

**Minutes**

**ACER – 6<sup>th</sup> meeting of Administrative Board**

22. September 2011, 9:00-17:00

Ljubljana, Trg republike 3, meeting room 2. floor

**Present:**

Mr. Piotr Grzegorz Wozniak, Chair and Proxy for Prof.Dr. Peter Mombaur

Mr. Razvan Eugen Nicolescu, Vice-Chair

Mr. Guido Bortoni, Member

Mr. Phillippe Guillard, Member

Mr. Augusto Bonucci, Member and Proxy for Mr. Philip Lowe

Mr. Jorge Vasconcelos, Alternate

Mr. Peter Gordos, Alternate

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

Mr. Alberto Pototschnig, Director of ACER.

**Other attendees:**

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

## **Main conclusions of the meeting**

- a.) The REMIT implementation will be discussed again in December. By then it should be clearer how the Commission and the NRAs envisage supporting it. The Board decided that the Director would always present two progress reports to the Administrative Board – one on the usual regulatory and administrative progress of ACER and one on its activities under REMIT.
- b.) The IAS Charter was signed by the Chairman and by the Director. An IT IAS audit is envisaged to take place in the near future.
- c.) The ACER Board of Appeal was appointed.
- d.) The ACER Work Programme 2012 was adopted, conditional upon the final opinion of the Commission containing the comments as included in its draft opinion announced to the Board and upon a notification of this opinion to the Board by 30 September.
- e.) Decision AB No. 21-2011 on the reimbursement of travel expenses to Board of Regulators members was adopted.
- f.) Decision AB No. 22-2011 on ACER Financial Regulation was adopted.
- g.) Decision AB No. 23-2011 on the appointment of Ms. Rodica Mandroc as the Accounting officer of ACER, in accordance with Art. 43 of the Financial Regulation of ACER, was adopted.
- h.) Decision AB No. 24-2011 on middle management staff was adopted.
- i.) Decision AB No. 25-2011 establishing the policy and procedure for the performance appraisal of staff was adopted.
- j.) The Board considered the draft decision on the implementation of teleworking and raised the annual maximum number of days for teleworking at ACER from 30 to 45.
- k.) The approach to publishing background documents was discussed. The Board took some time for reflection and requested the BoR to provide its opinion on this issue.
- l.) The Board agreed that its meetings in 2012 will take place on: Tuesday 13 March (from 13.00-17.30), Wednesday 20 June (9.00-12.30), Wednesday 8 September (12.00-17.30) and Wednesday 5 December (9.00 -12.30).

## **1. Approval of the Agenda**

The following agenda of the 6th ACER Administrative board meeting was approved:

## AGENDA

Agenda Topics	Accompanying documents	Rapporteur
<b>Opening</b>		
1. Approval of the agenda	Doc 1 for approval	AB Chair
2. Minutes of the 5 <sup>th</sup> Administrative Board meeting	Doc 2 for approval	AB Chair
3. Report on developments regarding ACER progress and on the activities of the Board of Regulators	Oral update	ACER Director and BoR Chair (tbc)
4. Developments on REMIT (preliminary implementation plan)	Doc 3 for consideration	ACER Director
<b>Administration and organisation</b>		
5. Exchange of views with Ms Agnieszka Kaźmierczak, Director of IAS .A of the European Commission	Doc 4 for consideration	AB Chair
6. Appointment of the members of the Board of Appeal	Doc 5 for adoption Doc 6 and 7 for consideration	AB Chair
7. Decision AB no.[...]/2011 on the reimbursement of travel expenses to Board of Regulators members	Doc 8 for adoption	ACER Director
8. Decision AB no. [...]/2011 on ACER Financial Regulation	Doc 9 for adoption	ACER Director
9. Decision AB no. [...]/2011 on the appointment of Ms. Rodica Mandroc as the Accounting officer of ACER, in accordance with Art.43 of the FR of ACER	Doc 10 for approval	AB Chair
10. Decision AB no. [...]/2011 on middle management staff	Doc 11 for adoption	ACER Director
11. Decision AB no. [...]/2011 establishing the policy and procedure for the performance appraisal of staff	Doc 12 for adoption	ACER Director

Agenda Topics	Accompanying documents	Rapporteur
12. Decision AB no. [...] /2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators	Doc 13 for adoption	ACER Director
13. Decision AB no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee	Doc 14 for adoption	ACER Director
14. Decision AB no. [...] /2011 on staff training (**)	Doc 15 for consideration	ACER Director
15. Decision AB no. [...] /2011 on temporary occupation of management posts (**)	Doc 16 for consideration	ACER Director
16. Decision AB no. [...] /2011 on implementation of teleworking at ACER (**)	Doc 17 for consideration	ACER Director
<p><b>General ACER work</b></p> <p>17. ACER draft Work Programme 2012</p> <p>18. Approach to monitoring</p> <p>19. Publication of background documents under article 10 or Regulation 713/2009</p> <p>20. Next Meetings</p> <p>21. AOB ( Boards get together meeting, anniversary event, Implementation of the Seat Agreement)</p>	<p>Doc 18 for consideration Doc 19 for adoption</p> <p>Doc 20 for consideration</p> <p>Doc 21 for discussion</p> <p>Doc 22 for information</p>	<p>ACER Director</p> <p>ACER Director</p> <p>ACER Director</p> <p>AB Chair</p> <p>ACER Director</p>
(**) Draft undergoing Commission's inter-service consultation.		

## 2. Minutes of the 5<sup>th</sup> Administrative Board

The minutes of the 5<sup>th</sup> meeting of the Administrative Board were approved (see ANNEX1).

### **3. Report on developments regarding ACER progress and on the activities of the Board of Regulators**

The Director started with a presentation of the state of play for the deliverables in the regulatory practice at the Agency. On electricity, the opinion on the statutes of ENTSO-E was issued in May 2011. The framework guideline on electricity grid connection was adopted on 20 July and the Commission already invited ENTSO-E to start developing the network code in line with ACER's framework guideline. The framework guideline on Capability Management and Capacity Allocation in electricity was adopted on 27 July. As regards the framework guideline on system operations, the public consultations just ended. The framework guideline on Balancing in electricity is in its scoping phase - ACER is discussing with the Commission which topics should be included. A forth framework guidelines in electricity, on balancing, is envisaged for this year and it will probably be adopted in early next year.

As regards gas, the opinion on the statutes of ENTSG was issued in May 2011 and ACER Opinion on the ENTSG's 10YNDP was issued on 16 September; The framework guideline on Capacity Allocation Mechanism for the European Gas Transmission Network was adopted on 3 August, the framework guideline on Gas Balancing in Transmission Systems is on the agenda of the BoR in October. The framework guideline on Interoperability rules is in its scoping phase.

On recruitment, the Director underlined that ACER establishment plan envisages 52 staff by the end of 2011; 34 staff are already working in the Agency (33 in Ljubljana and 1 in Brussels), 7 more are already appointed, 8 more are in the selection process. The selection has not yet started for 3 positions: for 2 SNEs and 1 TA. He presented the geographical coverage of ACER staff's nationalities. The Director also informed the Board about the internal audit that was carried out by the internal auditor from EMSA at the end of July. The Court of Auditors decided not to screen ACER this year.

Lord Mogg as the Chairman of the BoR concurred that a large amount of work was being conducted by the Agency and that the Board of Regulators was fully engaged in these activities.

In addition, work on REMIT, where the Commission assigned new tasks to the Agency, would become an important challenge and heavy workload for the Agency.

The Chairman congratulated the Director for the results and thanked the Board of Regulators for their activities.

### **4. Developments on REMIT**

The Director made a presentation on the preliminary implementation plan for the Regulation of the European Parliament and of the Council on Wholesale Energy Market Integrity and Transparency (REMIT) and reported on the recent adoption of REMIT by the EP with 616 favourable votes out of 666. The final adoption by the Council is expected in early October and REMIT shall enter into force in late November – early December. Under REMIT the Agency will be responsible for market monitoring of wholesale products between. Trading is more and more of cross-border nature and the national approach is not sufficient any more.

The presentation covered the notion of wholesale energy products and the new tasks for the Agency under REMIT. The Agency's main task under REMIT will be to collect information about trading, but also fundamental data (state of the physical assets) and other data (e.g. meteorological data). On the basis of the data collected, ACER will aim at detecting anomalous trading events and refer them to the national regulators for investigation. The Director underlined that this was a new monitoring task, as opposed to the traditional monitoring for which the Agency was already responsible under the ACER regulation.

Trade data will be collected from power exchanges, traders, brokers and from truly bilateral contracts. The amount of data collected is going to be significant. Initial screening will be conducted automatically, by using predefined "alerts". CEER recently conducted a pilot project in which it developed around 50 alerts over 3 months. ACER is looking for a system that would raise red flags whenever an anomalous situation is detected. The idea is to have a team of experts to look into these anomalous situation to assess whether the anomaly amount to suspected market abuse. Once the Agency notifies a suspicious case to NRA(s), in general there is an expectation that they would investigate it.

If ACER only conducted the automatic screening, it would impose a heavy workload on the NRAs (as in this case they would be notified on every alert). The Director therefore believes that the Agency should not just rely on the automatic screening, but also analyse the anomalous situations. The Agency would also need to report to the Commission, to the European Parliament and to the Council.

An implementation team was recently created at the Agency to start working on REMIT.

The Director also mentioned the very limited experience in this area in Europe, with only a handful of NRAs performing any market monitoring; significant expertise can be found with the Federal Energy Regulatory Commission (FERC) in the US. He stressed that the Commission envisaged these new tasks could be carried out with 15 additional staff, but its financial and human resource planning was based on a different, initial legislative text, where there was no requirement for ACER to conduct an analysis of anomalous events. In the current text however there is a requirement for the Agency to do the preliminary analysis before the reports are sent to the NRAs. Moreover, the inclusion of the European registry is now in the legislative text. During the legislative process the text has substantially changed and therefore the initial Commission estimation is probably outdated. The message coming out of the EP plenary on 13 September was explicitly saying that the Agency needs to get the sufficient resources for the accomplishment of its tasks. When asked about the resources at the ITRE committee hearing in July, the Director mentioned the need for 40-60 additional staff.

He indicated that the Agency is now trying to set up its new structure with new tasks deriving from REMIT. The Agency's current estimate is that it would need 56 new people, this being a prudent approach, allowing it to do the required tasks. He continued by saying there is a need to be close to the trading venues: Leipzig for electricity and London for Gas. In terms of the budget, the Agency's estimation is that it would need 3 million euro for IT/ICT.

Finally, the Board was informed about the meeting with the Commission services that was going to take place on 6 October to look at where the discrepancies in the estimates come from. A meeting with the Polish presidency would also take place. The 2012 budget for REMIT is 1.3 million euro and the Director presented the Agency's budgetary needs for the years up to 2016

An extensive discussion took place. One AB member raised the need for feedback from the NRAs regarding their analysis of the suspicious events back to the Agency. A need to communicate the cases to the antitrust authorities and the need for a local market expertise at the Agency was also raised.

The Director informed the Board that discussions are ongoing with the FERC. In most likelihood a new ACER working group will be established together with the NRAs. ACER has identified the issues where the Agency should take a stronger role. As regards the communication with antitrust authorities, it is up to the Member States to decide on the competent authority for REMIT. He underlined however, that the market integrity is an issue where you need a strong centralised monitoring. ACER will be working closely with the energy regulators and the financial regulators; however ESMA does not seem at the moment to be entrusted with monitoring responsibilities. As at FERC, ACER would also need to have the local European markets expertise. He underlined the importance of being located in the proximity of the trading and to the monitoring venues, as being part of the local market community would facilitate the understanding of the trading issues. The liaison office in Brussels has proved very useful. The need for proximity to trading venues is also stipulated in the recital of the REMIT regulation.

Another AB member underlined the importance for making the connection between the financial and the energy actors as it is the former that are in charge of acting on these issues in the Member States.

Several AB members underlined the need for a plan B, given the limited resources attributed to ACER for REMIT. A start would be to develop sophisticated IT systems, connecting the expertise of the local market to ACER, rather than getting new staff. Additional support of the NRAs, maybe in the form of a working group, should also be explored.

Lord Mogg, as the Chairman of the BoR, commented that the NRAs are already very involved in the discussion. There is expertise in some NRAs and analysis of the new challenges for NRAs is already undertaken. Given the present budgetary constraints, it will be difficult to envisage major budgetary requirements as proposed by the Director whilst NRAs already contribute to the work of the Agency in Remit and other areas the NRAs themselves are under similar resources constraints. A plan B should be developed. If there is no plan B, the Agency will be blamed that it cannot perform.

Mr. Bonucci, the Commission member, explained that it is not the first time that the Commission services are entrusted with more task than the resources allocated to them; it is most unlikely that any change can be made to the 2012 budget; in 2013 the Commission could eventually modify the situation, but not in staff, rather on the ICT equipment side. The recent Commission's austerity proposals do not help for when it comes to financial perspective. Moreover, the Agency will then be falling into the category of the cruising speed agencies, implying that it may also need to implement staff cuts. He suggested that ACER starts making a plan for 15 additional staff until new resources are possibly allocated in the new financial perspective.

The Chairman underlined the need to start thinking of deprioritising the tasks under plan B, but at the same time suggested to raise the issue with the legislators next year.

Mr. Bonucci suggested that before the Agency deprioritises, and in order to convince the budgetary authority, an analysis should be carried out of what tasks could be undertaken with 15 additional staff and what tasks could be carried out by the support of NRAs.

Lord Mogg, as the Chairman of the BoR, commented that the Commission should wherever possible propose adequate resources to deliver its proposals rather than turning to the NRAs to meet any needs in resources from their own.

Mr. Repa, adviser from the EC, explained that the Commission's estimate was based on the basis of the legislative proposal that was on the table at that time. The Commission agreed to meet with ACER representatives, including the IT experts, to discuss this matter on 6th October and to look again at the figures. The Commission was also in contact with FERC. Finally, the Council removed the reference to the Agency's own needs assessment from the Regulation.

The discussion continued and the following proposals were raised by the Members of the Board:

a.) When defining the tasks a distinction should be made between the tasks for financial actors under the financial regulations and those under the energy regulations, some tasks could be performed jointly with ESMA in order to save resources;

b.) NRAs could be charged for monitoring the transactions in order to implement plan A.

The Director assured that the Agency is developing a detailed implementation plan with job descriptions and the IT. Even though the NRAs have been helpful in the past, he would be disappointed if he was obliged completely to rely on them, as the cross-national dimension should prevail in REMIT.

Decision: The REMIT implementation will be discussed again in December. By then it should be clearer how the Commission and the NRAs could support its implementation. With REMIT there are two Agencies in one and therefore the Director would always present two progress reports to the Administrative board- one on regulatory and administrative activities of ACER and one on its activities under REMIT.

## **5. Exchange of views with Ms Agnieszka Kaźmierczak, Director of the Internal Audit Service (IAS) of the European Commission**

Ms Kaźmierczak made a presentation of the Internal Audit Service. She is one of the directors responsible for auditing the new agencies. And the internal auditor for many EU bodies having a legal personality under the EU law and receiving a subsidy from the EU budget. Currently she is responsible for 29 EU agencies, 7 joint undertakings, the European Data Protection Supervisor, the European schools and the European External Action Service. The mandate of the IAS is stipulated in the Financial Regulation, but the relationship with the Agencies is defined in the Mission Charter of the IAS of the European Commission in relation to traditional Agencies and Independent bodies, which the IAS wishes to sign with the Agencies. The IAS reports to the Administrative Boards and to the Directors, not to the Commission. The Commission would however be aware of the IAS reports via its membership in the Boards. The purpose of IAS audits is to provide an independent reassurance to the Board and to the Director. In case of open issues the Director - General of the IAS may directly address the Chairman of the Administrative Board. The IAS usually carries out a 3-year audit plan adopted by the Administrative Board. IAS does risk assessments, quality assurance programmes, and compliance and performance audits. IAS has good cooperation with OLAF in cases of fraud. They have an excellent IT team to carry out IT audits. However, IAS does not provide consulting services.

A seminar on internal control is organised on 25 October for new agencies. As regards ACER, IAS would in 2012 perform a risk assessment, check the internal control standards and decide on a strategic plan, however a real audit would start only in 2013.



Mr. Bonucci, the Commission member, underlined the importance of a well-established coordination with the Court of Auditors and mentioned that the Agency would have an internal auditor as well. Ms Kaźmierczak replied that coordination takes place on several topics, but IAS has a somehow larger scope (e.g. business continuity, IT audits, quality audits, experts on conflict of interest).

Lord Mogg as the Chairman of the BoR asked whether the IAS would also audit the Boards of Regulators and said he would not expect IAS to audit the CEER, given their donation to ACER. He also asked about a possible audit regarding the new REMIT resources and tools.

Ms Kaźmierczak replied that IAS may be auditing the governance process of the BoR, however this would not be the immediate priority. She reassured that the IAS only audits the EU Agencies. She said that the IAS will structure the risks of the Agency according to its own methodology.

The Chairman suggested that an IT audit could be carried out by IAS given that a substantial IT system is envisaged to be developed under REMIT.

Ms Kaźmierczak expressed readiness to undertake an IAS IT audit for REMIT and confirmed that she has a very good IT team.

Action: The IAS Charter was signed by the Chairman and the Director. An IT IAS audit is envisaged to take place in the near future.

## **6. Appointment of the members of the Board of Appeal (BoA)**

The Chairman explained that according to Article 18 of Regulation (EC) No 713/2009 the Administrative Board formally appoints the BoA, on the proposal of the Commission and following a favorable opinion of the BoR. The Commission presented its proposal on 24 May and the BoR gave its favorable opinion on 7 June 2011.

Lord Mogg as the Chairman of the BoR summarised the discussion on BoA candidates at the June BoR and underlined the importance that conflicts of interest do not occur within the BoA. He reiterated that the members of the BoA shall not perform any other duties in the Agency, in its Administrative Board or in its Board of Regulators in accordance with the ACER Regulation. This should also be reflected in the letter of appointment.

There was no objection concerning the proposed candidates, the Administrative Board appointed the BoA members and alternates as follows

- A) Members of the Board of Appeal (in alphabetical order):
- Jacques de Jong
  - Callum McCarthy
  - Ignacio Perez-Arriaga
  - Pippo Ranci Ortigosa
  - Herbert Ungerer
  - Wolfgang Urbantschitsch.

- B) Alternates of the Board of Appeal (in alphabetical order):
- Viorel Alicus, as an alternate to Pippo Ranci Ortigosa
  - Mariano Bacigalupo Saggese, as an alternate to Ignacio Perez-Arriaga
  - Olivier Beatrix, as an alternate to Callum McCarthy
  - Nadia Horstmann, as an alternate to Herbert Ungerer
  - Peter Kaderjak, as an alternate to Jacques de Jong
  - Constantinos Maniatopoulos, as an alternate to Wolfgang Urbantschitsch.

The Board agreed on the text of the letter of appointment and on the invitation to the BoA members concerning their first meeting in Ljubljana on 1 December. The BoA Rules of Procedures would have to be adopted at that meeting.

Decision: The Administrative Board appointed the members and the alternates of the Board of Appeal, as proposed by the Commission and following the favorable opinion of the Board of Regulators (see ANNEX 2). The Agency will check the availability of the appointed members and alternates and the Chairman will invite the BoA members to their first meeting on 1 December in Ljubljana.

## **7. Decision on the reimbursement of travel expenses to Board of Regulators members**

Decision: Decision AB No 21-2011 on the reimbursement of travel expenses to Board of Regulators members was adopted (see ANNEX 3).

## **8. Decision on ACER Financial Regulation**

The Director explained that the Commission comments have been included in the draft.

Decision: Decision AB No. 22-2011 on ACER Financial Regulation was adopted (see ANNEX 4).

## **9. Decision on the appointment of Ms. Rodica Mandroc as the Accounting officer of ACER, in accordance with Art.43 of the FR of ACER**

The Director explained that Ms Mandroc needs to be appointed as the Accounting officer of ACER under the newly adopted ACER Financial Regulation (FR), as previously she was appointed under the 2002 Financial Regulation applicable to the general budget of the European Communities.

Decision: Decision AB No. 23-2011 on the appointment of Ms. Rodica Mandroc as the Accounting officer of ACER, in accordance with Art.43 of the FR of ACER, was adopted (see ANNEX 5).

## **10. Decision on middle management staff**

The Director explained that the Decisions under points 10-13 of the AB Agenda had already been considered by the Board and have undergone the Commission's inter-service consultations.

Decision: Decision AB No.24-2011 on middle management staff was adopted (see ANNEX 6).

## **11. Decision establishing the policy and procedure for the performance appraisal of staff**

Decision: Decision AB No.25-2011 establishing the policy and procedure for the performance appraisal of staff was adopted (see ANNEX 7).

## **12. Decision concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators**

Decision: Decision AB No.26-2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators was adopted (see ANNEX 8).

## **13. Decision on general implementing provisions concerning the constitution of a Staff Committee**

Decision: Decision AB No.27-2011 on general implementing provisions concerning the constitution of a Staff Committee was adopted (see ANNEX 9).

## **14. Decision on staff training**

Action: The Board considered the draft decision on staff training without comments.

## **15. Decision on temporary occupation of management posts**

Action: The Board considered the draft decision on temporary occupation of management posts without comments.

## **16. Decision on implementation of teleworking at ACER**

The Director explained that the draft decision takes into account the location of the Agency, therefore some flexibility as regards the teleworking is requested.

One AB member suggested raising the maximum amount of days for teleworking from 30 to 45.

Mr. Bonucci, the Commission member explained that the maximum ceiling of teleworking days is set to avoid staff being too absent from ACER headquarters (Ljubljana), but agreed to set the ceiling at 45 days a year.

Action: The Board considered the draft decision on the implementation of teleworking and raised the maximum number of days for teleworking at ACER from 30 to 45.

## **17. ACER Work Programme 2012**

The Chairman explained that, in line with the article 13 (5) of Regulation (EC) No 713/2009, the Administrative Board shall adopt, before 30 September each year, after consulting the Commission and after having received approval by the Board of Regulators in accordance with Article 15(3), the Work Programme of the Agency for the coming year and shall transmit it to the European Parliament, the Council and the Commission.

On 30 June 2011, the Director of the Agency submitted the draft Work Programme for 2012 to the Board of Regulators and the European Commission, in accordance with article 17(6) of Regulation (EC) No 713/2009.

The Board of Regulators approved it on 6 July and again on 21 September taking account of the Commission's announced opinion scheduled to be formally adopted on 30 September only.

Some members expressed their dissatisfaction with the Commission's delays, which obliged the two ACER Boards to find flexible ways in order to accommodate the Commission's continuous practice concerning the adoption of its acts.

Mr. Bonucci, the Commission member, explained that the Commission cannot overcome certain obligatory procedures; it has however taken note of the comments and will try to improve in the future. However, in order to meet the 30 September deadline, he suggested to adopt the Work Programme 2012 as drafted, conditional upon the final decision of the Commission.

Decision: The ACER Work Programme 2012 was adopted, conditional upon the final opinion of the Commission containing the same comments as contained in its draft opinion announced to the Board and conditional upon a notification of this opinion to the Board by 30 September.

## **18. Approach to monitoring**

The Director explained that as regards the traditional monitoring, in 2011 ACER intends to establish the parameters; however, the technology will be the same as used by the CEER. The idea is to take advantage of the synergies between the CEER and ACER on access, prices, and consumers rights. Around 60-90 indicators will be presented to the next Administrative Board in December.

Lord Mogg, as president of the CEER, explained that the traditional monitoring is important for the defence of the public interest.

The Director illustrated the efforts in trying to define the indicators to be collected. The Agency relies on the NRAs for their collection, the Commission receives the national reports and is part of the process. The Agency is also working with the Consumer organisations. The Agency would not only like to be looking at the numbers, but to be able to explain the differences. However, he expressed cautiousness as to how ambitious the Agency should be.

Mr. Bonucci, the Commission's AB member welcomed the monitoring process, warned against duplications with the CEER, and suggested to build on CEER's work. The benchmarking report could be helpful; ACER should make use of it.

Decision: The Board considered the document; its implementation will be done by ACER.

## **19. Publication of background documents under article 10 or Regulation 713/2009**

The Chairman explained that the reason for ongoing discussion on this issue is a confusion about which documents should be published immediately after consideration by the Board(s) and which should instead be published only at a later stage.

The Director illustrated the document submitted for consideration by the AB. Currently the relevant provisions are contained in Regulation (EC) No 713/2009 and the AB decision 08-2010 on rules on access to documents. The Director highlighted the need to define a stance with respect to the publication of background document to ensure that the decision-making process in the Board(s) is not negatively impacted. In any case, the fact that a document is not considered as a background document within the meaning of article 10(4) of Regulation (EC) No 713/2009 and the AB decision 08-2010 does not mean that access cannot be sought according to Regulation (EC) No 1049/2001.

Lord Mogg as the Chairman of the BoR concurred to such explanation and said that this is of central importance to the BoR.

Mr. Bonucci, the Commission's AB member, warned that such restriction could undermine the process of different NRAs wanting to see the dissenting opinions, but acknowledged that it is difficult to distinguish between different categories of documents. ACER would need to look at individual cases and find a refined approach. The Commission supports the idea not to publish the documents when the publication would undermine the outcome of the consultation/decision process.

He suggested striking a balance between the transparency and the effectiveness of the publication.

Whereas the Chairman idea was to make a difference between background documents and discussion papers, in the Commission's view everything that is linked to the Agenda of the Administrative Board and published on ACERnet should be published on the internet. It admitted however, that some regulatory documents may be different as such publication may have an impact on trading.

One AB member said that ERGEG was the first one to decide on the rules for publications.

The Director believed that the Agency is working at a very high level of transparency, based on the experience of the regulators (the evaluation of comments, which includes all comments received during a public consultation, is published before the opinion is adopted).

Lord Mogg, as BoR Chairman, also mentioned that if all orientation/intermediate versions of regulatory documents on the BoR agenda were to be published, the BoR would probably start working differently, to the detriment of the decision-making process. These documents therefore should not be published, but given access to on request.

Decision: The issue of publication of background documents took was discussed. The Board took some time for reflection and requested the BoR to provide its opinion on this issue.

## **20.) Next meetings**

Decision: The AB meetings in 2012 are going to take place on: Tuesday 13 March (from 13.00-17.30), Wednesday 20 June (9.00-12.30), Wednesday 8 September (12.00-17.30) and Wednesday 5 December (9.00 -12.30).

## **22.) AOB**

The Director informed about the ACER event that is going to take place on 1st December 2011 (a get together of the three ACER Boards) the second event-celebrating the 1<sup>st</sup> anniversary of ACER- will be taking place on 14 March.

He also informed that the issues with the Slovenian Government arising from the implementation of the Seat agreement have been resolved to ACER's satisfaction and expressed his gratitude to the Slovenian Government for its continuous cooperative attitude.

The Commission informed that on 26 September it will adopt its financing decision, which includes the budget on ACER, the final decision however remains on the budgetary authority.

## **ANNEX 1**

### **Minutes**

#### **ACER – 5<sup>th</sup> meeting of Administrative Board**

1 June 2011, 9:00-17:00

Ljubljana, Trg republike 3, meeting room 2<sup>nd</sup> 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><b>Opening</b></p> <p>22. Approval of the agenda</p> <p>23. 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><b>Administration and organisation</b></p> <p>24. Report on the written procedures</p> <p>25. Update on the work of the BoR</p> <p>26. Appointment of the members of the Board of Appeal upon Commission's proposal</p> <p>27. 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>28. 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>29. 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>
<p>30. 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 (*)</p>	<p>Doc 9 for adoption</p>	<p>ACER Director</p>

Agenda Topics	Accompanying documents	Rapporteur
31. 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
32. Decision AB no. [...] /2011 on ACER Financial Regulation (**)	Doc 11 for consideration	ACER Director
33. Decision AB no. [...] /2011 laying down detailed rules for the implementation of ACER Financial Regulation (**)	Doc 12 for consideration	ACER Director
34. Decision AB no. [...] /2011 on middle management staff (**)	Doc 13 for consideration	ACER Director
35. Decision AB no. [...] /2011 establishing the policy and procedure for the performance appraisal of staff (**)	Doc 14 for consideration	ACER Director
36. 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
37. Decision AB no. [...] /2011 on general implementing provisions concerning the constitution of a Staff Committee (**)	Doc 16 for consideration	ACER Director
38. Decision AB no. [...] /2011 on outside activities and assignments (**)	Doc 17 for consideration	ACER Director
39. Oral report on the conclusion of the probationary and the management period for Alberto Pototschnig	Management period for confirmation	AB Chair
<b>General ACER work</b>		
40. 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
41. Next Meetings		
42. AOB	Doc 20 for information	AB Chair AB Chair

Agenda Topics	Accompanying documents	Rapporteur
<p>(*) Subject to the document being available after the Commission's inter-service consultation.</p> <p>(**) Draft undergoing Commission's inter-service consultation.</p>		

## **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 1<sup>st</sup> 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 2



### DECISION AB n° 20/2011

## ON THE APPOINTMENT OF THE MEMBERS AND THE ALTERNATES OF THE BOARD OF APPEAL OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "Agency") and, in particular, to Article 18 thereof.

Whereas:

Pursuant to Article 18(1) of the ACER Regulation, the Board of Appeal shall comprise six members and six alternates selected from among current or former senior staff of the national regulatory authorities, competition authorities or other national or Community institutions with relevant experience in the energy sector.

Pursuant to Article 18(2) of the ACER Regulation, the members of the Board of Appeal are formally appointed by the Administrative Board, on a proposal from the Commission, following a public call for expression of interest, and after consultation of the Board of Regulators.

Pursuant to Article 18(3) of the ACER Regulation, the term of office of the members of the Board of Appeal is five years.

On 24 May 2011 (ref. MH/ls A(11)566308), the Commission submitted to the Administrative Board for approval and to the Board of Regulators for consultative opinion, its proposal for members of the Board of Appeal.

On 17 June 2011, the Chairman of the Board of Regulators provided the favourable opinion of the Board on the Commission's proposal for the appointment of members and alternates of the Board of Appeal, following the Board's meeting on 7 June 2011.

HAS DECIDED:

- 1) To appoint as Members of the Board of Appeal (in alphabetical order):
  - a) Jacques de Jong
  - b) Callum McCarthy
  - c) Ignacio Perez-Arriaga
  - d) Pippo Ranci Ortigosa
  - e) Herbert Ungerer
  - f) Wolfgang Urbantschitsch.
- 2) To appoint as Alternates of the Board of Appeal (in alphabetical order):
  - a) Viorel Alicus, as an alternate to Pippo Ranci Ortigosa
  - b) Mariano Bacigalupo Saggese, as an alternate to Ignacio Perez-Arriaga
  - c) Olivier Beatrix, as an alternate to Callum McCarthy
  - d) Nadia Horstmann, as an alternate to Herbert Ungerer
  - e) Peter Kaderjak, as an alternate to Jacques de Jong
  - f) Constantinos Maniatopoulos, as an alternate to Wolfgang Urbantschitsch.
- 3) That the term of office of the Members and Alternates is five years from the entry into force of this Decision.
- 4) That the Members and Alternates of the Board of Appeal are not entitled to any remuneration for the performance of their duties in the Board, as participation in the Board's work as a member is an unpaid honorary function.
- 5) To adopt, with separate decisions

- a) the rules for the reimbursement of travel and other expenses incurred by Members and Alternates of the Board of Appeal in the performance of their duties.
  - b) the assignment of Alternates to Members.
- 6) To convene the first meeting of the Board of Appeal, to adopt its rules of procedure and designate its Chairman, for 1 December 2011.
  - 7) To give mandate to the Director to inform the appointed Members and Alternates of their appointment and to implement any other aspect of this Decision.

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

*Chairman of the ACER Administrative Board*

## ANNEX 3



DECISION AB n° 21/2011

### ADOPTING RULES ON REIMBURSEMENT OF TRAVEL EXPENSES TO BOARD OF REGULATORS MEMBERS

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators (hereafter 'Agency'),

HAVING REGARD to Decision No A10-BoR-01-03 of the Board of Regulators of the Agency of 04 May 2010 adopting the Rules of Procedure of the Board of Regulators of the Agency,

Whereas:

- (1) Decision No 04/2010 of the Administrative Board of the Agency of 06 May 2010 establishes the rules on the reimbursement of people from outside the Agency invited to attend meetings in an expert capacity,
- (2) It is necessary, for Agencies, to also adopt the rules for the reimbursements of expenses of representatives attending the meetings of the Boards.
- (3) Pursuant to Article 3 (b) of 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, the Board of Regulators is a Board of the Agency,

HAS DECIDED:

**Article 1**

The travel expenses incurred by members of the Board of Regulators, alternate members or persons attending the meetings of the Board of Regulators on their behalf shall be reimbursed by the Agency according to the rules listed in Annex I.

**Article 2**

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board



## Annex to the Decision AB n° 21/2011

### **GUIDE FOR THE REIMBURSEMENT OF TRAVEL EXPENSES TO BOARD OF REGULATORS MEETINGS**

#### **1. GENERAL REIMBURSEMENT RULES**

- 1) Travel expenses are reimbursed between the usual place of employment (place of origin) of the representative of the National Regulatory Authority (NRA) to the venue of the ACER Board of Regulators (BOR) meeting.  

In the case of a representative combining this travel with other travel arrangements, the maximum expense reimbursed shall be the economy return fare between the point of origin and the place of the meeting.
- 2) Only one representative per NRA may be entitled to reimbursement. The Chair will be reimbursed in addition to the representative attending from the same NRA. The NRA Representative can be a member of the Board, an Alternate member, or a person attending on their behalf.
- 3) The Representative entitled to reimbursement should arrange their travel in a way that is compliant with sound financial management, i.e. in the most economical way possible in terms of time and money.
- 4) The time of arrival at the meeting place and the time of departure from the meeting place should coincide as closely as possible with the respective starting and finishing times of the meeting or other ACER event closely related to BOR activities.
- 5) For the purpose of ensuring meeting attendance, the meeting secretary shall keep an attendance list which must be signed by the Representative. If a Representative does not attend the meeting, no reimbursements shall be made.
- 6) The Representative must declare any reimbursement of travel expenses received for the same meeting from other sources.
- 7) The Representative must inform the Agency in advance, via the meeting secretary, of any non-compliance with the rules and request authorisation for any derogation from them. The Agency will consider requests for derogations from the rules on a case by case basis and may authorise them when duly justified.
- 8) Travel expenses are reimbursed to the NRA on the bank account specified by the NRA in the financial identification form submitted to ACER.
- 9) This guide does not apply to the representative of the European Commission and to representatives of the NRAs of third countries that may be invited to participate to BoR's meetings.

## **2. TRAVEL ARRANGEMENTS**

### **2.1. Travel by air**

- 1) Air travel is only authorised if the distance is more than 400 km or if the journey involves a sea crossing.
- 2) The Representative is entitled to the reimbursement of an economy class flight ticket. Reimbursement of flights booked in Business class or at a higher rate is restricted to the economy return fare, unless:
  - a) the journey by air involves a flight of 4 hours or more without stopovers, or
  - b) exceptional circumstances can be invoked. In such case, the Representative must request in writing an authorisation for any derogation from these rules to the authorising officer for payments of the Agency. For instance, if seats had to be booked in Business class or at a higher rate for reasons beyond the control of the Representative, the Representative must produce supporting evidence together with the reimbursement form. Late booking by the Representative or his/her organisation falls under his/her responsibility unless the Agency requests the presence of the Representative at very short notice (i.e., within a week before the meeting).
- 3) The flight ticket ordered shall be non-flexible unless the Representative reasonably requires flexibility.

The authorising officer for payments of the Agency may scrutinise particularly closely any request for reimbursement involving abnormally expensive flights. He/she shall have the right to carry out any checks that might be needed and to request any proof from the Representative required for this purpose.

He/she shall also have the right, where it appears to be justified, to restrict reimbursement to the rates normally applied to the usual journey from the Representative's point of departure to the meeting place.

### **2.2 Travel by sea**

If transport by ferry is more economical than transport by air in terms of time and money, a 1st class return ticket for a ferry will be reimbursed.

### **2.3 Travel by rail**

The cost of a 1st class return rail ticket will be reimbursed.

### **2.4 Travel by car**

1) Where the Representative chooses to use his/her own vehicle, the reimbursement will be limited to the equivalent of the cost of a 1st class rail-ticket which the representative could have used instead.

If the route is not served by rail, the cost of travel shall be reimbursed at the rate of EUR 0.22 per km.

2) Costs incurred for using private car to drive to and from station/airport, including parking fees will not be reimbursed.

Other expenses (motorway tolls, parking, ferry crossing etc.) will not be reimbursed.

3) Persons using their own vehicle will remain fully liable for any accidents in which they may be involved during the trip.

## **2.5 Local transport**

Local transport at the place of the meeting, including taxi fares, will not be reimbursed.

## **3. ADMINISTRATIVE RULES AND PROCEDURE**

### **3.1. Documentation required**

#### **3.1.1. Application form for reimbursement**

For each meeting, an application for reimbursement shall be filled in, dated and signed by the person requesting the reimbursement.

#### **3.1.2. Financial identification form**

Travel expenses are reimbursed to the NRA on the Bank account specified by the NRA in the financial identification form submitted to ACER. A financial identification form fully completed and duly signed must be submitted prior to the first request of reimbursement. The forms to be used can be found in all EU languages on the following web-site:

[http://ec.europa.eu/budget/execution/ftiers\\_en.htm](http://ec.europa.eu/budget/execution/ftiers_en.htm)

#### **3.1.3. Legal Entity File**

In order to register a new legal entity, the completed and duly signed Legal Entity File form for the NRA must be submitted. The forms to be used can be found in all EU languages on the following web-site:

[http://ec.europa.eu/budget/execution/legal\\_entities\\_en.htm](http://ec.europa.eu/budget/execution/legal_entities_en.htm)

Members of the Board of Regulators, alternate members or persons attending the meetings of the Board of Regulators on their behalf are not required to fill in a legal entity file form as long as reimbursement of travel expenses is made to the Bank Account of the NRA.

#### **3.1.4. Supporting documents for reimbursement**

Prior to the first reimbursement, NRAs have to submit the financial identification form and the Legal Entity File as indicated under paragraphs 3.1.2. and 3.1.3.

For each meeting, an application for reimbursement shall be filled in, dated and signed by the person requesting the reimbursement and submitted in original together with supporting documents. Travel expenses shall be reimbursed on the presentation of:

-the original round trip tickets or invoices;

-the printout of the electronic reservation in case of online bookings.

The documents supplied must clearly indicate the name of the person travelling (for flights arrangements), the class of travel used, the time of travel and the actual price paid.

The original boarding cards are not required if the other supporting documents provided contain all the information necessary to process the reimbursement request.

Supporting documents proving that the journey took place by car, such as motorway tolls or petrol invoices, do not have to be submitted together with the request of reimbursement whenever it is considered reasonable to use the car on the distance travelled.

### **3.2. Time limit for claiming reimbursement**

The Representative should provide the meeting secretary staff with all the necessary documents for reimbursement before leaving the meeting, whenever possible. If for some reason this is not possible, the Representative shall send the duly signed reimbursement form and the required supporting documents at the latest within 30 calendar days of the meeting to the responsible meeting secretary indicated in the invitation. If, by this deadline, not all the necessary documents have been received, the Agency will proceed with payment based on the documents available, if any.

The Agency will inform the participant concerned about any cancellation or restriction of payment due to lack of information provided within the deadline.

### **3.3. Method of reimbursement**

Reimbursement of expenses will be done by bank transfer only to the Bank account specified by the NRA in the financial identification form submitted to ACER. When the order for payment is made, the Agency shall indicate the name and date of the meeting and the participant's name in the reference field.

### **3.5. Events outside the influence of the Representative**

In the case of flight, train or ferry cancellations that are outside the influence of the Representative, the Agency may compensate additional travelling costs incurred subject to justification and where not covered by the carrier and/or travel insurance.

### **3.6. Refund of unduly paid sums**

The recipient will be required to refund any sums paid in error or if received from other sources.

## ANNEX 4

### DECISION AB n° 22/2011

on the adoption of the

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

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

HAVING REGARD to Commission Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union and in particular, Article 185(1) thereof,

HAVING REGARD to the Commission regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Union; amended by Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008, thereof,

HAVING REGARD to the opinion of the European Commission<sup>1</sup>,

Whereas:

- 1) The Agency for the Cooperation of Energy Regulators, has legal personality and hence its own budget covered by specific financial rules,
- 2) Like the framework Financial Regulation, this Financial Regulation of the Agency for the Cooperation of Energy Regulators confines itself to stating the broad principles and basic rules governing the whole of the budgetary sector concerned, while detailed provisions may subsequently be adopted by the Agency in order to make their financial rules easier to read.
- 3) For the purpose of establishing and implementing the budget, the four fundamental principles of budgetary law (unity, universality, specification, annuality), and the principles of equilibrium, unit of account, sound financial management and transparency must be reasserted.
- 4) It is necessary to define the powers and responsibilities of the accounting officer, the internal auditor and authorising officers. The last mentioned are fully responsible for all revenue and expenditure operations executed under their authority and must be held accountable for their actions, including, where necessary, through disciplinary proceedings.
- 5) Like the institutions, the Agency must not be allowed to raise loans, in accordance with Article 14 of the general Financial Regulation.
- 6) The timetable for establishing the budget, presenting the accounts and granting discharge must be aligned on the equivalent provisions of the general Financial

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<sup>1</sup> If necessary

Regulation, and the authority responsible for granting the Agency discharge will be the same as for the general budget (Article 185(2) of the general Financial Regulation).

- 7) The accounting rules applied by the Agency must allow for consolidation with the accounts of the institutions, and to this end they must be adopted by the Commission's accounting officer in accordance with Article 133 of the new general Financial Regulation.
- 8) In accordance with Article 46 of the general Financial Regulation, the establishment plan must now be submitted to the budgetary authority for approval.
- 9) The Agency could have access to the panel referred to in Article 66(4) of the general Financial Regulation set up by the Commission to examine irregularities so that a similar assessment can be made of identical cases.
- 10) Since the Agency receives a grant charged to the European Union budget, the Agency must strictly observe the same requirements as the institutions in the award of public contracts and grants, insofar as such contracts and grants are authorised by the instrument setting up those bodies; in this respect a reference to the relevant provisions of the general Financial Regulation will suffice.
- 11) Like the institutions, the Agency may, for the performance of the tasks entrusted to it, employ external private-sector bodies only where necessary and not for tasks involving any public service mission or any use of discretionary powers of judgement, in order to guarantee that the Agency is accountable for the implementation of its budget and adheres to the objectives assigned to it on its creation.
- 12) In support of its requests for payment of the European Union subsidy, the Agency must submit a cash-flow forecast, and the funds paid by the European Union in respect of that subsidy must bear interest for the benefit of the European Union.
- 13) There must be specific provisions organising the collection of fees and charges, which are one of the resources of the Agency.
- 14) In view of the statutory requirements arising from the instrument setting up the Agency, the procedure for presenting the accounts should be adapted and provision made for the Administrative Board to give its opinion on the accounts.
- 15) The new budget structure adopted in the general financial regulation must also be used by the Agency insofar as this is justified by the nature of its activities.
- 16) The only provisions of the general Financial Regulation that must be included in this Regulation are those which are relevant to the Agency. In particular this Regulation must therefore not include the provisions relating to areas of activity that have no connection with the Agency, the various methods of implementation embodying the concept of externalisation and the information on the budget to be sent to the European Parliament and the Council. Additionally, only some of the categories of assigned revenue in the general Financial Regulation should be taken into consideration and, finally, the procedure for transfers of appropriations and establishment of the budget must be less detailed and less complex.

HAS ADOPTED THIS REGULATION:



## TITLE I

### *SUBJECT MATTER*

#### Article 1

This Regulation spells out the essential rules which the financial rules of the Agency for the Cooperation of Energy Regulators (ACER) may depart from only where their specific operating needs so require and with the Commission's prior consent in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 (hereinafter 'the general Financial Regulation').

#### Article 2

For the purpose of this Regulation:

1. **'ACER Regulation'** shall mean Regulation (EC) No 713/2009<sup>2</sup> of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators;
2. **'ACER'** shall mean the Agency for the Cooperation of Energy Regulators set up by the ACER Regulation as a European body;
3. **'Administrative Board'** shall mean the body referred to in Article 3(a) of the ACER Regulation;
4. **'Board of Regulators'** shall mean the body referred to in Article 3(b) of the ACER Regulation;
5. **'Board of Appeal'** shall mean the body referred to in Article 3(d) of the ACER Regulation;
6. **'Director'** shall mean the person referred to in Article 3(a) of the ACER Regulation;
7. **'Staff'** shall mean the Director as well as the staff referred to in Article 28 of the ACER Regulation;
8. **'Budget'** shall mean the budget of ACER as referred to in Article 21 of the ACER Regulation;
9. **'Budgetary Authority'** shall mean the European Parliament and the Council of the European Union;
10. **'General Financial Regulation'** shall mean Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
11. **'Framework Financial Regulation'** shall mean Commission Regulation (EC, Euratom) No. 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, amended by Commission Regulation (EC, Euratom) No. 652/2008 of 9 July 2008;
12. **'Implementing Rules to the general Financial Regulation'** shall mean the Commission Regulation (EC, Euratom) No. 2342/2002<sup>3</sup> of 23 December 2002 laying down the detailed rules for the implementation of Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
13. **'ACER Financial Implementing Rules'** shall mean the implementing rules to this Financial Regulation;

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<sup>2</sup> OJ L211, 14.8.2009, p. 1-14

<sup>3</sup> OJ L 357, 31.12.2002, p.1

14. '**ACER Financial Rules**' shall mean the ACER Regulation, this Financial Regulation and the ACER Financial Implementing Rules;
15. '**Staff Regulations**' shall mean regulations and rules applicable to officials and other servants of the European Union.

## **TITLE II**

### ***BUDGETARY PRINCIPLES***

#### **Article 3**

The establishment and implementation of the ACER budget (hereinafter referred to as 'the budget') shall comply with the principles of unity and budgetary accuracy, annuality, equilibrium, unit of account, universality, specification and sound financial management, which requires effective and efficient internal control, and transparency as provided for in this Regulation.

#### **CHAPTER 1 – Principles of unity and budget accuracy**

#### **Article 4**

The budget is the instrument which, for each financial year, forecasts and authorises the revenue and expenditure considered necessary for ACER.

#### **Article 5**

The budget shall comprise:

- (a) a subsidy granted by the European Union;
- (b) fees paid to the Agency pursuant to Article 22 of the ACER Regulation;
- (c) voluntary contributions from the Member States or from the regulatory authorities, under Article 13(8) of the ACER Regulation;
- (d) legacies, donations or grants under Article 13(8) of the ACER Regulation;
- (e) the expenditure of ACER covering staff, administrative, infrastructure, and operational expenses.
- (f) revenue assigned to specific items of expenditure in accordance with Article 19(1);

#### **Article 6**

1. No revenue shall be collected and no expenditure effected unless booked to a line in the budget.
2. An appropriation shall not be entered in the budget if it is not for an item of expenditure considered necessary.
3. No expenditure may be committed or authorised in excess of the appropriations authorised by the budget.

#### **CHAPTER 2 – Principle of annuality**

#### **Article 7**

The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

#### **Article 8**

1. The budget shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Administrative appropriations shall be non-differentiated. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.

#### **Article 9**

1. The revenue of the Agency referred to in Article 5 shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year.
2. The revenue of the Agency shall give rise to an equivalent amount of payment appropriations.
3. The appropriations authorised in the budget for a given year may be used solely to cover expenditure committed and paid in that financial year, and to cover amounts due against commitments from preceding financial years.
4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.

#### **Article 10**

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled. However, they may, by decision of the Administrative Board taken not later than 15 February, be carried over to the next financial year only, in accordance with paragraphs 2 to 7.
2. Appropriations relating to staff expenditure may not be carried over.
3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, as defined in the rules implementing this financial regulation, have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.
4. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. ACER shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.
5. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.
6. Appropriations carried over which have not been committed by 31 March of the year N+1 shall be automatically cancelled. Appropriations carried over in this way shall be identified in the accounts.
7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically. By 1 June of the year N+1 at the latest, ACER shall inform the Commission about the implementation of the assigned revenue carried over.

The appropriations available corresponding to assigned revenue carried over must be first used.

### **Article 11**

Where amounts are decommitted, as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriation were committed, the appropriations concerned shall be cancelled.

### **Article 12**

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has become definitive.

### **Article 13**

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the Administrative Board on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.
2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

### **Article 14**

1. If the budget has not been finally adopted at the beginning of the financial year, the following rules shall apply to commitment and payment of expenditure which it has been possible to book to a specific line in the budget as part of implementation of the last budget duly adopted.
2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the chapter in question for the previous financial year, plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the chapter in question for the previous financial year.

The limit of the appropriations provided for in the statement of estimates of revenue and expenditure may not be exceeded.

3. At the request of the Director, if the continuity of action by ACER and management needs so require, the Administrative Board may simultaneously authorise two or more provisional twelfths for both commitments and payments over and above those automatically made available by the provisions of paragraphs 1 and 2.

The additional twelfths shall be authorised in full and shall not be divisible.

## **CHAPTER 3 – Principle of equilibrium**

### **Article 15**

1. The budget revenue and payment appropriations must be in balance.
2. Commitment appropriations may not exceed the amount of the European Union subsidy, plus own revenue and any other revenue referred to in Article 5.
3. ACER may not raise loans.
4. European Union funds paid to the ACER shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.
5. ACER shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its

payment requests, it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.

#### **Article 16**

1. If the balance of the outturn account within the meaning of Article 81 is positive, it shall be repaid to the Commission up to the amount of the European Union subsidy paid during the year. The part of the balance exceeding the amount of the European Union subsidy paid during the year shall be entered in the budget for the following year as revenue.

ACER shall provide, by 31 March of the year N at the latest, an estimate of the operating surplus from the year N-1, which is to be returned to the European Union budget in year N, in order to complete the information already available concerning the surplus of the year N-2. This information shall be duly taken into account by the Commission when assessing the financial needs of ACER in year N+1;

The difference between the European Union subsidy entered in the general budget and that actually paid to ACER shall be cancelled.

2. If the balance of the outturn account provided for in Article 81 is negative, it shall be entered in the budget for the following financial year.
3. The revenue or payment appropriation shall be entered in the budget during the budgetary procedure using the letter of amendment procedure or, while the budget implementation is under way, by means of an amending budget.

### **CHAPTER 4 – Principle of unity of account**

#### **Article 17**

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for cash-flow purposes, the accounting officer and, in case of imprest accounts, imprest administrators shall be authorised to carry out operations in national currencies as laid down in the financial rules of ACER.

### **CHAPTER 5 – Principle of universality**

#### **Article 18**

Total revenue shall cover total payment appropriations, subject to Article 19. All revenue and expenditure shall be entered in full without any adjustments against each other, subject to Article 21.

#### **Article 19**

1. The following items of revenue shall be used to finance specific items of expenditure:
  - (a) revenue earmarked for a specific purpose, such as income from legacies, donations or grants as per Article 13(8) of the ACER Regulation;
  - (b) contributions to the Agency's activities from Member States, non-member countries or miscellaneous bodies, insofar as this is provided for in the agreement concluded between the Agency and the Member States, non-member countries or bodies in question;
  - (c) revenue from third parties in respect of goods, services or work supplied at their request, with the exception of fees and charges referred to in Article 5(b);
  - (d) proceeds from the supply of goods, services and works for European Institutions or other European bodies;
  - (e) revenue arising from the repayment of amounts wrongly paid;

- (f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped when the book value is fully depreciated;
- (g) insurance payments received;
- (h) revenue and payments connected with lettings;
- (i) revenue from the sale of publications and films, including those on an electronic medium.

The ACER Regulation may also assign the revenue for which it provides to specific items of expenditure.

- 2. All items of revenue within the meaning of point (a) to (d) of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
- 3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraph 1 and wherever possible shall indicate the amount.

#### **Article 20**

- 1. The Administrative Board may accept any donation made to the Agency, such as legacies, donations or grants, as provided by Art.13(8) of ACER Regulation.
- 2. Acceptance of donations which may involve some financial charge shall be subject to the authorisation of the Administrative Board, which shall take a decision within two months of the date on which the request is submitted to it. If the Administrative Board fails to take a decision within that period, the donation shall be deemed accepted.

#### **Article 21**

- 1. The following deductions may be made from payment requests, invoices or statements which shall then be passed for payment of the net amount:
  - (a) penalties imposed on parties to procurement contracts or beneficiaries of a grant;
  - (b) discounts, refunds and rebates on individual invoices and payment requests;
  - (c) interest generated by pre-financing payments.
- 2. The cost of products or services provided to the Agency shall be charged to the budget for the full ex-tax amount, where they incorporate taxes refunded:
  - (a) either by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Union, provided that it applies to ACER;
  - (b) or by a Member State or non-member country on the basis of other relevant agreements.

Any national taxes temporarily borne by ACER under the first subparagraph shall be entered in a suspense account until they are refunded by the State concerned.

- 3. Any negative balance shall be entered in the budget as expenditure.
- 4. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

### **CHAPTER 6 – Principle of specification**

#### **Article 22**

The appropriations in their entirety shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

#### **Article 23**

- 1. The Director may make transfers from one chapter to the other and from one article to another without limit and from one title to another up to a maximum of 10% of the appropriations for the financial year shown on the line from which the transfer is made.



2. Beyond the limit referred to in the first paragraph, the Director may propose to the Administrative Board transfers of appropriations from one title to another. If necessary a written procedure for approval may be employed. The Administrative Board shall have three weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.
3. Proposal for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.
4. The Director shall inform the Administrative Board as soon as possible of all transfers made. He shall inform the budgetary authority of all transfers carried out under paragraph 2.

#### **Article 24**

1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).
2. Appropriations corresponding to assigned revenue may be transferred only if they are used for the purpose to which the revenue is assigned.

### **CHAPTER 7 – Principle of sound financial management**

#### **Article 25**

1. Budget appropriations shall be used in accordance with the principle of sound financial management, that is to say, in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by ACER for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget.

Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided to the Administrative Board by the Director. This information shall be provided annually at the latest in the documents accompanying the preliminary draft budget.

4. In order to improve decision-making, the Agency shall regularly carry out ex-ante and ex-post evaluations of programmes or activities. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be sent to the Administrative Board.

#### **Article 25a**

1. The budget shall be implemented in compliance with effective and efficient internal control.
2. For the purpose of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
  - (a) effectiveness, efficiency and economy of operations;
  - (b) reliability of reporting;

- (c) safeguarding of assets and information;
- (d) prevention and detection of fraud and irregularities;
- (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

## **CHAPTER 8 – Principle of transparency**

### **Article 26**

1. The budget shall be drawn up and implemented and the accounts presented in compliance with the principle of transparency.
2. A summary of the budget and amending budgets, as finally adopted, shall be published in the *Official Journal of the European Union* within three months of their adoption.

The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.

3. The budget including the establishment plan and amending budgets, as finally adopted, as well as an indication of the number of contract staff expressed in full time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the Internet site of ACER within four weeks of their adoption.
4. ACER shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 74b. The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>4</sup>.

Where information is published only in anonymous form, ACER shall, upon request, provide information on the beneficiaries concerned to the European Parliament and the Council in an appropriate manner.

## **TITLE III**

### ***ESTABLISHMENT AND STRUCTURE OF THE BUDGET***

#### **CHAPTER 1 – Establishment of the budget**

##### **Article 27**

1. The budget shall be established in accordance with the provisions of the ACER Regulation.
2. ACER shall send the Commission a provisional draft estimate of its revenue and expenditure and the general guidelines underlying that estimate by 10 February each year and the final draft estimate by the date specified in the constituent instrument.
3. The estimate of revenue and expenditure of ACER shall include:

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<sup>4</sup> OJ L 8, 12.1.2001, p. 1.



- (a) an establishment plan setting the number of permanent and temporary posts, contract agents and seconded national experts, authorised within the limits of the budget appropriations, by grade and by category;
- (b) where there is a change in the number of persons in post, a statement justifying the request for the new posts;
- (c) a quarterly estimate of cash payments and receipts;
- (d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators.

Evaluation results shall be consulted and referred to as evidence of the likely merits of an increase or decrease of ACER's proposed budget in comparison with its budget for year N.

4. ACER shall send to the Commission and the budgetary authority by 31 March each year at the latest the following:
  - (a) its draft work programme;
  - (b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;
  - (c) information on the number of permanent and temporary posts, contract staff and seconded national experts, as defined in the Staff Regulations and the Conditions of Employment of Other Servants (hereinafter 'the Staff Regulations') for the years N-1 as well as an estimate for the year N+1;
  - (d) information on contributions in kind granted by the host Member State to the Agency;
  - (e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year N-1.
5. As part of the procedure for adoption of the general budget of the European Union, the Commission shall send ACER's statement of estimates to the budgetary authority and propose the amount of the subsidy for ACER and the number of staff it considers that ACER needs. The Commission shall provide the draft establishment plan of ACER and for an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.
6. The budgetary authority shall adopt the establishment plan of ACER and any subsequent amendment thereto in accordance with Article 32(1). The establishment plan shall be published in an Annex to Section III – Commission – of the general budget of the European Union.
7. The budget and the establishment plan shall be adopted by the Administrative Board. They become definitive after final adoption of the general budget of the European Union, setting the amount of the subsidy and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.

#### **Article 28**

Any amendment to the budget, including the establishment plan, shall be the subject of an amending budget adopted by the same procedure as the initial budget, in accordance with the provisions of the ACER Regulation and Article 27.

## **CHAPTER 2 – Structure and presentation of the budget**

#### **Article 29**

The budget shall comprise a statement of revenue and a statement of expenditure.

### **Article 30**

In so far as it is justified by the nature of ACER's activities, the statement of expenditure must be set out on the basis of a nomenclature with a classification by purpose. The nomenclature shall be determined by the Agency and shall make a clear distinction between administrative appropriations and operating appropriations.

### **Article 31**

The budget shall show:

1. In the statement of revenue:
  - (a) the estimated revenue of the ACER for the financial year in question;
  - (b) the estimated revenue for the preceding financial year and the revenue for year n-2;
  - (c) appropriate remarks on each revenue line.
2. In the statement of expenditure:
  - (a) the commitment and payment appropriations for the financial year in question;
  - (b) the commitment and payment appropriations for the preceding financial year, and the expenditure committed and the expenditure paid in year n-2;
  - (c) a summary statement of the schedule of payments due in subsequent financial years to meet budget commitments entered into in earlier financial years;
  - (d) appropriate remarks on each subdivision.

### **Article 32**

1. The establishment plan referred to in Article 27 shall show next to the number of posts authorised for the financial year, the number authorised for the preceding year and the number of posts actually filled.

It shall constitute an absolute limit for the ACER; no appointment may be made in excess of the limit set.

However, except for grades AD16, AD15, AD14 and AD13, the Administrative Board may modify the establishment plan by up to 10% of posts authorised, subject to two conditions:

- (a) that the volume of staff appropriations corresponding to a full financial year is not affected;
  - (b) that the limit of the total number of posts authorised by the establishment plan is not exceeded.
2. By way of derogation from the second subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments. Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, ACER shall take appropriate measures to respect the limit referred to in paragraph 1 point (b), as soon as possible.

## **TITLE IV**

### ***IMPLEMENTATION OF THE BUDGET***

#### **CHAPTER 1 – General provisions**

##### **Article 33**

The Director shall perform the duties of authorising officer. He/she shall implement the revenue and expenditure of the budget in accordance with the financial rules of ACER, on his/her own responsibility and within the limits of the appropriations authorised.

Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, ACER shall participate in fraud prevention activities of the European Anti-fraud Office.

##### **Article 34**

1. The Director may delegate his/her powers of budget implementation to staff of ACER covered by the Staff Regulations, in accordance with the conditions laid down by the financial rules, within the meaning of Article 185 of the general Financial Regulation, adopted by the Administrative Board. Those so empowered may act only within the limits of powers expressly conferred upon them.
2. The delegatee may subdelegate the powers received as provided for in the rules for implementing this Regulation referred to in Article 99. Each act of subdelegation shall require the explicit agreement of the Director.

##### **Article 35**

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures which may bring their own interests into conflict with those of ACER. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.
2. There is a conflict of interest where the impartial and objective exercise of the functions of a person referred to in paragraph 1 is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.
3. The competent authority referred to in paragraph 1 shall be the immediate superior of the member of staff concerned. If the member of staff is the Director, the competent authority shall be the Administrative Board.

##### **Article 36**

1. ACER's budget shall be implemented by the Director.
2. Technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment may be entrusted by contract to external private-sector entities or bodies, where this proves to be indispensable.

## **CHAPTER 2 – Financial actors**

### **Section 1 – Principle of segregation of duties**

#### **Article 37**

The duties of the authorising officer and accounting officer shall be segregated and mutually incompatible.

### **Section 2 – Authorising officer**

#### **Article 38**

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer shall make budget commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.
4. The authorising officer shall put in place, in compliance with the minimum standards adopted by the Administrative Board on the basis of equivalent standards laid down by the European Commission for its own departments, and having due regard to the risks associated with the management environment and the nature of the action financed, the organisational structure and the internal management and control systems and procedures suited to the performance of his/her duties, including where appropriate ex post verifications.

The authorising officer shall establish within his/her departments an expertise and advice function designed to help him/her control the risks involved in his/her activities.

5. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. Initiation and the ex-ante and ex-post verification of an operation shall be separate functions.
6. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget. Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.

#### **Article 39**

1. Initiation of an operation as referred to in Article 38(5) shall be understood to mean all the operations which are preparatory to the adoption of the acts implementing the budget by the authorising officers responsible referred to in Articles 33 and 34.
2. Ex-ante verification of an operation as referred to in Article 38(5) shall be understood to mean all the ex-ante checks put in place by the authorising officer responsible in order to verify the operational and financial aspects.

3. Each operation shall be subject to at least one ex-ante verification. The purpose of this verification shall be to ascertain that:
  - (a) the expenditure is in order and conforms to the relevant provisions;
  - (b) the principle of sound financial management referred to in Article 25 has been applied.

For the purpose of ex-ante verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate ex-post verification, in accordance with paragraph 4.

4. The purpose of ex-post verifications of documents and, where appropriate, on-the-spot verifications shall be to verify that operations financed by the budget have been correctly implemented and in particular that the criteria referred to in paragraph 3 have been complied with. These verifications may be organised on a sample basis using risk analysis.
5. The officials or other staff responsible for the verifications referred to in paragraph 2 and 4 shall be different from those performing the tasks referred to in paragraph 1 and shall not be their subordinates.
6. All staff responsible for scrutinising the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards adopted by ACER and based on standards laid down by the Commission for its own departments.

#### **Article 40**

1. The authorising officer shall report to the Administrative Board on the performance of his duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

The annual activity report shall indicate the results of his operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor within the meaning of Article 71 shall take note of the annual activity report and any other pieces of information identified.

2. By no later than 15 June each year, the Administrative Board shall send the budgetary authority and the Court of Auditors an analysis and an assessment of the authorising officer's annual report on the previous financial year. This analysis and assessment shall be included in the annual report of the Community body, in accordance with the provisions of the constituent instrument.

#### **Article 41**

Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the

professional rules he/she is required to observe shall inform the Director in writing and, if the later fails to take action within a reasonable period, the panel referred to in Article 47(4) and the Administrative Board. In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.

#### **Article 42**

Where powers of budget implementation are delegated or subdelegated in accordance with Article 34, Article 38(1), (2) and (3) shall apply *mutatis mutandis* to the authorising officers by delegation or subdelegation.

### **Section 3 – Accounting officer**

#### **Article 43**

1. The Administrative Board of ACER shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his/her duties. He/she shall be responsible in ACER for:
  - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
  - (b) preparing and presenting the accounts in accordance with Title VII;
  - (c) keeping the accounts in accordance with Title VII;
  - (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
  - (e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify the respect of validation criteria;
  - (f) treasury management.
2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the ACER's assets and of budget implementation.
  - 2a Before the adoption of the accounts by the Director, the accounting officer shall sign them off, thereby certifying that he/she has a reasonable assurance that the accounts present a true and fair view of the financial situation of ACER.

For that purpose the accounting officer shall satisfy himself/herself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

The authorising officer shall forward all information that the accounting officer needs in order to fulfil his/her duties.

The authorising officer shall remain fully responsible for the proper use of the funds he/she manages as well as the legality and regularity of the expenditure under his/her control.



- 2b The accounting officer shall be empowered to check the information received as well as to carry out any further checks he/she deems necessary in order to sign off the accounts.
- The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.
- 2c The accounting officer of ACER shall sign off its annual accounts and send them to the Commission's accounting officer.
3. Subject to paragraph 4 of this Article and Article 44, only the accounting officer shall be empowered to manage cash and cash equivalents. He/she shall be responsible for their safekeeping.
  4. The accounting officer may, in the performance of his/her duties, delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his/her duties.
  5. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.

#### **Section 4 – Imprest administrator**

##### **Article 44**

Where it proves indispensable for the payment of small sums and for the collection of other revenue referred to in Article 5, imprest accounts may be set up which shall be endowed by the accounting officer and shall be placed under the responsibility of imprest administrators designated by him/her.

The maximum amount of each item of expenditure or revenue that can be paid by the imprest administrator to third parties may not exceed the amount determined in the implementing rules referred to in Article 98, for each item of expenditure or revenue.

Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66(1), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.

#### **CHAPTER 3 – Liability of the financial actors**

##### **Section 1 – General rules**

##### **Article 45**

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.  

The authorising officer may at any time withdraw his/her agreement to a specific subdelegation.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the Administrative Board. The Administrative Board shall appoint an interim accounting officer.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the accounting officer.

#### **Article 46**

1. The provisions of this chapter are without prejudice to the criminal-law liability which the authorising officer and the persons referred to in Article 45 may incur as provided in the applicable national law and in the provisions in force on the protection of the European Union' financial interests and on the fight against corruption involving officials of the European Union or officials of Member States.
2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment compensation as laid down in the Staff Regulations, without prejudice to Articles 47, 48 and 49. In the event of illegal activity, fraud or corruption which may harm the interests of the European Union, the matter will be referred to the authorities and bodies designated by the applicable legislation.

### **Section 2 – Rules applicable to the authorising officers and authorising officers by delegation or subdelegation**

#### **Article 47**

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.

The obligation to pay compensation shall apply in particular if:

- (a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and its implementing rules;
  - (b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it, or is late in issuing a payment order, thereby rendering ACER liable to civil action by third parties.
2. An authorising officer by delegation or subdelegation who considers that a decision falling under his/her responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to implement the decision in question, the latter must implement it and may not be held liable.
  3. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.
  4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of ACER as it does in respect of Commission departments, unless the Administrative Board decides to set up a functionally independent panel, or to participate in a joint panel established by several European bodies. For cases submitted by European bodies, the specialised financial irregularities panel set up by the European Commission shall include one staff member of a European body.

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the



authorising officer and to the Commission's internal auditor. If the opinion implicates the Director, the panel shall send it to the Administrative Board and the Commission's internal auditor. The Director shall refer, in anonymous form, to opinions of the panel in his annual report and indicate the follow-up measures taken.

5. Any member of staff maybe required to compensate, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.

### **Section 3 – Rules applicable to accounting officers and imprest administrators**

#### **Article 48**

An accounting officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- (b) he/she alters bank accounts or postal giro accounts without notifying the authorising officer in advance;
- (c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he/she fails to collect revenue due.

#### **Article 49**

An imprest administrator officer may be liable to disciplinary action and payment of compensation, as laid down in the Staff Regulations, in particular where:

- (a) he/she loses or damages monies, assets and documents in his/her keeping or causes them to be lost or damaged by his/her negligence;
- (b) he/she cannot provide proper supporting documents for the payments he/she has made;
- (c) he/she makes payments to persons other than those entitled;
- (d) he/she fails to collect revenue due.

## **CHAPTER 4 – Revenue operations**

### **Section 1 – General provisions**

#### **Article 50**

ACER shall present to the European Commission requests for payment of all or part of the European Union subsidy pursuant to Article 15(5) under terms and at intervals agreed with the European Commission.

#### **Article 51**

The funds paid to ACER by the European Commission by way of a subsidy shall bear interest for the benefit of the general budget.

### **Section 2 – Estimate of amounts receivable**

#### **Article 52**

An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to ACER.

### **Section 3 – Establishment of the amounts receivable**

#### **Article 53**

1. Establishment of an amount receivable is the act by which the authorising officer or authorising officer by delegation:
  - (a) verifies that the debt exists;
  - (b) determines or verifies the reality and the amount of the debt;
  - (c) verifies the conditions in which the debt is due.
2. Any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order given to the accounting officer, accompanied by a debit note sent to the debtor. Both of these documents shall be drawn up and sent by the authorising officer responsible.
3. The contracts and grant agreements concluded by ACER shall provide that any debt not repaid on the due date laid down the debit note shall bear interest in accordance with Commission Regulation (EC, Euratom) No 2342/2002<sup>5</sup>. The condition whereby interest on late payment is due to ACER, including the rate for default interest, shall be explicitly referred to in the contracts and grant agreements.
4. In duly substantiated cases, certain routine revenue items may be established provisionally.

Provisional establishment shall cover the recovery of several individual amounts which need not, therefore, be established individually.

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<sup>5</sup> OJ L 357, 31.12.2002, p. 1.

Before the end of the financial year, the authorising officer shall amend the amounts established provisionally to ensure that they correspond to the amounts receivable actually established.

#### **Section 4 – Authorisation of recovery**

##### **Article 54**

The authorisation of recovery is the act whereby the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable, which he/she has established.

#### **Section 5 – Recovery**

##### **Article 55**

1. Amounts wrongly paid shall be recovered.
2. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer or authorising officer responsible. He/she shall exercise due diligence to ensure that the ACER receives its revenue and shall see that its rights are safeguarded.
3. Where the authorising officer responsible is planning to waive or partially waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality.

Such a waiver shall be made by a duly substantiated decision of the authorising officer. The authorising officer may delegate such a decision only for amounts receivable of less than EUR 5,000.

The waiver decision shall state what action has been taken to secure recovery and the points of law and the fact on which it is based.

4. The authorising officer responsible shall cancel an established amount receivable when the discovery of a mistake as to a point of law or fact reveals that the amount has not been correctly established. Such cancellation shall be by decision of the authorising officer responsible and shall be suitably substantiated.
5. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of a factual error entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the established entitlement of ACER. Such an adjustment shall be by decision of the authorising officer responsible and shall be suitably substantiated.

##### **Article 56**

1. Upon actual recovery of the sum due, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of all cash payments made to the accounting officer.

##### **Article 57**

1. If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and immediately

launch the procedure of effecting recovery by any means offered by the law, including, where appropriate, by offsetting and, if this is not possible, by enforced recovery.

2. The accounting officer shall recover amounts by offsetting them against equivalent claims that ACER has on any debtor who himself or herself has a claim on ACER that is certain, of a fixed amount and due, provided that offsetting is legally possible.

#### **Article 58**

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that the following two conditions are met:

- (a) the debtor undertakes to pay interest at the rate specified in Article 86 of Regulation (EC, Euratom) No 2342/2002 for the entire additional period allowed, starting from the date set in the debit note;
- (b) in order to safeguard the rights of ACER, the debtor provides a financial guarantee covering both the principal sum and the interest.

#### **Article 58a**

The accounting officer shall keep a list of amounts due to be recovered, in which ACER's entitlements are grouped according to the date of issue of the recovery order. He/she shall also indicate decisions to waive or partially waive recovery of established amounts. The list should be added to ACER's report on budgetary and financial management.

ACER shall establish a list of the ACER's entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of the res judicata and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

#### **Article 58b**

Entitlements of ACER in respect of third parties and entitlements of third parties in respect of ACER shall be subject to a limitation period of five years, which shall be laid down in the contracts and grant agreements concluded by ACER.

### **Section 6 – Specific provisions applicable to fees and charges**

#### **Article 59**

Where ACER collects fees and charges referred to in Article 5(b), an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the Administrative Board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of ACER's entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in ACER's report on budgetary and financial management.

Where ACER uses a separate invoicing system, the accounting officer shall regularly, and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.

As a general rule ACER shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. If by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Section 3, 4 and 5 of this Chapter shall apply.

## **CHAPTER 5 – Expenditure operations**

### **Article 60**

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Every commitment of expenditure shall be preceded by a financing decision.
3. The work programme of ACER shall be equivalent to a financing decision for the activities it covers, provided that they are clearly identified and the underlying criteria are spelled out precisely. The work programme shall comprise detailed objectives and performance indicators.
4. Administrative appropriations may be implemented without a prior financing decision.

### **Section 1 – Commitment of expenditure**

#### **Article 61**

1. The budget commitment is the operation reserving the appropriations necessary to cover subsequent payments to honour a legal commitment.
2. The legal commitment is the act whereby the authorising officer responsible enters into or establishes an obligation which results in a charge for the budget.
3. The budget commitment is individual when the beneficiary and the amount of expenditure are known.
4. The budget commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.
5. The budget commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

The provisional budget commitment shall be implemented either by the conclusion of one or more individual legal commitments giving rise to an entitlement to subsequent payments or, in exceptional cases relating to expenditure on staff management, directly by payments.

#### **Article 62**

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.
2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1.

Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year N.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after the final date shall be decommitted in accordance with Article 11.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 67 has been made in a period of three years following the signing of the legal commitment shall be decommitted.

### **Article 63**

When adopting a budget commitment, the authorising officer responsible shall ensure that:

- (a) the expenditure has been charged to the correct item in the budget;
- (b) the appropriations are available;
- (c) the expenditure conforms to the applicable provisions, in particular those of the ACER Regulation, the financial rules of ACER and all acts adopted pursuant to them;
- (d) the principle of sound financial management is complied with.

## **Section 2 – Validation of expenditure**

### **Article 64**

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) verifies the conditions in which payment is due;
- (c) determines or verifies the reality and the amount of the claim.

### **Article 65**

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The validation decision shall be expressed by the signing of a 'passed for payment' voucher by the authorising officer responsible.
3. In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, 'passed for payment' shall take the form of validation using the personal password of the authorising officer responsible.

### **Section 3 – Authorisation of expenditure**

#### **Article 66**

1. Authorisation of expenditure is the act whereby the authorising officer responsible, by issuing a payment order, instructs the accounting officer to pay an item of expenditure which he/she has validated.

Where periodic payments are made with regard to services rendered, including rental service, or goods delivered, and subject to his risk analysis, the authorising officer may order the application of a direct debit system.

2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 38(6).
3. Where appropriate, the payment order sent to the accounting officer shall be accompanied by a document certifying that the goods have been entered in the inventories referred to in Article 90(1).

### **Section 4 – Payment of expenditure**

#### **Article 67**

1. Payment shall be made on production of proof that the relevant action has been carried out in accordance with the provisions of the basic act within the meaning of Article 49 of the general Financial Regulation or the contract or grant agreement, and shall cover one of the following operations:
  - (a) payment of the entire amount due;
  - (b) payment of the amount due in any of the following ways:
    - (i) prefinancing, which may be divided into a number of payments;
    - (ii) one or more interim payments;
    - (iii) payment of the balance of the amounts due.

Prefinancing shall count in full or in part against the interim payment.

The entire prefinancing and interim payments shall count against the payment of balances.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

#### **Article 68**

Payment of expenditure shall be made by the accounting officer within the limits of funds available.

### **Section 5 – Time limits for expenditure operations**

#### **Article 69**

The validation, authorisation and payment of expenditure must be carried out within the time limits specified in, and in accordance with the provisions of, the detailed rules for implementation of the general Financial Regulation.



## **CHAPTER 6 – IT systems**

### **Article 70**

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

## **CHAPTER 7 – Internal auditor**

### **Article 71**

1. ACER shall have an internal auditing function which must be performed in compliance with the relevant international standards.
2. Without prejudice to Article 38(4), the European Commission's internal auditor shall exercise, the same powers with respect to ACER as with respect to European Commission departments.

### **Article 72**

1. The internal auditor shall advise ACER on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He/she shall be responsible:

- (a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them; and
- (b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budget implementation operation.
2. The internal auditor shall perform his/her duties on all ACER's activities and departments. He/she shall enjoy full and unlimited access to all information required to perform his/her duties.
3. The internal auditor shall report to the Administrative Board and the Director on his/her findings and recommendations. He/she shall ensure that action is taken on recommendations resulting from audits.
4. The internal auditor shall submit to the ACER an annual internal audit report setting out, *inter alia*, the number and type of internal audits conducted, the recommendations made and the action taken on these recommendations. This annual report shall also mention any systemic problems detected by the specialised panel set up under the Article 66(4) of the general Financial Regulation.
5. Each year ACER shall send to the authority responsible for discharge and to the Commission, a report drawn up by its Director summarising the number and type of internal audits conducted by the internal auditor, the recommendations made and the action taken on these recommendations.

### **Article 73**

The responsibility of the internal auditor for action taken in the performance of his/her duties shall be determined in accordance with Article 87 of the general Financial Regulation.



## TITLE V

### PROCUREMENT

#### Article 74

1. As regards procurement, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraph 4 to 7 of this Article.
2. ACER may be associated, at its request, as contracting authority, in the award of European Commission or interinstitutional contracts and with the award of contracts of other European bodies.
3. ACER shall participate in the common central database set up and operated by the European Commission pursuant to Article 95 of the general Financial Regulation.
4. ACER may conclude a contract, without having recourse to a public procurement procedure, with the European Commission, the interinstitutional offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94<sup>6</sup> for the supply of goods, provision of services or performance of work that the latter provide.
5. ACER may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 125c of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis*.
6. For the application of Article 101 of the general Financial Regulation, the call for tender shall provide that ACER may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.
7. For the application of Article 103 of the general Financial Regulation, calls for tender launched by ACER shall provide that it may suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure under the conditions laid down in that Article.

For the application of Article 103 of the general Financial Regulation, the contracts concluded by ACER with economic operators shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.

## TITLE VA

### PROJECTS WITH SIGNIFICANT BUDGET IMPLICATIONS

#### Article 74a

The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its administrative budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

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<sup>6</sup> OJ L 314, 7.12.1994, p. 1

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project notify ACER of its intention to issue such an opinion. Failing a reply, ACER may proceed with the planned operation.

This opinion shall be forwarded to ACER within four weeks of the notification pursuant to the second paragraph.

## **TITLE VB**

### **EXPERTS**

#### **Article 74b**

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting ACER, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. ACER may use the lists drawn up by the European Commission or other European bodies.

## **TITLE VI**

### **GRANTS AWARDED BY ACER**

#### **Article 75**

1. Where ACER awards grants in accordance with the ACER Regulation or by delegation of the Commission pursuant to Article 54(2)(b) of the general Financial Regulation, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraph 2 and 3 of this Article.
2. Grants shall be covered by written agreements between ACER and the beneficiary.
3. For the application of Article 119(2) of the general Financial Regulation, grant agreements concluded by ACER shall stipulate that it may suspend, reduce or terminate the grant in the cases provided for by Article 183 of Regulation (EC, Euratom) No 2342/2002 after the beneficiary has been given the opportunity to make his observations.

## **TITLE VII**

### **PRESENTATION OF THE ACCOUNTS AND ACCOUNTING**

#### **CHAPTER 1 – Presentation of the accounts**

#### **Article 76**

The annual accounts of ACER shall comprise:

- (a) the financial statements of ACER;
- (b) the reports on the implementation of the budget of ACER.

The accounts of ACER shall be accompanied by a report on budgetary and financial management during the year. The report shall give an account, *inter alia*, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget lines.

#### **Article 77**

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- (b) as regards reports on budgetary implementation, of revenue and expenditure operations.

### **Article 78**

The financial statements shall be drawn up in accordance with the generally accepted accounting principles specified in the detailed rules for implementing the general Financial Regulation, namely:

- (a) going concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;
- (g) reality over appearance;
- (h) accrual-based accounting.

### **Article 79**

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules laid down by the accounting methods provided for in Article 132 of the general Financial Regulation.

### **Article 80**

1. The financial statements shall be presented in euro and shall comprise:
  - (a) the balance sheet and the economic outturn, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Council Directive on the annual accounts of certain types of companies, but with account being taken of the specific nature of ACER's activities;
  - (b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
  - (c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.
2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to ACER's activities.

### **Article 81**

The budgetary implementation reports shall be presented in euro. They shall comprise:

- (a) the budgetary outturn account, which sets out all budget operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;
- (b) the annex to the budgetary outturn account, which shall supplement and comment on the information given in that account.

### **Article 82**

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of the Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

### **Article 83**

1. In accordance with Article 129(1) of the general Financial Regulation, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of ACER.
2. On receiving the Court of Auditors' observations on the provisional accounts of ACER, the Director shall draw up the final accounts of ACER in accordance with Article 43, under his own responsibility, and send them to the Administrative Board, which shall give an opinion on these accounts.
3. The Director shall send the final accounts, together with the opinion of the Administrative Board, to the European Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.
4. The final accounts of ACER, consolidated with those of the Commission, shall be published in the Official Journal of the European Union by 15 November of the following year.
5. The Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. He shall also send a copy of that reply to the Administrative Board and the Commission at the same time.

## **CHAPTER 2 – Accounting**

### **Section 1 – Common provisions**

#### **Article 84**

1. The accounting system of ACER is the system serving to organise budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budget year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the authorising officer may keep analytical accounts.

#### **Article 85**

The accounting rules and methods and the harmonised chart of accounts to be applied by ACER shall be adopted by the Commission's accounting officer in accordance with Article 133 of the general Financial Regulation.

### **Section 2 – General accounts**

#### **Article 86**

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of ACER.

#### **Article 87**

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All account entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail of all accounting entries.

#### **Article 88**

The accounting officer of ACER shall, after the close of the budgetary year and up to the date of presentation of the final accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts in compliance with the rules.

### **Section 3 – Budgetary accounts**

#### **Article 89**

1. The budget accounts shall provide a detailed record of budgetary implementation.
2. For the purposes of paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditures operations provided for in Title IV of this Regulation.

### **CHAPTER 3 – Property inventories**

#### **Article 90**

1. ACER shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting European Union property in accordance with a model drawn up by the accounting officer of the Commission  
ACER shall check that the entries in the inventory correspond to the actual situation
2. The sale of movable property shall be advertised in appropriate manner.

## **TITLE VIII**

### **EXTERNAL AUDIT AND DISCHARGE**

#### **CHAPTER 1 – External audit**

##### **Article 91**

The Court of Auditors shall scrutinise the accounts of ACER in accordance with Article 287 of the TFEU.

##### **Article 92**

1. ACER shall send the Court of Auditors the budget, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all the decisions and acts adopted pursuant to Articles 10, 14, 19 and 23.
2. ACER shall send the Court of Auditors the internal financial rules it adopts.
3. The Court of Auditors shall be informed of the appointment of authorising officers, accounting officers and imprest administrators and of delegation decisions under Article 34, Article 43(1) and (4) and Article 44.

##### **Article 93**

The scrutiny carried out by the Court of Auditors shall be governed by Articles 139 to 144 of the general Financial Regulation.

#### **CHAPTER 2 – Discharge**

##### **Article 94**

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year N+2, save where otherwise provided in the constituent instrument, give a

discharge to the Director in respect of the implementation of the budget for year N. The Director shall inform the Administrative Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Director of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Director, in cooperation with the Administrative Board, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.

#### **Article 95**

1. The discharge decision shall cover the accounts of all the revenue and expenditure of ACER, the resulting balance and the assets and liabilities of ACER shown in the financial statement.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of ACER. It shall also examine the annual report made by the Court of Auditors, together with the replies of the Director, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.
3. The Director shall submit to the European Parliament, at the latter's request, in the same manner as provided for in Article 146(3) of the general Financial Regulation, any information required for the smooth application of the discharge procedure for the year in question.

#### **Article 96**

1. The Director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for the discharge adopted by the Council.
2. At the request for the European Parliament or the Council, the Director shall report on the measures taken in the light of these observations and comments. He/she shall send a copy thereof to the Commission and the Court of Auditors.



## **TITLE IX**

### **TRANSITIONAL AND FINAL PROVISIONS**

#### **Article 97**

The European Parliament, the Council and the Commission shall be empowered to obtain any necessary information or explanations regarding budgetary matters within their fields of competence.

#### **Article 98**

The Administrative Board shall, as far as is necessary and with the European Commission's prior consent, adopt detailed rules for implementing the financial regulation of ACER, on a proposal from its Director.

#### **Article 99**

This Financial Regulation shall be adopted by the Administrative Board and enter into force on the day following its adoption by the Administrative Board.

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

## **ANNEX 5**

DECISION AB n° 23/2011

### **APPOINTING THE ACCOUNTING AND BUDGET OFFICER**

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

HAVING REGARD to Administrative Board Decision n° 22/2011 adopting ACER's Financial Regulation, in particular Article 43(1) of the Financial Regulation, thereof,

HAVING REGARD to the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities (hereafter "CEOS"), as laid down in Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments, and

HAVING REGARD to the Director's Decision 2010-004 appointing an accounting officer for ACER,

Whereas,

The Administrative Board shall appoint the accounting officer of ACER, who shall be covered by the Staff Regulations and be functionally independent in the performance of his/her duties;

The accounting officer shall be subject to rules and regulations applicable to officials and other servant of the European Communities, particularly as regards their recruitment and status;

The Director's Decision n° 2010-004 that refers to the general Financial Regulation as applicable to the European Union budget, does no longer apply as the Administrative Board has approved ACER's own Financial Regulation by AB Decision n° 22/2011,

HAS DECIDED TO:

Appoint Mrs Rodica MANDROC as the Accounting and Budget Officer of ACER.

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

**ANNEX 6**

DECISION AB n° 24/2011

**ON MIDDLE MANAGEMENT STAFF**

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing 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 Staff Regulations of officials (thereafter: "SR") and the Conditions of Employment of other servants of the European Communities (thereafter: "CEOS"), as laid down in Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto, and in particular Articles 2, 4, 5, 7, 29 and 44 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 SR;

Whereas:

The role and responsibilities of middle management staff should be laid down precisely;

A special trial period for newly appointed middle managers should be introduced.

HAS DECIDED AS FOLLOWS:

**Article 1**  
**Definitions**

1. Middle management functions to which this decision applies are those of head of unit as referred to in Article 44(2) of the SR, which involve the permanent and continuous management of an administrative structure as defined in paragraph 2;

This means that the function of Head of Department in ACER is covered by this decision.

These posts shall be filled at recruitment range of grades from AD9 to AD12.

2. Departments are organisational structures that meet the following criteria:
  - They appear in the official organisation chart of ACER;
  - They are justified by an overall evaluation considering the size, the number of AD staff, the complexity and sensitivity of its tasks, the budgetary impact and a comparison to other units with similar tasks within ACER and in other Agencies.

In the event of a change in the organisation chart, a net increase in management posts shall be justified and documented in the Staff Policy Plan.

3. In certain cases section managers may carry out management tasks delegated to them by the head of department. Even if they appear in ACER's official organisation chart, they are not part of the middle management staff.

## **Article 2**

### **Role of middle managers**

Middle managers shall demonstrate ability in human resources management or in financial management or both, as appropriate, as well as (where required) the specific knowledge and/or qualifications relevant to the particular post.

The role and responsibility of middle managers shall include the following:

- Issue guidelines for policies and actions to the department on the basis of ACER's mission statement and annual work programme. They shall define the department work programme, coordinate work within the department and with other departments and represent the department at important meetings.
- Act as the main channel for the exchange of information between senior management and the various members of the department.
- Be directly responsible for the management of the human resources of the department and, where appropriate, its financial resources.

## **Article 3**

### **Publication of a post and filling it**

Where the post may be filled by the appointment of a temporary agent, the Director may decide (in no particular order):

- To re-assign a temporary agent to the post in the interest of the service pursuant to Article 7(1) of the SR provided that the duties of the post are appropriate to his or her grade, and that he/she already occupies a middle management post or has occupied such a post and has not ceased to exercise management duties because of insufficient managerial ability or voluntary opt-out, in application of Article 7(1) or (3) below.

- To advertise the post in ACER and/or in the Interagency Job Market, before making an external publication of the vacant post. However, in case of simultaneous publication internally and in the Interagency Job Market, applications of internal candidates shall be considered first.

If the post is advertised internally and/or in the Interagency Job Market, the Director shall publish it at a range of grades corresponding to the functions. The post shall be reserved to candidates of the same function group and whose grade is within this range of grades. Successful candidates shall maintain their classification in grade, step and seniority in step as held before. For candidates from the Interagency Job Market, Article 32 of the SR and the ACER decision concerning the criteria applicable to classification in grade and step on appointment or engagement shall apply concerning the classification in step.

- To publish externally and to launch a selection procedure in accordance with the ACER decision on general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER, for temporary agents who are recruited through an external selection procedure.

If the post is advertised externally, the Director shall publish it at one grade out of the grades from AD9 to AD12.

#### **Article 4 Eligibility**

1. For temporary agents, if the post is published internally and/or in the Interagency Job Market, the applicant to be appointed must:
  - Have been selected according to the selection procedure for temporary agents 2(a) as defined in Article 4 of the ACER decision on general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER;
  - Be in grade AD9, AD10, AD11 or AD12;
  - Possess the qualifications specified in the vacancy notice;
  - Possess the competencies set out in Annex I to this decision.
2. For temporary agents, if the post is published externally, the applicant to be appointed must:
  - Have been selected according to the selection procedure pursuant to Article 3 (1) or (2) of the above mentioned decision on the engagement and use of temporary agents at ACER or, in the case of staff engaged before the entry into force of this decision, must have passed a selection procedure equivalent to that for short term employment referred to in Article 4 of the ACER decision on general implementing provisions on the procedure governing the engagement and the use of temporary agents at ACER ;
  - Possess the qualifications specified in the vacancy notice;
  - Possess the competencies set out in Annex I to this decision.

## **Article 5 Training**

1. Newly appointed Heads of Department shall be required to follow a management preparation course before or within three months of taking up their duties. Management courses listed in the Commission's/Agency's training catalogue and followed by an applicant during the five years prior to publication of the post may be validated by the appointing authority as management preparation courses.
2. As an alternative, the temporary agent may demonstrate to the appointing authority that he or she has already acquired the management qualifications required by successfully completing other courses of training for management functions.

## **Article 6 Trial period**

1. All those newly appointed to a Head of Department position without having served at least two years as a middle manager, whether in ACER, in the European Institutions<sup>7</sup>, bodies, offices or other Agencies (including new middle managers recruited following an open selection procedure), shall serve a special management trial period of nine months as a 'probationer Head of Department'.

The reporting officer and the countersigning officer (if applicable) shall be the same as those designated in relation to probation for the post to which the new middle manager has been appointed, for the purposes of the appraisal report under the ACER decision establishing the policy and procedure for the performance appraisal of staff.

The final assessment shall be drawn up in writing and countersigned by the 'probationer middle manager'. A 'probationer Head of Department assessment sheet', covering final assessment, is provided in Annex II.

2. For temporary agents already in service, the final assessment as middle manager shall be drawn up before the end of the management trial period. This assessment may be attached to the next Performance Appraisal Report provided for in Article 15(2) of the CEOS.

In exceptional circumstances, the management trial period may be extended by up to six months by the Authority Responsible for Concluding Contracts of Employment (AHCC), in order to give the probationer manager time to remedy perceived deficiencies.

If at the end of the process (i.e. after 15 months maximum) the probation is deemed to have been unsuccessful (meaning at least one 'insufficient' in the assessment sheet), the AHCC shall propose reassignment to a non-management position.

3. For 'probationer middle managers' newly recruited as temporary agents following an external selection procedure, the final assessment as manager shall be drawn up before the end of the management trial period. This assessment of management ability does not replace the normal probationary period report provided for in Article 14 of the CEOS.

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<sup>7</sup> Or two years as Head of cabinet, or as an AD13/AD14 Legal adviser in the Legal Service.

In exceptional circumstances, the management trial period may be extended by another three months by the AHCC, in order to give the probationer manager time to remedy perceived deficiencies.

If at the end of the process (i.e. after 12 months maximum) the probation is deemed to have been unsuccessful, the appointing authority shall propose termination of the employment.

### **Article 7**

#### **Reassignment to a non-management position**

Middle managers may be reassigned to a non-management position whilst keeping their grade.

Reassignment to a non-management position shall be distinguished from reassignment resulting from the procedure provided for in Article 51 of the SR.

Reassignment to a non-management position shall be possible in the following cases:

Insufficient managerial ability as a Head of Department

Reassignment following the trial period

A procedure for reassignment to a non-management position may occur following the end of the trial period for a newly appointed Head of Department provided for in Article 6(2) hereof.

Reassignment at any stage during a managerial career

A procedure for reassignment to a non-management position may occur at any stage when a Head of Department is deemed not to have met the required management standards in two successive Performance Appraisal Reports. Unmet standards means an 'improvements required' or a 'significant improvements required' in the Report sheet, related to possible deficiencies in management ability.

Before a decision is taken, the case shall be further assessed by one staff member designated by the Director, who must have at least the same grade as the middle manager and shall not be in any conflict of interest. The designated staff member shall draw up conclusions.

Following the opinion of the designated staff member, the final decision shall be taken by the Director.

In cases where a management post ceases to exist as a consequence of redeployment or the amendment of the organisation chart of ACER, a Head of Department may be reassigned to a non-management position.

Persons, who were reassigned to a non-management position under the conditions as described in this paragraph, may be reassigned by the Director to Head of Department posts in the interest of the service pursuant to Article 7 of the SR.

Voluntary opt-out



A Head of Department may ask to be allowed to opt out of a management position at any stage during his or her career. The request shall include a detailed explanation of the reasons for wishing to opt out, and implies a formal acceptance of reassignment to a unit under the supervision of a Head of Department. Where a staff member who has opted out under this paragraph subsequently reapplies for a management post he shall go through the standard selection procedure set out above.

**Article 8**  
**Entry into force**

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

**Annex I to the Decision AB n° 24/2011**  
**ABILITIES REQUIRED TO APPLY FOR A MIDDLE MANAGEMENT POST**

The abilities referred to in Articles 6 are the following:

I – The **core abilities** are:

General *management* skills, including:

Ability to set and revise objectives for the department within the overall strategic framework of the Agency.

Ability to determine and focus on priorities and to monitor and evaluate the progress made towards achieving the objectives set, in cooperation with the members of the team.

Ability to choose co-workers suited to the efficient pursuit of the department's objectives.

Ability to empower members of the team while ensuring that they understand what is expected of them and how their work contributes to the department's objectives.

Ability to motivate members of the team to achieve the desired results and also to enable them to achieve their objectives and greatest potential.

*Communication* skills

Ability to communicate clearly and present complex subjects simply, both orally and in writing, including to the members of the team.

*Interpersonal* skills

Ability to deal with people effectively and courteously and to build productive and cooperative working relationships with other departments and colleagues.

*Negotiation* skills

Ability to steer discussions and generate the best possible results without compromising productive working relationships with the other parties involved.

II - **Technical qualifications** include points of the following type:

*Familiarity with administrative, financial and oversight issues.*

Staff members must have a good knowledge of the administrative and financial circuits within the ACER and, ideally, experience of them. Knowledge of the relevant procedures would clearly be an additional asset. A high degree of competence in handling budgetary resources could be of key importance, depending on the post in question.

III - **Specialist knowledge** comprises points such as:

*Knowledge of Community policies, languages, legislation and programmes*, where relevant to the post in question.

Occupying a Head of Department post efficiently and effectively requires possession of these competencies to a high degree. The relative weighting of the various elements will depend largely on the particular features of each post.

**Annex II to the Decision AB n° 24/2011**

**PROBATIONER HEAD OF DEPARTMENT ASSESSMENT SHEET**

**Probationer Head of Department:**

Surname and first name(s):
Personnel number:
Current position:
Starting date in Head of Department position:
Department:
Contract (TA), Category and Grade: AD
Number of staff in the Department:
<b>Management trial period:</b>
From:        xx.xx.201x        to: xx.xx.201x

**Reporting Officer:**

Surname and first name(s):
Function:

**Opinion of the Reporting Officer:**

<u>Managerial competencies</u>	Exceeds expectations	Meets expectations	Does not meet expectations
Leadership skills <i>(initiative, credibility, assertiveness, setting example, coaching, emotional intelligence)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
People Management <i>(performance management, motivation, individual and team development, knowledge management)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Strategic management <i>(aligning work to strategic priorities, setting SMART goals and KPIs, being accountable)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Project and Resource Management <i>(efficient use of finance, equipment, staff, efficient project management)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Cross-functional collaboration <i>(across levels, units and jobs)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Delivered results <i>(quality of work and ability to deliver results)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Communication skills <i>(cross-cultural management, negotiation skills, feedback giving, conflict management, networking)</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>Overall assessment:</u>			
<input type="checkbox"/> Satisfactory managerial performance		<input type="checkbox"/> Unsatisfactory managerial performance	
<u>Comments:</u>			
Date:		Signature:	

**Comments of the Probationer Head of Department:**

Date:

Signature:

**Decision of the Director:**

- Confirmation as Head of Department
- Extension of the management trial period, for duration of:
  - 3 months  
(max. extension for newly-recruited external staff or  
internal staff in AST function group)
  - 6 months  
(max. extension for internal staff in AD function group)
- Re-assignment to a non-managerial function
- Termination of the contract

Date:

Signature:

**ANNEX 7**

DECISION AB n° 25/2011

**ESTABLISHING THE POLICY AND PROCEDURE FOR THE  
PERFORMANCE APPRAISAL OF STAFF**

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the  
Council of 13 July 2009 establishing 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 Staff Regulations of officials and the Conditions of Employment  
of other servants of the European Communities (hereafter "CEOS"), as laid down in Council  
Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto, and in  
particular Articles 43 of the Staff Regulations, and Articles 15(2) and 87(1) of the CEOS;

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) The appraisal system applicable to the Agency's staff is governed by rules aimed  
in particular at assessing individual achievements and performance in the light of  
the results to be attained, competencies and the various aspects of conduct in the  
service.
- (2) The specific rules which govern the appraisal determine the role of each actor and  
identify the various stages to be achieved to ensure the transparency of this  
procedure.

HAS DECIDED AS FOLLOWS:

**Chapter I**  
**GENERAL PROVISIONS**

**Article 1**  
**Scope**

A periodical report regarding abilities, efficiency and conduct in the service, hereinafter referred to as ‘performance appraisal report’ (or PAR), shall be drawn up each year for each temporary agent and contract agent who have been on active service or secondment in the interest of the service for a continuous period of at least four months during the reference period, with the exception of the Director who is assessed under different arrangements and is thus not covered by this annual exercise.

The temporary agents and contract agents are hereafter referred to as ‘jobholders’.

The purpose of the report is to assess the work that has been carried out and the results obtained by the jobholder over the period in question, and on the basis of this appraisal, to encourage the jobholder to develop his potential and consider his career prospects.

Even if there is already a probationary period report covering all or part of the reference period established for the annual performance appraisal, the concerned jobholders shall undergo an annual periodical appraisal as described in this Decision. The probationary period report does not replace the performance appraisal report.

Performance appraisal reports need not to be drawn up for jobholders who will end their service in the Agency during the six months following the end of the reference period for appraisal as defined in Article 4 hereof.

**Article 2**  
**Tasks and responsibilities of the reporting officer and countersigning officer**

**a) *General considerations***

The activities, functions and responsibilities of the reporting officer (RO) and countersigning officer (CO) deriving from this Decision shall constitute fundamental duties.

**b) *The reporting officer (RO)***

The reporting officer shall be responsible for conducting the appraisal, organising an interview (formal annual dialogue) with the jobholder and drafting the report.

After the dialogue, which shall be conducted in accordance with Article 9 hereof, the RO shall draw up a draft report. If during the reference period for the appraisal, the jobholder was assigned to another Department, carried out duties in a Department to which he was not formally assigned, was temporarily attached to another Department or sent on secondment in the interest of the service within or outside the Agency, the RO must consult and take into consideration the opinion of the other direct hierarchical superior(s) of the jobholder for the relevant period.

The reporting officer shall be responsible for sending all the reports which he must draft to the Unit of Human Resources (HR) to be included in the personal files, at the latest by the end of the time limit for filing the appeals, as defined in Article 12 hereof.

The reporting officer shall also be responsible for acting on the opinions issued by the Joint Appraisal and Reclassification Committee (JARC) in the event of an appeal.

**c) *The countersigning officer (CO)***

The countersigning officer shall be responsible for ensuring the consistent application of appraisal standards in appraisal reports which he countersigns. He shall ensure harmonization of the standards and methods used to appraise the members of staff under his responsibility.

The countersigning officer shall countersign the report. In the event of disagreement with the reporting officer, the countersigning officer has the ultimate responsibility for the report.

### **Article 3**

#### **Appointment of the reporting officer and countersigning officer**

**a) *Appointment of the reporting officer***

As a general rule, the reporting officer is the direct supervisor of the jobholder at the launch of the exercise. The Heads of Departments shall carry out the role of reporting officers for jobholders of whom they are the direct hierarchical superior.

**b) *Appointment of the countersigning officer***

As a general rule, the countersigning officer is the direct hierarchical superior of the reporting officer at the launch of the exercise.



For the appraisal of other jobholders reporting directly to the Head of Department or the Director, the role of the countersigning officer shall be carried out by the Director or, upon request from the jobholder, by the Chairman of the Administrative Board.

In his role as countersigning officer, the Director shall guarantee the consistent application of the appraisal standards laid down by the Agency and ensure the coordination and harmonization thereof among countersigning officers and reporting officers within their Departments.

**c) *Special cases***

In case there is a need to deviate from the standard allocation of reporting and countersigning officer's responsibilities, the concerned Department shall send to the HR, at the latest by the starting date of the appraisal exercise, an overview indicating how the reporting officer and countersigning officer responsibilities have been allocated within the Department.

**Article 4**

***Reference period for appraisal exercises***

The appraisal exercise for which all reports must have been established covers the period from 1<sup>st</sup> January to 31<sup>st</sup> December of the previous year.

The drawing up of the appraisal reports and the appraisal procedure shall be covered by the timetable published to this effect by the HR before the starting date of each appraisal exercise.

**Article 5**

**Appraisal Report Form**

An appraisal report form, showing the indicative format, graphical layout and general appearance is annexed to this Decision.

Regardless of the form of the appraisal report drawn up, the general assessment must comply with the definition set out in Article 6 hereof and to the model presented in the annexed form<sup>8</sup>. The self-assessment for the previous year and the objectives/activities defined for the future period shall constitute annexes to the report.

**Chapter II**

**APPRAISAL PROCEDURE**

**Article 6**

**Harmonization of Appraisal Standards**

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<sup>8</sup> Section D (overall assessment)

The appraisal report shall include an overall assessment relating to the abilities, efficiency, and conduct in the service of the jobholder. This assessment shall compare the level of performance with the level expected for the post, and the results achieved during the appraisal period with the objectives previously established.

The countersigning officers or reporting officers shall inform the Director of the Agency in all cases where an appraisal report contains an exceptional positive or negative assessment<sup>9</sup>, before validating the report.

For the drafting of reports, reporting officers and countersigning officers shall rely on the training/information they were provided for this purpose. They shall also comply with the guidelines for performance appraisal as drafted by the HR.

Such guidelines shall be communicated to all staff to ensure that staff is fully informed about the appraisal procedure.

HR shall supervise the appraisal procedure to ensure harmonization when drafting the reports:

- By providing information, recommendations, and advice to reporting officers as and when necessary;
- By ensuring that the appraisal reports are drafted and filed within the time limits of the adopted timetable.

#### **Article 7** **Timetable for the appraisal exercise**

HR shall publish a timetable showing the stages of the appraisal procedure before the starting date of each appraisal exercise, which is set – as a rule – on 1<sup>st</sup> January of each year.

In all the stages of the procedure, the deadlines are compulsory, except in the event of manifest *force majeure* or duly justified exceptional instances.

The timetable shall establish the fixed dates which apply to all reporting officers, countersigning officers and the jobholders being appraised. Compliance with the deadlines laid down in this timetable shall be referred to specifically in the appraisal reports of reporting officers and countersigning officers.

#### **Article 8** **Self-Assessment**

Each jobholder shall draw up a self-assessment with reference to the appraised period, and a proposal for his/her objectives during the next appraisal period. The self-assessment and the proposed objectives shall be sent to the reporting officer prior to the annual dialogue and within 20 working days of the starting date of the appraisal exercise.

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<sup>9</sup> The assessment is considered exceptionally positive or negative when the final overall assessment is at the highest or lowest end of the assessment scale.

The self-assessment shall be attached to the final report. If the jobholder does not send a self-assessment to the reporting officer within the deadline laid down, the reporting officer may decide to hold the dialogue without a self-assessment. If so, the self-assessment shall not be annexed to the final report, and the absence of the self-assessment shall be mentioned in the report.

### **Article 9**

#### **Formal annual dialogue and draft appraisal report**

The reporting officer shall invite the jobholder to a formal annual dialogue within 25 working days of receiving the self-assessment of the jobholder or at the latest within 45 working days of the starting date of the appraisal exercise.

At this meeting (formal annual dialogue), the reporting officer shall examine the efficiency, abilities and conduct in the service which the jobholder has demonstrated during the reference appraisal period, in relation to the objectives, activities or projects set for the period, and to the requirements of the relevant post. The RO shall discuss with the jobholder the impact of training on the abilities deployed during the period in question, his/her future needs in terms of training, and possible desired career developments.

During this annual dialogue, the RO shall establish with the jobholder the objectives to be attained and/or the activities and/or projects to be carried out, which shall form the basis for the appraisal of efficiency corresponding to the following appraisal exercise. These shall be referred to in an annex to the report, to be signed by both the RO and the jobholder.

In the event of a disagreement on the content of this annex, the final decision shall be taken by the countersigning officer; the jobholder will have the opportunity to indicate his/her remarks.

As a conclusion of the formal dialogue the RO shall inform the jobholder of the outline of the report and his or her general assessment proposal.

The RO shall draw up the report and send it to the countersigning officer at the latest within 50 working days of the starting date of the appraisal exercise (within 5 days after the annual dialogue).

If the reporting officer does not comply with the deadlines at any stage whatsoever of the procedure, the jobholder shall be authorized to bring the matter before the countersigning officer or Director.

### **Article 10**

#### **Validation of appraisal reports**

The countersigning officer shall ensure that all the reports drawn up by the reporting officer are sent to him within 50 working days at the latest of the starting date of the appraisal exercise.

Within a period of 65 working days from the starting date of the appraisal exercise (within 15 working days of receiving the appraisal report), the countersigning officer shall examine the report, ensuring that the established appraisal standards were properly and consistently applied.

If in agreement, the countersigning officer shall countersign the report and sent it to the reporting officer, who shall forward it to the jobholder.

If he does not agree with the reporting officer, the countersigning officer shall invite the reporting officer and, if necessary, the jobholder to a consultation meeting to try and reach an agreement.

Once an agreement has been reached, the countersigning officer shall countersign the report, amended in accordance with the outcome of the meeting, and sent it to the reporting officer, who shall forward it in turn to the jobholder.

If the consultation meeting fails to result in an agreement, the final decision shall rest with the countersigning officer, who shall forward it to the reporting officer and jobholder.

If the appraisal report includes an exceptionally positive or negative assessment, the countersigning officer shall send it to the Director for an opinion. Depending on the opinion of the Director, the Director shall send the report to the countersigning officer and to the reporting officer for final approval or amendment. The reporting officer shall then forward the resulting report to the jobholder.

In specific cases as mentioned in Article 3(b) hereof, Director will act as a countersigning officer or exceptionally Chairman of the Administrative Board.

### **Article 11** **Transmission of the report to the jobholder and signature**

Upon receipt of the report, the jobholder shall complete the sections reserved for any comments he/she may have.

If he/she agrees with the content of the report, the jobholder shall sign the report and send it back to his/her reporting officer. The reporting officer shall sign it immediately and forward it to the HR to be filed in the personal file.

If he/she does not agree with the content of the report, the jobholder shall inform the reporting officer and the countersigning officer immediately by e-mail setting out the reasons for his/her request and stating, in the section of the report reserved for comments, his/her wish to discuss the matter with the countersigning officer.

Within 10 working days, the countersigning officer shall organize a dialogue with the jobholder and reporting officer in order to reach an agreement. At the end of the dialogue the

report shall be either amended or confirmed. The countersigning officer shall forward the report once again to the jobholder.

With effect from the 75<sup>th</sup> working day after the starting date of the appraisal exercise, if the jobholder refrains either from signing the report, sending it to the reporting officer, or seeking a dialogue with the countersigning officer, he/she shall be deemed to have accepted the content thereof.

If the countersigning officer does not comply with the deadlines at this stage, the jobholder is authorized to consider the failure to reply as a refusal and, therefore, if appropriate, to file an appeal to the Joint Appraisal and Reclassification Committee.

In all cases the reporting officer shall ask the jobholder to return the report and sent it to the HR.

## **Article 12**

### **Joint Appraisal and Reclassification Committee**

1. A Joint Appraisal and Reclassification Committee, hereinafter referred to as 'JARC', shall be set up in the Agency.

JARC shall be composed as follows:

- a Chair, with the rank of Head of Department and appointed by the Director;
- two members: a member from the HR, hereinafter referred to as an "external member" appointed by the Director; and one staff representative appointed by the Staff Committee.

2. The Chair and full members shall each have one alternate. The Chair shall, if absent, be replaced by the external member. Where the number of full members present is less than two, alternate members shall be entitled to vote provided the total number of members (full members and alternates) entitled to vote does not exceed two members appointed by the Director and one member appointed by the Staff Committee.

3. JARC shall meet by invitation of the Chair. Opinions shall be adopted by a simple majority of the members present who are entitled to vote. For the Committee's decisions to be valid, the Chair or external member must be present, together with staff committee member or alternates who are entitled to vote. If the number of participants present at a meeting is not sufficient to enable decisions to be taken, the Chair shall immediately convene a new meeting which may be held within two working days. If the third meeting is inquorate the Committee shall record its failure to deliver an opinion.

Rules of procedure shall be adopted by the HR in accordance with the provisions of this Article. The rules of procedure shall apply to every JARC.

4. JARC may not take the place of the reporting officer or the countersigning officer as regards appraising the jobholder's performance. It shall verify that reviews have been drawn up fairly and objectively, i.e. where possible on a factual basis and in accordance with these general implementing provisions and the appraisals guide. It shall verify in particular that the

procedure laid down in Articles 8, 9, 10 and 11 hereof has been followed. To this end it shall carry out the necessary consultations and shall have at its disposal any working documents which may assist it in carrying out its work.

6. If the Chair or a member of JARC has a personal interest in a matter such as to impair his or her independence in the handling of that matter, he or she shall be replaced by the appropriate alternate member and refrain from participating in the work of the Committee. A conflict of interest is deemed to arise in particular where the Chair or member is also the reporting officer, countersigning officer or appeal assessor according to Article 2b or 2c of this decision for the jobholder who has appealed to JARC.

### **Article 13**

#### **Appeals to the Joint Appraisal and Reclassification Committee**

In the event of disagreement with the decision of the countersigning officer or reporting officer, the jobholder may bring the matter before the JARC. The jobholder shall file the appeal to the JARC through hierarchical channels and stating in writing the grounds for the appeal.

Appeals shall relate solely to the body of the appraisal report, which excludes the annexes.

Appeals must be submitted to the JARC by the 80<sup>th</sup> working day after the starting date of the appraisal exercise. All reports which have not been the subject of an appeal within this period shall be considered as final.

The JARC may only be consulted once all methods of conciliation described in particular in Articles 9, 10 and 11 of this Decision have been exhausted.

The JARC shall examine the appeals by the deadline fixed in the published timetable of the appraisal exercise.

### **Article 14**

#### **Complaints**

A complaint under Article 90(2) of the Staff Regulations may not be lodged unless internal channels of appeal as provided for in Article 13 hereof have been used.

### **Article 15**

#### **Entry into force**

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:



Piotr Woźniak

Chairman of the ACER Administrative Board

**Annex to the Decision AB n° 25/2011**

**PERFORMANCE APPRAISAL REPORT**

**Section A – Administrative data**

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**Reference period** covered by the report (*starting – ending dates*): **01/01/2011 - 31/12/2011**

**Jobholder**

Name, Surname:

Contract type: **Temporary Agent/Contract Agent**

Function group and grade:

In this grade since:

Department:

Job title:

**Reporting Officer**

Name, Surname:

Department:

Job title:

**Countersigning Officer**

Name, Surname:

Department:

Job title:

**Signatures and circulation**

		Name	Signature	Date
1	Draft report (transmission to CO)	<i>Reporting Officer</i>		
2	Validation of report (transmission to RO)	<i>Countersigning Officer</i>		
3	Transmission of report to Jobholder	<i>Reporting Officer</i>		
4.a	Agreement with report (transmission to RO)	<i>Jobholder</i>		
4.b	Disagreement with report and request for dialogue with CO	<i>Jobholder</i>		
5	Transmission of (amended) report to CO	<i>Reporting Officer</i>		
6	Transmission of (amended) report to Jobholder	<i>Countersigning Officer</i>		
7	Reception of (amended) report and transmission to RO	<i>Jobholder</i>		

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8	Transmission of final report to HR	<i>Reporting Officer</i>		
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## Section B – Appraisal of Efficiency, Ability and Conduct

### B.1 - Efficiency

Review and appraisal of results achieved in carrying out activities and projects, also with reference to relevant objectives established for the reference period. Appraisal dimensions: working methods, quality of work, productivity, management of resources.

<u>Appraisal dimensions</u>	Significant improvement required	Improvement required	Meets expectations	Exceeds expectations	Outstanding	Not applicable
<b>Achievement of objectives related to efficiency</b> <i>Achieved efficiency-related objectives established for the reference period</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Working methods</b> <i>Organizes work to meet standards or commitments (time, budget, etc.). Adjusts way of working to focus on priorities or new demand. Seeks continuous performance improvement.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Quality of work</b> <i>Works rigorously and in an orderly manner. Produces accurate, thorough and reliable results. Learns from experience to avoid errors and mistakes.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Productivity</b> <i>Consistently produces expected results for assigned duties. Effectively manages multiple tasks and responsibilities. Is able to meet agreed objectives or commitments.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Management of resources (if applicable)</b> <i>Makes effective and efficient use of available human and financial resources. Effectively sets objectives and distributes activities among the team. Accurately monitors and evaluates the progress of work. Drafts appraisal reports in compliance with standards and deadlines.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

#### Comments on Efficiency

Achievement of objectives, activities and projects. Efficiency dimensions as listed above. Management of resources (if applicable). Further information related to the area of Efficiency, e.g. major strengths and areas for improvement.

## B.2 - Ability

Review and appraisal of skills and competencies demonstrated, also with reference to relevant objectives established for the reference period.

<u>Appraisal dimensions</u>	Significant improvement required	Improvement required	Meets expectations	Exceeds expectations	Outstanding	Not applicable
<b>Achievement of objectives related to ability</b> <i>Achieved ability-related objectives established for the reference period</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Professional knowledge</b> <i>Possesses updated professional knowledge and understands all aspects related to the job. Knows how to search for relevant information, and apply relevant reference material reliably. Demonstrates capacity to learn and to improve professional knowledge. Is familiar with ACER regulations, procedures, and tools.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>IT skills</b> <i>Ability to efficiently apply relevant IT tools on the job.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Analysis and problem solving</b> <i>Identifies key points and problems. Is able to analyse and identify links between issues. Considers alternative options and their impact on results. Knows when and from whom to seek advice, and when to refer decisions elsewhere.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>General communication skills</b> <i>Adapts methods and styles of communications to different situations and people. Gives information and instructions precisely and clearly.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Oral communication skills</b> <i>Listens carefully and asks questions to clarify understanding. Demonstrates interpersonal skills, public presentation skills, and/or diplomatic skills.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Written communication skills</b> <i>Demonstrates drafting skills. Structures and presents information so that key points are easily understood.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>People management and leadership skills (if applicable)</b> <i>Coaches staff, identifies talents, plans and encourages their training and development. Consults and involves staff in decision making, explains decisions. Keeps staff informed and provides feed-back. Recognizes and rewards achievement. Is able to delegate. Resolves conflicts in a constructive manner. Builds and maintains productive and fair working relations with other managers. Contributes to the development of the department / section. Promotes teamwork, creativity, openness to change and improvements among the members of the team.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### Comments on Ability

Achievement of objectives related to improvement of skills and competencies. Ability dimensions as listed above. People management and leadership skills (if applicable). Further information related to the area of Ability, e.g. major strengths and areas for improvement. Comments on language skills.

Languages

Does the jobholder works mainly in his/her native language?

Yes

No

**B.3 - Conduct**

*Review and appraisal of professional conduct and behavioural competencies demonstrated, also with reference to relevant objectives established for the reference period.*

<u>Appraisal dimensions</u>	Significant improvement required	Improvement required	Meets expectations	Exceeds expectations	Outstanding	Not applicable
<b>Achievement of objectives related to conduct</b> <i>Achieved conduct-related objectives established for the reference period</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Customer service orientation</b> <i>Promotes and demonstrates appropriate service standards. Understands the point of view of internal and external customers. Responds promptly and constructively to enquiries. Promotes a positive image of the Agency and of the Department/Section.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Working with others</b> <i>Builds and maintains productive working relationships with others. Shares information, knowledge and good practice with others. Develops the team spirit and contributes to creating a positive working environment. Provides and accepts constructive feed-back. Is helpful, approachable and flexible.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Initiative, creativity and motivation</b> <i>Seeks and accepts responsibility. Makes suggestions for improvement of work. Demonstrates commitment to the job. Demonstrates commitment to own training and development. Is able to perform under pressure and adverse circumstances. Is open to changes required by the organisation.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments on Conduct

*Achievement of objectives related to improvement of conduct and of behavioural competencies. Conduct dimensions as listed above. Further information related to the area of Conduct, e.g. major strengths and areas for improvement.*

## Section C – Overall assessment

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### Synthetic overall assessment

Express the synthetic overall assessment of jobholder's performance (efficiency, ability, and conduct in the service) during the reference period, by selecting the box corresponding to one of the pre-defined statements on the scale below.

Note that an assessment at the highest ("outstanding") or at the lowest ("unacceptable") ends of the scale needs to be submitted for validation to the Director.

7	The Jobholder demonstrates a sustained <b>outstanding</b> performance in all appraised aspects (efficiency, abilities and conduct in the service).	<input type="checkbox"/>
6	The efficiency, the abilities and the aspects of conduct appraised are <b>significantly above</b> the levels required for the post occupied.	<input type="checkbox"/>
5	Overall, the efficiency, the abilities and the aspects of conduct appraised are <b>above</b> the levels required for the post occupied.	<input type="checkbox"/>
4	Overall, the efficiency, the abilities and the aspects of conduct appraised <b>correspond</b> to the level required for the post occupied.	<input type="checkbox"/>
3	The efficiency, the abilities and the aspects of conduct appraised are <b>acceptable</b> despite some weak point.	<input type="checkbox"/>
2	The efficiency, the abilities and the aspects of conduct appraised <b>do not correspond</b> to the level required for the post occupied. Improvements are needed.	<input type="checkbox"/>
1	The efficiency, the abilities and the aspects of conduct appraised are <b>unacceptable</b> in relation to the level required for the post occupied. Mandatory improvements are included in the attached action plan.	<input type="checkbox"/>

### Comments of the Reporting Officer

## Section D – Development and mobility

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### Other activities in the interest of the Agency (if applicable)

*Notes on other activities carried out during the reference period, which are outside the areas of responsibility of the post, and in the interest of the Agency e.g. membership in selection committees, membership in the staff committee, fire wardens, relevant external activities, etc.*

### Review of past training and development actions (if applicable)

*Which training courses and other development activities carried out by the jobholder during the reference period have had an impact on professional development or on the level of service?*

### Training and development needs (if applicable)

*Which training opportunities / development actions should be envisaged with reference to the post currently occupied, and to support further professional development? Indicate priorities.*

### Mobility (if applicable)

Is the jobholder interested/suitable for other positions within the Agency?

Yes

No

*If yes, indicate desired positions, in which Department, and from when.  
Add any supplementary comment as appropriate.*

## Section E – Comments on the report

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### Comments of the Countersigning Officer

**Comments of the Jobholder**

**Annex 1 – Jobholder self-assessment**

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*Review your own performance during the reference period, with particular reference: to the objectives previously established, and to the dimensions of efficiency, ability and conduct as listed in the performance appraisal report. Add any supplementary comment as appropriate.*



## **Annex 2 – Objectives for the next appraisal period**

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*Indicate objectives for the next appraisal period. Objectives should focus on specific results to be achieved through activities and projects within the areas of responsibility of the Jobholder (corresponding appraisal area: Efficiency). If appropriate, one or two development objectives may also focus on the improvement of skills and competencies, or of behavioural aspects (corresponding appraisal areas: Ability and Conduct in the service)*

### **Objective 1**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

### **Objective 2**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

### **Objective 3**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

### **Objective 4**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

### **Objective 5**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

### **Objective 6**

<b>Performance Indicators</b>	<b>Challenges and Considerations</b>

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Date and Signature Jobholder

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Date and Signature Reporting Officer

**ANNEX 8**

DECISION AB n° 26/2011

**CONCERNING THE APPRAISAL OF THE DIRECTOR OF THE AGENCY  
FOR THE COOPERATION OF ENERGY REGULATORS**

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing 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 Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter "CEOS"), as laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto;

HAVING REGARD to Article 43 of the Staff Regulations and Article 15(2), of the CEOS relating to the annual appraisal procedure;

HAVING REGARD to Article 34 of the Staff Regulations and Article 14 of the CEOS relating to the probationary period;

HAVING REGARD to Articles 44 and 46 of the Staff Regulations applicable by analogy to the temporary agents as laid down in the conclusion of Heads of administration of 20 June 2005 on the management probationary period;

HAVING REGARD to Commission Decision SEC(2009)27 of 12 January 2009 concerning the guidelines relating to selection and appointment of the Directors of regulatory and executive agencies as well as joint undertakings,

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) The Director of ACER shall be subject to an annual appraisal, to a probationary period and to a management trial period. These various procedures aim to assess the achievements of the Director with regard to his ability, efficiency and conduct in the service;

(2) The specific rules which govern the various appraisals, to which the Director shall be subject, determine the role of each actor and identify the various stages to be achieved in order to ensure the transparency of these procedures.

HAS DECIDED AS FOLLOWS:

## **I. Annual appraisal**

### **Article 1**

#### *Scope*

1. The Director of ACER shall be subject to an annual appraisal exercise, organised at the beginning of each calendar year.

The reference period for the annual appraisal is from 1 January to 31 December of the preceding year.

To this end, an annual performance appraisal report (PAR) covering the reference period is drawn up for Director, who is a temporary agent within the meaning of the Article 2(a) of the CEOS.

The report covers the period during which the Director was in activity. The period of activity covers a continuous period of at least 3 months during the reference period.

2. The objective of the annual appraisal is to assess the efficiency, the competencies and the aspect of conduct in the service of the Director.

3. For the first appraisal exercise after nomination, the annual report concerns the period which is not covered by the probationary period report drawn up under Article 14 of the CEOS.

### **Article 2**

*Role of the various actors*

1. The appraisers for the Director's appraisal, hereinafter referred to as "reporting officers", are designated by the Administrative Board and instructed on the procedure how to carry out an appraisal of the Director. After the dialogue held in accordance with Article 6(3) hereof, they draw up a report and sign it.
2. In case of appeal, the appeal assessor makes the final decision on report of the Director after consultation of the Administrative Board.

**Article 3**

*Designation of the reporting officers and the appeal assessor*

1. The Administrative Board designates at least two reporting officers from among its members. Reporting officers cannot be designated to any other functions within the appraisal procedure of the Director. It is highly recommended that the European Commission representative is designated as one of the reporting officers for his/her knowledge of ACER and in relation to the Commission's engagement in the selection of the Director.
2. The appeal assessor is the Chairperson of the Administrative Board.

**Article 4**

*Carryover*

1. A carryover consists of drawing up a report whose content is identical to the preceding annual appraisal report. The report to be drawn up is closed if the Director and the reporting officers agree on the carryover, without it being necessary to follow the procedure set out in Article 6 hereof.
2. The carryover is authorised if there has been no significant change in the efficiency, competencies and/or conduct in the service of the Director.
3. In case of a carryover, a formal dialogue which covers the objectives set up and the training plan has to be organised between the reporting officers and the Director in accordance with Article 6(3) hereof. An annual appraisal report cannot be carried over more than once.

**Article 5**

*Contents and form of the performance appraisal report*

1. The appraisal report shall contain comments on efficiency, competencies and conduct in the service of the Director.
2. Without prejudice to Article 5(1) hereof, the content and the form of the performance appraisal report is in line with the model used for ACER staff. If necessary, it can be amended by a decision of the Administrative Board upon a proposal from the reporting officers.

## **Article 6**

### *Appraisal procedure*

1. Preferably, the annual appraisal takes place during the first semester of the year following the reference period.
2. The Director establishes, within ten working days after the reporting officers' request, a self-assessment which is incorporated into the performance appraisal report.
3. At the latest ten working days after the self-assessment is communicated by the Director, the reporting officers and the Director hold a formal dialogue. If the Director refuses to finalise his self-assessment within the required time, the reporting officers can decide to hold the dialogue when the deadline referred to in paragraph 2 has expired.

The dialogue covers the following elements:

- a) the reporting officers examine the Director's efficiency based on the fulfilment of objectives and the implementing of the agency work programme, adopted each year by the agency, the competencies shown and the conduct in the service of the Director, for the reference period.
  - b) the Director and the reporting officers set the objectives for the following reference period and, - if necessary-, a training plan which takes into account the objectives in relation to the agency annual work programme and the personal development goals.
4. At the latest ten working days after the formal dialogue, the reporting officers draw up a draft performance appraisal report. This draft comprises a general appraisal which takes into account the appraisals given on efficiency, competencies and conduct in the service of the Director, in accordance with the criteria defined in the appraisal report.
  5. The report is notified in writing to the Director.
  6. The Director has five working days to accept the report without making any comments, accept it after adding comments in the appropriate section of the report, or refuse the report by justifying the revision request in the appropriate section. If the report is accepted by the Director, the appraisal report is closed. A report is deemed to be accepted in case of absence of reaction of the Director within the time foreseen.

7. The closed report is transmitted to the chairman of the Administrative Board for information.
8. The deadlines referred to in this Article start when the decision is likely to have been communicated to the person concerned or, at least, when the latter acting as a diligent temporary agent may be expected to be aware of the content of this Decision and the underlying reasons.

#### **Article 7**

##### *Appeal procedure*

1. The reasoned refusal is transmitted to the appeal assessor. The appeal assessor gives his opinion within ten working days as from the date of submission.
2. After consultation with the Administrative Board, at which the members of the Administrative Board might be invited to vote, the appeal assessor confirms or amends the report. When the appeal assessor departs from the opinion of the Administrative Board, he must justify his decision. The reporting officers are excluded from these consultations and votes.
3. The report is then closed and communicated to the Director and to the Administrative Board.

#### **Article 8**

##### *Particular case*

If the Director is an official seconded from the Commission in the interest of the service, in application of the principle of double career, the agency appraisal report, once drawn up, is transmitted to the parent DG as a basis for the draft report on the career development of the official within the Commission. In such cases any possible appeal procedures will be handled according to the applicable rules of the Commission.

## **II. Probationary period**

#### **Article 9**

##### *Scope*

1. The newly nominated Director of ACER shall be subject to a probationary period, in accordance with Article 14 of the CEOS.
2. If the newly nominated Director is an official on secondment in the interest of the service, he is exempted from this probationary period.

3. The Director concerned is hereinafter referred to as "the probationer".

4. The probationary period starts on the first day of the entry into service of the Director and finishes at the end of a 6-month-period. When, during the probationary period, the Director is prevented, by sickness, maternity leave or accident, from performing his duties for a continuous period of one month or more, the reporting officers may propose to the appointing authority to extend his probationary period for the corresponding length of time without any other reason.

#### **Article 10**

##### *Role of the various actors*

The reporting officers and the appeal assessor for the probationary period are the same as those for the annual appraisal, as defined in Article 2 and 3 of the present Decision.

#### **Article 11**

##### *Contents and form of the probationary report*

1. The probationary report aims to appreciate simultaneously the efficiency, the competencies and the conduct in the service of the Director within the first six months of his service. It should also include the senior management skills assessment without prejudice to report, which is referred to in Articles 16(1) hereof.

2. Without prejudice to Article 11(1) hereof, the content and form of the probationary report is in line with the model used for ACER staff. If necessary, it can be amended by a decision of the Administrative Board upon a proposal from the reporting officers.

#### **Article 12**

##### *Appraisal procedure for the probationary period*

1. During the month which follows the first day of entry into service, the reporting officers meet the Director in order to comment on his job description and to agree, in writing, on how the objectives and the performance level expected from the Director will be assessed during his probationary period. The assessment will particularly take into account the efficiency, based on the fulfilment of objectives and the implementing of the agency work programme, competencies shown and conduct in the service of the Director.

2. In case of clear inaptitude, a report can be drawn up at any time of the probationary period. Further proceedings of the appointing authority in such a case are stipulated in 4th paragraph of Article 14 CEOS.

3. At the latest one month before the expiry of the probationary period, a final report shall be drawn up on the efficiency of the Director, on his competencies to perform the duties pertaining to his post and on his conduct in the service. The Director and the reporting officers hold a formal dialogue on the report.

4. At the latest ten working days after the formal dialogue, the reporting officers make an appraisal on the probationary period in accordance with Article 14 of the CEOS. If the reporting officers propose to the appointing authority to extend the probationary period, this extension shall be for a maximum period of six months. The total length of the probationary period shall in no circumstance exceed 12 months.

5. After having been notified of the report in writing, the Director has five working days to accept the report without making any observations, accept it after adding comments in the appropriate section of the report, or refuse the report justifying his decision in the appropriate section in conformity with the procedure foreseen in Article 13 of this Decision. If the report is accepted by the Director, the appraisal report is closed. A report is deemed to be accepted in case of absence of reaction of the Director within the time foreseen.

### **Article 13**

#### *Appeal procedure*

The appeal procedure is identical to that defined in Article 7 of the present Decision.

## **III. Management probationary period**

### **Article 14**

#### *Scope*

1. The Director performing for the first time senior management functions shall serve a management probationary period of nine months, in accordance with Articles 44 and 46 of the Staff Regulations applicable by analogy to the temporary staff under the conditions foreseen in the conclusions of the heads of administration of 20 June 2005.

2. The Director performing senior management functions including managerial tasks at the time of the engagement or having served at least two years in such management functions in any other European Institution is exempted from the management probationary period.

3. The management probationary period begins the first day of entry into service of the probationer and finishes at the end of a nine-month-period.

### **Article 15**



*Role of the various actors*

The reporting officers of the management probationary period are the same as those for the annual appraisal, as defined in Article 2 and 3 of the present Decision.

**Article 16**

*Contents and form of the management report*

1. The management report shall confirm the senior management skills of the probationer.
2. The content and form of the management report is in line with the model used for ACER staff. If necessary, it can be amended by decision of the Administrative Board on a proposal from the reporting officers.

**Article 17**

*Appraisal procedure for the management probationary period*

1. The appraisal report for the management probationary period shall be drafted including the assessment carried out during the probationary period as referred to in Article 11 hereof.
2. If the probationary period is extended for at least 3 months, the appraisal of the probationer for his senior management functions will take place at the same time and covers the same period as the appraisal for the extended probationary period.
3. After the end of the management probationary period, the reporting officers draw up a draft report in accordance with paragraph 1 of this Article. The probationer and the reporting officers hold a formal dialogue. At the latest ten working days after the formal dialogue with the probationer, the reporting officers can propose either a positive appraisal of the management probationary period or its extension.
4. After having being notified of the report in writing, the probationer has five working days to comment on the report. A report is deemed to be accepted in case of absence of reaction of the probationer within the time foreseen.

**Article 18**

*Management allowance*

1. The management allowance is paid after written confirmation of the probationer's capacity to fulfil his management functions satisfactorily in the report referred to in Article 17(1) hereof once the latter is drafted.
2. The management allowance is paid retroactively as from the date of appointment of the probationer.

**Article 19**

*Entry into force*

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

## **ANNEX 9**

DECISION AB n° 27/2011

### **ON SETTING UP A STAFF COMMITTEE**

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing 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 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 Article 9, 10 and 10a of the Staff Regulations, and Article 1 of Annex II, concerning the Staff Committee;

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:

- the Staff Committee shall represent the interests of the staff vis-à-vis the Agency and shall provide a channel for the expression of opinion by staff,
- the Agency shall adopt the appropriate implementing rules for giving effect to these Staff Regulations, after consultation of the relevant Staff Committee,
- the Staff Committee shall ensure the fair representation of staff of the Agency.

HAS DECIDED AS FOLLOWS:

***Article 1***

***Purpose and scope***

The Staff Committee shall represent the interests of the staff vis-à-vis ACER, and maintain continuous contact between the Agency and its staff. It shall contribute to the smooth running of the Agency by providing a channel for the expression of opinion by staff.

***Article 2***

***Tasks***

The Staff Committee shall bring to the notice of the Director of the Agency or other persons designated by him/her any difficulties having general implications concerning the interpretation and application of the Staff Regulations. It may be consulted on any difficulty of this kind.

The Staff Committee shall submit to the Director suggestions concerning the organisation and operation of the ACER's services and proposals for the improvement of staff working conditions or general living conditions.

***Article 3***

***Social welfare bodies***

The Staff Committee shall participate in the management and supervision of social welfare bodies set up by ACER in the interests of its staff. It may, with the consent of the Director, set up such welfare bodies, for example social committee.

***Article 4***

***Consultation on implementing rules***

The Staff Committee shall be consulted regarding the appropriate implementing rules giving effect to the Staff Regulations within ACER, as laid down in Article 110(1) of the Staff Regulations.

***Article 5***

***Composition***

1. The composition of the Staff Committee, as set out below, shall properly reflect the current situation within ACER.

The Staff Committee shall consist of:

- 3 full members and 3 alternate members (as established by the model decision for setting up a staff committee for agencies with less than 100 members of staff),

representing the staff situation in the Agency for the following types of staff:

- temporary agents in function group AD;
- temporary agents in function group AST;
- contract agents.

The agency's SNEs may designate one representative who will attend the meetings of the Staff Committee as an observer.

The composition can be changed jointly by the Staff Committee deciding unanimously on this issue and the Director before a new election in case the composition does no longer reflect the actual situation within ACER.

2. The alternate member shall replace a full one during the period that the latter is unable to perform his/her tasks.

#### **Article 6**

##### ***Rights and obligation***

1. The duties undertaken by full members or by alternate members of the Staff Committee shall be deemed to be part of their normal service in ACER.
2. The fact of performing such duties shall in no way be prejudicial to the person concerned.
3. Membership in the Staff Committee does not constitute a special standing with regard to the extension of an employment contract limited in time.

#### **Article 7**

##### ***Term of office***

1. The term of office of the Staff Committee shall be three years.
2. The Staff Committee shall elect a Chairman and a Co-chairman within its members by an absolute majority of its members.
3. The term of office of a member of the Staff Committee shall cease in particular upon death, resignation from the Committee, or termination of employment with ACER.
4. In the event of the departure of a full member, he/she shall be automatically be replaced by his/her alternate. A full member and his/her alternate shall automatically be replaced in the event of their departure by the full candidate and his/her alternate who obtained the highest number of votes among the candidates not elected at the last election. In case of list votes, the candidate shall be taken from the same list.

5. Any member of the Staff Committee who changes function group or type of staff during his/her term of office shall remain in office until expiry of the term of the Staff Committee.

6. In the event of collective resignation of the Staff Committee or a successful motion of no-confidence, the Appointing Authority shall then organise new elections – according to the electoral rules.

7. If the term of office of the Staff Committee expires before a new Committee has been elected, the sitting members shall remain in office until replaced by newly elected members in order to deal with on-going affairs.

### *Article 8*

#### *Internal rules of procedure*

1. The Staff Committee shall adopt its own rules of procedure, which shall be notified to the Director and to staff and it may also determine the distribution of duties among its members. These rules shall allow the Committee to work by written procedure.

2. The Staff Committee and the Director shall meet at least 2 times a year and at the request of the Staff Committee or the Director, at any time on any urgent matter.

3. The Staff Committee shall meet at least every three months.

4. The Staff Committee shall convene a general meeting of staff at least once a year in order to present a report on its activities and propose its future action plans.

5. Meetings of the Staff Committee shall be competent to transact business only where at least two thirds of its full members are present or represented by alternates. If the quorum is not reached, the meeting shall be reconvened by means of a letter sent to all the members and alternates in accordance with the rules of procedure, specifying that a reduced quorum applies, consisting of a majority of the members or alternates.

6. Decisions shall be taken by a majority of members present or represented by alternates.

7. The observer designated by the agency's SNEs representing the Seconded National Experts shall have no vote but shall be duly heard in all matters affecting, directly or indirectly, the Seconded National Experts.

8. The Staff Committee can be dismissed by a motion of no confidence approved by a simple majority of the staff entitled to vote. This motion of no confidence shall be organised and implemented in accordance with the rules applicable for elections following a written request of 10% of staff members.

#### ***Article 9***

##### ***Consultation of the Staff Committee***

1. When consulted, the Staff Committee shall have a period of 15 working days to declare its position on relevant matters.
2. If no opinion has been delivered within the period prescribed or agreed, ACER shall take its decision.

#### ***Article 10***

##### ***Resources***

1. Subject to the agreement of the Director, the Staff Committee shall be entitled to make use of ACER's facilities for printing and communication, in order to perform its duties and to inform staff.
2. Missions carried out by members of the Staff Committee, in the exercise of their duties, shall be reimbursed according to the normal rules applied within ACER.

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

##### ***Elections***

The conditions for the election of the Staff Committee shall be laid down as rules of electoral procedure at a general meeting of the staff of ACER and shall be such as to ensure that staff members of all categories and services are represented in the Staff Committee.

The members of the Staff Committee shall be elected by a secret ballot of temporary and contract agents whose contracts are for an indefinite period or for one year or more, and other servants whose contracts are for less than a year provided they have been employed for at least six months.

A servant with an indefinite contract or whose contract is for one year or more shall be entitled to stand for election to the Staff Committee.

Elections shall be valid only if two-thirds of those entitled to vote take part. However, if this proportion is not attained, the second vote shall be valid if the majority of those entitled to vote take part. This second vote shall be organised immediately.

***Article 12***

***Amendment to the rules***

These rules may be amended:

- By decision of the Administrative Board on the initiative of the Director or,
- On request of the Staff Committee following agreement by a majority of two-thirds of the members present at the general meeting of the staff duly convened for this purpose.

The proposed revised rules shall be submitted to the staff not less than five working days before the general meeting.

In any case they shall be submitted to the Commission according to Article 110 of the Staff Regulations.

**Article 13**  
**Entry into force**

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board