



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

**– 39th Meeting –
– Ordinary Session –**

Thursday, 13 December 2018, 09:00 – 14:00

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> |
| Prof Uwe LEPRICH | <i>Alternate</i> | Ms Britta THOMSEN, | <i>Alternate</i> |
| Ms Edit HERCZOG, | <i>Member</i> | Mr Edmund HOSKER | <i>Member</i> |
| Mr Michel THIOILLIERE, | <i>Member</i> | Mr Jurijs SPIRIDONOVs, | <i>Member</i> |
| Mr Ľubomír KUČHTA, | <i>Alternate</i> | Mr Pal KOVACS | <i>Alternate</i> |
| <i>(with voting rights)</i> | | | |
| Mr Diego VAZQUEZ, | <i>Alternate</i> | Ms Agnieszka KAZMIERCZAK, | <i>Member</i> |
| Mr Georgios SHAMMAS | <i>Alternate</i> | | |

Mr Alberto POTOTSCHNIG (*Director*), Mr Garret BLANEY (*Chair of the Board of Regulators*) and Mr Michael SCHUETZ, (*Policy Officer, DG ENER*), were present at the meeting, acting as observers and advisor respectively.

Ms Olga BORISSOVA (*Head of Administration*), acting as adviser, was present for the discussion of Items 1 to 11 of the Agenda.

Mr Dennis HESSELING (*Head of the Gas Department*), acting as adviser, and Mr Thomas QUERRIOUX, Staff Committee representatives, were present for the discussion of Items 6 of the Agenda.

Mr Christophe GENCE-CREUX (*Head of the Electricity Department*) and Mr Andrej BELOGLAVEC (*Strategy & Communication Team Leader*), acting as advisers, were present for the discussion of Items 11 of the Agenda.

The secretariat was provided by the Agency.

II. SUMMARY OF CONCLUSIONS OF THE 36th MEETING OF THE ADMINISTRATIVE BOARD

At the 39th meeting, the Administrative Board:

- (1) adopted the minutes of the 37th and 38th meetings of the Administrative Board;
- (2) invited the Agency to provide at the next meeting of the Administrative Board an assessment of the possible solutions to face the lack of financial resources in the attempt to establish a disaster recovery system for REMIT, taking into consideration the distinction between disaster recovery systems and disaster recovery arrangements;
- (3) adopted, by unanimity, Decision No 16/2018 on outside activities and assignments and on occupational activities after leaving the Service;
- (4) adopted, by unanimity, Decision No 17/2018 on the Internal Control Framework of the Agency for the Cooperation of Energy Regulators;
- (5) adopted, by unanimity, Decision No 18/2018 on the Budget and Establishment Plan for the Agency for the Cooperation of Energy Regulators for the financial year 2019;
- (6) took note of the delays in the adoption of the Union Budget and declared the urgency for the adoption of the Single Programming Document of the Agency for the Cooperation of Energy Regulators for the years 2019-2021 via written procedure in the course of the month of December 2018.
- (7) invited the Management to engage in a further dialogue with Staff Committee in order to define the priorities in addressing the results of the Staff Engagement Survey within the shortest delay possible. It further stressed the importance of ensuring communication, understanding and overall acceptance of the Action Plan, and invited to consider the opportunity to engage external advisors to ease the process;
- (8) welcomed and supported the approach taken by the Agency in drafting the Single Programming Document 2020-2022 and conveying the desired messages to the European institutions;
- (9) invited the Agency to provide an assessment of the long-term financial needs for REMIT IT operations alongside the technical requirements needed beyond the timeframe of the multi-annual planning;
- (10) expressed the intention to end the contract of employment of the Director *ad interim* and offered him the possibility to be heard at the next meeting of 30 January 2019 on the matter at hand;
- (11) discussed the procedure for the appointment of the Director and adopted the evaluation grid for the evolution of the candidates shortlisted by the European Commission;
- (12) invited the Board of Regulators to a joint session to exchange views and reach a common understanding on the selection procedure, before the notification of the shortlist of candidates from the European Commission.

III. MINUTES

SESSION I

SECTION I – OPENING

The 39th meeting of the Administrative Board of the Agency for the Cooperation of Energy Regulators was convened in ordinary session on 13 December 2018. The meeting started at 9 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. Ms HERCZOG informed the Administrative Board that she would leave the meeting earlier before the discussion of Item 12 of the Agenda. Mr KOVACS instead informed the Administrative Board of the change of his duties. He provided the details of his new duties and clarified that such a change did still not have implications on his participation to the activities of the Administrative Board.

(1) *Approval of the Agenda*

The Agenda of the 39th meeting of the Administrative Board was approved as follows:

| Agenda Topics | | Documents | Rapporteur |
|----------------------------|--|--|------------------------|
| Opening | | | 9:00 |
| (1) | Approval of the Agenda and Declaration of Interest | Doc. A <i>for approval</i> | The Chair |
| (2) | Minutes of the 37 th Meeting of the Administrative Board | Doc. A <i>for approval</i> | The Chair |
| | Minutes of the 38 th Meeting of the Administrative Board | Doc. B <i>for approval</i> | |
| Items for Reporting | | | 9:20 |
| (3) | Report on decisions by delegation and by written procedure | Doc. A <i>for information</i> Doc. B <i>for information</i> | The Chair |
| (4) | Report on Agency's developments in the area of Administration | Doc. A <i>for information</i> | Head of Administration |
| (5) | Report on the activities of the Board of Regulators | - <i>oral update</i> | BoR Chair |
| (6) | Report on the Action Plan following the Staff Engagement Survey and its implementation | Doc. A <i>for information</i> | Head of Gas Department |
| | | Doc. B <i>for information</i> | SC Representative |
| Items for Adoption | | | 11:00 |
| (7) | Decision on the Adoption of General Implementing Provision on outside activities | Doc. A <i>for adoption</i> Doc. B <i>for information</i> | Head of Administration |
| (8) | Decision on the Internal Control Framework repealing Decision AB No 10/2012 | Doc. A <i>for adoption</i> Doc. B <i>for adoption</i> | Head of Administration |

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| | Doc. C <i>for adoption</i> Doc. D <i>for adoption</i> | |
| (9) Decision on the adoption of Budget 2019 and establishment plan | Doc. A <i>for adoption</i> | Head of Administration |
| (10) Decision on the adoption of Programming Document 2019-2021 | Doc. A <i>for adoption</i> | Head of Administration |
| Items for Discussion | | 11:30 |
| (11) Draft Programming Document 2020-2022 | Doc. A <i>for information</i> | Heads of Departments |
| (12) Procedure for the selection of the Director of the Agency | Doc. A <i>for discussion</i> Doc. B <i>for adoption</i> Doc. C <i>for information</i> | The Chair |
| AOB | | 13:35 |
| (13) Implementation of the Conflict of Interest Policy for the year 2019 and report on the mid-term review of the Board of Regulators for the year 2018 | - <i>oral update</i> | The Chair |
| End of Meeting | | 14:00 |

(2) Approval of the Minutes of the 37th and 38th meeting of the Administrative Board

The Chair went through the conclusions of the 37th and 38th meetings of the Administrative Board, confirming the achievement of the outstanding actions with the exception of the submission to the Administrative Board of two reports to be reported to the next meeting.

The Chair therefore invited the Agency to i) provide an assessment of the possible solutions to face the lack of financial resources for the reestablishment of a disaster recovery arrangements for REMIT at the next meeting of the Administrative Board, taking also into account the distinction between disaster recovery site and disaster recovery arrangements; and ii) report on the results of the consultations with the Board of Regulators with regard the support of NRAs in translating the Agency's act in the official languages of the Union.

The Chair further reported that, by the closing date for comments of 12 December 2018, the Agency received textual comments on the minutes related to the 38th meeting only. The comments were addressed in the final version of the minutes submitted to the Administrative Board for approval.

Conclusion: The minutes of the 37th and 38th meeting of the Administrative Board were approved by unanimity.

SECTION II - REPORTING

(3) Report on the decisions adopted by delegation and by written procedure

The Chair reported about the adoption of two decisions after the 38th Meeting of the Administrative Board. Decision No 14/2018 was adopted via delegation pursuant to Decision No 05bis/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 21 September 2010 on the Delegation to the Chair of the powers to appoint new members of the Board of Regulators. Decision No 15/2018 was adopted instead via written procedure pursuant to Decision No 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedures of the Administrative Board, and, in particular, Article 9(2) thereof.

Decision No 14/2018 of 12 September 2018 concerned the appointment of: (i) Mr Carsten SMIDT as Member of the Board of Regulators in representation of *Forsyningstilsynet* – the Danish Utility Regulator; and (ii) Mr Andrew BURGESS and Dr Cathryn SCOTT respectively as Member and Alternate Member of the Board of Regulators in representation of Office of Gas and Electricity Markets of the United Kingdom.

Decision No 15/2018 of 19 October 2018 instead adopted the Transfer of Appropriations in the Budget of the Agency for the Cooperation of Energy Regulators for the Financial Year 2018.

Conclusion: (1) The Administrative Board took note of the adoption of Decision No 14/2018 and Decision No 15/2018.

(4) Report on Agency's developments, budget implementation, and Audit Results – Administration Area

4.1 Progress Report on Human Resources

As regards the Agency's human resources, the Head of Administration presented the latest statistics identifying the number of staff members subdivided by contract type and amounting to a total of 119 FTEs. The Head of Administration highlighted that roughly a quarter of the FTEs is composed by interim agency workers and trainees in an attempt to address, at least partially, the severe shortage of human resources that the Agency is suffering from.

The Head of Administration further reported on the current vacancies at the Agency, with three open vacancies for temporary agents, and the reclassification exercise for temporary and contract staff for the year 2018. In addition, the Head of Administration briefed the Administrative Board on the recently adopted general implementing provisions of the Staff Regulations and on the decisions to be adopted in the next meetings.

Finally, the Head of Administration reported on the encouraging developments of the European School and the positive results of a recent open week with the participation of families, also coming from the Agency.

4.2 Rental of additional office space

The Head of Administration reported that, following the endorsement by the Administrative Board, at its 36th meeting, of the rental of additional office space, the Agency rented an additional floor in the building that hosts its premises. The Head of Administration reported that the conclusion of the rental agreement resulted in a very limited increase of fees moving from a yearly rent in 2018 for 3,234.18 m² = € 651,623 to a new yearly rent for 2019 for 3,926.98 m² = € 656,315.

4.3 Budget and Procurement Implementation

As regards the Budget Implementation for the year 2018, the Head of Administration reported that, by 13 December, commitments of C1 appropriations reached 97.49% (target 95%) while payments 78.50% (target 75%). As regards the C8 appropriations, payments reached 96.10% (target 95%). The Head of Administration therefore highlighted that the Agency has successfully overcome the set targets.

The Head of Administration also provided details on the Budget implementation for REMIT with particular regard to C1 appropriations under Title II and Title III, with a total appropriations of EUR 2,081,639, and commitments at 91.82% and payments at 20.00%.

Finally, the Head of Administration provided an overview of the procurement procedures for the year 2018. She highlighted that the Agency finalised 57 procurement procedures. 50 procedures resulted in budget being committed in the total value: € 2,622,418 while 7 procedures resulted in concluding framework contracts with the total value: € 6,246,000.

4.4 Court of Auditors' preliminary observations on the account for the year 2017

The Head of Administration further reported on the implementation of the preliminary observations of the Court of Auditors, as conveyed at the 36th meeting of the Administrative Board.

The Head of Administration recalled that the accounting services of the Agency have been outsourced to the European Commission as of October 2017 and the validation of the accounting systems is now performed by the European Commission and the final report will be delivered before the end of the year.

The Agency has also performed an assessment of the impact of Brexit on its operations. The assessment will be presented to the Administrative Board at its next meeting. In a nutshell, Brexit will mainly impact upon the governance of the Agency and REMIT operations, unless transitional arrangements are defined. In particular, the participation of experts from the United Kingdom at all level of the Agency's governance structure including the Board of Regulators, working groups, and task forces will be impacted by the Brexit. In addition, at operational level, market participants allowed to trade in wholesale energy products that are currently registered with Ofgem or the Utility Regulator of Northern Ireland will need to re-register with another NRA to maintain operations. The Agency is now in the process of issuing an open letter to market participants advising to re-register beforehand. Re-registration will be active as of the day of entry into effect of Brexit.

The Agency is also in the process of deploying e-procurement, with e-submissions being already available.

As with regard to the lack of publications of vacancies notices on the EPSO website and as reported at the 36th meeting of the Administrative Board, the Head of Administration recalled that publications on the EPSO website entails the translation in all the official languages of the Union. The translation entails a significant impact on the financial resources of the Agency. The Agency has therefore adopted a pragmatic approach publishing on the EPSO website those vacancy notices related to horizontal positions, which are likely to attract interest more widely. To the contrary, vacancy notices related to operational specialised positions which are likely to attract experts in the field that are aware of the role of the Agency, are published on the website of the Agency in the English language.

Finally, and most importantly, the Head of Administration reported that with regard to the concern raised by the Court of Auditors that the Agency is not equipped with a second recovery site for REMIT, eventually undermining business continuity, the Agency is aware of the risks related to REMIT business continuity. However, the discontinuation of the disaster recovery site results from the lack of financial resources and the reestablishment of the recovery site is a priority for the Agency as soon as the necessary financial resources become availability. A presentation highlighting possible solutions to face the current situation will be delivered at the next meeting of the Administrative Board.

The Head of Administration also reported that, with regard to the pending recommendation of the Audit 2014 and the two recommendations of the last Audit 2016. As regards the first, concerning the establishment of a European School, given the above reported progresses made on this item it will be likely closed in the course of the year 2019.

As regards the two pending recommendations of the last Audit 2016, the Head of Administration reported in detail on the actions undertaken in the field of procurement and recalled that with regard to the amount of carry-over, this is justified in light of the multiannual nature of REMIT and its current level. On this last item, the Administrative Board supported the view that carry-over of allocations is justifiable as long as it remains within a healthy threshold based on the assumption that the multiannual nature of operational activities entails that activities cannot end within the same financial year in which commitments are raised.

4.5 Report on Internal Audit Service's audit on the Human Resources Function and IT Security

The Head of Administration reported on the achievements of the Agency in the implementation of the action plan to address the recommendations received by the Agency as a result of the IAS audit of the Human Resources function of the Agency in the year 2017.

The Head of Administration turned to the IAS Audit Follow-up 2018 on Information Security at the Agency and in the "REMIT" domain. She reported that the Agency received the Draft Report and no important or very important recommendations were identified. She highlighted that improvements have been required in the roadmap for implementing the recently adopted overall information security policy with regard to roles and responsibilities, software development and change management processes. The Head of Administration concluded by identifying the following steps in the procedure with the Agency having time to provide comments by January the 10th and the Final Report to be expected by the end of January 2019.

4.6 Document Management Policy

The Head of Administration further reported on the developments concerning the ongoing migration to ARES (the document management tool of the European Commission). She reported that the Agency and the European Commission agreed on a kick-off meeting to take place in the first months of the year 2019. The Agency will be signing a Memorandum of Understanding with the European Commission for the provision of the service, to be received against payment of pre-agreed fees. For that purposes, appropriate financial resources have been identified. The Head of Administration also highlighted that, in order to ensure a smooth migration, the Agency has prepared the nomination for the role of a Document Management Officer of the Agency and submitted the first draft of the Filing Plan and Retention Schedule for consultation with the European Commission.

4.6 Developments in the field of Data Protection

The Head of Administration recalled that Regulation (EU) No 2018/1725 on data protection applicable to EU institutions and agencies was published in the Official Journal on 21 November 2018 and entered into force on 11 December. The Agency, while is planning to have appropriate information sessions for staff, has addressed already the main changes brought about by the recast Regulation. In particular, in order to ensure that appropriate information are provided to those whose personal data is processed ('data subjects') in a concise, transparent, intelligible and easily accessible form, using clear and plain language, 11 privacy statements were developed to cover all processing activities of the Agency. The privacy statements were adopted via Director Decision of 12 December and published on the relevant portals of the Agency (ACER website, AEGIS portal and REMIT portal, as appropriate).

Conclusion: The Administrative Board took note of the report in the administration area and expressed appreciation for the reached levels of the budget implementation.

(5) Progress Report from the Board of Regulators

The BoR Chair reported on the contribution of NRAs to the activities performed by the Agency. He first recalled about his early resignation from the role of Commissioner at CRU (the European Commission for Regulation of Utilities of Ireland) precluding him from maintaining the charge of Chair of the BoR. He therefore informed the Administrative Board about the steps for the appointment of the future Chair of the BoR.

The BoR Chair referred about the strategic discussions taking place at BoR level on the future of energy regulation. In particular, the BoR Chair focused in particular on decarbonisation, digitalisation, and gas and electricity markets coupling.

In this broad context, the BoR Chair invited the Administrative Board to plan the fulfilment of the mandate entrusted with the Agency by the REMIT Regulation on a long term-basis, considering also that the interface with NRAs is not necessarily always easy. In particular, the BoR Chair called for a systematic assessment of alternative solutions to face the increasingly expanding amount of data collected by the Agency being not accompanied by a proportionate and sufficient increase in human resources, the BoR Chair, such as automation. In this respect, it will be essential, in the view of the BoR Chair, to build support from the European Institutions and the Member States. This long-term strategical perspective shall be bridged with the short-to medium term need of the Agency, ensuring that the current IT infrastructure is adequately financed.

In this respect, the Administrative Board concluded that this long-term strategic view should be focused in subsidiarity terms, identifying cost-saving deriving from a Union approach to REMIT, compared to the costs for Member States acting separately.

- Conclusion:**
- (1) The Administrative Board thanked Mr BLANEY for his great contribution to the activities of the Agency and for having ensured a great level of cooperation between the Administrative Board and the BoR.
 - (2) The Administrative Board invited the Agency to identify the relevant topics to enable discussion in the course of the year 2019 on a strategic vision for the future of the Agency within the Board. The results of the discussion would be further tabled with the newly appointed Director and will be mirrored in concrete actions to be undertaken at level of the Agency and of the Administrative Board.

(6) Report on the results of the Staff Engagement Survey and the Action Plan established to address the concerns raised.

The Chair gave the floor to Mr HESSELING, Head of the Gas Department, to report on the action plan put in place by the management team of the Agency to address the concerns highlighted by the staff engagement survey. In particular, Mr HESSELING identified the macro-areas which the action plan intends to intervene upon and provided an explanations of the principal actions to be implemented for each sphere.

Mr QUERRIAUX, representative of Staff Committee, was invited to report on the views of the Staff with regard to the action plan designed by the management team. Staff Committee expressed concerns for the absence of a comprehensive assessment of the results of the staff engagement survey which would have highlighted the need to intervene in a number of relevant domains not currently covered by the action plan. Staff Committee advocated for the employment of an external expert which could mediate between the Staff and the management and advice in identifying priorities and address the concerns raised.

- Conclusion:*
- (1) The Administrative Board took note of the reports on the results of the Staff Engagement Survey and the Action Plan established to address the concerns raised. The AB invited the Management to engage in further dialogues with Staff Committee in order to define the priorities in addressing the results of the Staff Engagement Survey within the shortest delay possible. It further stressed the importance of ensuring communication and overall acceptance of the roadmap, and invited to consider the opportunity to engage external advisors to that hand.
 - (2) The Administrative Board invited the Director to report on implementation of the Action Plan at the meeting of December 2019.

SECTION III – ITEMS FOR ADOPTION

(7) Staff Regulations Implementing Provisions – Application by Analogy – Outside activities

The Head of Administration reported that on 6 July 2018 the Agency was notified of the adoption of Commission Decision C(2018) 4048 of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the Service.

The Head of Administration recalled that pursuant to Article 110(2) of the Staff Regulations, unless a request for derogation is submitted, general implementing provisions shall apply by analogy to the Agency either nine months after the date of the notification or at an earlier date, subject to a decision of the Administrative Board.

The Head of Administration clarified that, in comparison to Commission Decision C(2013) 9037, currently applied by analogy at the Agency, the new Implementing Provisions update the regulatory framework applicable to i) the engagement of staff members in outside activities in order to maintain their professional skills and/or upgrade their qualifications, as required by the interests of the service; and ii) the post-employment activities of staff members, after leaving the service.

In particular, she highlighted that the changes brought about by the new Implementing Provisions entail: 1) More clarity on the definition of the concept of ‘occupational activity’ in the meaning of Article 16 of the Staff Regulations and examples of unpaid activities; 2) More flexibility on the assessment of individual cases for activities which do not interfere in the performance of staff members’ duties and especially those which generate modest incomes; 3) The obligation to make public, every year, the list of outside activities of senior management (Director); 4) The yearly maximum remuneration a staff member may earn when engaging in an outside activity was revised to EUR 10,000.00, since the previous ceiling of EUR 4,500.00 dated 2004.

The Head of Administration also highlighted that the Staff Committee, consulted on 18 October 2018, did not provide comments by the closing date for consultation (17 November 2018).

Conclusion: The Administrative Board, on the basis of the assessment provided by the Head of Administration, adopted by unanimity Decision No 16/2018 on outside activities and assignments and on occupational activities after leaving the Service.

(8) *Decision on the Internal Control Framework of the Agency for the Cooperation of Energy Regulators*

The Head of Administration recalled that the Agency has been applying the Internal Control Standards as defined by the European Commission, consisting of 16 Internal Control Standards. Those Standards define the control environment of the Agency to support sound the decision-making process by taking into account risks in the achievement of objectives and, where necessary, reducing them to acceptable levels.

The Head of Administration reported that, on 19 April 2017, with Communication C(2017) 2373 final, Commissioner Oettinger, communicated the Revision of the Internal Control Framework of the European Commission to ensure the implementation of the highest international standards as set by the framework of the Committee of Sponsoring Organizations of the Treadway Commission. The main change brought by the new framework is the replacement of internal control standards with the internal control principles. Contrary to the current indicators, principles allow for more flexibility at the time of assessing the internal control measures to be implemented on the basis of the needs and scale of operations of each service.

The Head of Administration therefore proposed to align the Agency's internal control system to the international and European standards and to develop the most optimal internal control environment, and therefore deploy the European Commission Internal Control Framework in so far as suitable to the Agency's environment. In this respect, the Head of Administration reported that, following a GAP analysis and a consultation with the services of the European Commission, the Agency identified the internal control principles best suiting its business environment.

The framework proposed for implementation at the Agency would consist of 17 principles that define the 5 components of the Agency's internal control system, namely, i) Control Environment, ii) Risk Assessment, iii) Control Activities, iii) Information and Communication, iv) Monitoring, and v) Activities

The implementation of the principles would be monitored via indicators helping to assess the level of compliance and effectiveness of the internal control measures. The results of the annual assessment would be presented to the Administrative Board and would be included in the Annual Activity Report, as per the internal control methodology.

The Head of Administration highlighted that the main advantages of the new internal control framework are: i) the flexibility of the Agency to adapt its internal control measures to its business environment and ii) the ability to assess realistically weaknesses and to propose improvements in a timely manner due to the SMART indicators and the new methodology.

Conclusion: The Administrative Board, on the basis of the assessment provided by the Head of Administration, adopted by unanimity Decision No 17/2018 on the Internal Control Framework of the Agency for the Cooperation of Energy Regulators.

(9) *Decision on the budget and establishment plan of the Agency for the Cooperation of Energy Regulators for the financial year 2019*

The Head of Administration reported that, following the approval of the Budget of the Union for the year 2019, the Agency for the Cooperation of Energy Regulators has been assigned with Union contributions for a total of EUR 16 147 153. In particular, an amount of EUR 293 657, coming from the

recovery of surplus, has been added to the amount of EUR 15 853 496 entered in the budget. In particular and with regard to the establishment plan of the Agency, the number of posts related to temporary agents is fixed in a total of 67 (sixty-seven), at the same level of the year 2018. As regards the expenditures related to other agents, the Union contributions allow a total of 27 (twenty-seven) Contract Agents, which is 8 (eight) Contract Agents more compared to the number of Contract Agents authorised for the year 2018 (19 Contract Agents).

The Head of Administration highlighted that the budget assigned to the Agency in the 2019 EU budget and the number of authorised posts are significantly lower than what was estimated by the Administrative Board in March 2018. She therefore concluded that the 2019 Work Programme of the Agency would have required to be adjusted to reflect the resources actually made available to the Agency. She concluded by reporting that the revised 2019 Work Programme would have been submitted to the Board of Regulators for approval and to the Administrative Board for adoption as soon as the revision was going to be completed.

The Administrative Board expressed concern for the results of the budgetary procedure with regard to the establishment plan and the level of contribution attributed to the Agency, highlighting the impact on the ability of the Agency to perform its role in the completion of the internal energy market ultimately increasing the costs of Member States in dealing with the inefficiencies of a non-completed internal energy market.

Conclusion: The Administrative Board adopted by unanimity Decision No 18/2018 on the budget and establishment plan of the Agency for the Cooperation of Energy Regulators for the financial year 2019.

(10) Single Programming Document 2019-2021

The Head of Administration reported that on 19 November 2018, the Parliament and the Council acknowledged that it was not possible to reach an agreement on the first draft 2019 EU budget by the end of the conciliation period. As a result, on 3 December, the European Commission presented a new draft 2019 EU budget to the European Parliament Committee on Budgets with the aim of reaching an agreement on the 2019 EU budget by the end of the year. Following the submission of a new draft, on 11 December 2018, the Council endorsed the agreement reached with the European Parliament on the 2019 EU budget. Only on 12 December, the European Parliament finally approved 2019 EU budget.

The Head of Administration therefore concluded that the delay in the decision-making process for the adoption of the 2019 EU budget impacted upon the decision-making process of the Agency for the adoption of the Single Programming Document for the years 2019-2020. She therefore invited the Administrative Board to consider the adoption of the Single Programming Document for the years 2019-2020 via written procedure.

Conclusion: The Chair, after having considered the delays in the adoption of the 2019 EU budget, declared urgency for the purpose of the adoption of the Single Programming Document for the years 2019-2021 via written procedure counting on the support expressed by the Administrative Board.

SECTION IV - DISCUSSION

(11) Strategic discussion on Draft Single Programming Document 2020-2022

The Chair invited Mr Christophe GENCE-CREUX (Head of the Electricity Department) and Mr Andrej BELOGLAVEC (Strategy & Communication Team Leader) to join the meeting in their capacity of advisers for the purpose of discussing this item.

The Chair and the Director *ad interim* briefly reported about the process for the adoption of the Programming Document 2020-2022. The Director *ad interim* recalled that in line with the requirements of the Framework Financial Regulation applicable to decentralised agencies, the Agency shall submit the draft Single Programming Document 2020– 2022 ('SPD') to the European institutions by 31 January 2019.

Before the submission to the European institutions, the Agency will seek the endorsement of the Administrative Board. After the submission to the European institutions and the issuing of the European Commission's opinion on the SPD, the Board of Regulators will be called to approve the SPD and the Administrative Board will adopt it by 30 September 2019.

The Director *ad interim* introduced the draft Single Programming Document 2020-2022 drawing the attention of Members and Alternates on the revision of the definition of the term 'Activity' under which tasks and deliverables are listed. The revised definition enables to i) incorporate the new tasks foreseen within the Clean Energy Package and ii) divide the work programme into a limited number of activities.

The Director *ad interim* therefore highlighted that, apart from the administrative and support and coordination categories, the SPD is thus divided into the following operational activities: (i) Market Integrity and Transparency; (ii) Market Surveillance and Conduct; (iii) Electricity and Gas Internal Market Monitoring; (iv) Internal Electricity Market; (v) Internal Gas Market; and (vi) Infrastructure and Security of Supply. The Director *ad interim* further highlighted that, within the SPD, human resources (in terms of Full Time Equivalents – FTEs) and financial resources are aggregated at activity level.

The Director *ad interim* clarified that the Single Programming Document 2020-2022 is based on the assumption that the Agency will be assigned the resources required to effectively deliver on its mission. Should these additional resources not be assigned to the Agency, this Work Programme will have to be revised in line with the level of resources actually available.

In this regard, the Director *ad interim* recalled that, as done in the past, in order to ensure an appropriate prioritisation of its activities, and to allocate resources accordingly, focusing on those areas and activities which are most critical for delivering the Energy Union objectives and, ultimately, benefits for consumers, in the Work Programme for 2020 the Agency has clustered its tasks and deliverables according to the following three priority levels.

The Director *ad interim* therefore clarified that with "Priority level 1 – Critical" are identified those activities/tasks that must be performed/executed under any circumstance, as failure to do so would seriously undermine the functioning of the Internal Energy Market and the achievement of the Energy Union objectives. Under "Priority level 2 – Important", the Agency has included those activities/tasks that could be postponed, reduced in scope or de-scoped with only limited repercussion on the Internal Energy Market. Finally, under "Priority level 3 – Relevant", the Agency has included those activities/tasks that the Agency could usefully perform, provided adequate resources were made available.

The Director *ad interim* therefore recalled that, in case the resources assigned to the Agency will not be sufficient to perform all the activities included in the Work Programme for 2020, the prioritisation of activities will be performed starting from those classified as "relevant" and then, to the extent necessary, including those classified as "important", in order to devote sufficient resources to the

“critical” activities. The Director *ad interim* maintained that the Agency will nevertheless strive to perform all its legally mandated activities. Legally mandated activities falling under Priority Level 3 will be performed to the level necessary to comply with the Agency’s legal obligations, even in the absence of sufficient resources.

The Director *ad interim* invited the Administrative Board to consider: i) the human resources needed by the Agency to perform its current and future tasks, and ii) the financial resources needed to support REMIT IT operations.

In order to avoid this situation and ensure the fulfilment of all its activities, the Director *ad interim* concluded by highlighting that the Agency estimated that 27 (twenty seven) additional Temporary Agents’ positions (‘TAs’) are needed in 2020 in order to ensure that it can perform its tasks in line with its current legal mandate, namely 19 posts to perform REMIT related tasks and 8 additional for the other tasks to be performed by the Agency (Network Code Implementation, Security of Supply, TEN-E Regulation) and additional 16 (eighteen) TAs for the foreseen tasks stemming from the Clean Energy Package currently in the adoption phase. Moreover, the Agency is requesting 6 (six) additional contract staff FG III to support its operations.

As regards the funding of REMIT activities, the Director *ad interim* stressed that the magnitude of the data collection, going above what could have been reasonably expected, called for a reassessment of the financial years 2020-2022 with an increase of budget to 3.9 Million to finance the IT needs for REMIT. The support provided by the Agency in enforcing REMIT has brought already benefit to consumers with the first impositions of penalties in several Member States. In this context, the Director *ad interim* invited the Administrative Board to consider that the possibility to assess the financial resources needed to guarantee IT operations at optimal level over a period of time going beyond the multiannual planning of three years discounts the difficulty to establish reasonable assumptions due to the unprecedented enterprise that REMIT represents.

Finally, the Director *ad interim*, upon request of the Administrative Board, clarified that at this stage the lack of sufficient financial resources does not allow to provide the Board of Appeal with additional support beyond the one provided so far.

The Administrative Board welcomed the approach taken by the Agency in drafting the Single Programming Document 2020-2022 and conveying the desired messages to the European institutions. The representative of the European Commission noted that the request for additional TAs is going beyond the agreement on the Clean Energy Package, a request which should be evaluated at a later stage. In this context, the Agency was invited to re-consider its request in light of the tasks that the Agency will receive under the framework of Cyber Security, Risk preparedness. As regards the request for additional financial resources to support REMIT IT operations, the Administrative Board invited the Agency to provide an assessment of the long-term financial needs for REMIT IT operations alongside the technical requirements needed. The Administrative Board invited the Agency to consider expanding the introduction with an outlook on the future of the energy sector highlighting the effects of decarbonisation, decentralisation and digitalisation on the energy markets, taking into account the uncertainties deriving from the future developments at policy and political level.

The Director *ad interim* highlighted that the current debate within the European institutions on security of supply and cybersecurity does not take into consideration to a sufficient degree the impact of the tasks currently attributed to the Agency in the completion of the internal market and their role in ensuring security. In particular the Director *ad interim* recalled that the stress test conducted by the European Commission demonstrated that the well-functioning of the internal market guarantees security of supply. The attribution to the Agency of the necessary resources to perform its current tasks at optimal level would therefore contribute in ensuring security, reducing overall costs for the Member States. This is even more so if the competencies which might be attributed to the Agency

under the Clean Energy Package are considered – e.g. methodology for European resource adequacy standards, reliability standards, costs of energy generation, methodology for participation in capacity mechanism, scenarios for bidding zone reconfiguration. The Director *ad interim* therefore concluded that the debate should focus, in his view, on these aspects in order to ensure that the Agency can contribute effectively to the European agenda, especially given the limited fraction of financial resources needed within the broader Union budget against the broader benefits delivered for the Union and for the Member States.

- Conclusion:*
- (1) The Administrative Board welcomed and supported the approach taken by the Agency in drafting the Single Programming Document 2020-2022 and conveying the desired messages to the European institutions;
 - (2) The Administrative Board invited the Director *ad interim* to consider the suggestions provided by the Agency about security, prioritisation, future outlook and support for the Board of Appeal.
 - (3) The Administrative Board invited the Agency to provide an assessment of the long-term financial needs for REMIT IT operations alongside the technical requirements needed beyond the timeframe of the multi-annual planning.

(12) Procedure for the selection of the Director of the Agency

Before starting the discussion of this item, Ms HERCZOG left the meeting.

The Administrative Board was briefed on the current stage of the selection procedure for the Director of the Agency and the expected timeline for the notification of the short-list of candidates for the appointment of the Director. In light of the above, the Administrative Board, without support from the representative of the European Commission expressing different considerations given the legal risks for the Agency, considered appropriate to render the post of Director available as of 1st January 2020. In reaching this conclusion, the Administrative Board weighted the uncertainties of the selection procedure against the need to i) ensure continuity of service in the management of the Agency's operations and ii) maintain a vision for the future especially in light of the financial deadlines to which the Agency is subject to. As a result, despite the deep appreciation for the effort shown in the interim period, the Administrative Board, having assessed the limitations of the establishment plan of the Agency, expressed to the Director *ad interim* the intention to terminate his contract of employment with effect as of 31st December 2019, to be formalised in the course of the month of January 2019 according to the procedures in place for the purpose at hand.

The Administrative Board further discussed the procedure for the selection of the Director of the Agency.

- Conclusion:*
- (1) The Administrative Board expressed the intention to end the contract of employment of the Director *ad interim* and offered him the possibility to be heard on the matter at hand;
 - (2) The Administrative Board discussed the procedure for the appointment of the Director and adopted the evaluation grid for the evolution of the candidates shortlisted by the European Commission;
 - (3) The Administrative Board invited the Board of Regulators to a joint session to exchange views and reach a common understanding on the selection procedure, before the notification of the shortlist of candidates from the European Commission.

SECTION V – AOB

(13) Implementation of the Conflict of Interest Policy of the Agency for the year 2019

The Chair recalled that pursuant to Decision No 02/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 31 January 2015 laying down a policy for the prevention and management of conflict of interest, Members and Alternates of the Administrative Board are required, by 31 January of each year, to submit their individual Declaration of Interest ('DoI') and Declaration of Commitment ('DoC').

Conclusion: Members and Alternates took note of the incoming deadline to submit the individual Declaration of Interest ('DoI') and Declaration of Commitment ('DoC').

CLOSING

In the absence of any other business to be treated, the Chair closed the 39th meeting at 14:45.