

Call for expression of interest for the appointment of the members and alternates of the Board of Appeal of the European Union Agency for the Cooperation of Energy Regulators (ACER)

The tasks of ACER and its Board of Appeal

The European Union Agency for the Cooperation of Energy Regulators ('ACER') established in March 2011 and located in Ljubljana, Slovenia, plays a central role in fostering the integration and completion of the European Internal Energy Market for electricity and natural gas.

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 Regulators¹ regulates the functioning of ACER and describes the tasks it shall perform, including the power to take binding decisions in the areas referred to in point (d) of Article 2 of Regulation (EU) 2019/942. Decisions are adopted by ACER's Director. In many cases the adoption is subject to a favourable opinion of ACER's Board of Regulators, composed of representatives of the regulatory authority of each Member States. Any directly and individually concerned natural or legal person can appeal against decisions referred to in point (d) of Article 2 of Regulation (EU) 2019/942 before ACER's Board of Appeal.

Further information about ACER can be found on the following website: <http://www.acer.europa.eu/>

The organisation and work of the Board of Appeal

Articles 25 to 28 of Regulation (EU) 2019/942 set out the relevant provisions in relation to appeals.

The Board of Appeal consists of six members and six alternates.

The Board of Appeal adopts and publishes its rules of procedure, setting out in detail the arrangements for the organisation and functioning of the Board of Appeal and the rules applicable to appeals before the Board². The Board of Appeal designates its *Chair* and *Vice-Chair* from among its members.

The *Chair* allocates and presides over the appeal proceedings and ensures the quality and consistency of decisions by the Board of Appeal. The role entails coordination and administrative activities to ensure the proper implementation of the rules of procedure. The *Vice-Chair* replaces the *Chair* in case of his or her unavailability.

A *Rapporteur* is designated for each appeal to carry out a preliminary examination of the appeal, present the results of that examination to the other members and prepare a draft decision.

The members and alternates of the Board of Appeal shall act in the public interest and be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in ACER, including its Administrative Board, its Board of Regulators or its working groups and task forces. A member or alternate of the Board of Appeal shall not be removed during his or her term of office, unless he or she has been found guilty of serious misconduct, and the Administrative Board, after consulting the Board of Regulators, takes a decision to that effect. In this regard, members and alternates, when acting in the exercise of their duties, are protected by ACER from the risks of liabilities imposed by lawsuits and similar claims by any party, unless negligence or serious misconduct is established.

The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. The Board of Appeal may confirm the decision of ACER, or it may remit the case to the

¹ OJ L 158, 14.6.2019, p. 22.

² The Rules of Procedure of the Board of Appeal are available at: https://www.acer.europa.eu/en/The_agency/Organisation/Board_of_Appeal/Pages/Procedural-Documents.aspx

competent body of ACER. The latter shall be bound by the decision of the Board of Appeal.

To ensure that the Board of Appeal can operate smoothly, the Board of Appeal is financed via a separate budget line within ACER's budget and assisted in the exercise of its duties by a Registrar, tasked with administrative and secretarial duties.

The Board of Appeal, in carrying out its tasks, may receive legal and technical support, acting under its supervision. This support is subject to the limits of the available budget.

Working conditions

The members and alternates will be expected to be available to deal with appeal cases as they arise. In the year 2020, the Board of Appeal has dealt with 13 appeals in total. A similar workload is expected for the years 2021-2023. Members of the Board of Appeals may therefore be in full-time employment, if this is compatible with their ability to hear appeals at short notice. The level of activity of the Board of Appeal will depend on the number of appeals made against ACER's decisions and the potential further litigation before the Court of Justice of the European Union.

As such, they are not required to suspend their current professional activities, but any such activities must be compatible with the requirements that members and alternates of the Board of Appeal shall be independent.

The Staff Regulations of Officials and Conditions of Employment of other servants of the European Union (the 'Staff Regulations') do not apply to those members and alternates of the Board of Appeal who are not already employed as servants of the European Union.

The members and alternates will be required to declare any interests which may conflict with their duties to the Board of Appeal and with individual appeal cases.

Depending on the number of appeals and the distribution of tasks within the Board, the members and alternates will be expected to be available 7 to 12 days per appeal for at least 10 appeals per year.

The following remuneration scheme for members or alternates, not being servants of the European Union, is envisaged for each decision appealed, irrespective of the number of appeals received against a decision:

- Members or alternates designated for an appeal proceeding shall be remunerated at a rate of 625 EUR per day, with a maximum of 5,000 EUR per person per appeal case;
- The Chair or the Vice-Chair and the Rapporteur designated for an appeal proceeding shall be remunerated at a rate of 750 EUR per day with a maximum of 9,000 EUR per person per appeal case.

The remuneration will depend on the number of appeal cases and the task allocation within the Board of Appeal. Therefore, it is not possible to guarantee a certain level of income from the above remuneration scheme. Please note that the provided figures are gross amounts, the taxes you would need to pay on received remuneration depend on the applicable rules in your respective tax domicile.

EU servants in active service within an EU institution, agency, body or office, who are appointed to act on the Board of Appeal, are not allowed to be in receipt of remuneration from the Union institutions, agencies, bodies or offices, but only reimbursement of mission costs, as per the Staff Regulations. To this end, it is appropriate that the assignment to serve on the Board of Appeal is agreed with their institution, agency, body or office.

ACER may enter into a service level agreement (SLA) or Memorandum of Understanding (MoU) with an EU institution or an EU agency, body or office to regulate the conditions on costs (including mission costs) for its staff to serve on the Board of Appeal.

The travel and subsistence expenses will be reimbursed under the applicable rules of ACER.

The term of office starts on **18 October 2021**, for a maximum of five (5) years and is renewable once.

Eligibility criteria

Candidates will be considered eligible for selection on the basis of the following formal criteria to be cumulatively fulfilled by the closing date for applications:

- be a national of a Member State of the European Union;
- enjoy full rights as a citizen;
- have a level of education which corresponds to completed university studies, attested by a diploma:
 - when the normal period of university education is at least four years;
 - or
 - when the normal period of university education is at least three years³, at least one additional year of postgraduate professional experience in the field of law, engineering, economics, or equivalent;
- have acquired at least twenty (20) years of postgraduate professional experience⁴;
- be a current or former senior staff of:
 - a) the Union institutions, agencies, bodies or offices with relevant experience in internal market law, competition law, competition policy, other Union law, regulated network industries and, in particular, the energy sector
 - or
 - b) the regulatory authorities, competition authorities or other national institutions with relevant experience in internal market law, competition law, competition policy, Union law, regulated network industries and, in particular, the energy sector;
- have a thorough knowledge of one of the official European Union languages, preferably English, and a satisfactory knowledge of a second of those languages to the extent necessary to perform his/her duties;
- not having previously served as member or alternate of the Board of Appeal for two terms (as of 19 October 2021);

³ Only study titles that have been awarded in EU Member States or that are subject to the equivalence certificates issued by the authorities in the said Member States shall be taken into consideration.

⁴ Only professional experience acquired after achieving the stated minimum level of education shall be considered. Where additional period of training and study are accompanied by periods of professional activity, only the latter shall be considered as professional experience. Compulsory military service or equivalent civilian service accomplished after the achieving the minimum level of education shall be taken into consideration. Professional activity pursued part-time shall be calculated pro-rata, on the basis of the percentage of full-time hours worked. A given period may be counted only once. At a later stage, the candidate will be asked to provide supporting documents confirming the length and the level of his/her professional experience.

Selection criteria

The following criteria will be assessed when selecting the Candidates. Candidates will be considered selected on the basis of the following criteria to be fulfilled by the closing date for applications:

1. university studies in law, engineering, economics or equivalent, attested by a diploma;
2. post graduate attested relevant degree (Master, Ph.D) in European Union law, competition law, competition policy, regulated network industries, energy policy and/or energy regulation;
3. have acquired at least fifteen (15) years of post-graduate professional experience with European Union Law, competition law, regulated network industries, energy policy and/or energy regulation;
4. have acquired judicial experience in the field of European Union Law, competition law, regulated network industries, energy policy and/or energy regulation;
5. Excellent knowledge of the functioning of the Internal Energy Market acquired through relevant professional experience;
6. Technical and economic expertise relevant for the internal electricity and gas sectors and markets;
7. Familiarity with the current developments in the European electricity and gas markets and their regulation;
8. Familiarity with EU competition policy and its implementation;
9. Excellent written and oral command of the English language;
10. Good written and oral command of another official language of the European Union other than the mother tongue and English.

Exclusion criteria

Potential candidates shall be excluded if:

- a) he or she is bankrupt, subject to insolvency or winding-up procedures, his/her assets are being administered by a liquidator or by a court, he/she is in an arrangement with creditors, his/her business activities are suspended or he/she is in any analogous situation arising from a similar procedure provided for under EU or national laws or regulations;
- b) it has been established by a final judgement or a final administrative decision that the person is in breach of obligations relating to the payment of taxes or social security contributions in accordance with the applicable law;
- c) it has been established by a final judgement or a final administrative decision that the person is guilty of grave professional misconduct by having violated applicable laws or regulations or ethical standards of the profession to which the person belongs, or by having engaged in any wrongful conduct which has an impact on its professional credibility where such conduct denotes wrongful intent or gross negligence, including, in particular, any of the following:
 - fraudulently or negligently misrepresenting information required for the verification of the absence of grounds for exclusion or the fulfilment of selection criteria or in the performance of a contract or an agreement;
 - entering into agreement with other persons with the aim of distorting competition;
 - violating intellectual property rights;

- attempting to influence the decision-making process of the contracting authority during the award procedure;
 - attempting to obtain confidential information that may confer upon it undue advantages in the award procedure;
- d) it has been established by a final judgement that the person is guilty of the following:
- fraud, within the meaning of Article 3 of Directive (EU) 2017/1371 and Article 1 of the Convention on the protection of the European Communities' financial interests, drawn up by the Council Act of 26 July 1995;
 - corruption, as defined in Article 4(2) of Directive (EU) 2017/1371 and Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997, and conduct referred to in Article 2(1) of Council Framework Decision 2003/568/JHA, as well as corruption as defined in the applicable law;
 - conduct related to a criminal organisation, as referred to in Article 2 of Council Framework Decision 2008/841/JHA;
 - money laundering or terrorist financing, within the meaning of Article 1(3), (4) and (5) of Directive (EU) 2015/849 of the European Parliament and of the Council;
 - terrorist-related offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA, respectively, or inciting, aiding, abetting or attempting to commit such offences, as referred to in Article 4 of that Decision;
 - child labour or other offences concerning trafficking in human beings as referred to in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;
- e) he or she has shown significant deficiencies in complying with the main obligations in the performance of a contract or an agreement financed by the Union's budget, which has led to its early termination or to the application of liquidated damages or other contractual penalties, or which has been discovered following checks, audits or investigations by a contracting authority, OLAF or the Court of Auditors;
- f) it has been established by a final judgment or final administrative decision that the person has committed an irregularity within the meaning of Article 1(2) of Council Regulation (EC, Euratom) No 2988/95;
- g) it has been established by a final judgment or final administrative decision that the person has created an entity under a different jurisdiction with the intent to circumvent fiscal, social or any other legal obligations of mandatory application in the jurisdiction of its registered office, central administration or principal place of business.
- h) for the situations referred to in points (c) to (h) above the person is subject to:
- facts established in the context of audits or investigations carried out by the European Public Prosecutor's Office, the Court of Auditors, the European Anti-Fraud Office or an internal auditor, or any other check, audit or control performed under the responsibility of an authorising officer of an EU institution, of a European office or of an EU agency or body;
 - non-final administrative decisions which may include disciplinary measures taken by the competent supervisory body responsible for the verification of the application of standards of professional ethics;

- facts referred to in decisions of entities or persons being entrusted with EU budget implementation tasks;
- information transmitted by Member States implementing Union funds;
- decisions of the Commission relating to the infringement of Union competition law or of a national competent authority relating to the infringement of Union or national competition law or
- decisions of exclusion by an authorising officer of an EU institution, of a European office or of an EU agency or body.

Before appointment, candidates shall provide a declaration on their honour stating that they are not in one of the situations of exclusion listed above. In case of doubt, they may be requested to provide supporting evidence of non-exclusion.

Submission and closing date of applications

Candidates wishing to express their interest must submit an application in English consisting of:

- a detailed curriculum vitae showing the fulfilment of the eligibility and the selection criteria;
- their full contact details; and
- a letter of motivation (1 page maximum) indicating how the selection criteria are best met.

Applications not containing the above documents risk to be rejected.

Application shall be submitted by e-mail to the following address:

ENER-BOA-ACER@ec.europa.eu.

The subject of the email should clearly mention ‘*CANDIDACY ACER BOARD OF APPEAL*’.

Upon request, the Commission may ask supporting evidence related to the selection criteria.

The **deadline** to submit an expression of interest is **Tuesday, 25 May 2021 date of e-mail**.

For any further inquiry on this call, please contact ENER-BOA-ACER@ec.europa.eu.

Selection and Appointment

Candidates are invited to submit an expression of interest in accordance with the rules set out in this Call.

For practical reasons and in order to complete the selection procedure as quickly as possible in the interest of the candidates as well as that of ACER, and taking into account that ACER’s working language is English⁵, the selection procedure will be carried out in English only. Nevertheless, the selection panel will verify whether candidates comply with the requirement of a satisfactory knowledge of another official EU language.

The Commission will draw up a list of candidates who meet the eligibility criteria and best fulfil the selection criteria indicated above and will submit a proposal to the Administrative Board of ACER. The Commission will strive for a proposal, which will ensure that the Board of Appeal will have members and alternates with a legal background, but also members and alternates with

⁵ Decision No 15/2014 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 18 December 2014 on the internal language regime of the Agency for the Cooperation of Energy Regulators, available at: https://www.acer.europa.eu/en/The_agency/Organisation/Administrative_Board/Administrative%20Board%20Decision/DECISION%20AB-15-2014%20on%20the%20language%20regime%20of%20the%20Agency.pdf

relevant economic and technical expertise.

Candidates should pay attention to the Conflict of interest policy of ACER⁶. Before appointment, candidates will be required to make a declaration of commitment to act independently in the public interest and to make a declaration in relation to any interests, which might be considered prejudicial to their independence. In particular, candidates should not be current staff of regulatory authorities or other national or Union institutions and having been directly involved in the last three years in the activities of ACER or having been responsible in the last three years for cases ACER was involved in or may get involved. Successful candidates are expected to refrain from being responsible for or working on files in which ACER is involved in or may get involved during their term as member or alternate of the Board of Appeal.

In accordance with Articles 19(1)(c) and 25(2) of Regulation (EU) 2019/942, the Administrative Board of ACER shall appoint the members of the Board of Appeal and their alternates from the list referred to above after having consulted the Board of Regulators.

Protection of personal data

The Commission and ACER, acting as data controller, will ensure that candidates' personal data are processed as required by Regulation (EU) 2018/1725. This applies in particular to the confidentiality and security of such data⁷.

Unless indicated otherwise, your reply to this call for expression of interest and any personal data requested are required for the purposes indicated above and will be processed solely for those purposes indicated in this call for expression of interest.

Please read the [Specific Privacy Statement](#) for this call regarding the collection and use of your personal data provided on this occasion and the rights and obligation deriving therein. Your personal data may be registered in the Early Detection and Exclusion System by the responsible Authorizing Officer, should you be in one of the situations mentioned in Article 136 of the Financial Regulation⁸.

Contact details

Responsible service: DG Energy, Unit C3 Internal Energy Market

Postal address:

European Commission

Directorate General for Energy

Unit C3 - Internal Energy Market

1049 Brussels

Belgium

Email: ENER-BOA-ACER@ec.europa.eu

⁶ Decision No 2/2015 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 conflicts of interest, available at: https://www.acer.europa.eu/en/The_agency/Organisation/Administrative_Board/Administrative%20Board%20Decision/DECISION%20AB-02-2015%20on%20CoI%20Policy.pdf.

⁷ See Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, OJ L 295, 21.11.2018, p. 39.

⁸ See Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, OJ L 193, 30.7.2018, p. 1.