



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

***– 37th Meeting –
– Extra-Ordinary Session –***

Thursday, 23 July 2018, 13:00 — 15:30

Trg Republike 3, Ljubljana - Slovenia

MINUTES

I. LIST OF ATTENDEES

The following Members and Alternates of the Administrative Board were present at the meeting:

Dr Romana JORDAN,	<i>Chair</i>	Dr Jochen PENKER,	<i>Vice-Chair</i>
Ms Edit HERCZOG,	<i>Member</i>	Ms Britta THOMSEN,	<i>Alternate</i>
Mr Edmund HOSKER,	<i>Member</i>	Mr Jurijs SPIRIDONOVs,	<i>Member</i>
Mr Diego VAZQUEZ TEIJEIRA,	<i>Alternate</i>	Ms Agnieszka KAZMIERCZAK,	<i>Member</i>
		Proxy Mr Dominique RISTORI	

Mr Garret BLANEY (*Chair of the Board of Regulators*) was also present at the meeting, acting as observer.

Mr HOSKER, Ms THOMSEN and Mr VAZQUEZ TEIJEIRA participated via teleconferencing.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 37th MEETING OF THE ADMINISTRATIVE BOARD

At the 37th meeting, the Administrative Board:

- (1) took note that the selection procedure for the appointment of the Director of the Agency has been completed without the appointment of any candidate;
- (2) invited the European Commission to relaunch a new selection procedure so as to appoint a new Director as soon as feasible;
- (3) Assessed the available options for a Director *ad interim* to ensure business continuity and bridge the gap between the expiry of Mr Alberto POTOTSCHNIG's mandate and the entry into service of the newly appointed Director.
 - (4) Considered the option offered under the AB decision 7/2018 on temporary occupation of management posts to offer a temporary posting to one of the 5 ACER Heads of Department ;
 - (5) Decided not to use this option and rather request the Commission and the HR team to check if Mr Alberto POTOTSCHNIG's could act as interim Director, on an exceptional basis, without this constituting an extension of his mandate, subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union.

III. MINUTES

SECTION I – OPENING

The 37th meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened, in extraordinary session, on 23 July 2018. The meeting started at 13 hours.

The Chair invited the present Members and Alternates of the Administrative Board to declare any actual or potential interest that could be considered prejudicial to their independence with respect to the items on the agenda. No relevant interest was declared.

(1) *Approval of the Agenda*

The Agenda of the 37th meeting of the Administrative Board was approved as follows:

Agenda Topics	Documents	Rapporteur
<i>Welcome Coffee</i>		12:45
Opening		
(1) Approval of the Agenda and Declaration of Interest	Doc. 1 A -	AB Chair
Items for Reporting		13:00
(2) Developments on the selection procedure for the appointment of the Director	Doc. 2 A <i>oral update</i>	AB Chair BoR Chair
Items for Decision		13:30
(3) Closure of the Selection Procedure for the post of Director and consequential acts	Doc. 3 A <i>for information</i> Doc. 3 B <i>for information</i> Doc. 3 C <i>for adoption</i>	AB Chair
End of Meeting		15:30

SECTION II – ITEMS FOR REPORTING

(2) *Developments on the selection procedure for the appointment of the Director*

The Chair informed the Administrative Board that, following the conclusions of the 36th meeting, on 14 June 2018, she invited the Board of Regulators (BoR) to reconsider its position of 4 May 2018 on the candidate designated by the Administrative Board.

The Chair reported that, in the request, she expressed the concern of the Administrative Board for the implications of a conclusion of the selection procedure without appointment of the Director, especially in light of the current negotiations on the recast of the Agency's Regulation and the Clean Energy for All Europeans Package. In this regard, she highlighted the crucial momentum of the accelerating inter-institutional negotiations - with the first inter-institutional triologue in preparation already for the end of June - on the new electricity market design, in which the Agency should continue playing a central role.

The Chair further emphasised that, in the request, she also invited the BoR to consider the need to ensure that the hard-gained leadership role of the Agency, the smooth continuity in the activities of the Agency, and its regulatory vision for the energy markets would have risked to be tainted by the uncertainty brought by the absence of a Director. In particular, the concern was expressed related to the relaunching of a new selection procedure so close to the previous vacancy notice, with the risk of not finding suitable candidates, capable of managing an institution, understanding the regulatory features of the energy sector, and cooperating and communicating widely with stakeholders in the energy sector.

In addition, the Chair emphasised the need to select the director on the basis of whole spectrum of criteria (e.g. managerial experience, communication and negotiation skills) beyond the sole regulatory and therefore invited the BoR to consider also these criteria.

The Chair reported that, unfortunately, despite the elements brought to the consideration of the BoR, she was informed on 4 July 2018 that the BoR decided not to reconsider its position of 4 May 2018.

The Chair concluded by reporting that she assisted at the meeting of the BoR of 18 July 2018 in Brussels where a further discussion took place on the selection procedure for the post of Director at her presence and at the presence of the European Commission Director-General for Energy. The position of the BoR was however maintained.

The BoR Chair therefore intervened explaining that, upon receipt of the letter from the Chair of the Administrative Board, he solicited feedbacks from the BoR Members. The BoR did not reach the necessary quorum to put the request of the Administrative Board for discussion and thus the BoR position of 4 May, which did not provide a favourable opinion on the designated candidate, remained valid. The BoR Chair emphasised that the considerations of the BoR Members went beyond the case at hand, encompassing also considerations related to the legitimacy of the internal decision-making process and the setting of the conditions to reconsider, given the fact that the BoR was called to establish a precedent of general application.

The Administrative Board, while restating the concerns raised at the 36th meeting as regards the stability in the governance of the Agency, appreciated the outcome as part of the democratic multilevel governance of the Union and therefore invited all the bodies and institutions involved to take advantage of this experience for the future and cooperate further in this direction.

Conclusion: The Administrative Board took note of the report concerning the developments on the selection procedure for the appointment of the Director of the Agency and reiterated its concerns with regard to the inevitable effects of this outcome on business continuity and on the negotiations on the recast of the Agency's Regulation and the Clean Energy Package for All Europeans.

(3) *Closure of the Selection Procedure for the post of Director and consequential acts*

In light of the Report on the developments concerning the selection procedure for the appointment of the Director of the Agency, the Administrative Board concluded for the closure of the Selection procedure for the post of Director.

The Administrative Board therefore invited the Chair to inform the European Commission about the closure of the Selection Procedure with the aim of considering to launch a new selection procedure.

The Administrative Board further considered the need to establish a framework of consultation between the bodies and institutions involved in the selection procedure to minimise the risk that similar situations occur in the future. In this framework, Members and Alternates were invited to submit proposals to the European Commission on the definition of the selection criteria for the vacancy notice to be published, so as to attract the most appropriate pool of candidates.

The Administrative Board further stressed the need to ensure enough time for applications in the framework of the publication of the new vacancy notice, to reach a sufficient number of potentially interested candidates.

As regards the establishment of a temporary solution to ensure continuity of service, the Administrative Board discussed the different options to face a situation in which the post of Director would have remained vacant for a period lasting longer than three months.

The Administrative Board agreed on the need to ensure stability and minimise risks and harm deriving by the current stalemate, especially given the pending negotiations on the Clean Energy Package and the incoming elections of the European Parliament. In addition, the Administrative Board recalled the contentious decisions that the Agency will be called to take in the near future and the need to preserve the Agency's credibility with stakeholders and the robustness of its acts.

Against this background, the Administrative Board converged on the need to ensure that the function of Director be attributed to a staff member with expertise in all the dimensions of the governance of the Agency (i.e. the managerial, administrative, budgetary and regulatory dimensions).

The Administrative Board considered the availability of a post AD15 in the establishment plan of the Agency as of 16 September 2018 and decided to use it for a position with the function of interim director, allowing the necessary flexibility to bridge the gap between the term of offices of the current and next Director and to ensure business continuity.

The Administrative Board assessed the available solutions for a Director *ad interim* and considered the option offered under the AB decision 7/2018 on temporary occupation of management posts to offer a temporary posting to one of the 5 ACER Heads of Department. The Administrative Board decided not to use this option as none of them was meeting all the necessary requirements for the post and that having one of them doing the 2 jobs for the duration of the new procedure (which could be long and take 1 year) would put the agency stability at risk. Indeed, ACER has been suffering from a severe staff shortage for many years.

The Administrative Board assessed the option of appointing Mr Alberto POTOTSCHNIG as Director *ad interim* without this constituting an extension of his mandate, subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union.

Upon the expressed availability of the current Director to remain at disposal of the Agency, the Administrative Board mandated the Commission and the HRM Team to check the conditions and the consequential administrative steps to ensure the filling of the post as of 16 September 2018.

- Conclusion:
- (1) The Administrative Board closed the selection procedure as unsuccessful, and instructed the Agency to inform the short-listed candidates accordingly;
 - (2) The Administrative Board mandated the Chair to invite the European Commission to launch a new selection procedure with the aim to appoint the Director of the Agency as soon as feasible while leaving sufficient time for applications;
 - (3) The Administrative Board mandated the Commission and the HRM Team to check the conditions for appointing Mr Alberto POTOTSCHNIG as Director *ad interim*, on an exceptional basis, without this constituting an extension of his mandate, subject to the conditions established in the Staff Regulations and the Conditions of Employment of Other Servants of the Union.

SECTION III – AOB

(4) *Call of a meeting of the Administrative Board in extraordinary session for the 6th of September 2018*

The Chair of the Administrative Board recalled that the next meeting, in extraordinary session, has been convened for 6 September 2018.

Conclusion: Members and Alternates of the Administrative Board took note of the date for the next meeting of the Administrative Board for year 2018.

CLOSING

In the absence of any other business to be treated, the Chair closed the 37th meeting at 15:30.