chairperson of the Board of Appeal, participates in the Agency's administrative planning and the follow-up of its implementation to contribute to defining and addressing the administrative, financial and organisational needs to support the Board of Appeal. The services responsible for finance and planning inform and consult the Registry on administrative, organisational and financial issues which can affect the Board of Appeal and the Registry's Staff or their activities.
3. The Director, as Authorising Officer for the Agency's budget, delegates the management of the budget lines related to the activities of the Board of Appeal, to the Registry.
4. Resources from the budget line are made available by the Agency upon request of the Chairperson of the Board of Appeal to cover the needs of the Board.
5. The support provided by the Agency shall remain consistent with the provisions made in the Agency's Budget according to paragraph 1 above.

VI. Joint consultation / planning

1. The Agency consults the Registry and the Board of Appeal at least once a year, in order to discuss all matters relating to the efficient operation of the Board of Appeal. The consultation includes the discussion of a planning perspective for the Board of Appeal for the subsequent period to guarantee that the Board's administrative, financial and organisational needs are effectively met.
2. For general coordination purposes, matters related to the implementation of the work programme are discussed in the context of coordination meetings with the Agency. The Registry's work programme and objectives are set within the Agency's strategic plan and priorities, in line with the specific role of the Board of Appeal. The contributions of the Board of Appeal to the planning and reporting activities of the Agency are submitted to the Agency, with an accurate assessment of the Registry's Staff and budgetary needs in order to provide the Board of Appeal with the necessary support.
3. The Agency ensures that the Board of Appeal is able to meet at least once a year physically outside the framework of appeal related meetings, in order to discuss the results of the consultations under paragraph 1 as well as to take any related decisions required. The meeting should also serve to ensure the necessary coherence and update the Board of Appeal on the Agency's developments.

VII. Representation of the Board of Appeal before the Court of Justice of the European Union

1. In cases before the Court of Justice of the European Union concerning a decision of the Board of Appeal, the Agency represents the Board of Appeal with best efforts and ensures an efficient coordinated asserting of arguments and positions concerning a Board's decision. For this purpose, unless differently decided by the Agency for reasons of efficiency or in the interest of the service, the Staff, under the supervision of the Director, manages and coordinates the assertion of arguments and positions in court cases concerning a decision issued by the Board of Appeal.

2. The Board of Appeal is duly consulted on the strategy and the pleadings related to the appeals before the Court of Justice of the European Union. The Board of Appeal is invited to attend hearings and it may seek additional specialised legal advice on the matter. The Agency makes the necessary arrangements for such advice.
3. In case that the decision of the Board of Appeal ruled against the original decision by the Agency, or in case of possibly divergent positions between the Board of Appeal and the Agency, the Board of Appeal and the Director should seek an amicable solution as to the legal representation of the Agency before the Court with regard to the proceeding in question.

VIII. General Provisions

1. The Agency takes due account of the role of the Board of Appeal in its decision-making process. Wherever the Agency has the right to take individual decisions, it makes explicit reference in those decisions to the rights of appeal before the Board in line with Article 28 of Regulation (EU) 2019/942.
2. The Agency gives the Board of Appeal due coverage on ACER website and access to publication of the announcements and decisions of the Board of Appeal via its press release and info-flash facilities, and any other facilities which may be required.

IX. Repeal

This Administrative Arrangement replaces the previous Administrative Arrangement for ensuring the support by the Agency for the Cooperation of Energy Regulators for the Agency's Board of Appeal of 6 July 2016.

Done at Ljubljana, on 22 January 2025.

For the Agency

The Director

C. ZINGLERSEN

For the Board of Appeal

The Chairperson

M. PREK