

## DECISION AB n° 03/2010

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

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (hereafter 'Regulation' and 'Agency'), and in particular Article 12(5) thereof,

HAS ADOPTED THESE RULES OF PROCEDURE

#### **Article 1 Composition**

1. The Administrative Board, whose nine members are appointed according to Article 12 (1) of the Regulation, shall decide which alternate member is assigned to which member with voting rights.
2. The duration of the term of office, as set by Article 12 (1) of the Regulation, is four years, renewable once. For the first mandate, the term of office of five of the members and their alternates will be six years.
3. One year before the term of office of a Member of the Administrative Board expires, the Chair of the Administrative Board (the "Chair") shall inform the appropriate institution about the need for either renewal or appointment of new Board members, in line with Article 12(1) of the Regulation. If a member leaves before the end of its term, his/her alternate shall take the place unless the appropriate institution designates a different replacement.
4. In event of an appointment that concerns a Board Member who had been appointed by the Council, the Chair shall, in the letter referred to in Article 1.3, invite the Council to appoint a new Member or alternate from a Member State that has not yet nominated a Member in the Administrative Board. If the Council so wishes, it can nominate an alternate to become member and appoint a new alternate member.

#### **Article 2 Chair and Vice-Chair**

1. In line with Article 12 (2) of the Regulation, the Administrative Board shall appoint a Chair and a Vice-Chair from among its members.
2. The term of office of the Chair and the Vice-Chair shall be two years, renewable once. The term of office shall expire when they cease to be members of the Administrative Board.
3. Nominations for the Chair and the Vice-Chair shall be submitted either by the candidates themselves or by other members of the Administrative Board.
4. The elections shall be by secret ballot unless the Administrative Board decides otherwise by unanimity. In case of a secret ballot, a teller shall be designated



amongst the members to assist in the counting of the vote. The voting will take place through a series of rounds. After each round, the candidate with the lowest number of votes shall be withdrawn. Voting shall continue until one candidate receives a two-thirds majority of favourable votes of the Administrative Board members.

5. The Vice-Chair shall automatically take the place of the Chair if he/she is prevented to perform his/her duties. If both the Chair and the Vice-Chair are unable to attend a meeting, the meeting shall be chaired by the longest serving member of the Administrative Board or, in the event of equal length of service, by the oldest of the longest serving members.
6. If the office of the Chair or the Vice-Chair falls vacant before the end of the term of office, the Vice-Chair or Chair as the case may be shall convene a meeting to elect a successor, which shall be held within three months of the post falling vacant. The elected member shall serve as Chair or Vice-Chair for the remainder of his predecessor's term or until the end of his membership of the Administrative Board, whichever is earlier.

### **Article 3** **Meetings of the Administrative Board**

1. The Administrative Board shall meet at least twice per year in ordinary session. The date of each ordinary meeting shall be decided by the Board at least two meetings in advance.
2. In addition to its meetings in ordinary session, the Administrative Board shall meet in extraordinary session at the initiative of its Chair following a request from the European Commission or at least a third of its members.
3. When the Board is to meet in ordinary session, the Chair shall send the agenda, accompanied by the relevant material for decision making, at least fifteen calendar days prior to the meeting.
4. When the Board is to meet in extraordinary session, the Chair shall send the invitation to the meeting within six weeks of receipt of the request. The agenda, accompanied by the relevant material for decision making, shall be sent at least fifteen calendar days prior to the meeting.
5. When the Board is convened in extraordinary session to discuss urgent business as defined in Article 9 of these Rules of Procedure, the Chair shall send the agenda, accompanied by the relevant material for decision making no later than the tenth calendar day prior to the meeting, except in cases of 'force majeure'.
6. Every member of the Administrative Board shall notify the Administrative Board secretariat whether he/she will be attending a meeting in person or if they will be represented by his or her alternate member or exceptionally, if the alternate cannot be present, by a proxy.
7. The Chair of the Board of Regulators, or the nominee of the Board of Regulators, and the Director shall participate, as observers (i.e. without the right to vote), in the deliberations unless the Administrative Board decides otherwise as regards the Director. The Chair of the Board of Regulators (or the nominee of the Board of Regulators) and the Director may be accompanied by an adviser.



8. The Administrative Board may invite any person who has a relevant expertise to attend its meetings for specific points in the capacity of an expert.
9. The members of the Administrative Board may be assisted by their advisers. The Chair may restrict participation for specific points on the Agenda to the Members and Observers that are referred to in paragraph 7.
10. An alternate member may attend a meeting of the Administrative Board without voting right where the Member, whom he or she is assigned to, is present.
11. The Chair of the meeting may briefly introduce any point that is submitted for discussion. He/she may also ask that another Board member, the Director or an invited expert or adviser carries out this function. The Chair shall introduce and conclude on each agenda point; he/she may take part in the discussions insofar as it does not compromise his/her position as Chair.

**Article 4**  
**Venue of Administrative Board Meetings**

Unless the Chair decides otherwise, in particular in order to simplify the conduct of its business, meetings of the Administrative Board shall be held at the seat of the Agency.

**Article 5**  
**Agenda**

1. A provisional agenda shall be drawn up by the Chair in consultation with the Director. Board members can submit issues to be included on the provisional agenda to the Chair not less than six weeks before the meeting. The agenda shall include those items the inclusion of which is requested by the Director. The Chair of the Administrative Board approves the final agenda of every meeting.
2. The provisional agenda shall be finalised and agreed at the beginning of each meeting.
3. If the Administrative Board so decides, urgent issues may be added to the agenda at any time prior to the end of the meeting. Items on the agenda may be deleted or carried forward to subsequent meetings.
4. As required by Article 10(4) of the Regulation, the agenda, the background documents and, where appropriate, the minutes of the meetings of the Administrative Board shall be made public on the website of the Agency. The Administrative Board will ensure that the Board of Regulators and the Board of Appeal respect this provision of the Regulation. When publishing the agenda, the background documents to the agenda and the approved minutes or any other documents of the Board, due regard should be given to the exceptions from access to documents set out in Article 4 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The Administrative Board shall adopt practical and implementing measures for applying Regulation (EC) No 1049/2001 and the publication of documents in line with Article 10(4) of Regulation (EC) No 713/2009.





**Article 6**  
**Selection and Appointment of the Director**

1. The Administrative Board shall, taking due account of a favourable opinion of the Board of Regulators, select and appoint the Director in accordance with Article 16 (2) of the Regulation.
2. Immediately after the submission of the Commission's shortlist, the Chair of the Administrative Board shall write to the candidates inviting them for the interview with the Board. In his/her letter, the Chair should invite the candidates to send if they so wish, an updated curriculum vitae and motivation letter in sufficient time before the interview.
3. In advance of the interviews, the Administrative Board shall agree on an evaluation grid and the basic questions that will be put to the candidates. To ensure the equal treatment of all candidates the same set of standard questions shall be put to all candidates. Board members shall have the opportunity to ask additional questions related to the candidate's presentation or to the answers given to the standard questions. The evaluation grid and the questions should enable the Board to select the best candidate on the basis of merit as well as skills and experience relevant to the energy sector. They should also focus on the vision for the future of the Agency as well as on their leadership and communication skills, as defined in the relevant Vacancy Note.
4. In the discussion following the interviews the Chair of the Board of Regulators shall have the opportunity to explain the opinion of the Board of Regulators.
5. The voting should take place on the same day as the interviews. The voting shall be by secret ballot. A teller, acting under the authority of the Chair shall be designated to assist in the counting of the vote. The teller should preferably not be of the same nationality as any of the short listed candidates. If none of the candidates receives the necessary majority of two-thirds in the first ballot, further rounds shall be held. At the end of each round, the candidate with the lowest number of votes shall be withdrawn. When it is not possible to determine the candidate with the lowest number of votes due to equality, there shall be a special ballot to determine the remaining candidate. Voting shall continue until one candidate receives the required majority of two-thirds of favourable votes.

**Article 7**  
**Quorum**

1. The quorum necessary for the meeting to be valid shall be achieved when at least two thirds of the members with voting rights are present or represented by their alternate or by a proxy.
2. If this quorum necessary for the meeting to be valid is not met, the Chair shall immediately convene a new meeting of the Board to be organised within two weeks. At this new meeting, the quorum necessary for the meeting to be valid shall be achieved when at least four members with voting rights (or their alternates) are present. This special quorum cannot be applied in cases where the Administrative Board decides on the nomination or removal of the Director from



office, nor in cases where the Administrative Board is adopting or changing its Rules of Procedure.

### **Article 8** **Voting of the Administrative Board**

1. In accordance with Article 12(4) of the Regulation, all decisions of the Administrative Board shall be adopted by a two-thirds majority of the members present, with the exception of the decision on the removal of the Director from office. The decision to remove the Director from office can only be taken on the basis of a three-quarters majority of the members present. Each member of the Administrative Board or alternate replacing a member shall have one vote unless they have been allocated a proxy vote from another member or alternate.
2. In case both a member and his/her alternate are unable to participate in a vote, the member or alternate may transfer by proxy his or her voting right to another member or alternate. In addition to his/her own vote, each voting member may cast a maximum of one vote that he or she has received by proxy. The proxy shall be notified to the Chair at the beginning of the meeting and shall be recorded in the minutes.
3. Unless a secret ballot is requested by at least one-third of the members present, votes shall be taken by the show of hands.
4. For each decision adopted by the Board, figures for the votes cast shall be recorded. A statement of the views of the minority may be entered in the minutes along with the decision, if the minority so requests.
5. The Chair may authorise a member to speak briefly in explanation of a vote that he/she has cast.

### **Article 9** **Urgent business and written procedure**

1. Urgent business that is important for the functioning of the Agency or the internal market may be submitted to the Administrative Board either by convening an extraordinary Administrative Board meeting in accordance with Article 3.4 of these Rules of Procedure or by written procedure.
2. A written procedure may be proposed by the Chair in consultation with the Director for matters that have already been addressed during previous meetings, unless the Chair declares the issues to be urgent and important for the functioning of the Agency or the internal market. To start the written procedure the Director shall send by express or electronic mail a draft decision and any relevant background information to the members and, for information, to the Chair of the Board of Regulators, after approval and on behalf of the Chair. Members with voting rights may raise written objections within seven calendar days of the date of this mail. The quorum and voting rules of Article 7 and 8 of these Rules of Procedure apply *mutatis mutandis*.
3. In case of serious objections, the Chair in consultation with the Director may decide whether the written procedure is suspended and an extraordinary Administrative Board meeting should be convened, or whether the draft decision,



together with the serious objections, should be re-circulated to all Administrative Board members and the written procedure is followed. In the latter case, a new seven days period for objections shall be started.

4. A full report on the outcome of the written procedure shall be made at the following meeting.

#### **Article 10** **Impossibility to convene meetings**

1. In case Administrative Board meetings cannot be convened due to circumstances outside the control of the Agency, the Chair in consultation with the Director shall initiate written procedures on matters where an absence of a decision would have harmful consequences to the functioning of the Agency or to the functioning of the gas and electricity market.
2. These decisions shall be adopted in accordance with the procedure outlined in Article 9.2-9.4.

#### **Article 11** **Minutes**

1. Minutes of each meeting shall as a general rule indicate in respect of each item:
  - (a) documents submitted to the Administrative Board;
  - (b) a summary record of the proceedings;
  - (c) the decision taken or the conclusions reached by the Administrative Board;
  - (d) the list of attendees.
2. The draft minutes shall be forwarded to all members, as well as to the observers referred to in Article 3.7 having attended the meeting in question, no later than four weeks after that meeting.
3. The final text of the minutes shall be considered as being approved if none of the attendees of the meeting in question informed the Chair of any objections to the minutes within 15 working days from the date of receipt of the minutes. If any objection is raised, the Chair will either circulate new draft minutes (in which case the same procedure applies) or he or she may submit it to the next meeting of the Board.
4. Once approved, the minutes shall be signed by the Chair. The signed copy of the minutes shall be kept in the archives of the Agency.

#### **Article 12** **Access to Agency documents by Board members**

In the execution of its tasks specified in Article 13 of the Regulation, the Administrative Board shall have access to all Agency documents. After receipt of a request for obtaining access to documents, the Director shall ensure that all Board members or their alternates can consult these documents within a reasonable time period.





**Article 13**  
**Declarations**

1. The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions. The members shall make a declaration of commitment to fulfil their duties and a declaration of interests which could be prejudicial to their independence. These declarations shall be made annually in writing and be entered in a register held by the Agency which is accessible to the public. These Declarations shall be made in accordance with the models contained in Annex 1 and Annex 2.
2. At each meeting, members and observers, as well as advisors or experts, shall declare any interest which could be considered to be prejudicial to their independence with respect to any point on the agenda. Anyone declaring such interests shall not attend any deliberations of nor participate in any voting on the relevant point.

**Article 14**  
**Duty of confidentiality**

Members and observers of the Administrative Board, as well as any other attendant of Board meetings shall be required, even after their duties have been ceased, not to disclose information covered by professional secrecy.

**Article 15**  
**Secretariat of the Administrative Board**

The Director shall be responsible for providing the secretariat for the Administrative Board. All correspondence with the Board shall be addressed to the Agency.

**Article 16**  
**Reimbursement of expenses**

1. Unless expenses are covered by other means, travel and subsistence expenses incurred by the Administrative Board Members and the Chair of the Board of Regulators (or the nominee of the Board of Regulators) in connection with Board meetings shall be paid by the Agency in accordance with the scales laid down by the Staff Regulations of Officials of the European Communities.
2. Expenses incurred by alternate members relating to Board meetings shall be paid by the Agency in accordance with paragraph 1 where the alternate replaces the Board member for whom he/she has been appointed as alternate.
3. Where the Administrative Board has invited an expert, the costs of the expert shall be reimbursed according to the Rules on the reimbursement of expenses incurred by people from outside the Agency for the Cooperation of Energy Regulators invited to attend meetings in an expert capacity.

**Article 17**  
**Rules of Procedure**



1. These Rules of Procedure shall be signed by the Chair and published on the website of the Agency.
2. The Rules of Procedure can be amended by a Board decision according to the quorum rules specified in Article 7 of these Rules of Procedure.

Done at Brussels, on 6 May 2010.

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the left.

Piotr WOZNIAK

*Chairman of the Administrative Board*



**DECLARATION OF INTERESTS**

**Name:**

\_\_\_\_\_

- **I hereby declare that I do not have any interests which could be prejudicial to my independence.**
  
- **I hereby declare that I have the following interests that could be prejudicial to my independence:**

**I understand that this Declaration will be entered in a register held by the Agency for the Cooperation of Energy Regulators which is accessible to the public, on request, at the Agency's offices.**

**Done at** \_\_\_\_\_ **on** \_\_\_\_\_

**Signature:**

**ACER**

AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

**ANNEX**

**2 DECLARATION OF COMMITMENT**

**I ....., hereby declare that I shall make all reasonable efforts to fulfill my duties as member of the Administrative Board of the Agency for the Cooperation of Energy Regulators.**

**I understand that this Declaration will be entered in a register held by the Agency for the Cooperation of Energy Regulators which is accessible to the public, on request, at the Agency's offices.**

**Done at \_\_\_\_\_ on \_\_\_\_\_**

**Signature:**