

Minutes

ACER – 5th meeting of Administrative Board

1 June 2011, 9:00-17:00

Ljubljana, Trg republike 3, meeting room 2. floor

Present:

Mr. Piotr Grzegorz Wozniak, Chair

Mr. Razvan Eugen Nicolescu, Vice-Chair

Mr. Phillippe Guillard, Member

Mr. Philip Lowe, Member

Mr. Augusto Bonucci, Member

Mr. Jorge Vasconcelos, Alternate

Mr. Uwe Leprich, Alternate

Mr. Alfonso Gonzalez Finat, Alternate

Mr. Peter Gordos, Alternate

Lord John Mogg, Chair of the Board of Regulators, Observer

Mr. Alberto Pototschnig, Director of ACER.

Other attendees:

Mr. Lukas Repa from the EC, Mrs. Saša Borko from ACER.

Main conclusions from the meeting:

- 1.) At the next meeting in September the Board will discuss the possibility of writing a letter from the Chairman to the European Parliament (EP) and the Council on the Commission's budgetary proposal which envisages a level of subsidy to ACER lower than the one estimated by the Administrative Board in its meeting on 3 March (€170000).
- 2.) The Administrative Board decided to await the opinion of the BoR before the formal appointment of the members/alternates of the Board of Appeal. It will then decide whether a written procedure can take place.
- 3.) The Board adopted AB decision n° 13/2011 on accepting the offer for logistical support by the Council of European Energy Regulators (ANNEX1). The Board gave the mandate to the Director to implement it. ACER will thank CEER for the donation. The amount of the CEER's in kind contribution to ACER will be reflected in the 2012 ACER budget balance sheet.
- 4.) The Board adopted AB Decision no. 9/2011 on the adoption of implementing rules to the Staff Regulations (ANNEX2). The Staff Committee of ACER will be given the possibility to give its opinion on the implementing rules and the Board will take full account of this opinion.

The Board also adopted the following decisions: AB Decision no. 10/2011 on the adoption of general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER (ANNEX3); AB Decision no. 11/2011 on the adoption of general implementing provisions on the procedures governing the engagement and the use of contract staff at ACER (ANNEX4), and AB Decision no. 12/2011 on the general implementing provisions concerning the criteria applicable to classification in grade and step on appointment or engagement (ANNEX5).

- 5.) The Board considered the following decisions ahead of their sending for inter-service consultation: AB Decision no. [...] /2011 on ACER Financial Regulation; AB Decision no. [...] /2011 laying down detailed rules for the implementation of ACER Financial Regulation; AB Decision no. [...] /2011 on middle management staff, AB Decision no. [...] /2011 establishing the policy and procedure for the performance appraisal of staff; AB Decision no. [...] /2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators; AB Decision no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee; and AB Decision no. [...] /2011 on outside activities and assignments.
- 6.) The Board confirmed the management period for Director Pototschnig.
- 7.) The ACER's Work Programme 2012 will be adopted at the next meeting on 22 September.
- 8.) The dates for AB meetings in 2012 will be confirmed at the next meeting.

1. Approval of the Agenda

The following agenda of the 5th ACER Administrative Board meeting was approved:

AGENDA

Agenda Topics	Accompanying documents	Rapporteur
<p>Opening</p> <p>1. Approval of the agenda</p> <p>2. Report on ACER progress incl. recruitment, financial autonomy and budget execution, methodology of reporting on market monitoring</p>	<p>Doc 1 for approval</p> <p>Oral update</p>	<p>AB Chair ACER Director</p>
<p>Administration and organisation</p> <p>3. Report on the written procedures</p> <p>4. Update on the work of the BoR</p> <p>5. Appointment of the members of the Board of Appeal upon Commission's proposal</p> <p>6. Acceptance of contribution in kind from CEER related to the Agency's liaison office in Brussels (*)</p>	<p>Oral update</p> <p>Oral update</p> <p>Doc 5 for consideration</p> <p>Doc 6 for adoption</p> <p>Doc 6a for information</p>	<p>ACER Director</p> <p>BoR Chair Commission</p> <p>ACER Director</p>
<p>7. Decision AB no. [...] /2011 on the adoption of implementing rules to the Staff Regulations (adopted by analogy) (*)</p>	<p>Doc 7 for adoption</p>	<p>ACER Director</p>
<p>8. Decision AB no. [...] /2011 on the adoption of general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER (*)</p>	<p>Doc 8 for adoption</p>	<p>ACER Director</p>

Agenda Topics	Accompanying documents	Rapporteur
9. Decision AB no. [...] /2011 on the adoption of general implementing provisions on the procedures governing the engagement and the use of contract staff at ACER (*)	Doc 9 for adoption	ACER Director
10. Decision AB no. [...] /2011 on the general implementing provisions concerning the criteria applicable to classification in grade and step on appointment or engagement (*)	Doc 10 for adoption	ACER Director
11. Decision AB no. [...] /2011 on ACER Financial Regulation (**)	Doc 11 for consideration	ACER Director
12. Decision AB no. [...] /2011 laying down detailed rules for the implementation of ACER Financial Regulation (**)	Doc 12 for consideration	ACER Director
13. Decision AB no. [...] /2011 on middle management staff (**)	Doc 13 for consideration	ACER Director
14. Decision AB no. [...] /2011 establishing the policy and procedure for the performance appraisal of staff (**)	Doc 14 for consideration	ACER Director
15. Decision AB no. [...] /2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators (**)	Doc 15 for consideration	ACER Director
16. Decision AB no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee (**)	Doc 16 for consideration	ACER Director
17. Decision AB no. [...] /2011 on outside activities and assignments (**)	Doc 17 for consideration	ACER Director
18. Oral report on the conclusion of the probationary and the management period for Alberto Pototschnig	Management period for confirmation	AB Chair
<p>General ACER work</p> 19. Report on the state of play of ACER's Work Programme 2011 and ACER's draft Work Programme 2012	Doc 19 and 19a for consideration	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
20. Next Meetings 21. AOB	Doc 20 for information	AB Chair AB Chair
(*) Subject to the document being available after the Commission's inter-service consultation. (**) Draft undergoing Commission's inter-service consultation.		

2. Report on ACER progress including recruitment, financial autonomy and budget execution, methodology of reporting on market monitoring

Director Pototschnig presented ACER's progress. He outlined the state of play concerning the development of the framework guidelines (FG). Two public consultations on FG on Capacity Allocation Mechanism for the Gas Transmission Network and Electricity FG on Electricity Grid Connections finished on 2 May, their adoption is envisaged for 6 July. Two public consultations on FG on Electricity Capacity Allocation and Congestion Management and FG on Gas Balancing are due on 10-12 June, their adoption is envisaged for September.

Director Pototschnig informed the Board about the recently (6 May) adopted first ACER's opinions, namely the opinions on the ENTSOE and ENTSOG Statutes. He indicated that nevertheless there would be some delays regarding the 2011 Work Programme, but these have already been reflected in the Joint 3-years plan. FG on Electricity Balancing will continue to be developed in 2012; FG on gas transmission tariff structure might be developed directly by the Commission as "Comitology Guidelines" procedure; work has started as planned regarding Gas FG on interoperability. He reported on the establishment, on 1 March 2011, of ACER's working groups on Electricity and Gas. Moreover, AESAG (Agency Electricity Stakeholder Advisory Group) has been established to continue work from AHAG on the Roadmaps for the implementation of the target model. It met three times and delivered some proposals for Roadmaps that were presented at the Florence forum.

Director Pototschnig informed the Board about the appointment of the new Head of Gas. He also reported that staff recruitment is well on track and today 20 staff are in office. Selection is underway for 11 additional posts. Vacancy notices for 8 of the remaining 9 positions will be published in the next four months. SNEs will begin to take up posts in the summer. By September 6 SNEs will have started (4 positions are still available). The Director is hopeful to complete recruitment by the end of the year. In terms of geographic representation, the staff includes nationalities from several countries, which is part of the wealth of the Agency.

As envisaged, the Agency gained its financial autonomy on 8 March, since 17 March it has started using its own financial system.

Some internal control standards are already in place at ACER, others are yet to be prepared. The first internal audit is expected to take place in July/August 2011, by the Internal Audit Officer contracted for 5 days by ACER from the European Maritime Safety Agency (EMSA). When asked about the permanent position of an internal audit officer at ACER, Director Pototschnig indicated that an assessment of the exact job description for this position will take place following the internal audit in July.

The Director presented the state of the budget execution. ACER is well on track regarding budget spending. A monthly report will be regularly provided on the ACERnet.

As regards the general annual statistical monitoring - benchmarking reports - ACER is taking this task over from the Commission and is already in contact with the regulators. Under the proposed REMIT legislation, ACER will have additional monitoring responsibility on the wholesale products. This will include the collecting and the screening of data. ACER would be working together with the financial supervision agencies and the regulators. A dedicated IT system for the screening of the data on a continuous basis would need to be installed. According to the Director, the pilot project carried out by CEER and EFET in 2010-2011 provides useful elements that could be taken into account for the ACER's monitoring activity. ACER would summarise and circulate the report on the CEER's and EFET's pilot project to the Board members.

Director Pototschnig informed the Board about the latest provisions in the draft REMIT Regulation, which were voted by the ITRE committee of the EP, underlining that the Agency shall be provided with additional financial and human resources to fulfil its tasks. According to the latest text, by 15 September 2011 at the latest, it should assess its staffing and resources needs arising from the assumption of its powers and duties under REMIT, and submit a report to the European Parliament, the Council and the Commission. Mr Lowe reported on COREPER's discussions regarding REMIT that had taken place a week before.

One AB member underlined the importance of changing the current framework of market monitoring, as in numerous countries energy is generated by renewables. On a request of the Vice-Chairman, Director Pototschnig promised to prepare a written methodology and a template of ACER's monitoring, which would take into account new realities of market monitoring. An AB member raised the issue of the need to incorporate legally these new REMIT responsibilities into the tasks of the AB mainly in terms of ACER's work programme. Mr Lowe also confirmed that the Commission would welcome the opinion of the Agency and the regulators on its Communication "Energy Efficiency Plan 2011", as well on its Communication "Energy infrastructure priorities for 2020 and beyond - A Blueprint for an integrated European energy network".

Finally, Director Pototschnig described cooperation with the Commission as excellent.

Lord Mogg praised the work of the Agency as well as the Commission's support.

A discussion on the Commission's cut (€170.000) in the subsidy to ACER took place. Mr Pototschnig is pursuing the possibility of meeting with ITRE committee where he would raise the budget issue. A letter from the Chairman to the EP and the Council underlining the need for sufficient financial resources could be sent in the autumn.

Decision: At the next meeting in September the Board will discuss the possibility of writing a letter from the Chairman to the European Parliament (EP) and the Council on the Commission's budgetary proposal which envisages a level of subsidy to ACER lower than the one estimated by the Administrative Board in its meeting on 3 March (€170000).

3. Report on the written procedures

Director Pototschnig reported on two written procedures that were successfully completed in March and in April: the AB decision on the Internal Control Standards was adopted on 11 April and the AB Decision on the Multiannual Staff Policy Plan (MSPP) was adopted on 31 March. The minutes of the 4th AB meeting were adopted on 14 April.

4. Update on the work of the BoR

Lord Mogg reported on the work of the Board of Regulators (BoR). Since March 2011 BoR held five orientation debates on the FGs and adopted a decision on the Rules on access to its documents.

He underlined that a smooth shift of regulatory debate has taken place from ERGEG to ACER (BoR) and a change of voting rights has also taken place (simple weighted majority in ERGEG versus a two-thirds majority on a one-member-one-vote basis in the BoR). In 2012 six BoRs' meetings will take place in Ljubljana, others would be organised back to back with the Florence and Madrid forum. One will be organised in the capital of the Presidency (Cyprus). Lord Mogg underlined that the relationship between the Director and the BoR is working well.

When asked about the possibility to adopt FGs via the BoR written procedure, Lord Mogg confirmed that such possibility existed, but it would depend on the importance of issues raised during the consultation process.

5. Appointment of the members of the Board of Appeal (BoA) upon Commission's proposal

The Agency Regulation requires that the members of the Board of Appeal shall be formally appointed by the Administrative Board, on a proposal by the Commission after consultation of the Board of Regulators.

On 24 May the Commission submitted its proposal on the Board of Appeal Members and Alternates to the AB and BoR. To preserve confidentiality, the Cvs and motivation letters were shared only with those AB members/alternates that were present at June AB meeting.

The Chairman explained that one AB Member had taken part in the Commission's selection process and that BoR was going to discuss the proposal on 7 June.

The AB discussed the scope of appeals.

Some Board members placed particular emphasis on the importance of ensuring independence from any political, industry affiliation of the members/alternates of the BoA. One AB member was, however, particularly concerned about the absence of appropriate qualified representatives from the new Member States. One AB member commented on not all the candidates fulfilling the Advantageous selection criteria. Some Board members drew attention to the possibility of defining arrangements to replace members by alternates taking into consideration the need to ensure a proper geographical balance.

The Commission indicated that only 3 applications had been received from candidates in new Member States, 2 of whom have been included in the list as alternates; the Commission had formulated its proposal on the basis of the criteria set out in the public call of interest and under the overriding principle that the members/alternates undertake to act independently and in the public interest, and would not be bound by any instructions nor would they represent their Member State.

The Administrative Board noted the need to define more precisely a number of procedural issues, notably on the arrangements about the replacement of members by alternates (order of replacement); clarity on the independence requirements of those appointed in accordance with the legal provisions in the Regulation.

Most participants were pleased with the proposal of the Commission, but unsatisfied with the timeline of the process.

The Chairman agreed that some legal clarification, especially as regards article 19 of the Regulation (EC) No 713/2009 regarding the scope of appeals would be needed. Moreover, a meeting with the Board of Appeal, once established, should be taking place.

Decision: The Administrative Board decided to await the opinion of the BoR before the formal appointment of the members/alternates of the BoA. It will then decide whether a written procedure can take place.

6. Acceptance of contribution in-kind from CEER related to the Agency's liaison office in Brussels

Director Pototschnig expressed his satisfaction with the Commission's consent for the in-kind contribution from CEER related to the Agency's liaison office in Brussels. He expressed his sincere thanks to CEER and he will write formally to the BoR chair following the approval of the donation. As chairman of the Board of Regulators and president of CEER itself Lord Mogg commented that the donation was significant not least given the considerable financial pressures most National regulatory Authorities were currently facing.

An AB member raised the issue of reflecting this on ACER books as there is not guaranty of it being a permanent contribution. A short discussion took place whether the amount of the in-kind contribution should be reflected in the budget (as p.m). Mr Lowe indicated that the MSPP needs to be adapted accordingly.

Decision: The AB decision n° 13/2011 on accepting the offer for logistical support by the Council of European Energy Regulators was adopted (ANNEX 1). A mandate was given to the Director to implement it. ACER will thank CEER for the donation. The amount of the CEER's in kind contribution to ACER will be reflected in the 2012 ACER budget balance sheet.

7. Decision AB no. 9/2011 on the adoption of implementing rules to the Staff Regulations (adopted by analogy)

8. Decision AB no. 10/2011 on the adoption of general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER

9. Decision AB no. 11/2011 on the adoption of general implementing provisions on the procedures governing the engagement and the use of contract staff at ACER

10. Decision AB no. 12/2011 on the general implementing provisions concerning the criteria applicable to classification in grade and step on appointment or engagement

Director Pototschnig briefly introduced draft AB decisions 7-10/2011 regarding ACER's implementing rules of the Staff Regulations of officials and the Conditions of Employment of Other Servants of the European Communities. These draft decisions had already been considered at the previous AB meeting in March. On 31 May the Commission adopted a decision C(2011) 3819 giving its agreement to the Agency's rules. Decision AB no.9/2011 will be implemented by analogy, decisions 10/11/12/2011 were drafted as Agency decisions, but are nevertheless taking into account the Commission's decision C (2011) 3819.

Mr Lowe pointed out that according to article 110 (1) of the Staff Regulations, the Agencies adopt appropriate implementing rules to give effect to these Staff Regulations, after consultation of the relevant Staff Committee. However, as the Staff Committee of ACER has not yet been created, the AB may not be able to adopt the Decision AB no. 9/2011 on the adoption of implementing rules to the Staff Regulations.

Director Pototschnig clarified that the Commission in its decision C (2011) 3819 explicitly gives agreement to ACER's implementing rules and underlines that the opinion of the Staff Committee, once constituted, would be duly taken into account by the Administrative Board. The Director confirmed that ACER would proceed quickly with the appointment of the Staff Committee.

Decision: The Board adopted AB Decision no. 9/2011 on the adoption of implementing rules to the Staff Regulations (ANNEX2). The Staff Committee of ACER will be given the possibility to give its opinion on the implementing rules and the AB will take full account of this opinion.

The Board also adopted the following decisions: AB Decision no. 10/2011 on the adoption of general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER (ANNEX3); AB Decision no. 11/2011 on the adoption of general implementing provisions on the procedures governing the engagement and the use of contract staff at ACER (ANNEX4), and AB Decision no. 12/2011 on the general implementing provisions concerning the criteria applicable to classification in grade and step on appointment or engagement (ANNEX5).

11. Decision AB no. [...] /2011 on ACER Financial Regulation

12. Decision AB no. [...] /2011 laying down detailed rules for the implementation of ACER Financial Regulation

13. Decision AB no. [...] /2011 on middle management staff

14. Decision AB no. [...] /2011 establishing the policy and procedure for the performance appraisal of staff

15. Decision AB no. [...] /2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators

16. Decision AB no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee

17. Decision AB no. [...] /2011 on outside activities and assignments

Director Pototschnig indicated that these decisions still needs to go into inter-service consultations, therefore it was presented to the Board for consideration only. ACER only deviated from the Commission's Financial Regulation in a more flexible approach to remuneration that can be allowed for external activities (the allowed amount could be set at a higher level than the Commission's cap at €4500 euro). No particular comments were raised.

One AB member indicated that in the performance appraisal rules lodging a double appeal should be avoided in case of Commission officials detached to ACER.

Decision: The Board considered the following decisions: AB Decision no. [...] /2011 on ACER Financial Regulation; AB Decision no. [...] /2011 laying down detailed rules for the implementation of ACER Financial Regulation; AB Decision no. [...] /2011 on middle management staff, AB Decision no. [...] /2011 establishing the policy and procedure for the performance appraisal of staff; AB Decision no. [...] /2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators; AB Decision no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee; and AB Decision no. [...] /2011 on outside activities and assignments.

18. Oral report on the conclusion of the probationary and the management period for Alberto Pototschnig

At the beginning Director Pototschnig asked whether he should leave the room. The Chairman allowed him to stay. He then explained that the management period is the confirmation of the probationary period that had already been previously confirmed. The two assessors gave a positive opinion of the management period. Director Pototschnig did not have any objection to the report of the two assessors.

Decision: The Board confirmed the management period for Director Pototschnig.

19. Report on the state of play of ACER's Work Programme 2011 and ACER's draft Work Programme 2012

The Director presented a preliminary draft of the Agency's 2012 Work Programme. The Director's draft Work Programme will be submitted to the BoR, European Commission and the European Parliament by 30 June. The BoR needs to approve it and present it by 1st September for adoption to the AB. The AB shall adopt it before 30 September, after consulting the Commission and after having received approval by the Board of Regulators. It shall transmit it to the European Parliament, the Council and the Commission.

Director invited initial feedback from the members before this is finalised.

A number of activities will be carried forward from 2011. On the administrative side this includes some IT applications. On the regulatory side this includes follow up work on network codes which are being drafted following ACER's framework guidelines – grid connection, CACM for electricity; CAM for gas, gas balancing. New work for 2012 on electricity will include the FG on third party access, for which scoping will begin in 2012 with the FG to be completed in 2013. For gas, new FGs will be prepared on interoperability and on the rules for trading.

There are also a number of other activities, which form part of ACER's responsibilities in the Regulation, including, inter alia, monitoring of markets. There may also be work related to infrastructure package elements as well as the new responsibilities under REMIT.

Mr Lowe indicated that risk assessment against the key deliverables needs to be included (difficult timelines, the recruitment of right people etc.) In Director's view the risk is not on the staff, but on the degree of the complexity of the issues to be solved.

Lord Mogg underlined the need for the Agency's Work Programme to reflect complementarity with the CEER's activities; the need to focus on key areas to assure delivery against the key objectives; and suggested underlining in the significant contribution

of regulators (at the heart of the Agency) through the BoR and the Agency WGs in all Agency's activities, including on regional cooperation activities, which will enormously increase.

One member raised the issue of the multiannual work programme, but the Administrative Board decided that only a paragraph explaining the process in the coming years, could be included in the introduction of the Work Programme, as the planning process is carried out by the High Level Group any way,

Decision: The ACER's Work Programme 2012 will be adopted at the next meeting on 22 September.

20. Next Meetings

The Chairman proposed the following dates for the AB meetings in 2012:

13.3., 20.6, 5.9, 5.12.

One member has a concern about 13 March, therefore another appropriate date will be found for March 2012 meeting at the next AB.

Decision: The dates for AB meetings in 2012 will be confirmed at the next meeting.

21. AOB

Director Pototschnig informed the Board of a request from a stakeholder regarding the language policy of ACER's public consultations. He underlined that the tight deadlines envisaged in the ACER Regulation implies that this was drafted assuming that no translation was necessary. A brief discussion took place. A standard letter would be prepared by the legal service.

One AB member requested short information about the role of AESAG.

ANNEX 1

DECISION AB n° 13/2011

**ON ACCEPTING THE OFFER FOR LOGISTICAL SUPPORT BY THE COUNCIL OF
EUROPEAN ENERGY REGULATORS**

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

HAVING REGARD to the Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as “Agency”), and in particular to recital (20) and articles 13(8) and 21(1)(c);

Whereas:

Decision 2009/913/EU of the Representatives of the Governments of the Member States in the European Council of 7 December 2009 (OJ 9 December 2009, L 322/39) provides that the Agency for the Cooperation of Energy Regulators shall have its Seat in Ljubljana, Slovenia;

While the Agency has its Seat in Ljubljana, it is deemed essential that it keeps close contact and cooperation with the other European Union institutions, and in particular with the Council, the European Parliament and the Commission, to whom it delivers opinions and recommendations, pursuant to Article 4(c) of Regulation (EC) No 713/2009;

Such contact and cooperation are facilitated by the establishment of a liaison office in Brussels;

The Multi-Annual Staff Policy Plan for the period 2010 - 2013, adopted by Decision AB No 05/2010 of 22 June 2010, envisages that the Director may decide to open a liaison office for the Agency in Brussels in order to efficiently organise and prepare

possible meetings of working groups of national energy regulators during an initial start-up phase;

The Council of European Energy Regulators (hereafter referred to as “CEER”), with letter of its Chairman of 1 February 2011, has offered to support the Agency, in accordance with recital (20) of Regulation (EC) No 713/2009, with the provision of office space and secretarial and logistical support at their premises Rue le Titien, 28, B - 1000, Brussels, free of any rent, fees or charges, for the purpose of the establishment of the Agency’s liaison office in Brussels;

Such offer would allow the Agency to save the substantial costs of renting office premises in Brussels and organising the necessary secretarial and office management support;

Pursuant to Article 13(8) of Regulation (EC) No 713/2009, the European Commission has given its agreement on [1 June 2011] for the Agency to accept the offer from the CEER for the provision of office space in Brussels, including logistical and secretarial support, free of any rent, fees or charges, for the establishment of the Agency’s liaison office in Brussels;

HAS DECIDED:

- 1) To accept the offer from the CEER for the provision of office space in Rue le Titien, 28, B - 1000, Brussels, including logistical and secretarial support, free of any rent, fees or charges, for the establishment of the Agency’s liaison office in Brussels;
- 2) To give mandate to the Director to implement this Decision and, if necessary, to agree with the Council of European Energy Regulators the terms of utilisation of the offered facilities and services.

Done at Ljubljana, on 1 June 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX 2

DECISION AB n° 09/2011

**ON THE ADOPTION OF IMPLEMENTING RULES TO THE STAFF
REGULATIONS**

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

HAVING REGARD to the Staff Regulations of Officials of the European Communities and
the Conditions of Employment of Other Servants of the European Communities, laid down
by Council Regulation (EEC, EURATOM, ECSC) No 259/68, and in particular to Article
110 of the Staff Regulations,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the
Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy
Regulators (hereafter referred to as the "ACER Regulation" and "Agency"), and in particular
to Article 28(2) thereof,

HAVING REGARD to the decisions of the Commission setting up implementing rules for
the application of the amended Staff Regulations of Officials of the European Communities
and Conditions of Employment of Other Servants of the Employment Communities,

After the consultation of the Staff Committee of the Agency and in agreement with the
Commission pursuant to article 110 of the Staff Regulations

Whereas it is necessary, following Article 110 of the Staff Regulations, for agencies to adopt
the appropriate implementing rules for giving effect to these Staff Regulations in agreement
with the Commission.

HAS ADOPTED the following general implementing rules:

Article 1

The general implementing rules of the Staff Regulations, as adopted by the Commission, and listed in Annex I, shall apply by analogy to the staff of the Agency for the Cooperation of Energy Regulators.

Article 2

This decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 01 June 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

Annex to Decision AB n° 09/2011

1. Commission decision on general implementing provisions for Article 4 of Annex VIII to the Staff Regulations concerning the taking into account, for purposes of calculating pension rights, of periods of activity previously completed by staff before they resume active employment (C(2004) 1364 of 15.04.2004)
2. Commission decision on general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on transferring pension rights (C(2011) 1278 of 03.03.2011)
3. Commission decision on general implementing provisions for Article 26 of Annex XIII to the Staff Regulations on transferring pension rights – transitional provisions (C(2004) 1588 of 28.04.2004)
4. Commission decision on general implementing provisions for Article 22 (4) of Annex XIII to the Staff Regulations (C(2004) 1588 of 28.04.2004)
5. Commission decision on general implementing provisions on granting the household allowance by special decision (C(2004) 1364 of 15.04.2004)
6. Commission decision on general implementing provisions concerning persons to be treated as dependent children (Article 2(4) of Annex VII to the Staff Regulations) (C(2004) 1364 of 15.04.2004)
7. Commission decision on general implementing provisions for giving effect to Article 7(3) of Annex VII to the Staff Regulations on determining the place of origin (C(2004) 1364 of 15.04.2004)
8. Commission decision on general implementing provisions for giving effect to Articles 67 and 68 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII thereto (C(2004) 1364 of 15.04.2004)
9. Commission decision on general implementing provisions for the grant of education allowance (Article 3 of annex VII to the Staff Regulations) (C(2004) 1313 of 07.04.2004)
10. Commission decision on general provisions giving effect to Article 8 of Annex VII to the Staff Regulations (C(2004) 1588 of 28.04.2004)
11. Commission decision on the general provisions for implementing Article 42a of the Staff Regulations concerning parental leave (C(2010) 7572 of 05.11.2010)
12. Commission decision on Article 42b of the Staff Regulations concerning family leave (C(2010) 7494 of 05.11.2010)

13. Commission decision on transitional measures required by the revision of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (C(2004) 1613 of 28.04.2004)
14. Commission Decision implementing Article 1d (4) of the Staff Regulations (C(2004) 1318 of 7.4.2004)
15. Commission Decision introducing implementing provisions on absences as a result of sickness or accident (C(2004) 1597 of 28.04.2004)
16. Commission decision on general implementing provisions adopting the Guide to missions for officials and other servants of the European Commission (C(2008) 6215 of 18.11.2008)
17. Commission decision on introducing implementing provisions on leave (C(2010) 7495 of 05.11.2010)
18. Commission decision measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Communities (C(2004) 1597 of 28.04.2004)
19. Commission Decision on Article 55a and Annex IV a of the Staff Regulations concerning part-time work (C(2010) 7573 of 05.11.2010)

ANNEX 3

DECISION AB n° 10/2011

**ON THE ADOPTION OF
GENERAL IMPLEMENTING PROVISIONS ON THE PROCEDURE
GOVERNING THE ENGAGEMENT AND THE USE OF TEMPORARY
AGENTS AT ACER**

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

HAVING REGARD to the Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities (CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68, and in particular to Articles 2(a) and (b) and 12(5) of the CEOS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "ACER", respectively), and in particular to Article 28(2) thereof,

HAVING REGARD to the Commission Decision C(2005)5304 of 16 December 2005 concerning the Guidelines on staff policy in the European Regulatory Agencies,

After consultation of the Staff Committee and in agreement with the European Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations,

Whereas:

- (1) Detailed rules on the employment of temporary agents are desirable. These rules should be based on the types and the duration of tasks to be filled with temporary staff.
- (2) Temporary agents should be selected through a transparent and objective procedure.
- (3) The grading of temporary staff should correspond to the functions to be exercised.
- (4) The Agency may only recruit temporary staff under Article 2(a) of the CEOS.

HAS ADOPTED the following implementing provisions:

Article 1 - Scope

These rules shall apply to temporary staff referred to in Article 2(a) of the CEOS engaged in ACER (hereafter: temporary agents 2 (a)), except:

- the post corresponding to the function stated in Article 16 of the Council Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing ACER: the Director of ACER.
- heads of departments whose conditions of engagement and employment shall be carried out in line with the specific decision concerning middle management.

Article 2 - Type of posts and filling of posts

With reference to the Guidelines on staff policy in the European Regulatory Agencies¹, temporary agents 2 (a) shall be engaged on temporary posts on long-term or short-term employment, depending on the type and the duration of tasks:

- Temporary agents on long-term employment shall be engaged for permanent tasks: staff employed on long-term operational, administrative or technical tasks;
- Temporary agents on short-term employment shall be engaged for tasks of a limited duration: staff employed on operational, administrative or technical tasks of a defined duration or staff to cover peaks in workload on a limited period.

Long-term employment posts may be filled through an internal selection procedure, or via the Interagency Job Market and then through an external selection procedure. Short-term employment posts shall only be filled through an external selection procedure.

The publication of a long-term employment post may be done simultaneously internally in ACER and in the Interagency Job Market, before making an external publication of the vacant post. However, in the case of simultaneous publication internally and in the Interagency Job Market, the applications of the internal candidates shall be considered first.

Article 3 - Selection procedure for long-term employment

ACER may select temporary agents 2 (a) for long-term employment using one of the

¹ Commission Decision C(2005)5304 of 16 December 2005

following selection procedures:

1. Selection procedure by the European Communities Personnel Selection Office (EPSO):

- (a) Where, pursuant to Article 12(3) and (4) of the CEOS, EPSO organises on request of ACER a selection procedure, it shall follow the same standards as for general officials' competitions².

EPSO shall provide ACER with a short list of successfully tested candidates.

In the case of general selection procedures performed for different institutions, EPSO shall, on request of ACER, take account of the needs of ACER by reserving a quota of successful candidates and indicating, where appropriate, which of them were successfully tested in ACER's field.

- (b) ACER shall set up a Selection Committee, which shall consist of at least three members. Where the Selection Committee consists of three members, there should be one member from the administration department of the agency, one member from the recruiting unit/service and one member designated by the Staff Committee. The member of the administration or the member from the relevant unit shall act as chairman.

Where the Staff Committee decides not to be represented or fails to propose its representative within 10 working days following invitation to do so, the third member shall be proposed by the Human Resources unit in consultation with the recruiting unit.

In specific cases, in particular for selection procedures of experts, two additional members may be designated from another service of the agency, from outside ACER or from outside the Community Institutions.

The Human Resources unit is in charge of ensuring permanent assistance and supervision of the respect of the current rules throughout the whole procedure. The Human Resources unit is also in charge of making all the necessary preparatory work in order to enable the Selection Committee to perform its tasks.

The members of the Selection Committee who are officials or temporary agents shall be chosen from officials/temporary agents whose function group and grade is at least equal to the post to be filled. Where possible, Selection Committees shall comprise members of both genders.

- (c) The Selection Committee shall invite for interview the candidates from EPSO's short list who are considered to be the most suitable. Minutes of

² The involvement of EPSO in the selection procedures is defined in a Service Level Agreement between EPSO and ACER.

Committee meetings shall be drawn up setting out the reasons for any decision taken.

- (d) The Selection Committee shall propose a short list of successful candidates to the Director, who may appoint successful candidate(s) to the post(s) and may draw up a reserve list of successful candidates. This list will be valid up to 12 months from the date of its establishment and its validity may be extended by decision of the Director.
- (e) Candidates shall be informed of the outcome of the interview and of whether they have been placed on the reserve list.

2. Selection procedure carried out by ACER

- (a) ACER may organise a selection procedure, in which it must apply similar standards to those applied in competitions for officials.
- (b) ACER shall launch the recruitment procedure by advertising vacancy notices specifying the criteria concerning general and specific competencies and key qualifications required and the possible duration of employment, the function group and grade, and the main steps of the selection procedure.

The vacancy notice shall be published at least in English on ACER website and EPSO website, as well as if necessary in the international and local and specialist media. The channels of Permanent Representations of the Member States to the European Union and representatives of National Regulatory Authorities who sit on the Board of Regulators may also be used.

- (c) A Selection Committee as referred to in Article 3(1)(b) shall evaluate applications and select those candidates meeting the eligibility criteria and matching best the selection criteria required as per vacancy notice.
- (d) The Selection Committee shall invite the selected applicants to written tests whose content shall be defined in accordance with the level and profile of the position advertised.

The written tests shall consist of the following components:

- general aptitudes and language abilities to the extent necessary for the performance of the duties;
- specific competencies with reference to their profiles, assessing the quality of writing style and presentation.

The above-mentioned components of these tests can be combined and tailored according to the profile of the post.

A derogation from the requirement for written tests can be granted for a selection procedure by decision of the Director in exceptional circumstances

which need to be duly justified and documented.

In accordance with Article 12(3) and (4) of the CEOS, EPSO shall, at the request of ACER, provide assistance to ACER's selection procedure, in particular by providing the written tests and/or defining the content of these tests.

- (e) The Selection Committee shall either invite selected candidates for interview, on the basis of the results of the written tests, or interview all selected candidates. The interview may be organised on the same day as the written tests.
- (f) Minutes of Selection Committee meetings shall be drawn up setting out the reasons for any decision taken.
- (g) The Selection Committee shall propose a short list of successful candidates to the Director, who may appoint successful candidate(s) to the post(s) and may draw up a reserve list of successful candidates. This list will be valid up to 12 months from the date of its establishment and its validity may be extended by decision of the Director.
- (h) Candidates shall be informed of the outcome of the written test and the interview and of whether they have been placed on the reserve list.

3. Interagency job market

By derogation to paragraph (1) and (2), the vacancy notice can be published in the interagency job market within the agencies network at a range of grades corresponding to the functions. The post shall be reserved to temporary agents 2 (a) of the same function group whose grade is within this range of grades and who meet the following criteria:

- being employed in a Regulatory Agency applying the Staff Regulations as a temporary agent 2 (a) on long term employment for permanent tasks as defined in Article 2;
- having been selected according to the procedure laid down in Article 3(1) and (2) or, for staff engaged before the entry into force of this decision, having succeeded in a selection procedure equivalent to that referred to in Article 4.

ACER shall select candidates by following the same procedure as mentioned in Article 4.

From the closing date of the selection procedure on, if no suitable candidates could be found in the network of Agencies, the vacancy notice may be published externally at the most appropriate grade.

Article 4 - Selection procedure carried out by ACER for short-term employment

The selection procedure carried out by ACER to select temporary agents 2 (a) for short term employment shall be that set out in Article 3(2), except that the matters referred to in Article 3(2)(d) may be tested orally, which test may also be incorporated in the interview.

Article 5 - Grading

1. Subject to paragraph 2, depending on the function and the level of tasks and within the limits authorised by the establishment plan of ACER, temporary agents shall be engaged in principle at the following entry grades:
 - AST 1 to AST 4 for the function group AST
 - AD 5 to AD 8 for the function group AD.
2. By way of derogation from paragraph (1)
 - (a) in order to ensure high-quality recruitment, if justified by an analysis of the labour market conditions in its sector of work and if the post cannot be filled at a lower grade, ACER may engage temporary agents at grades AD 9, AD 10, AD 11 or, on an exceptional basis, at grade AD 12. Such recruitments shall remain annually within the limits of 20% of AD recruited per year within ACER for each type of posts, long-term and short-term employment, as defined in the current Staff Policy Plan approved by the Administrative Board. This percentage may vary within the limit of an annual average of 20 % calculated over a five years rolling period.
 - (b) Successful candidates selected according to the procedure mentioned in Article 3(3) shall be recruited at the grade held in their previous Agency. Article 32 of the Staff Regulations and the specific ACER Decision concerning the criteria applicable to classification in grade and step on appointment or engagement, shall apply concerning the classification in step.
3. The minimum number of years of professional experience required after the award of the qualification certifying the completion of the level of studies required as a condition of eligibility for any selection procedure is as follows:

Grade of engagement	Number of years of professional experience
AD 5	0 years
AD 6	3 years
AD 7	6 years
AD 8	9 years
AD 9/10	12 years
AD 11/12	15 years
AST 1	0 years
AST 2	1 year
AST 3	3 years
AST 4	6 years

Article 6 - Duration of contracts

1. Temporary agents 2 (a) may be engaged under their first contract for a fixed period. Any further renewal shall be for an indefinite period.
2. Contracts of an indefinite period shall only be awarded to temporary agents 2 (a) on long-term employment who have been successful in a selection procedure pursuant to Article 3.

For staff already engaged before the entry into force of this decision, contracts of an indefinite period can be awarded to temporary agents 2 (a) on long-term employment who have been successful in an equivalent selection procedure pursuant to Article 4.

3. Contracts for temporary agents 2 (a) on short-term employment can only be extended once up to 8 years maximum. The duration of the contract shall correspond to the duration of the tasks.

Article 7 - Probationary period

A temporary agent 2(a) on short-term employment or long-term employment shall serve a probationary period pursuant to Article 14(1) of the CEOS, which is in proportion to the duration of his/her contract. If the duration of the contract exceeds twelve months, the probationary period shall last for 6 months. If the duration of contract is between 6 and 12 months, the probationary period shall cover half of the duration of the contract. If the duration of contract is less than 6 months, the temporary agent may be exempted from the requirement to serve a probationary period.

Article 8 - Entry into force

This decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 01 June 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX 4

DECISION AB n° 11/2011

**ON THE ADOPTION OF
GENERAL IMPLEMENTING PROVISIONS ON THE PROCEDURES
GOVERNING THE ENGAGEMENT AND THE USE OF CONTRACT
STAFF AT ACER**

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

HAVING REGARD to the Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities (CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68, and in particular to Article 82(6) of the Conditions of Employment,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "ACER"), and in particular to Article 28(2) thereof,

HAVING REGARD to the Commission Decision C(2005)5304 of 16 December 2005 concerning the Guidelines on staff policy in the European Regulatory Agencies,

After consultation of the Staff Committee and in agreement with the European Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations,

Whereas:

- (5) Detailed rules on the employment of contract staff are desirable and contract agents should be selected through a transparent and objective procedure.
- (6) The rules contained in these implementing provisions, and in particular those on selection procedures and grading, are without prejudice to Article 2 of the Annex to the CEOS.
- (7) The grading of contract staff in function groups needs to be based on the functions to be exercised by the person concerned. It is therefore essential that detailed job descriptions are established for all functions to be filled with contract staff.

(8) The agency may only recruit contract staff under Article 3a of the CEOS.

HAS ADOPTED the following implementing provisions:

– **General provisions**

(1) Article 1

Scope

These rules shall apply to contract staff referred to in Article 3a (AC3a) of the CEOS engaged in the Agency for the Cooperation of Energy Regulators (hereafter the Agency).

(2) Article 2

Minimum qualifications required

In the Agency, Article 82(2) of the CEOS shall be applied as follows:

1. Engagement as a member of the contract staff shall require at least:
in function group I, successful completion of compulsory education;
in function group II:
 - a post-secondary education attested by a diploma, or
 - a secondary education attested by a diploma giving access to post-secondary education and appropriate professional experience of three years. The secondary education diploma giving access to post-secondary education may be replaced by a certificate of adequate professional training of not less than three years on condition that there was no similar professional training giving access to higher education at the time it was issued or,
 - successful completion of intermediate education plus two years relevant supplementary specialised training plus five years' appropriate professional experience.in function group III:
 - a post-secondary education attested by a diploma, or
 - a secondary education attested by a diploma giving access to post-secondary education and appropriate professional experience of three years.in function group IV: completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year.

2. Only diplomas and certificates that have been awarded in EU Member States or that are the subject of equivalence certificates issued by the authorities in the said Member States shall be taken into consideration.

(3) Article 3

Probationary period

Where a member of the contract staff has to serve a probationary period in accordance with Article 84 of the CEOS, the report referred to in that Article shall be established by applying the Agency decision on the general implementing provisions for implementing Article 43 of the Staff Regulations by analogy.

(4) Article 4

Succession of contracts

1. The authority referred to in Article 6 of the CEOS (hereafter AHCC) may engage as AC3a persons employed as AC3b in an institution only after the latter contract has expired or been terminated.
2. In this case, the contract agent AC3a must comply with the conditions set out in the CEOS and in these provisions, in particular the conditions concerning the qualifications required, and have undergone a selection procedure as laid down under Article 5 or an equivalent selection procedure undertaken by another Community institution or Agency followed by an interview carried out under the provisions of Article 5(1)(c).

(5) Article 5

Selection procedure

The Agency may recruit contract staff CA3a by using, alternatively, one of the selection procedures indicated below:

3. Selection procedure using the European Communities Personnel Selection Office (EPSO) database

(a) The Agency may recruit contract staff CA3a by using EPSO's database. Candidates validated in the above-mentioned database are the ones that have successfully completed the selection procedure organized by EPSO according to Article 5(1)(g) of the Commission Decision of 7 April 2004 C(2004) 1313 on the procedures governing the engagement and the use of contract staff.

(b) The Selection Committee, set up by the agency, shall consist of no less than three members. Where the Selection Committee consists of three members, one member will be from the human resources unit, one member from the relevant recruiting department and one member designated by the Staff Committee. The member from the human resources unit or the member from the relevant department shall act as chairman. Where Selection Committees consist of four members, the

fourth member shall be from another department of the Agency or external to the Agency.

(c) The Selection Committee shall invite for interviews the candidates that are considered to be the most suitable ones, on the basis of the job description, from among the list of applicants already validated by EPSO. Minutes of Committee meetings shall be drawn up setting out the reasons for any decision taken.

(6) (d) Candidates shall be informed of the outcome of the interview.

(7) 2. Selection procedure carried out by the Agency

(8) (a) The Agency shall launch the recruitment procedure by advertising vacancy notices specifying the criteria concerning general and specific competencies and key qualifications required.

(9) (b) The Selection Committee as mentioned in Article 5.1(b) of this decision shall evaluate applications and select those matching best the profile and qualifications required as per vacancy notice.

(10) (c) The Agency shall organize written tests for the selected applicants on the basis of the job description as stated in the vacancy notice. The written tests shall be drafted in accordance with the level and profile of the position advertised. The written tests shall consist of the following components:

(11) - general aptitudes and language abilities, to the extent necessary for the performance of their duties,

(12) - specific competencies with reference to their profiles.

(13) The above-mentioned components can be combined. Specific practical skills such as typing, driving, and the like, will be tested through practical tests.

(14) (d) The Selection Committee shall invite for interview the selected applicants as per point (c). The interviews can be held on the same day as the written tests take place. Any decision concerning the applicants shall be recorded in writing, setting out the reasons for any decision taken.

(15) (e) The Selection Committee shall establish a list of successful candidates on the basis of the above mentioned selection procedure and the AHCC may appoint successful candidate(s) to the post(s). This list will be valid up to 12 months from the date of the establishment of the list and may be extended by decision of the AHCC.

(16) (f) Candidates shall be informed of the outcome of the interview and of whether they have been placed on the list of the successful candidates.

3. In accordance with Article 82(5) of the CEOS, EPSO shall, at the request of the Agency, provide assistance to the selection procedure as mentioned in paragraph 2, in particular by:

- advertising on its website vacancy notices of the Agency,

- giving the Agency access to use the list established by EPSO of candidates identified on the basis of the evaluation referred to in Article 5(1)(e) of the Commission Decision of 7 April 2004 C(2004) 1313 on the procedure governing the engagement

and the use of contract staff, followed by the selection procedure indicated in 2 (c) and (d) above,

- providing and/or organising written tests for the Agency's selection procedure.

4. Where the interest of the service so requires and where no suitable candidates are available from the EPSO database, the human resource unit, at the request of the unit/department concerned, may grant an exemption from the procedure of paragraph 1. and 2. above for the recruitment of a member of the contract staff in function group IV. In this specific case, written tests are not mandatory.
- (17) 5. Where there is no current list of successful candidates or in case of a negative result of the screening of candidates of an established list of successful candidates and should the engagement of a member of the contract staff for replacement purposes be required either very quickly or for a short-term replacement, the following procedure shall apply:
 - (18) (a) The Agency shall launch the recruitment procedure by advertising vacancy notices on its website for at least two weeks and optionally by an additional publication in a local newspaper, by specifying the criteria concerning general and specific competencies and key qualifications required.
 - (19) (b) The Selection Committee shall evaluate the applications and select those matching best the profile and qualifications required as per vacancy notice.
 - (20) (c) The Selection Committee shall invite for interview the selected applicants on the basis of the job description as stated in the vacancy notice. The interview shall cover: an analysis of the language abilities and the personal and professional competences of each applicant. On the basis of the results of the interviews the Selection Committee will make its decision in writing by setting out the reasons for any decision taken. For function groups I and II, practical tests on general aptitudes/skills such as typing are to be organized.
 - (d) The Selection Committee shall consist of at least three members as follows: one from the human resources unit of the agency, one from the relevant unit/department, and/or from another service internal or external to the Agency, and one designated by the Staff Committee.
 - (21) (e) Candidates shall be informed of the outcome of the interview.
 - (22) (f) Contracts concluded following the procedure of this paragraph for a quick replacement shall not exceed six months. Contracts concluded for a short-term replacement are limited to a maximum duration linked to the maximum replacement duration caused by the single leave covered by Articles 42, 42a, 42b and Title IV “working conditions” of the Staff Regulations. Both types of contracts may only be renewed for another fixed term or for an indefinite duration if the AC3a has passed a selection procedure pursuant to paragraph 1., 2. or 3. of the present Article.
 - (23)

(24) Article 6

Duration of contracts

4. AC3a may be engaged under their first contract for a fixed period of at least three months and not more than five years.
2. The renewal of a contract in function groups II, III and IV shall be for another fixed period of at least three months and not more than five years. A second renewal without interruption leading to an indefinite-duration contract may only be granted if the first two contracts covered a total period of at least five years.
3. The first three renewals of the contract in function group I shall be for fixed periods of at least three months and not more than five years, the fourth renewal, in accordance with Article 85(2) of the CEOS, shall be for an indefinite period. However,
 - where a total duration of ten years of service would be exceeded, already a previous renewal shall be for an indefinite period, in accordance with Article 85(2) of the CEOS;
 - a fourth renewal without interruption may only be granted if the first four contracts covered a total period of at least five years.
4. In order to be taken into consideration with a view to the award of an indefinite duration contract the contracts concerned must follow each other uninterruptedly. A gap of six months or more between two contracts shall be regarded as an interruption.
5. Where a contract as AC3a in function group I has been renewed three times without a further renewal being granted, any new engagement under such a contract shall be subject to the condition that the 12-year reference period laid down in Article 2 of the Commission Decision of 28.4.2004 on the maximum duration for the recourse to non-permanent staff in the Commission services and the Annex thereto has expired.

(25) Article 7

Grading of AC3a

5. AC3a shall be engaged:
 - (26) (a) in function group I: in grade 1;
 - (27) (b) in function group II:
 - in grade 4 if the person has professional experience of up to seven years;
 - in grade 5 if the person has professional experience of more than seven years;
 - (28) (c) in function group III:
 - in grade 8 if the person has professional experience of up to seven years;
 - in grade 9 if the person has professional experience of more than seven years;
 - in grade 10 if the person has professional experience of more than fifteen years;
 - (29) (d) in function group IV:

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- in grade 13 if the person has professional experience of up to seven years;
- in grade 14 if the person has professional experience of more than seven years;
- in grade 16 if the person has professional experience of more than twenty years.
6. The AHCC may decide to grant the grade immediately above the one determined in paragraph 1 if the function to be filled corresponds to a competency profile where due to the labour market conditions this measure is necessary to ensure a sufficient number and quality of applications. These profiles shall be determined by decision of the AHCC and communicated to the units/departments.
7. In order to be taken into account professional experience must have been acquired in an activity corresponding at least to the level of qualification required for the access to the function group and having a link with one of the institution's sectors of activity. It shall be taken into account from the date on which the person fulfils the minimum qualifications for engagement set out in Article 2 (including, where applicable, any professional experience required by that Article).
8. In the case of a doctorate/PhD the actual duration of the studies shall be taken into account, subject to an upper limit of three years. In the case of other qualifications the statutory duration of the studies shall be taken into account.
9. Military service and equivalent civilian service shall be regarded as professional experience.
10. For grading purposes, part-time work shall be taken into account in proportion to the stated percentage in relation to full-time work.
- (30) In the case of freelance translators the extent of the professional experience shall, subject to the period devoted to this activity, be calculated on the basis of the number of pages translated.
11. No period may be counted more than once.
12. Where AC3a are engaged in another entity without interruption as defined in Article 6(4) as contract staff under the same type of contract the following shall apply:
- (31) a. If hired to perform duties within the same function group the member of the contract staff shall retain the grade, step and seniority acquired in his or her grade and step;
- (32) b. If hired to perform duties in a higher function group the member of the contract staff shall be placed in the most favourable grade resulting from:
- the application of the provisions under paragraphs 1 to 7 above, including the requirement that professional experience must have been acquired at least at the level of the function group concerned, and
 - the application of the rule laid down in Article 86(2) of the CEOS that the basic salary is to be maintained, choosing the grade that, taking into account the steps, constitutes the lowest grade possible.
- (33) c. If the person is hired to perform duties in a lower function group, paragraphs 1 to 7 above shall apply.

– **Transitional and final provisions**
(34)

(35) **Article 8**

Possibility of engaging staff during the transition period

1. The contracts concluded before date of entry into force of this decision may only be renewed if the member of staff has successfully completed one of the selection procedures pursuant to Article 5.

Article 9

Entry into force

This decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 01 June 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

DECISION AB n° 12/2011

**ON THE GENERAL IMPLEMENTING PROVISIONS CONCERNING THE
CRITERIA APPLICABLE TO CLASSIFICATION IN GRADE AND STEP
ON APPOINTMENT OR ENGAGEMENT**

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

HAVING REGARD to the Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities (CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto, and in particular to Articles 5, 29, 30, 31 and 32 of the Staff Regulations and Articles 10 and 15 of the Conditions of Employment,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "ACER" respectively), and in particular to Article 28(2) thereof,

After consultation of the Staff Committee and in agreement with the European Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations,

Whereas

(9) The ACER's recruitment policy constitutes an essential part of its staff policy;

(10) Pursuant to the second paragraph of Article 32 of the Staff Regulations, the Authority Habilitated to Conclude Contracts (AHCC) may allow candidates additional seniority of step in grade in order to take account of their specific professional experience,

HAS ADOPTED the following implementing provisions:

(36)

(37) Article 1

These general implementing provisions shall apply when any permanent official is appointed to the ACER or any temporary agent is engaged.

(38) Article 2

Taking account of professional experience

- 13. Any duly certified professional activity relevant to the functions to be performed within the Agency or its areas of activity shall be taken into account.
- 14. Where additional periods of training and study are accompanied by periods of professional activity, only the latter shall be considered as professional experience.
- 15. Compulsory military service or equivalent civilian service shall be taken into consideration.
- 16. For grading purposes, professional activities pursued part-time shall be calculated pro rata, on the basis of the certified percentage of full-time hours worked.
- (39) In the case of freelance translators, the length of professional experience shall be calculated, within the limits of the period spent on such activities, on the basis of the number of pages translated.
- (40) In the case of freelance interpreters, the length of professional experience shall be based on both the number of days worked as an interpreter and the time spent on the necessary preparations.
- (41) In the case of other freelance and/or self-employed activities, the length of professional experience shall be based on official documents and declarations showing registration of the company and allowing assessment of the time spent working.
- 17. A given period may be counted only once.
- 18. According to the rules on access to function groups (Article 5(3) of the Staff Regulations), professional experience shall be counted as follows:

B* and C*/AST:	<p>from the time when a post-secondary education diploma was awarded: where the official duration of the course is less than three years, the difference shall be deducted from the professional experience;</p> <p>where no such diploma has been awarded and a secondary-education certificate and three years' professional experience have been accepted as an alternative, those three years shall be deducted from</p>
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	<p>the experience acquired;</p> <p>where professional training of an equivalent level is accepted as an alternative, from the time when the diploma or certificate relating to this training was awarded;</p> <p>where equivalent professional experience is accepted as an alternative, the duration of the professional experience within the meaning of Article 2 shall be reduced by the number of years of equivalent experience specified in the notice of competition or selection procedure; where no such number is specified, three years shall be deducted from the professional experience.</p>
<p>A*5/AD5 and A*6/AD6:</p>	<p>from the time when, on completion of a minimum of three years of study, the university degree giving access to these grades was awarded;</p> <p>where no such degree has been awarded and "professional training of an equivalent level" has been accepted as an alternative in the competition or selection procedure, from the date when the diploma or certificate relating to this training was awarded.</p>
<p>A*7/AD7 to A*16/AD 16:</p>	<p>from the time when a university degree was awarded on completion of a minimum of four years of study;</p> <p>where a university degree has been awarded on completion of less than four years of study, the difference between the official duration of the course and four years shall be deducted from the professional experience;</p> <p>where no such degree has been awarded and "professional training of an equivalent level" has been accepted as an alternative in the competition or selection procedure, from the date when the diploma or certificate relating to this training was awarded.</p>

(42)

(43) Article 3

Candidates shall be responsible for providing documents evidencing
 the official duration of their studies/training,
 the level of a degree or diploma/the equivalent level of a training period,

the length of professional experience,
professional activity during periods of training and further study.

(44) Article 4

Professional experience requirements

For the purposes of determining the minimum years of professional experience required per grade, the Appointing Authority shall refer to the years as indicated in annex.

(45) Article 5

Additional seniority of step in grade

For the purposes of determining professional experience, the Appointing Authority shall allow additional seniority of step 2 in grade for professional experience equal to or more than the number of years indicated below and in annex:

For grades A*14/AD14 to A*16/AD16: 21 years

For grades A*11/AD11 and A*13/AD13: 18 years

For grades A*9/AD9 to A*10/AD 10: 15 years

For grade A*8/AD8: 12 years

For grade A*7/AD7: 9 years

For grade A*6/AD6: 6 years

For grade A*5/AD5: 3 years

For grade B*4/AST4: 12 years

For grade B*3/AST3: 9 years

For grade C*2/AST2: 6 years

For grade C*1/AST1: 3 years

By way of exception, where a temporary agent is hired at level B*/AST5, 6, 7 or 8 additional seniority of 24 months shall be granted in respect of professional experience of 15 years or more.

The length of the professional experience to be counted shall provisionally be established at the time when the job offer is made. It shall be definitively determined at the date on which duties for the Agency are effectively taken up. Where the period between this date and that on which the appointment is actually taken up has an impact on the classification in step, the appointing authority shall adopt a new decision in this regard.

Article 6

Temporary staff members appointed as permanent officials

19. Temporary staff who are appointed as permanent officials to posts in the same grade immediately after their period of temporary employment shall maintain their seniority in step.
20. Any temporary staff who are appointed as permanent officials in a lower grade immediately after their period of temporary employment shall be classified according to one of the following options, whichever is most favourable:
as new recruits,
in the same step and with the same seniority in step in the grade acquired as a member of the temporary staff, or
with the same seniority in step, but in the step which they would have occupied had they been hired as temporary staff in the grade to which they are appointed as permanent officials.
21. Any temporary staff who are appointed as permanent officials in a higher grade immediately after their period of temporary employment shall be classified according to one of the following options, whichever is more favourable:
in accordance with Article 46 of the Staff Regulations; or
as new recruits.

(46) Article 7

Any permanent officials who are appointed at a higher grade as a result of an open competition shall be classified according to one of the following options, whichever is more favourable:

- on the basis of Article 46 of the Staff Regulations;
- as a new recruit.

The same shall apply to any temporary staff who, immediately after a period of temporary employment, are hired in a higher grade as temporary staff following a selection procedure.

(47) Article 8

Entry into force

This decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 01 June 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX to Decision AB n° 12/2011

	<u>step 1</u> required years of professional experience, after the a conditions mentioned in Article 2 point 6	<u>step 2</u> after the a conditions mentioned in Article 2 point 6
AD 16	15	21
AD 15	15	21
AD 14	15	21
AD 13	15	18
AD 12	15	18
AD 11	15	18
AD 10	12	15
AD 9	12	15
AD 8	9	12
AD 7	6	9
AD 6	3	6
AD 5	0	3

	<u>step 1</u> after the a conditions mentioned in Article 2 point 6	<u>step 2</u> after the a conditions mentioned in Article 2 point 6
AST 11		
AST 10		
AST 9		
AST 8	12	15
AST 7	12	15
AST 6	12	15
AST 5	9	15
AST 4	6	12
AST 3	3	9
AST 2	1	6
AST 1	0	3