

**11<sup>th</sup> ACER Administrative Board meeting**  
**Wednesday, 5 December 2012, 9.00 – 16.00**  
ACER, Trg republike 3, 1000 Ljubljana

**Present:**

Mr. Piotr Woźniak, Chair and with proxy of Mr. Philippe Guillard, Member  
Mr. Razvan Eugen Nicolescu, Vice-Chair  
Mr. Stefan Tostmann, Member and with proxy from Mr. Philip Lowe, Member  
Mr. Luis Martin Oar, Member  
Mr. Guido Bortoni, Member  
Mr. Detlef Dauke, Member  
Mr. José Braz, representative of the Board of Regulators, Observer  
Mr. Alberto Pototschnig, Director of ACER, Observer  
Ms. Marie-Christine Jalabert, Adviser  
Mr. Konrad Purchała, Adviser  
Ms. Wiebke Ewert, Adviser  
Lord John Mogg, Chair of the Board of Regulators sent apologies

**Main conclusions of the meeting**

- 1.** The AB heard a presentation of the Agency external evaluation, carried out by an external consultant, and suggested to replicate the external evaluation of the Agency right before the deadline for the completion of the internal energy market.
- 2.** The Chairman declared the urgency of adopting the 2013 Agency's Budget as soon as the EU General Budget is approved. Therefore the Chairman also decided that once the EU Budget is approved, the written procedure will be launched for the adoption of the Agency 2013 Budget. The Commission will work with the Agency on the analysis of the required resources for REMIT implementation and for the TEN-E Regulation.
- 3.** The AB approved the Agency External Communication guidelines, with 6 votes in favour of the new text proposed by one AB Member as regards the expression of AB Members' views on their work at the Agency (ANNEX1).

4. The AB approved the Agency conflict of interest guidelines with a slight amendment (ANNEX2).
5. The AB was informed that due to the abandoned tender procedure the Agency premises will continue at its current location in 2013. Additional offices will be rented in the same building to accommodate new staff. A new market prospection was carried out and a new tender will be launched early in the new year.
6. The AB noted the report of the Director on his outside activities in 2012 and adopted the Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2013 (ANNEX3).
7. The AB adopted the decision on outside Activities and Assignments as proposed by the Agency (ANNEX4).
8. The AB noted the Court of Auditors Opinion on the Agency's Final Accounts for the 2011 Financial year.
9. The AB was informed that the Agency Annual Conference is taking place on 17 May and that Commissioner Oettinger agreed to intervene.
10. The AB thanked the EC for the presentation of the EC-EP-Council's Common approach on Decentralised Agencies. The AB will discuss the Joint statement and the Roadmap at its next meeting.

## 1. Approval of the Agenda

The following agenda of the 11th ACER Administrative Board meeting was approved:



Agenda Topics	Accompanying documents	Rapporteur
<p><b>Opening</b></p> <p>1. Approval of the agenda</p> <p>2. Minutes of the 10<sup>th</sup> Administrative Board meeting</p>	<p>Doc 1 for approval</p> <p>Doc 2 for approval</p>	<p>AB Chair</p> <p>AB Chair</p>
<p><b>Presentation</b></p> <p>3. Presentation of the results of the Agency external assessment</p>	<p>Oral update</p>	<p>ACER Director/Consultant</p>
<p><b>Reporting on developments</b></p> <p>4. Report on the written procedure on implementation of teleworking</p> <p>5. Report on ACER developments (including REMIT, monitoring pursuant to Art. 11 Regulation (EC) No 713/2009, and on the activities of the Board of Regulators)</p>	<p>Oral update</p> <p>Oral update</p>	<p>ACER Director</p> <p>ACER Director BoR Representative</p>
<p><b>General ACER work</b></p> <p>6. Note regarding the budgetary implications on the ACER Work Programme 2013</p>	<p>Oral Update</p>	<p>AB Chair/ACER Director</p>
<p>7. ACER external communication guidelines</p>	<p>Doc 3 for approval</p>	<p>ACER Director</p>
<p>8. Conflict of Interest policy guidelines</p>	<p>Doc 4 for approval</p>	<p>ACER Director</p>
<p>9. New ACER Premises – Update on the process</p>	<p>Oral update</p>	<p>ACER Director</p>
<p><b>Administration (HR)</b></p> <p>10. Decision AB n° [XX]/2012 regarding ACER administrative inquiries and disciplinary procedures (*)</p>	<p>Doc 5 for adoption</p>	<p>ACER Director</p>

Agenda Topics	Accompanying documents	Rapporteur
11. Decision AB n° [XX]/2012 on the Policy on Protecting the Dignity of the Person and Preventing Psychological Harassment and Sexual Harassment (*)	Doc 6 for adoption	ACER Director
12. Decision AB n° [XX]/2012 on Outside Activities and Assignments	Doc 7 for adoption	ACER Director
13. Report on the outside activities of the Director in 2012 and Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2013	Doc 8 for consideration Doc 9 for consideration Doc 10 for adoption	AB Chair/ACER Director
14. Court of Auditors Opinion on the Agency's Final Accounts	Doc 11 for Information	ACER Director
15. AOB  Annual Conference		ACER Director

(\*) Subject to the Commission's inter-service consultation being completed and the Agency notified accordingly

## 2. Minutes of the 10<sup>th</sup> Administrative Board meeting

The draft Minutes of the 10<sup>th</sup> Administrative Board meeting were adopted.

## 3. Presentation of the results of the Agency external assessment

The consultant, commissioned by the Agency, presented the results and the analysis of the external survey he conducted within the last 3 months. This was the second presentation of the report, which was already presented at the Board of Regulators on 4.12. and at the Agency Staff Away Day on 29.11. The consultant carried out 40 interviews with different stakeholders, including from the EC, EP, PXs, NRAs and ENTSOs.

The discussion on the results of the survey focused on the general EU lacunae of a strategic leader in the energy discussions and whether there should be more



strategic discussions at the ACER Boards. Furthermore, the Members discussed the distinction of roles between the Agency and the CEER. One Member appointed by the EP argued that for the European Parliament the ACER is considered as a very successful and valuable agency. He further underlined that great effort was made to keep it small and operational, therefore the development of ACER will be followed with great interest as it could be considered a model for other EU agencies in the future. The EP values the possibility to ask the Agency for advice.

The Director thanked the consultant and said that the external evaluation report of ACER will be published on the ACER website in January. The Agency also carried out an internal survey and will take steps regarding the follow up.

Action: The Board thanked the consultant for his presentation of the Agency external evaluation and suggested to replicate the external evaluation of the Agency right before the deadline for the completion of the internal energy market.

#### **4. Report on the written procedure on implementation of teleworking**

The Director reported on the written procedure having taken place since the last meeting: the AB Decision on teleworking was adopted on 9<sup>th</sup> October 2012.

#### **5. Report on ACER developments (including REMIT, monitoring pursuant to Art. 11 Regulation (EC) No 713/2009, and on the activities of the Board of Regulators)**

The Director presented the progress in the recruitment of the staff and the recent activities of the Agency. Regarding personnel, out of a total of 59 staff members in the establishment plan for 2012, currently 56 are in office. There are also 9 posts under selection or advertised, some of which relate to the establishment plan for 2013. The current vacancy notices include a SNE position to deal with FG&NC in Electricity, four positions for SNEs on REMIT, a Senior Legal and Policy Officer position, 2 Market Data Management Officers positions and one Legal Assistant position. He also informed of the establishment of the new Market Monitoring Department and the appointment of its Head, as well as of the appointment of the new Head of the Gas Department.

Regarding the recent activities of the Agency, the Director reported that, after the adoption of the Framework Guidelines (FG) on Electricity Balancing on 18 September 2012, there is only one FG pending, out the initial priority list of eight FGs, four in Electricity and four in Gas the FG on harmonised gas transmission tariff, whose adoption is due by the end of the year, but it is likely to be delayed to the first quarter of 2013, in agreement with the European Commission, in order for the

Agency to be able properly to analyse the many submissions received from stakeholders during the public consultation which was closed on 5 November.

Of the other regulatory activities, the Agency is currently working on a number of opinions: on the ENTSO-E 2013 Work Programme, on ENTSG 2011 Annual Report, on ENTSG 2013 Work Programme, and on ENTSG's Winter Supply Outlook.

Regarding REMIT, progress is on track in delivering its policy documents with the release of the 2nd ACER guidance in September and of ACER Recommendations to the Commission on the Record of Transactions in October.

On IT system architecture and on procurement, significant progress has been achieved. 3 tenders have been launched:

- Tender 1, on web applications development services and IT consultancy services for the implementation of REMIT Information System (ARIS) with 2 lots:
  - o Lot 1: Web application development, software maintenance and remote support to stakeholder services.
  - o Lot 2: IT specialised support and consultancy services.
- Tender 2 on IT infrastructure hosting services; and
- Tender 3 on Market monitoring system for the Agency's REMIT information system (ARIS).

These tenders were issued between 14.06.2012 and 28.08.2012. The award decision has been taken on all tenders, except for Lot 2 of Tender 1, where no award will take place as no bidder satisfied all the criteria. The Framework Contract on Tender 1, Lot 1 was already signed and the first request for services already issued.

On REMIT, the Chairman asked whether the platform for the publication of inside information would be managed by ACER. The Director replied that in the Guidance issued by the Agency it is proposed that platforms are identified by NRAs, either at national or regional level. The platforms for each country/region would then be listed on the ACER webpage.

With respect to the monitoring of wholesale energy markets, the Agency is implementing an approach for the IT system by which those NRAs who will not want to develop their own monitoring capability will be able to rely on the Agency's software, which they will be able to use by paying a licence fee to the contractor. Mr Braz, the representative of the BoR, said the NRAs welcome the option of having a choice. The compatibility question however remains to be solved. The Chairman expressed his interest in understanding whether the NRAs may encounter any legal issues if there are to use the ACER monitoring software, given possible national requirements on tendering procedures. The Member representing the Commission



was interested in the Agency's discussion with ESMA on data sharing. The Director replied that the Agency expects to receive data on transaction in financial products from the trade repositories.

The Director reported on his recent contacts with the Swiss Regulator, ElCom. Cooperation with Switzerland regarding REMIT is put on hold for the time being as the Commission has indicated that this cannot be pursued separately from the negotiations of the EC with the Swiss authorities on the implementation of the Community acquis including the REMIT Regulation.

Lastly, the Director reported on the latest developments regarding the TEN-E Regulation. At the last triologue on 27 November, a political agreement was reached on the Regulation on Guidelines for trans-European energy infrastructure.

Regarding the presentation of the first joint ACER/CEER Market Monitoring Report, the Director reported that the event on 29 November was participated by panellists from the EC, BEUC, EFET, ENTSO-E and ENTSOG. The event was attended by around 100 stakeholders and was also live web streamed. There were 2 press conferences. The first MMR Report is now available on the ACER website. The reception of the MMR was overwhelmingly positive. The Chairman commented that the outcome of the Market Monitoring Report is outstanding, he suggested the Members promote it as widely as possible. At the next AB meeting the feedback from stakeholders on the MMR will be discussed. The Director committed to undertake a web survey in this regard.

The Member representing the Commission stressed that the EC Services will try to ensure that the two processes, the Commission's market monitoring exercise and the Agency's, will diverge as little as possible in the future.

The Director reported that the Agency received a letter from the ITRE committee of the EP. The ITRE has asked ACER to provide an opinion (on the basis of Article 4(c) of ACER Regulation (which provides that the Agency may issue opinions and recommendations addressed to the European Parliament, the Council, or the Commission) on capacity markets focusing on the following elements: Which are the new capacity and transmission and distribution needs with regard to the RES integration? How to ensure flexibility in power markets? What is the future of energy markets in a high RES system? Do we need capacity markets? The Director noted the particular importance of this first formal request from ITRE.

The ITRE has invited the Director to present the ACER WP 2014 before 31st May at the ITRE Committee. The time schedule for the Director's formal proposal on the WP is 30 June, but nevertheless an outline with key priorities can already be presented earlier.



Based on the recommendation made at the end of August during the visit of the ITRE delegation to the Agency, a meeting with the ACER contact group of ITRE is proposed twice a year (autumn and spring).

Members welcomed the letter and the invitation to prepare the Agency's opinion on capacity markets, the presentation of the 2014 WP to the ITRE and the biannual meetings with the ACER contact Group.

The Member representing the Commission said that the EC was able to support the EP position for the Agency to collect the fees for EIP. There is now an agreement of the three institutions on the ability of the Agency to collect fees on EIP. The implementation of this process is in EC's hands who needs to draft a decision. The EC would appreciate the Agency's analysis on the fees. The Director, supported by several Members, underlined the importance of being allowed to charge fees on a stable and predictable basis so that any funds raised through fees can be used in a predictable manner. If, instead, fees were to be charged for Agency's activities which are difficult to predict, as it is currently the case with the fees that the Agency could charge for decisions on exemptions, the benefit of such fees would be limited, as the Agency would not be able to include them in its budget and therefore use them for supporting planned activities.

Action: A report on the feedback from stakeholders on the Market Monitoring Report will be discussed at the next AB meeting.

## **6. Note regarding the budgetary implications on the ACER Work Programme 2013**

The EU General Budget 2013 had not yet been adopted and therefore the AB was not in a position to adopt the 2013 Agency's Budget. The AB decided that this adoption will take place as soon as the EU General Budget is approved. The Chairman declared the urgency of adopting the 2013 Agency's Budget as soon as the EU General Budget is approved and that, therefore, such adoption will take place through the written procedure.

The Director recalled that the Agency's 2013 Work Programme, adopted on 5 September 2012, envisages, inter alia, activities related to the implementation of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) and of the new Regulation on guidelines for trans-European energy infrastructure, (TEN-E Regulation), expected to be adopted early in 2013. Uncertainty and risks regarding the ability of the Agency to deliver on its Work Programme were already highlighted (in chapter 6.3 on pages 74-76).

In particular, with respect to the REMIT-related activities, the 2013 Work Programme refers to the Agency's estimate that the full implementation of REMIT, in particular with respect to the development of the data collection and monitoring



systems, will require an investment in IT infrastructure in the order of € 3 million in 2013 and that unless such resources are not made available to the Agency, the fulfilment of its tasks in this area as planned in the Work Programme would prove impossible. With respect to the activities related to the TEN-E Regulation, mainly in the area of the identification of the Projects of Common Interest, the Director highlighted the risks of the Agency finding itself in an impossible position in 2013 of having to undertake such activities without being assigned the required additional human resources, estimated in 12-14 staff.

The EU budget, when adopted, will most likely not include the additional 3 million € for the REMIT-related IT software, nor the resources allocated to the implementation of the TEN-E Regulation (as this Regulation will not have been adopted by that time). He stressed that the Agency will not be able to deliver on its Work Programme if it is not given the resources on which this Programme has been compiled. The Commission indicated that it is trying to secure the financial resources for the implementation of the REMIT IT system, while it is unlikely that additional staff will be made available in 2013 for the implementation of the TEN-E Regulation.

The Director indicated his intention to submit a note for endorsement to the Administrative Board and to the BoR, clarifying the activities that the Agency will not be able to undertake if resources fall short of what has been taken as the basis for the Work programme.

The Member representing the Commission informed the Board that even if they are trying to secure additional resources internally, the Commission will need to present the new financial statement to the budgetary authorities. He also said that the implementing acts for REMIT are not going to be adopted before the summer of 2013, therefore the impact of not having the required resources at the beginning of the year may be minimal. The Director indicated that in order for the full market monitoring system to go live in March 2014, the resources need to be secured in advance, and the implementing acts are now planned for September 2013. Mr Braz, representing the BoR, underlined that all interlinkages amongst the NRAs will need to be put in place and this will require some time after the adoption of the implementing acts and before going live.

Action: The Chairman declared the urgency of adopting the 2013 Agency's Budget as soon as the EU General Budget is approved. Therefore the Chairman also decided that once the EU Budget is approved, the written procedure will be launched for the adoption of the Agency 2013 Budget. The Commission will work with the Agency on the analysis of the required resources for REMIT implementation and for the TEN-E Regulation.

## **7. ACER external communication guidelines**

As the guidelines were submitted for discussion at the AB the second time, the Chairman invited comments on the draft.



One Member proposed a new text as regards the expression of AB Members' views on their work at the Agency. The Chairman argued that Members should distinguish clearly when they speak on behalf of the Agency or on their personal behalf.

The Member representing the European Commission informed that Commission officials' behaviour is already governed by their Code of Conduct on matters of public expressions.

Mr Braz, representing the BoR, argued that the guidelines are already reflected in the BoR Rules of Procedure.

Action: The Board approved the guidelines, with 6 votes in favour of the new text as regards the expression of AB Members' views on their work at the Agency, as proposed by one Member (ANNEX1).

## **8. Conflict of Interest policy guidelines**

The Director presented the guidelines submitted to the Board for the second time by underlining that any situation of a Member which already existed at the time of his/her appointment as Member of a Board, which the appointing institution was or should have been aware of at the time of the appointment and which was declared in the first declaration rendered by the Member, is deemed not to entail any conflict of interest. He outlined the Agency procedure of handling the interest declarations. One Member, supported by others, presented an amendment proposing that 3 Members judge the declarations of interest, also when the declarations of the Chairman and Vice-Chairman are examined.

Action: The Board approved the Agency conflict of interest guidelines with a slight amendment, as proposed by one Member (ANNEX2).

## **9. New ACER Premises – Update on the process**

The Director reported that the initial tendering procedure started in April 2012 was abandoned because of a technical and administrative issue. The Agency has accordingly informed the budgetary authorities. A new market prospection was launched after the summer 2012 and a new tender will be launched early in the new year. In 2013 the Agency premises will therefore continue at its current location. Additional offices will be rented in the same building to accommodate new staff.

## **10. Decision AB n° [XX]/2012 regarding ACER administrative inquiries and disciplinary procedures (\*)**

The Director informed that the Commission has not yet finalised its inter-service consultations on the document, therefore the document was not discussed.

### **11. Decision AB n° [XX]/2012 on the Policy on Protecting the Dignity of the Person and Preventing Psychological Harassment and Sexual Harassment (\*)**

The Director informed that the Commission has not yet finalised its inter-service consultations on the document, therefore the document was not discussed.

### **12. Decision AB n° [XX]/2012 on Outside Activities and Assignments**

The Director said that the document went through the Inter-service consultations of the Commission, but the AB is invited to adopt the document with the replacement of Article 17b with only Article 17, as the 17b is a typo that was overlooked. The Chairman said that this Article is quite important as it is linked to the policy when Staff are leaving the Agency.

Action: The AB adopted the decision on outside Activities and Assignments as proposed by the Agency (ANNEX4).

### **13. Report on the outside activities of the Director in 2012 and Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2013**

The Director briefly presented the report on his outside activities in 2012. No comments were made by the Members.

Action: The AB noted the report of the Director and adopted the Permission to the Director to engage in academic cooperation with the Florence School of Regulation in 2013 (ANNEX3).

### **14. Court of Auditors Opinion on the Agency's Final Accounts**





The Director briefly informed the AB about the report of the Court of Auditors on the Agency's final accounts for the financial year 2011. The main comments were on the high level of appropriations and of carry overs, as well as a low level of payments; on the need to improve the transparency of the recruitment procedures; and on the subsistence allowance paid to the Slovenian national experts.

Action: The AB noted the Court of Auditors Opinion on the Agency's Final Accounts for the 2011 Financial year.

## **15. AOB**

### **Annual Conference**

The Director informed the AB that the Agency Annual conference is scheduled for 21.3. [comments : the date is in the meantime changed to 17 May 2013] and that Commissioner Oettinger agreed to intervene.

### **Common Approach**

The AB Member representing the EC informed the Agency about the Common approach for the Agencies. After a long negotiation in July 2012 the EC, EP and the Council reached a political agreement (non-binding) on the general approach to EU Decentralised Agencies in order to ensure a greater coherence of the EU Agencies. An advisor from the EC made a presentation of the approach: the main novelty is point 59 saying that an alert/warning system can be activated by the EC if there are serious reasons for concern when an Agency Management Board is about to take decisions violating EU law – the EC can warn the EP and the Council in such cases. The Commission will adopt a roadmap by the end of 2012. The Commission will also adapt the Agency founding acts.

Action: The AB Secretariat will circulate the Joint statement and the roadmap. The AB will discuss them at its next meeting.

### **AB meeting in June 2013**

The Chairman informed that the AB meeting on 13. June 2013 will be organised in Warsaw, at the headquarters of the Polish TSO.



## ANNEX 1

### ACER External Communication Guidelines

The Agency for the Cooperation of Energy Regulators (the Agency) is increasingly playing a key role in the creation of a well-functioning Internal Energy Market. Beyond the regulatory remit assigned to the Agency by the Third Package, additional tasks in the area of wholesale market monitoring were entrusted to the Agency by Regulation (EU) No 1227/2011 (REMIT).

Given its prominent role in the regulatory developments in the energy sector, it is appropriate that the Agency maintains an open external communication strategy, to inform the widest range of stakeholders on its activities. This strategy should go beyond the statutory requirements for consultations contained in the relevant Regulations.

In this respect, external communication at all levels should be encouraged. However, it is essential that:

- This communication provides consistent messages;
- The content of the communication reflects the official position of the Agency and does not adversely affect the image or reputation of the Agency;
- Caution is maintained while the official position of the Agency on specific issues is formed.

This note provides a proposal, for the consideration by the Administrative Board and the Board of Regulators, for guidelines on external communication, which are aimed at achieving the objectives defined above in the most effective way. It would be appropriate if these guidelines, once agreed, were to be implemented in each Board through their respective Rules of Procedures.

These guidelines are based on the following considerations:



- According to article 17(1) of Regulation (EC) No 713/2009, “the Director shall be responsible for representing the Agency”;
- According to article 15(5) of Regulation (EC) No 713/2009, “the European Parliament may invite, while fully respecting his independence, the chairman of the Board of Regulators or his deputy to make a statement before its competent committee and answer questions put by the members of that committee”. Similarly, according to article 16(8) of the same Regulation “the European Parliament may [...] invite the Director to make a statement before its competent committee and answer questions put by the members of that committee”;
- It is useful and valuable that the Director more generally shares the external communication effort with members of the Boards and other members of the staff of the Agency as appropriate, so that the Agency’s messages reach a wider audience at all levels;
- It is at the same time paramount that the messages provided as part of the Agency’s external communication activities are fully consistent and reflect the official position of the Agency, thus avoiding generating confusion or, even worse, negatively impacting on the image or reputation of the Agency.

Therefore, the following guidelines on the external communication activities of the Agency are proposed:

- 1) The external communication actions of the Agency are undertaken by the Director, by the members of the Administrative Board, of the Board of Regulators and of the Board of Appeal, by the members of the staff of the Agency and, in specific areas, by the Chairs and members of the Agency’s Working Groups, Task Forces and Work Streams.
- 2) Members of the Administrative Board and of the Board of Regulators participate in the external communication actions of the Agency in the areas of competence of their respective Boards.
- 3) Agency’s staff members are involved in the external communication actions on the basis of a general or specific mandate from the Director. The Press and Communication Officer has a general mandate to propose and, once approved by the Director, to implement the external communication strategy of the Agency, to coordinate the external communication action of other staff members and to provide support to Boards’ members where required. Heads of the Agency’s Departments have a general mandate regarding the external communication actions in their respective areas of competence, but may assign a specific mandate to members of their departments.



- 4) Chairs and members of the Agency's Working Groups, Task Forces and Work Streams are involved in the external communication actions on the basis of a general or specific mandate from the Director. Whereas the Chairs have a general mandate in their respective areas of competence, they also may give a specific mandate to members of the Working Groups, Task Forces or Work Streams (e.g., for presentations at the Florence, London and Madrid Fora).
- 5) The content of the external communication activities should reflect the official position of the Agency. The official position of the Agency is defined by the acts – Decisions, Opinions and Recommendations – and other documents adopted or otherwise published by the Agency. Draft acts which have received the favourable opinion of the Board of Regulators, pursuant to article 15(1) of Regulation (EC) No 713/2009, do not contribute to forming the official position of the Agency until they are adopted according to article 17(3) of the same Regulation. Presentations given by the Director, Agency's staff members, Working Group Chairs and Working Group, Task Forces or Work Streams members on Agency topics, when the circumstances so require, may reflect the "working" position of the Agency, rather than its official position as defined above. When the presentation is delivered by Working Group, Task Forces or Work Stream members it should be submitted for prior endorsement to the respective Working Group Chair.
- 6) In case of doubt on the official position of the Agency, the Director shall be consulted. The Press and Communication Officer is also available to provide support whenever appropriate. In order to provide full transparency and consistence on the Agency's official position, a repository of all presentations given by or on behalf of the Agency shall also be established, and shall be made accessible to all Board members, Agency staff and Working Group, Task Force and Work Stream members.
- 7) The delivery of the Agency's external communication shall avoid any prejudice to the image or reputation of the Agency.
- 8) In specific circumstances, the Director, Board Members, Chairs of the Agency's Working Groups and Head of Departments at the Agency may express their personal views in external communication, provided that:
  - a. The context is such that expression of personal opinions is expected (e.g. academic events);
  - b. It is clearly stated that what is expressed represents personal views and does not reflect the position of the Agency or of any of its Bodies. Such a





- statement should be delivered, depending on the context and circumstances, in a way which leaves no room for ambiguity;
- c. The personal views expressed should not discredit or otherwise damage the image and reputation of the Agency, of any of its bodies or of its staff;
  - d. Particular care should be taken in avoiding any actual, potential or perceived conflict of interest in respect to the personal views expressed.
- 9) These guidelines are without prejudice to the possibility for members of the Administrative Board and of the Board of Regulators of registering their dissenting opinion according to respective Rules of Procedures.

## ANNEX 2

### Guidelines

#### **Preventing and Managing Potential or Actual Conflicts of Interest in the Agency for the Cooperation of Energy Regulators**

Integrity is important in all strands of life, but it becomes essential in public functions. In the regulatory practice, the highest level of integrity is required to ensure the quality and credibility of the regulatory action. Conflicts of interest, actual or perceived, may put integrity of the decision-making process into question and therefore should be avoided and, where this is not possible, effectively managed.

The European Parliament has recently re-emphasised and is placing particular attention on the issue of conflicts of interest, also in the case of EU Agencies.

In the case of ACER, conflicts of interest may arise with:

- Agency staff members;
- Members and alternates of the Administrative Board;
- Members and alternates of the Board of Regulators;
- Members and alternates of the Board of Appeal.

In the case of **staff members**, the staff rules in place seem to provide sufficient guarantee with respect to conflicts of interest.

In particular they specify:

- that “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. 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 interests of the institution”.
- that “If the spouse of an official is in gainful employment, the official shall inform the appointing authority of his institution. Should the nature of the employment prove to be



incompatible with that of the official and if the official is unable to give an undertaking that it will cease within a specified period, the appointing authority shall, after consulting the Joint Committee, decide whether the official shall continue in his/her post or be transferred to another post”.

- that: “1. An official who intends to stand for public office shall notify the Appointing Authority. The Appointing Authority shall decide, in the light of the interests of the service, whether the official concerned:

(a) should be required to apply for leave on personal grounds, or

(b) should be granted annual leave, or

(c) may be authorised to discharge his duties on a part-time basis, or

(d) may continue to discharge his duties as before.

2. An official elected or appointed to public office shall immediately inform the Appointing Authority. The Appointing Authority shall, having regard to the interests of the service, the importance of the office, the duties it entails and the remuneration and reimbursement of expenses incurred in carrying out those duties, take one of the decisions referred to in paragraph 1. If the official is required to take leave on personal grounds or is authorised to discharge his duties on a part-time basis, the period of such leave or part-time working shall correspond to the official's term of office”.

- Finally, they specify that: “Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit”.

The Agency will monitor the effectiveness of these provisions in preventing situations of conflict of interests affecting its staff and will adopt specific rules if necessary.

In the case of the members of the **Board of Regulators**, the ACER Regulation specifies that “the Board of Regulators shall act independently and shall not seek or follow instructions from any government of a Member State, from the Commission, or from another public or private entity” (art. 14(5)). However, each of its members represents one NRA and its interest. Therefore, the representation of national interests in the Board of Regulators and the conflicts which may arise with respect to the interest of the EU as a whole are in the nature of the Board itself. In this respect, it is noticeable that the ACER Regulation does not contain any provision on the exclusion from voting in the Board of Regulators of members who may find themselves, on the reason of the NRAs they represent, in a situation of “institutional” conflict of interest. Finally, national provisions and safeguards typically applicable to senior members of NRAs should prevent any conflict of interest, beyond those related to the position of the institutions they represent, to arise. In fact, members of the Board of Regulators are not required to make any declaration of interests.

The case of the **Administrative Board** and the **Board of Appeal** is more complex, as their members are not appointed explicitly to represent an institution, but rather to act independently and in the public interest. This is explicitly stated in the ACER Regulation:

- "The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions" (art. 12(7)).
- "The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions" (art. 18(3)), "Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal" (art. 18(4)) and "The members of the Board of Appeal shall undertake to act independently and in the public interest" (art. 18(7)).

In the case of both Boards, members are required annually to make a declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

The issue is therefore how to process these declarations and, in particular, how to deal with any general or specific situation emerging from the declarations which may entail a potential or actual conflict of interest.

In this respect, the following procedure is proposed, applicable to both the Administrative Board and the Board of Appeal:

- The annual declarations of the members and of alternates of a Board, collected by the secretary of the Board, are sent to the Chair and to the Vice-Chair of the Board, and to the Director. The annual declarations of members and alternates are to be examined by Chairman, Vice-Chairman and the Director; the annual declarations of the Chairman are to be examined by the Vice-Chairman, one appointed AB member and the Director; the annual declarations of the Vice-Chairman are to be examined by the Chairman, one appointed AB member and the Director. Any change in his/her situation, which may be of relevance for the appraisal of the conflict of interest, should be directly communicated to the Chair, Vice-Chair and to the Director.
- Where a declaration gives rise to a situation of actual, possible, or even perceived, conflict of interest, the Chair may decide, in consultation with the relevant member and the Director, to inform the appointing institution stating the nature of the problem. The declaration of the Chair is handled by the Vice-Chair in a similar way. Until a reaction is received by the appointing institutions, the Board member shall refrain from participating at the meetings on topics where they may be a perceived conflict of interest.
- In assessing the declarations rendered by the Board members, the Chair or the Vice-Chair, as the case may be, should consider that any situation of a member which already existed at the time of his/her appointment as member of a Board, which the appointing institution was or should have been aware of at the time of the appointment and which was declared in the first declaration rendered by the member is deemed not to entail



any conflict of interest. This shall not relieve the member from the obligation of declaring the interest which is giving rise to the situation under consideration.

- In case the Director is not satisfied with the way in which a situation is handled, he/she will inform the Chair or Vice-Chair of the Board, as the case may be. If, even after this communication, the Director still considers that the situation is not being handled adequately, he/she will inform the Administrative Board at the next meeting and have his/her concerns noted in the minutes.

In the case of the Board of Appeal, the procedure proposed above is clearly without prejudice to the provisions in art. 18(4) of the ACER Regulation quoted above [Members of the Board of Appeal shall not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal].

### **ANNEX 3**

#### **DECISION AB n° 23/2012**

### **GRANTING PERMISSION TO THE DIRECTOR TO ENGAGE IN ACADEMIC COOPERATION WITH THE FLORENCE SCHOOL OF REGULATION AT THE EUROPEAN UNIVERSITY INSTITUTE FOR THE YEAR 2013**

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 Agency"), 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;

HAVING REGARD to Commission Decision C(2004) 1597 of 24 April 2004 on outside activities and assignments;

HAVING REGARD to Administrative Board Decision AB n° 23/2012 on



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”;
- Article 6 of Administrative Board Decision AB n° XX/2012 provides that “teaching and other educational activities, whether gainful or not, shall in principle be authorised for one year provided that their duration does not exceed 100 hours per academic year” and that “in exceptional circumstances, where the activity is clearly in the interest of the institution, the educational activities may be extended to academic activities, including research”.
- Article 9 of Administrative Board Decision AB n° XX/2012 provides that “the maximum annual ceiling for net remuneration, including any fee received, which an official may receive in connection with all his assignments or outside activities combined, shall be € 4.500”, that “the reimbursement of costs (e.g. transportation, etc.) shall not be taken into account for this purpose”, that “the official shall hand over to the Appointing Authority amounts exceeding the sum of € 4.500” and that “royalties received for publications shall be excluded from the calculation of net remuneration”.
- 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 Administrative Board, with its Decision AB n° 34/2011 of 2 December 2011, granted permission to Mr Pototschnig to engage in academic cooperation with the





School;

- With letter to the members of the Administrative Board, dated 20 August 2012, the European Commission, Directorate-General for Energy, raised concerns on Administrative Board's Decision AB n° 34/2011 to the extent that it deviates in some respects from Commission Decision C(2004) 1597, asking for Administrative Board's Decision AB n° 34/2011 to be brought into line with the Commission's rules or to be repealed;
- 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, at the same time benefitting the Agency from the activities in the School;
- It is therefore of utmost important for the Agency 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;
- In granting permission to Mr Pototschnig to engage in training and academic activities with the School, compliance with Commission Decision C(2004) 1597 should be ensured;
- Given the importance for the Agency of Mr Pototschnig's activities as Adviser to the Director of the School, exceptional circumstances are deemed to exist for permission to be extended to include academic and research activities as well, up to a total of 200 hours per year.

HAS DECIDED:

- 1) To grant permission to Mr Alberto Pototschnig to continue in 2013 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 period from 1 January 2013 to 31 December 2013;
- 3) That the activities for which permission is granted shall be carried out for a maximum of two hundred (200) hours during 2013.
- 4) That the activities for which permission is granted, to the extent that they are carried out during working hours with a limit of 100 hours, are considered to be carried out in the interest of the service within the meaning of article 6, paragraph 2, of the Administrative Board Decision AB n° XX/2012;
- 5) That permission is granted subject to the condition that no costs shall be incurred by the Agency.
- 6) That, given the governance and mission of the School, the activities for which permission is granted do not raise any conflict of interest;
- 7) 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 Pototschnig shall hand over any remuneration received in excess of EUR four thousand five hundred (4,500). 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;
- 8) Mr Pototschnig will report to the Administrative Board on his activities at the School at the end of the period;
  - 9) 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.
  - 10) The present Decision repeals and replaces Administrative Board Decision AB n° 34/2011 of 2 December 2011.

This Decision shall take effect on 1 January 2013

Done at Ljubljana, on 5 December 2012

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board



**ANNEX4**

**DECISION AB No 23/2012**  
**OF THE ADMINISTRATIVE BOARD**  
**OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**  
**of 5 December 2012**  
**ON OUTSIDE ACTIVITIES AND ASSIGNMENTS**

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<sup>1</sup> (hereinafter referred to as the “Agency”), and, in particular, to Article 28(2) thereof,

HAVING REGARD to the Staff Regulations of Officials of the European Communities, laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68<sup>2</sup>, and, in particular, Article 1c, the second paragraph of Article 11, Article 11a, Article 12, Article 12b, Article 15(2), Article 16, Article 17, Article 17a, Article 19, the first paragraph of Article 55 and Articles 13 and 40 of Annex VIII thereof, and to the Conditions of Employment of Other Servants of the Union, and, in particular, Articles 11, 16, 54, 57, 81 and 91 thereof;

After consultation of the Staff Committee and in agreement with the European

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<sup>1</sup> OJ L211, 14.8.2009, p.1.

<sup>2</sup> OJ L56, 4.3.1968, p.1.





Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations,

Whereas:

- (1) In the interest of transparency the provisions governing permission to engage in an outside activity and assignment should be incorporated in a single measure indicating in detail which factors have to be taken into account when taking a decision on such permission.
- (2) The Agency has decided to encourage external mobility to enable staff to acquire new skills and knowledge which are of benefit both to the staff themselves and to the institution.
- (3) The present rules are intended to prevent conflicts of interest from arising, without imposing unreasonable restrictions on staff members' outside activities,

HAS DECIDED AS FOLLOWS:

**Article 1**  
*Definition*

For the purposes of the present Decision

1. "Public office" means any public office, paid or unpaid, that is filled following an election or otherwise;
2. "Assignment" means the taking-on of a defined, time-limited task;
3. "Outside activity" means any other activity, paid or unpaid, that is of an occupational character or goes otherwise beyond what can be reasonably considered a leisure activity;
4. Any reference in this Decision to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice versa, unless the context clearly indicates otherwise.

**Chapter 1**  
**Staff in active employment**



**(Article 35(a) of the Staff Regulations)**

**GENERAL PROVISIONS**

**Article 2**

*Assignments and outside activities*

Staff in active employment or secondment wishing to engage in an assignment or outside activity within the meaning of Article 1 of this Decision must request permission from the Appointing Authority pursuant to Article 12b of the Staff Regulations. Applications, accompanied by the necessary supporting documents, must be submitted through their immediate superiors, where possible, 2 months before the beginning of the activity or assignment. The Appointing Authority shall respond to this request within 1 month of receipt of the application.

**Article 3**

*Exercise of a public office*

Staff members that are elected or appointed to public office and who continue working are subject to the obligations that normally apply to officials. By way of exception, any payment made to the staff member in that connection shall not count towards the ceiling for net remuneration established pursuant to Article 9 of this Decision.

Staff members who are elected or appointed to public office and who take leave on personal grounds in order to fill it shall require prior authorisation for assignments or outside activities that are not related to the performance of the duties that it entails. This provision shall not apply where an elective office is covered by legal immunity.

**Article 4**


*Activities carried out in the framework of a mission*

A staff member may not accept any remuneration that is offered in exchange for any work done - and in particular participation in a conference or a presentation - in the course of a mission ordered by the Appointing Authority. The staff member should however ask for the costs of the mission to be reimbursed by the body to which he renders such services. Any such reimbursement shall be declared to the Appointing Authority and deducted from the staff member's mission costs.

**Article 5**

*Voluntary work*

Without prejudice to Article 8 hereof, permission shall in principle be granted for work not giving rise to remuneration or the like, whether charitable or not, provided that it is



not so onerous as to be likely to impair the staff member's ability to work for the Agency, and in particular his obligations under Article 55, first indent, of the Staff Regulations.

**Article 6**  
*Educational activities*

Subject to Article 5 and 8 of this Decision, teaching and other educational activities, whether gainful or not, shall in principle be authorised for one year provided that their duration does not exceed 100 hours per academic year.

In exceptional circumstances, where the activity is clearly in the interest of the institution, the educational activities may be extended to academic activities, including research. In those cases no decision may be taken without prior consultation of the Appointing Authority.

**Article 7**  
*Professional activities*

Without prejudice to Articles 5, 6 and 8 of this Decision, permission shall not be granted for assignments or outside activities which are pursued in a professional or similar capacity (e.g. architect, lawyer, economist, accountant, computer expert, engineer, interpreter, doctor, translator, consultant etc.).

**Article 8**  
*Commercial activities*

Permission shall not be granted for assignments or activities for firms and companies, whose objects are commercial, even if the staff member's relationship with the company or firm in question entails no remuneration or purely nominal remuneration.

**Article 9**  
*Maximum net remuneration*

The maximum annual ceiling for net remuneration, including any fees, which a staff member may receive in connection with all his assignments or outside activities combined, shall be € 4500. The reimbursement of costs (e.g. transportation etc.) shall not be taken into account for this purpose. The staff member shall hand over to the Agency amounts exceeding the sum of € 4500.

Royalties received for publications shall be excluded from the calculation of net remuneration.





**Article 10**  
*Prizes and awards*

Staff members given a prize or award for an assignment or outside activity are required to apply to the Appointing Authority for permission to accept it. Such permission shall be granted or withheld by the Appointing Authority depending on the circumstances of each case, regardless of the value of the prize or award. Permission shall only be refused if the acceptance of the prize or award is incompatible with the interests of the institution or could impair the independence of the staff member.

**Article 11**  
*Special leave*

Where unpaid activities are of benefit to the Agency, the Appointing Authority may grant special leave amounting to half the number of working days involved, up to a maximum of twelve days per year.

**Article 12**  
*Period of validity*

Permission granted pursuant to Article 12b of the Staff Regulations shall be valid for the period set out in the authorisation but in principle not more than one year. A new application must be submitted for any prolongation or renewal at least two months before expiration of the period.

**Article 13**  
*Staff members working part time*

Staff members who have been authorised to work part time may take on unpaid outside assignments and activities if such outside assignments and activities are not incompatible with the reasons for which part-time work has been authorised.

Staff members elected or appointed to public office who have been authorised to work part time may take on paid outside assignments and activities directly related to the reasons for which part-time work has been authorised.

**Chapter 2**  
**Specific provisions for staff on leave on personal grounds**



**(Articles 35(c) and 40 of the Staff Regulations)**

**GENERAL PROVISIONS**

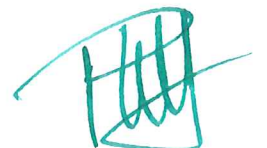
**Article 14**

*Permission for outside activities or assignments for staff on leave on personal grounds  
(Article 12b of the Staff Regulations)*

1. Staff on leave on personal grounds must seek permission pursuant to Article 12b of the Staff Regulations to undertake an assignment or an outside activity at any time during the period of leave in accordance with the present Decision.
2. Such permission shall in principle be granted except where the assignment or the activity could give rise to a conflict of interest or be detrimental to the interest of the Agency or of the EU Institutions. A conflict of interest shall be deemed to exist where the assignment or the activity would reflect on the staff member's status as a staff of the agency and would be detrimental to the loyalty he owes to the institution and its authorities, but also where it would be incompatible with his duty to conduct himself in a manner that is beyond suspicion in order that the relationship of trust between that institution and himself may at all times be maintained.
3. A staff member requesting permission pursuant to Article 12b of the Staff Regulations in order to take up an assignment or outside activity shall in particular provide to the Appointing Authority:
  - a) a description of his activity during his last three years of active service at the Agency or in another EU Institution;
  - b) a description of the activity that he wishes to take up including information on the position the staff member is to occupy and the expected duration of the activity;
  - c) the name, address and telephone number of the potential employer;
  - d) the employer's fields of activity;
  - e) the links with the staff member's functions exercised in the Agency, if any;
  - f) any other information that could reasonably be considered relevant by the Appointing Authority in deciding on the request.

To this end the staff member will fill in and file with the Agency an application form provided by the Appointing Authority (see Annex). Applications, accompanied by the necessary supporting documents, must be submitted through his immediate superiors, at least two months before the beginning of the activity or assignment. Authorisation shall only be refused if the work referred to above is incompatible with the interests of the institution or could impair the independence of the staff member.

4. In addition, the staff member shall sign a declaration confirming that he has full knowledge of his obligations in the sense of the present Decision.
5. The Appointing Authority shall make permission to undertake an activity whilst on leave on personal grounds conditional upon the staff member's consent to the Agency making his name, position in the undertaking, and the name of the



- undertaking for which he intends to work, publicly available. To this end the staff member will sign a declaration provided by the Appointing Authority.
6. Any permission granted pursuant to an application under paragraph 3 of this Article shall be limited to employment with the named employer, and any person with whom the employer merges or transfers the undertaking by which the staff member is employed.
  7. A staff member on leave on personal grounds who wishes to transfer to a different employer shall seek a revised authorisation pursuant to Article 12b of the Staff Regulations. Obligations of the present Decision shall apply.
  8. A staff member shall inform the Appointing Authority without delay where any other change in one or more of the circumstances set out in paragraph 3 of this Article arises after permission pursuant to Article 12b, second paragraph, of the Staff Regulations has been granted. The Appointing Authority shall examine whether to modify the conditions of or to withdraw its permission in the light of such a change. Such withdrawal shall take effect after the staff member has had a reasonable time to take the necessary measures.

## SPECIFIC PROVISIONS

### Article 15

#### *Work dealing with active service in the Agency*

1. If the staff member intends to undertake work that requires him to deal directly or indirectly with subjects that fall within a policy area in which he was or has been working during the three years of active service immediately preceding the probable or actual date of commencement of his leave on personal grounds, he shall provide full details thereof to the Appointing Authority. Such work may not be undertaken unless and until he has received the written authorisation of the Appointing Authority.
2. The staff member may not deal with individual cases that he had worked on in the course of the three years of active service in the Agency or in another EU Institution immediately preceding the probable or actual date of commencement of his leave on personal grounds. When staff members have worked on individual cases prior to the said period of three years, they shall notify the appointing Authority and are not thereby automatically authorised to deal with those individual cases.
3. The staff member may not participate in meetings or have contacts of a professional nature with the Agency for a period of:
  - o 1 year where the staff member occupied a management function in the Agency,
  - o 6 months in all other cases.
4. The Appointing Authority may make any authorisation it grants subject to such conditions as it reasonably sees fit, in the light of the particular characteristics of a policy area or of the circumstances of the case. The Appointing Authority may in particular increase the restrictions laid down in paragraph 3.





**Article 16**  
*Contracts with the Agency*

1. No staff member on leave on personal grounds may be given an assignment of any kind that carries remuneration other than a daily allowance and / or a reimbursement of expenses unless an exemption has been granted under paragraphs 2 to 4 of this Article.

For the purposes of this Article, « assignment » includes in particular:

- a. any direct contractual relationship between the Agency and a staff member on leave on personal grounds as an individual; and
  - b. any contractual relationship between the Agency and an undertaking in which a staff member on leave on personal grounds has directly or indirectly a significant financial interest.
2. The Appointing Authority may grant exemptions in cases which fall under paragraph 1 of this Article, where a staff member has been granted leave on personal grounds in accordance with Article 40, paragraph 2, 2<sup>nd</sup> indent, of the Staff Regulations (accompanying a spouse who is an official) except for assignment mentioned in paragraph 1(b).
  3. The Appointing Authority may grant an exemption from paragraph 1 of this Article in a case of an urgent need by the Agency of the staff member's services except for assignment mentioned in paragraph 1(b). However, in the case of a direct contract between the staff member and the Agency, the remuneration may not exceed the salary (on a pro-rata basis) the staff member would have obtained if he had carried out the task when in active service, plus any reasonable professional expenses.
  4. In cases other than those referred to in paragraph 1 of this Article, where the staff member on leave on personal grounds is asked by a third party to work on the performance of contracts with or for the Agency, whether directly or by way of sub-contracting, and where he intends to give a positive answer, he shall immediately inform the Appointing Authority about this request and give all the necessary information allowing the Appointing Authority to assess the request and take a decision.

**Chapter 3**  
**Staff members having left the service of the Agency**

**Article 17**

1. Staff member leaving the service of the Agency shall sign a declaration following a form provided by the Appointing Authority so as to acknowledge that he is aware of his continuing obligations to the Agency, in particular under Articles 16, 17 and 19 of the Staff Regulations.



2. For a period of 2 years after leaving the Agency, a former staff member wishing to take up an assignment or outside activity shall inform the Appointing Authority. The former staff member shall in particular provide:
  - 1) a description of his activity during his last three years of active service at the Agency;
  - 2) a description of the activity that he wishes to take up including information on the position he is to occupy and the expected duration of the activity;
  - 3) the name, address and telephone number of the potential employer;
  - 4) the employer's fields of activity;
  - 5) the links with his former functions in the Agency, if any.

To this end the former staff member will fill in and file with the Agency the application form provided by the Appointing Authority (see Annex).

3. Any permission granted in response to the application submitted pursuant to paragraph 2 of this Article shall be limited to employment with the named employer, and any person with whom the employer merges or transfers the undertaking by which the staff member is employed.
4. A former staff member shall inform the Appointing Authority without delay where any other change in one or more of the circumstances set out in paragraph 2 of this Article arises after permission has been granted. The Appointing Authority shall examine whether to modify the conditions of or, in exceptional circumstances, to withdraw its permission in the light of such a change.

## **SPECIFIC PROVISIONS FOR CERTAIN GROUPS OF FORMER STAFF MEMBERS**

### **Article 18**

*Former staff members receiving a retirement pension or on non-active status or retired in the interests of the service*

1. Former staff members in receipt of a retirement pension may be requested by the Agency to undertake assignments or carry out activities provided that such assignments or activities are unpaid and do not give rise to remuneration of any kind. However costs reasonably incurred in connection with such assignments or activities may be reimbursed. The above restriction shall not apply to assignments and activities which, although not directly paid by the Agency, give rise to payments that are financed from Community funds.
2. The Appointing Authority may authorise a former staff member who is receiving a retirement pension to provide services to the Agency. Such permission will only be given when it is in the general interests of the institution and to fulfil a specific need demanding a knowledge that is difficult to find other than with the staff member in question. In this case, the former staff member can receive ad hoc payments for his services, which when cumulated with his retirement pension or allowance for the then current year, do not exceed his last total annual



remuneration whilst in activity. The reimbursement of costs shall not be taken into account for this purpose. The annual remuneration is established on the basis of the salary table in force on the first day of the month for which the pension is paid. A staff member may render services described in this paragraph until a date of 3 years after his day of retirement.

3. The provisions of this Article shall apply by analogy to staff on non-active status or who have been retired in the interest of the service.

#### **Article 19**

##### *Former staff receiving an invalidity allowance or invalidity pension*

1. Former staff receiving an invalidity allowance or invalidity pension may not be given an assignment of any kind, paid or unpaid, by the Agency.
2. In addition, the staff member shall sign a declaration confirming that he has full knowledge of his obligations in the sense of the present Decision.
3. When deciding whether to grant the permission to undertake an activity or assignment on the basis of Article 13 of Annex VIII, paragraph 2, of the Staff Regulations, the Appointing Authority must consider whether such an assignment or activity is consistent with the original reasons for granting an invalidity allowance or pension.

#### **Chapter 4 Other Servants**

#### **Article 20**

1. The present Decision shall apply by analogy to members of the temporary staff and of the contract staff.

Only those contract staff who have had access to sensitive information shall be subject to the obligations laid down in Article 17(2) hereof. Contract staff shall be informed by their service whether Article 17(2) hereof is applicable on leaving the service.

2. Former temporary, auxiliary and contract staff in receipt of an unemployment allowance may not be given an assignment of any kind, paid or unpaid, by the Agency for as long as the allowance is paid.

#### **Chapter 5 Final provisions**

#### **Article 21**







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

Done at Ljubljana, on 5 December 2012

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

A handwritten signature in blue ink, located in the bottom right corner of the page. The signature is stylized and appears to be the name 'Piotr Woźniak'.

**Annex**

**AUTHORISATION TO ENGAGE IN AN OUTSIDE ACTIVITY,  
 WHETHER GAINFUL OR NOT, OR TO CARRY OUT AN ASSIGNMENT  
 OUTSIDE THE UNION**

(Article 12b of the Staff Regulations and Articles 11, 54 and 81 of the CEOS)

Name: First name: Personnel N°:	Function Group/Grade: Office: ☎:	Department:
---------------------------------------	--	-------------

- Status:**  Temporary agent  
 Contract agent  
 Seconded National Expert

Date of expiry of the contract: .....

Description of duties at the Agency:

Activity at the Agency is:  full-time  part-time

**PLANNED ACTIVITY**

Name of the organisation in which activity is to be exercised:

Address of the organisation:

Street:

Post Code and City:

Country:

Telephone:

Website:

**a) Type of activity:**

- Teaching<sup>3</sup>     Conference     Seminar     Other:.....

Description of the activity:

.....  
 .....

Place in which the activity is to be carried out:

.....

<sup>3</sup> Based on article 6 of the Agency decision on outside activities and assignments, teaching and other educational activities, paid or unpaid, are in principle allowed for one year, provided that their duration is not exceeding 100 hours per academic year.



In the case of an educational activity: (total number of teaching hours to be worked):  
 .....hours/week or ..... hours/month.

**b) The activity is to be carried out:**

1. outside normal working hours:  evening  Saturday  Sunday  
 2. during normal working hours (give dates and times):

.....

For 1 and 2, indicate the period: from ...../...../.....to  
 ...../...../.....

**c) Possible conflict of interests:**

1. Does the organisation have a financial and/or a contractual relationship with ACER?  
 YES  NO

If YES, give details (on a separate sheet of paper if necessary)

2. Is there any direct and/or indirect link between the activity and your duties at ACER?  
 YES  NO

If YES, give details (on a separate sheet of paper if necessary)

**d) Absences:**

The activity will entail a planned/likely total absence of ..... working day(s),  
 including travel time.

- Will this absence be covered in its entirety by a request for annual leave?  
 YES  NO

(if NO) special leave of ..... day(s) is requested.<sup>4</sup>

**e) Financial arrangements:**

Will remuneration or compensation be provided for:

1. the activity itself? (total net amount)  
 .....
2. travel expenses?  YES  NO

<sup>4</sup> The Appointing Authority may grant special leave to cover half the days in question within 12 days a year provided that the activity is unpaid and is of interest for ACER.





(if YES, the proposed amount).....  
 3. subsistence expenses?  YES  NO  
 (if YES, the proposed amount).....

**f) Publication:**

Will the above activity result in a publication?  
 YES  NO

If YES, give details of the financial arrangements:

**Reference texts:**

Decision AB n° 23/2012 of 5 December 2012

Date: ..... Signature applicant: .....

**Name of staff member:**

**OPINION OF HIERARCHICAL SUPERIOR**

Head of Department or Director (name): .....

Is the activity of benefit to ACER and/or the Union?  
 Yes  No

If not, explain why: .....

.....

.....

Favourable                    }  
 Favourable with restrictions                    }  
 Unfavourable                    } as regards the requested application for outside activity  
*(NB: the maximum annual ceiling for net remuneration for all external activities combined is 4.500 €)*

If favourable with restrictions, give the restrictions and the reasons:  
 .....  
 .....

If unfavourable, give reasons: .....

.....

Date: ..... Signature: .....



**DECISION OF APPOINTING AUTHORITY**

Name: ..... Function: .....

Is the activity of benefit to ACER and/or the Union?  
 Yes       No

If not, explain why: .....

.....

.....

The requested external activity is:

authorised as requested from ...../...../..... to  
 ...../...../.....

authorised with the following restrictions: ..... from  
 ...../...../..... to ...../...../.....

refused for the following reasons:.....

.....

.....

*(NB: authorised staff will declare their revenues so that ACER can check that the maximum annual ceiling for net remuneration for all external activities combined is 4.500 €)*

Special leave is granted for ..... day(s):  YES     NO

Date: ..... Signature: .....

**Original of decision to be sent to: ACER HR**  
*(a copy of the decision will be sent to the applicant)*

