

7th ACER Administrative Board meeting
Friday, 2 December 2011, 9.00 – 17.00
ACER, Trg republike 3, 1000 Ljubljana
9.00-17.00

Present:

Mr. Piotr Grzegorz Wozniak, Chair

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. Alfonso Gonzalez Finat, Alternate as Observer

Mr. Kristian Moller, Alternate as Observer

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 of the meeting

- 1.) The AB decided that following the publication of REMIT in the EU Official Journal a letter will be sent to the Commission, the Council and the EP. The AB accepted the offer of the BoR to prepare a fuller report on *the allocation of responsibilities between ACER and NRAs particularly on REMIT implementation with regard to market monitoring* as well as the resourcing requirements, the NRAs preparations for REMIT and welcomed the support of the NRAs in this regard.
- 2.) The Director will circulate a proposal for an internal rule (procedure) on how the monitoring report should be adopted.
- 3.) The AB underlined the importance of transparency and agreed that an internal note will provide the basis for the Director to decide on the publication of background documents.
- 4.) The AB decided to approve the 2012 budget (AB Decision 31-2011 in ANNEX1). The Director is authorised to amend the budget by up to 1 percent following the adoption of the EU budget. If the required amendment is greater than 1 percent the AB will decide separately.
- 5.) The AB accepted the information from the Director on the 2013 draft budget.
- 6.) The AB adopted the Decision AB n° 32/2011 (ANNEX2) on the notification to the European Commission's Directorate-General for Budget of the intention of the Agency for the Cooperation of Energy Regulators to launch a project related to the rental of a building in Ljubljana.
- 7.) The AB adopted the Decision AB n° 33/2011 (ANNEX3) authorising the Chairman of the AB to appoint two members as reporting officers for the assessment of the annual performance of the Director.
- 8.) The AB authorised the outside activities of the Director.
- 9.) The AB confirmed the dates of its meetings in 2012: 13.3, 20.6, 8.9 and 5.12.

1. Approval of the Agenda

The following agenda of the 7th ACER Administrative Board meeting was approved:

Agenda Topics	Accompanying documents	Rapporteur
Opening		
1. Approval of the agenda	Doc 1 for approval	AB Chair
2. Minutes of the 6 th Administrative Board meeting	Doc 2 for approval	AB Chair
Reporting on developments		
3. Report on the written procedures	Oral update	ACER Director
4. Report on developments regarding ACER progress and on the activities of the Board of Regulators	Oral update	ACER Director and BoR Chair
5. Developments on REMIT	Oral update	ACER Director
6. Progress on market monitoring	Doc 3 for consideration	ACER Director

General ACER work		
7. Publication of background documents under article 10 or Regulation 713/2009	Doc 4 for consideration	ACER Director BoR Chair
8. ACER Budget 2012 (*)	Doc 5 for decision	ACER Director
9. ACER Budget 2013	Doc 6 for information	ACER Director
10. Preliminary notification to the budgetary authority on a project within Article 74a of ACER Financial Regulation	Doc 7 for decision	ACER Director
Administration		
11. Decision AB no [...] /2011 on establishing the policy and procedure for the reclassification of contract staff(**)	Doc 8 for consideration	ACER Director
12. Decision AB no [...] /2011 on establishing the policy and procedure for the reclassification of temporary agents (**)	Doc 9 for consideration	ACER Director
13. Nomination of the reporting officer for the annual appraisal of the Director	Oral update and doc 10 for decision	AB Chair
14. Outside activities of the Director	Doc 11 for approval	AB Chair
15. AOB 1st anniversary of ACER	Oral update	ACER Director
(*) Subject to the final approval of the budgetary authority (**) Draft undergoing Commission's inter-service consultation		

2. Minutes of the 6th Administrative Board meeting

The minutes of the 6th Administrative Board meeting were approved.

3. Report on the written procedures

Director Pototschnig reported on the only written procedure that had taken place since the last AB meeting. By 3 November 2011 the Decision on rules on reimbursement of travel and other expenses incurred by members and alternates of the Board of Appeal in the performance of their duties was approved by written procedure.

4. Report on developments regarding ACER progress and on the activities of the Board of Regulators

Director Pototschnig reported on ACER activities:

In the Electricity sector 3 framework guidelines have been adopted by ACER (on Grid Connections, on Capacity Allocation and Congestion Management and on System operations) , also the Opinion on ENTSO-E 2012 Work Programme was adopted the same day (2/12). Now ACER is in the scoping phase for the framework guidelines on Balancing.

In the Gas sector 2 framework guidelines have been adopted by ACER (on Capacity Allocation Mechanisms for the European Gas Transmission Network and on Gas Balancing in Transmission Systems). The opinion on the ENTSO-G EU-wide Ten-Year Development Plan was adopted on 16 September. Now ACER is working on the remaining 2 framework guidelines (on Interoperability Rules and on Rules regarding Harmonised Transmission Tariff Structures).

The first meeting of the Board of Appeal (BoA) took place on 1 December and Mr. Ranci Ortigosa has been designated as Chairman of the BoA and Mr. Ungerer as Vice-Chairman of the BoA. The BoA also adopted its Rules of Procedure.

On recruitment, the Agency was able to finalise its 2011 recruitment targets - all positions except one have been filled. Director Pototschnig expressed his gratitude to the institutions that have been able to second staff to the Agency. The elections of the staff committee are going to take place in the period from 16-19 January 2012. The first annual appraisal exercise will start the second week of January 2012.

The visit of the IAS (Internal Audit Service) of the Commission is scheduled to take place from 6-10 February. The expected outcome will be the draft Strategic Audit Plan 2012-2014.

The visit of the European Court of Auditors is scheduled to take place from 16-20 April 2012.

The Agency has received a letter from OLAF (European Anti-Fraud Office) on 23 November 2012. The Agency is expected to accede to the Inter-Institutional Agreement of 25 May 1999 between the European Parliament, the Council and the Commission concerning OLAF's internal investigations.

Finally, the Agency will soon start the tender procedure for new premises and will, in line with Article 74a of the Agency's Financial Regulation notify the budgetary authority.

Lord Mogg, the Chairman of the BoR, commented that two new Agency working groups (on Market Integrity and Transparency-MIT and on Monitoring and Implementation) will be created back-to-back in CEER and the Agency. The BoR will formulate a proposal for the Chairs of the Agency Working Groups to the Director who is responsible for their appointment. Moreover, four ERI cross-regional projects have been established in the Regional initiatives, which were approved by regulators.

5. Developments on REMIT

Director Pototschnig reported on the recent developments regarding REMIT:

REMIT is expected to be published in the EU Official Journal on 8 December 2011. REMIT will then enter into force on 28 December 2011. A dedicated ACER Working Group on Market Integrity and Transparency (AWG MIT) will soon be established. He presented the timeline of envisaged actions concerning REMIT implementation in the next years. The first document in preparation is the non-binding ACER Guidance document on definitions, directed to the NRAs, which will be published before the end of the year. As of 28 December 2011 market participants are subject to an obligation to publish inside information and to notify ACER and competent NRAs in case of delayed publication of inside information. The persons professionally arranging transactions are subject to an obligation to (1) establish effective arrangements to identify breaches; (2) notify NRAs in case of reasonable suspicion of market abuse. The relevant electronic templates for notifications will be available on the Agency website. The registration format needs to be developed within six months.

The immediate priority is to inform the NRAs of their obligations and procedures. Go live for the full monitoring framework is expected for the beginning of 2014, the registration process is envisaged to start in the autumn 2013.

The first REMIT workshop was held in Ljubljana on 28 November. Market participants, exchanges and brokers largely participated. The US market monitoring and oversight experience was also presented.

A debate on the implications of scarcely allocated resources took place.

Lord Mogg, as the Chairman of the BoR, commented that at the BoR meeting that had taken place a day before the NRAs welcomed further guidance on REMIT definitions, but the guidance had to be generic not to fetter NRAs' enforcement actions. An ad-hoc working group on REMIT has been created.

It looked specifically at the division of tasks between the Agency and the NRAs on REMIT implementation. It came to the conclusion that the NRAs will not be able to address the Agency's need for additional resources. NRAs from larger Member States may well obtain a market monitoring role at national level, whilst most NRAs from smaller Member States are likely to rely on ACER or third parties to signal breaches. At present, most NRAs do not perform any systematic market monitoring; most of NRAs are doing the "conventional market monitoring against competition breaches" but not against the new REMIT context; there are resources constraints and lack of expertise. Some NRAs have doubts that they will be equipped with additional resources to carry out investigations under REMIT. Even if additional resources are foreseen at NRA level, the new investigatory and enforcement powers of NRAs reflect a new task at national level and, therefore, additional resources will have to be foreseen for this task as well.

Furthermore, ACER has the legal responsibility of undertaking monitoring of wholesale markets at European level (NRAs may monitor their markets at national level). Where NRAs assume this responsibility at national level, this would not address cross border breaches.

Most NRAs are likely to assign the monitoring tasks to the existing staff. The real issue will be to ensure the quality of the monitoring with the scarce resources envisaged by the Commission (15 staff as opposed to 56 identified by the Agency). The dimension of the problem is serious. Contacts with FERC indicated that enforcement is lengthy and few cases are in fact pursued. Therefore, the credibility of the monitoring system (in terms of detecting misbehaviour) is very important to discourage breaches.

One member raised the issue of the synergies of the IT systems. Lord Mogg replied that there will be heavy reliance on the Agency's software and on the powers of individual NRAs. The powers of the NRAs regarding REMIT may vary; some Member States may shift the powers from the NRAs to the competition authorities.

Mr Bonucci, as the Commission representative, said that it is important to at least secure the procurement of the IT system for 2013-2015. As regards the staff, the currently envisaged figures are engraved in stone; some additional opportunities, based on the clearer idea of the monitoring needs, could however arise in 2015.

Director Pototschnig said that the need for further resources will also depend on the timing of the Commission's implementing acts. The additional staff of the Agency would be required for monitoring. By 2013 it will become clearer what level of monitoring will have to be undertaken. He underlined that staff with the trading experience will be difficult to attract at the Agency. The lowering of the country coefficient for Slovenia is not helping in this regard.

Some AB members suggested writing a letter to the three institutions, but the Commission representative hesitated on the efficacy of such a letter at this moment. On the contrary, at the hearings on the 2013 budget starting in February 2012 this issue could be flagged by the Commission.

In order to avoid a similar situation in the future, Director Pototschnig asked the Commission representative on the timing of the negotiation for the new multi-annual financial framework.

The Commission representative replied that these negotiations will only start later in 2012 and that there is still plenty of time to rectify the current situation.

A few AB members suggested publishing a press release regarding REMIT to clarify the regulatory policy and the immediate steps to be undertaken by different stakeholders.

Action: A letter will be sent to the Commission, the Council and the EP following the publication of REMIT in the EU Official Journal. The AB welcome the offer of the BoR to prepare a fuller report on *the allocation of responsibilities between ACER and NRAs on REMIT, particularly with regard to market monitoring* as well as resources requirements and the NRAs preparations for REMIT and the support of the NRAs in this regard.

6. Progress on market monitoring

Director Pototschnig explained that in line with the Article 11 of Regulation 713/2009 the Agency developed its approach to market monitoring. He underlined the importance to undertake a consistent approach and provide a single ACER-CEER platform for data collection. Also a joint ACER-CEER monitoring report is envisaged which will provide stakeholders with a full picture of the situation and evolution of the energy sector. While this is a coherent exercise the formal roles are different. The Agency has fulfilled its Work Programme for this year, i.e. - to prepare parameters and indicators. The first monitoring report under Article 11 of the Agency regulations is envisaged for 2012.

The Commission representative asked for clarification on who would carry out the analysis. As the Commission is in itself planning to publish country reports in 2012, there is scope for synergies. He warned that the normalisation work needed to be carried out before the data collection, otherwise there may be risk of unreadable data provided.

Director Pototschnig replied that the Monitoring and Implementation Working Group would meet once a month and any outstanding issue may be resolved while the data is collected and not when the data is collected.

Lord Mogg, as the Chairman of the BoR, expressed expectations that the NRAs would be closely involved in the monitoring report via an orientation discussion.

The Vice-Chair of the AB proposed that a procedure to decide on the process of adoption of the monitoring report should be decided upon by the AB. He added that according to the provisions of ACER regulation the monitoring report is done based on the date submitted by NRAs, European Commission and relevant third parties.

Some members of the AB expressed the need for a coherent approach of the data provided and the interpretation of the collected data

Action: Director Pototschnig will circulate a proposal for an internal rule (procedure) on how the monitoring report should be drafted and adopted.

7. Publication of background documents under article 10 of Regulation 713/2009

Action: A letter from the Chairman of the BoR was considered. The AB underlined the importance of transparency and agreed that the internal note will provide the basis for the Director to decide on the publication of background documents following the approach included therein. The BoR will finalise its list for publication on the basis of the report.

8. ACER Budget 2012

Director Pototschnig informed that the AB already considered the 2012 budget and explained that a one percent cut was suggested by the conciliation committee that had recently taken place.

As the cut was not yet officially communicated to the Agency, he suggested AB to adopt the 2012 Budget as currently stands. Once the formally approved EU budget will be available, a written procedure could take place.

The Commission representative informed that the 1 percent cut will be decided by the plenary session of the EP on the day. He suggested to approve the draft budget and give the mandate to the Director to circulate the consolidated form after the cut.

Lord Mogg, as the president of the CEER, informed the AB about the contribution of the CEER to the Agency in 2011 which is substantial (e.g. cost of providing administrative support to the Agency WGs, and servicing the working groups and the BoR meetings). The CEER will continue to support the Agency for the next year, however this support should not be taken for granted in the future, given the financial constraints of the NRAs.

One member proposed that this issue should be properly reflected in future financial statements.

Director Pototschnig stressed that the Agency was faced with several cuts during the financial year and if such practice continues, the AB will be asked to decide on negative priorities.

The Commission representative suggested that the cuts could be done on public relations and the website- the budget line could be renamed into information, communication.

Decision: The AB decided to approve the 2012 budget (AB Decision 31-2011 in ANNEX1). The Director was authorised to amend the budget by up to 1 percent following the adoption of the EU budget. If the required amendment is greater than 1 percent the AB will decide separately.

9. ACER Budget 2013

Director Pototschnig presented the draft 2013 Budget and described the calculations for the budget lines where the 2013 budget will incur important additional cost compared to the 2012 budget. One is the budget line on premises and the other on data processing coming from REMIT. He also informed that the Agency will join the Commission in the hearings concerning its future budgets.

The Commission representative informed that the EC is doing the analysis on whether the average cost of the Agency's TAs already includes the cost for the premises. It will be informing the Agency soon.

Following one member suggestion, the Director accepted that future budget presentations will include a comparative table with exercise N-1.

Action: The AB accepted the information from the Director on the 2013 draft budget.

10. Preliminary notification to the budgetary authority on a project within Article 74a of ACER Financial Regulation

Director Pototschnig explained that the current premises of the Agency are provided by the Slovenian government for a period of 2 years, i.e. until 31. January 2013. In order to launch the tender procedure for its new premises, the AB needs to notify the budgetary authority, but it could also delegate this task to the Director.

Decision: The AB adopted the Decision AB n°32/2011 (ANNEX2) on the notification to the European Commission's Directorate-General for Budget of the intention of the Agency for the Cooperation of Energy Regulators to launch a project related to the rental of a building in Ljubljana.

11. Decision AB on establishing the policy and procedure for the reclassification of contract staff

Action: The AB considered the draft decision without comments or objections.

12. Decision AB on establishing the policy and procedure for the reclassification of temporary agents

Action: The AB considered the draft decision without comments or objections.

13. Nomination of the reporting officer for the annual appraisal of the Director

Decision: The AB nominated two assessors to carry out the annual appraisal of the Director. The AB adopted the Decision AB n°33/2011 (ANNEX3) authorising the Chairman of the AB to appoint Mr, Philip Lowe and Mr Razvan Nicolescu as reporting officers for the assessment of the annual performance of the Director. Both accepted the nomination.

14. Outside activities of the Director

Decision: The AB adopted Decision AB n° 34/2011 (ANNEX 4) granting permission to the Director to engage in academic cooperation with the Florence School of Regulation at the European University Institute.

15. AOB

The following dates for the next AB meetings for 2012 were confirmed: 13.3., 20.6., 5.9. and 5.12.

Director Pototschnig informed about the event celebrating the 1st anniversary of the Agency that will take place on 14.3. in Ljubljana.

ANNEX1

DECISION AB n°31/2011

ON THE ADOPTION OF THE 2012 BUDGET

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 Article 23(5).

HAVING REGARD to the ACER Financial Regulation and, in particular, Article 27(7).

Whereas:

The budget for the Agency of the Cooperation of Energy Regulators shall be drawn up and adopted by the Administrative Board.

The budget shall become final after the adoption of the general budget of the European Union.

Where necessary it should be adjusted accordingly.

The ADMINISTRATIVE BOARD of ACER HAS DECIDED to adopt the 2012 budget as presented in Annex I.

This decision shall enter into force on the day following the final adoption of the general budget of the European Union by the budgetary authority.¹

The Director is delegated to amend the 2012 budget as a consequence of the adoption of the budget of the Union, within the limit of 1%.

Done at Ljubljana, on 2 December 2011.

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

¹ In the case where ACER budget as adopted by the budgetary authority, will be different from the budget adopted under this decision the budget shall be adjusted accordingly.

Annex to the
Annex1

ACER Budget 2012

Title Chapter	Heading	Financial year 2012
		€
TITLE 1	EXPENDITURE RELATING TO STAFF AND RESOURCES	
CHAPTER 11	STAFF IN ACTIVE EMPLOYMENT	4,849,238
CHAPTER 12	MISSIONS AND DUTY TRAVEL	168,307
CHAPTER 13	SOCIOMEDICAL INFRASTRUCTURE	23,500
CHAPTER 14	SOCIAL SERVICES	17,300
	TOTAL TITLE 1	5,058,345
TITLE 2	AGENCY'S BUILDING AND ASSOCIATED COSTS	
CHAPTER 20	AGENCY'S PREMISES COSTS	55,000
CHAPTER 21	DATA PROCESSING	1,087,388
CHAPTER 22	MOVABLE PROPERTY AND ASSOCIATED COSTS	100,000
CHAPTER 23	CURRENT ADMINISTRATIVE EXPENDITURE	697,522
CHAPTER 24	COMPUTER INFRASTRUCTURE TELECOMMUNICATION AND POSTAGE	126,000
	TOTAL TITLE 2	2,065,910
TITLE 3		
CHAPTER 30	REPRESENTATION EXPENSES	25,000
CHAPTER 31	OPERATIONAL MISSIONS	135,934
CHAPTER 32	PUBLIC RELATIONS & WEBSITE	190,000
CHAPTER 33	TRANSLATIONS	15,000
CHAPTER 34	PROFESSIONAL INDEMNITY	15,000
	TOTAL TITLE 3	380,934
	GRAND TOTAL BUDGET 2012	7,505,190
Funded by:		
	EU subsidy	7,315,000
	EFTA contribution	190,190
	2012 Required budget funding	7,505,190

ANNEX 2

DECISION AB n°32/2011

On the notification to the European Commission's Directorate-General for
Budget
of the intention of the Agency for the Cooperation of Energy Regulators to
launch a project related to the rental of a building in Ljubljana

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 "Regulation (EC) No 713/2009" and the "Agency"), and, in particular, to Article 23(6) thereof;

HAVING REGARD to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular to Article 179(3) thereof;

HAVING REGARD to Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008, amending Regulation (EC, Euratom) No 2343/2002 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 Communities (hereafter referred to as "Commission Regulation (EC, Euratom) No 652/2008"), and, in particular, Article 74(a) thereof;

HAVING REGARD to Decision AB n° 22/2011 on the adoption of the Financial Regulation of the Agency for the Cooperation of Energy Regulators (hereafter referred to as "Decision AB n° 22/2011"), and, in particular, Article 74(a) thereof;

HAVING REGARD to the Rules of Procedure (hereafter referred to as 'RoP') adopted by the Administrative Board on 6 May 2010;

WHEREAS, pursuant to Decision AB n° 06/2010, the Administrative Board of the Agency notified on 22 November 2010 the European Parliament and the Council (hereafter referred to as the "Budgetary Authority") of the Agency's intention to occupy premises in Ljubljana;

WHEREAS, according to Article 15(2) of the seat agreement concluded between the Agency and the Government of the Republic of Slovenia, rental costs related to the Agency's temporary premises are borne by the Slovenian government during the period from February 2011 to January 2013;

WHEREAS the Agency did not receive any appropriations for rental of buildings in 2011 and 2012, due to this commitment of the Slovenian government, but whereas the rental of a building in Ljubljana will have a significant financial implication for its budget in 2013;

WHEREAS the Agency envisages to launch an open procurement procedure in 2012 for selecting its premises in Ljubljana following the end of the rent-free period;

WHEREAS Article 23(6) of Regulation (EC) No 713/2009 and Article 74(a) of both Commission Regulation (EC, Euratom) No 652/2008 and Decision AB n° 22/2011 require the Agency to inform the Commission of its projects with significant budget implications, such as projects related to the rental of buildings;

WHEREAS, prior to submitting the final building file to the Budgetary Authority, the Agency wishes therefore to consult and notify the European Commission's Directorate-General for Budget (hereafter referred to as "DG BUDG") beforehand of its intention, in order to be able to address its possible concerns and to facilitate the approval of the building proposal;

HAS DECIDED:

- 1) To send a notification to DG BUDG of the intention of the Agency to launch a project related to the rental of a building in Ljubljana, in order to find suitable premises for the period following January 2013;
- 2) To give mandate to the Director to proceed with the notification;
- 3) To submit in due time, once more detailed information has become available following the public procurement proceedings, a prior communication and pre-notification to DG BUDG, with all relevant information on the operation planned, the cost to the budget in the various years, its justification as regards the principle of sound financial management and its impact on the financial perspective.

Done at Ljubljana on 2 December 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX 3

DECISION AB n°33/2011

AUTHORISING THE CHAIRMAN OF THE ADMINISTRATIVE BOARD TO APPOINT TWO MEMBERS AS REPORTING OFFICERS FOR THE ASSESSMENT OF THE ANNUAL PERFORMANCE OF THE DIRECTOR

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

HAVING REGARD to the Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as “Agency”);

HAVING REGARD to the Staff Regulations of Officials of the European Communities (hereinafter Staff Regulations), and the Conditions of Employment of Other Servants of the European Communities (hereinafter CEOS), laid down by Council Regulation (EEC, EURATOM, ECSC) n° 259/68 and the amendments thereto;

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

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;

HAVING REGARD to Decision AB n° 26/2011 concerning the appraisal of the Director of the Agency for the Cooperation of Energy Regulators and in particular Article 3 relating to the designation of the reporting officers;

Whereas:

The Administrative Board has to appoint two reporting officers to assess the annual performance of the Director. One of the members shall be a representative of the European Commission.

HAS DECIDED AS FOLLOWS:

The chairman of the Administrative Board is authorised to appoint Mr Philip Lowe and Mr Razvan Nicolescu as reporting officers for the annual appraisal of the Director for the reference period of 01 January 2011 to 31 December 2011.

Done in Ljubljana on 2 December 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX4

DECISION AB n° 34/2011

GRANTING PERMISSION TO THE DIRECTOR TO ENGAGE IN ACADEMIC COOPERATION WITH THE FLORENCE SCHOOL OF REGULATION AT THE EUROPEAN UNIVERSITY INSTITUTE

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 thereof;

HAVING REGARD to the Staff Regulations of Officials of the European Communities, laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68, (hereafter referred to as the "Staff Regulation") and, in particular, Article 12b thereof, and to the Conditions of Employment of Other Servants of the Communities;

WHEREAS:

- Article 12b of the Staff Regulations requires "an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Communities shall first obtain the permission of the Appointing Authority" and envisages that "permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official's duties or is incompatible with the interest of the institution";
- The Florence School of Regulation (hereafter referred to as the "School") is a partnership between the European University Institute (EUI) - Robert Schuman Centre for Advanced Studies (RSCAS), the Council of the European Energy Regulators (CEER) and the Independent Regulators Group (IRG), and it works closely with the European Commission. It is a European forum dedicated to economic regulation;
- The objectives of the School are to organise policy events dealing with key regulatory issues, to provide state-of-the-art training for practitioners, to produce analytical and empirical research in the field of regulation and to promote networking, through documents and ideas exchanges;
- Mr Alberto Pototschnig has been cooperating with the School since its foundation in 2004, therefore well before his appointment as Director of the Agency;
- At the School, Mr Pototschnig has been acting as Adviser to the Director on the

School's activities in the energy policy area, as well as participating, as instructor, to the Training Courses organised by the School;

- Through its activities, the School contributes to enhancing and spreading best practices in regulation, including for the energy sector;
- The involvement of Mr Pototschnig in the activities of the School, in his current role of adviser to the Director of the School, ensures that the School focuses on the most relevant issues in the regulation of the European energy sector;
- It is therefore of utmost important for ACER that Mr Pototschnig maintains his current role as Adviser to the Director of the School and is involved in other related activities, including, as an instructor, in training courses organised by the School;

HAS DECIDED:

- 1) To grant permission to Mr Alberto Pototschnig to continue in his role of adviser to the Director of the School and with his activities of instructor at the School;
- 2) That the permission is granted for the duration of his appointment as Director of the Agency, but can be revoked by the Administrative Board at any time;
- 3) That the activities for which permission is granted shall be carried out mainly outside working hours, and within working hours with a limit of one hundred (100) hours per years, and that, to the extent that they are carried out during working hours, they are considered to be carried out in the interest of the service;
- 4) That permission is granted subject to the condition that no costs shall be incurred by the Agency;
- 5) That, given the governance and mission of the School, the activities for which permission is granted do not raise any conflict of interest;
- 6) That Mr Pototschnig shall receive no remuneration in connection with the activities for which permission is granted to the extent that they are carried out during working hours. To the extent that these activities are carried out outside working hours, Mr Alberto Pototschnig shall hand over any remuneration received in excess of EUR ten thousand (10,000). Such limit shall apply to net remuneration and shall exclude any royalties or similar utilities received for publications, as well as any reimbursement of expenses, including per diems;
- 7) Mr Alberto Pototschnig will report annually to the Administrative Board on his activities at the School;
- 8) To give mandate to the Chairman for the implementation of this Decision and for any procedural step related to the permission granted with this Decision.

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

Done at Ljubljana, on 2 December 2011

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board