

8th ACER Administrative Board meeting
Tuesday, 13 March 2012, 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. Phillippe Guillard, Member

Mr. Alfonso Gonzalez Finat, Alternate

Mr. Stefan Tostmann, Member and with proxy for Mr. Philip Lowe, Member

Mr. Jorge Vasconcelos, Alternate

Mr. Alfonso Gonzalez Finat, Alternate

Mr. Luis Martin Oar, Observer

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

Mr. Alberto Pototschnig, Director of ACER.

Mr. Artur Carvalho, Observer

Main conclusions of the meeting

- 1.) The AB unanimously re-appointed Piotr Woźniak and Razvan Nicolescu respectively as Chair and Vice-Chair of the Administrative Board for a period of two years, following a proposal by one of its Members.
- 2.) The Board decided to amend the 2012 Work programme at its next meeting and update it in line with the decisions of the Planning Group on the framework guidelines and the network codes.
- 3.) The Board adopted the budget estimate with 6 votes in favour and 2 against. A written procedure for a decision with expanded recitals and the inclusion of the BoR reasoned opinion on the 2013 budget estimate will be launched. The urgency for the written procedure was also declared (ANNEX 1).
- 4.) The Board adopted the Multi-annual Staff Policy Plan 2013 – 2015 (ANNEX 2).
- 5.) The Board adopted the Decision AB no. 5/2012 concerning the terms and conditions for internal investigations in relations to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest (ANNEX 3).
- 6.) The Board adopted Decision AB no. 6/2012 on staff training (ANNEX 4).
- 7.) The Board adopted Decision AB no. 7/2012 on temporary occupation of management posts (ANNEX 5).
- 8.) The AB Chair will decide whether an earlier meeting would need to be convened for the adoption of the Annual Activity Report or the report could be adopted via the written procedure.. In the later case the next AB meetings will be held on 20. June, 5. September and 5. December, from 9.00-12.30.

Opening

The Chairman welcomed the appointments of the new AB members and alternates by the European Commission, and the announced appointments of the new AB members by the European Parliament.

1. Approval of the Agenda

The following agenda of the 8th ACER Administrative Board meeting was approved:

8th ACER Administrative Board meeting

Tuesday, 13 March 2012, 13.00 – 17.30

ACER, Trg republike 3, 1000 Ljubljana

AGENDA

| Agenda Topics | Accompanying documents | Rapporteur |
|---|--------------------------------|--------------------------------|
| Opening | | |
| 1. Approval of the agenda | Doc 1 for approval | AB Chair |
| 2. Minutes of the 7th Administrative Board meeting | Doc 2 for approval | AB Chair |
| 3. Signing of a written declaration of commitment and a written declaration of interests in line with Article 12(7) of the Agency Regulation | Doc 3 for individual signature | AB Chair |
| 4. Appointment of the Chairman and the Vice Chairman | / | AB Chair |
| Reporting on developments | | |
| 5. Report on the written procedure | Oral update | ACER Director |
| 6. Report on ACER developments (including recruitment, establishment of Working Groups, monitoring ex art. 11 Regulation (EC) No 713/2009) and on the activities of the Board of Regulators | Oral update | ACER Director and BoR Chair |
| 7. Report on progress in the implementation of REMIT | Oral update | ACER Director BoR Chair |

| Agenda Topics | Accompanying documents | Rapporteur |
|---|---|---------------|
| 8. NRAs' support in the implementation of REMIT | Oral update | ACER Director |
| 9. Internal procedure on the adoption of the monitoring report | Doc 4 for consideration | ACER Director |
| 10. Staff committee elections | Doc 5 for information | |
| General ACER work | | |
| 11. Preliminary Tasks for ACER regarding the Energy Infrastructure Package | Doc 6 for consideration | ACER Director |
| 12. Preliminary Draft Budget for the 2013 Financial Year | Doc 7 for consideration | ACER Director |
| 13. Estimate of revenue and expenditure of the Agency for the 2013 Financial Year | Doc 8 for decision | ACER Director |
| 14. Multi-annual Staff Policy Plan 2013 – 2015 | Doc 9 for adoption | ACER Director |
| 15. New ACER Premises - Information on the results of the market prospection | Oral update | ACER Director |
| 16. 1st Annual Activity Report- process | Oral update | ACER Director |
| <p>17. Accession of the Agency for the Cooperation of Energy Regulators (ACER) to the International Agreement of 25 May 1999, concerning internal investigations by the European Anti-Fraud Office</p> <p>Decision AB n° [...] /2012 concerning the terms and conditions for internal investigations in relations to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest</p> | <p>Doc 10 and Doc 11 for consideration</p> <p>Doc 12 for adoption</p> | ACER Director |
| Administration | | |
| 18. Decision AB no. [...] /2012 on staff training | Doc 13 for decision | ACER Director |
| 19. Decision AB no. [...] /2012 on temporary occupation of management posts | Doc 14 for decision | ACER Director |

| Agenda Topics | Accompanying documents | Rapporteur |
|---|---------------------------------------|---------------------------|
| 20. Updated annex to the decision AB no 08/2010 | Doc 15 for agreement | ACER Director |
| 21. AOB 1 st anniversary of ACER Next meetings | Oral update Doc 16 for information | ACER Director AB Chair |

2. Minutes of the 7th Administrative Board meeting

The Commission representative suggested that the text of AB decision 34-2011 on the outside activities of the Director is included in the minutes that were going to be published. One AB member made a minor amendment to his previous written amendment.

Action: The minutes of the 7th Administrative Board meeting were approved with the inclusion of the text of AB decision 34-2011 on the outside activities of the Director.

3. Signing of a written declaration of commitment and a written declaration of interests in line with Article 12(7) of the Agency Regulation

All members and alternates present signed the declarations.

4. Appointment of the Chairman and the Vice Chairman

Action: The AB unanimously re-appointed Piotr Woźniak and Razvan Nicolescu respectively as Chair and Vice-Chair of the Administrative Board for a period of two years, following a proposal by one of its Members.

A press release on the appointment was issued on the ACER webpage.

5. Report on the written procedure

The Chairman reported that there was only one written procedure since the last meeting of the Board, for the approval of the 2012 Budget of the Agency. The Chairman also reported that, by the closing date on December 14th, 2011, no objection was raised to the proposed decision. Therefore, Decision AB n° 35/2011 on the adoption of the 2012 Budget was adopted on 14 December 2011.

6. Report on ACER developments (including recruitment, establishment of Working Groups, monitoring ex art. 11 Regulation (EC) No 713/2009) and on the activities of the Board of Regulators

The Director provided an overview of the process regarding the framework guidelines and network codes. For electricity, the framework guideline on Balancing is expected to be issued by ACER in Q2/Q3 of 2012. 4 electricity network codes are expected to be submitted to ACER in 2012. For Gas, the framework guideline on interoperability rules is expected to be ready by 31 July 2012 and the framework guideline on Harmonised Transmission Tariffs Rules is expected to be ready by Q3 2012. Moreover, 1 network code on Capacity Allocation Mechanism was already submitted to ACER on 6 March 2012, and another one on balancing is expected for Q4 of 2012. The Director also provided an overview of ACER opinions in 2011. In 2012 there was one issued on ENTSOG Work programme on 24 January 2012. Moreover, on 22 February 2012 the Agency also provided a recommendation on Article 2(1)(n) of the Commission proposal for a Directive of the EP and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the EP and of the Council (COM(2011) 656 final) regarding the regulatory treatment of Financial Transmission Rights.

As regards administrative issues, the Director outlined the envisaged and confirmed recruitment targets for 2012 and 2013, based on the Third Energy package and the Regulation on Wholesale Energy Market Integrity and Transparency, as well as plans for the proposed regulation on guidelines for trans-European energy infrastructure, as tabled by the EC on 19 October 2011. He presented the open vacancy notices, the nationality composition of ACER Staff (16 different nationalities present at ACER). He explained that the entry into force of the TEN-E guidelines is expected on 1 January 2013, whereas the resources for staffing are contained in the Connecting Europe Facility, which is expected to come into effect on 1 January 2014 only. The EC, on the other hand, would wish that the Agency already started providing its opinion on the PCI list in 2012, before the adoption of the Regulation and the availability of the resources.

He informed about the visit of the Internal Audit Service on 6-10 February 2012, about the planned visit of the European Court of Auditors to the Agency on 16 to 20 April 2012, the elections of the Staff Committee on 19 January 2012, and the appointment of the Joint Appraisal and Reclassification

Committee on 24 February 2012. He mentioned that, in addition to the existing Gas and Electricity Working Groups, on 1 February 2012 2 new ACER Working Groups (WGs) were established - the Market Integrity and Transparency (MIT) WG and the Implementation, Monitoring and Procedures (IMP) WG. In addition, new rules for the functioning of Working groups were adopted by Director decision 2012-06 of 6 February 2012.

The Director also reported that the Board of Appeal adopted its Rules of procedure on 1 December 2011. The rules envisage a registry and a registrar to provide record-keeping and secretarial support that would need to be outsourced. As the cost of the Board of Appeal depends on the number and complexity of the cases it receives, these are difficult to be evaluated and the current budget of the Agency for this purpose is limited. In this context, the Director referred to the Agency's tasks as regards the adoption of Individual decisions on terms and conditions for access to and operational security of cross-border infrastructure and the decisions on exemptions for cross-border infrastructure, for which the Agency's costs could become high and unpredictable. According to Article 21(1) of regulation (EC) No 713/2009 the revenues of the Agency shall also involve the fees paid to the Agency pursuant to article 22. In line with Article 21(1) the Director has written to the Commission requesting that the fees are set.

On monitoring activities he informed that a joint ACER-CEER market monitoring report (pursuant to Article 11 of Regulation (EC) No 713/2009) is planned for November 2012. He presented the main monitoring indicators and informed about the adoption process. The draft will be ready in October and will be submitted to the BoR in November for information.

The Director informed the AB on the meeting of the Planning Group that took place on 29 February, which had decided that in terms of the framework guidelines ACER should only wrap up the work already in the pipeline for this year (no work starting on new framework guidelines, whereas the Data exchange guideline would become part of the Interoperability guideline), and to work on the network codes that will be submitted to the Agency. In view of these changes he asked for the support regarding the amendment to the 2012 Work programme.

Lord Mogg, as the BoR Chair, underlined the significant contribution of NRA staff are involved in considering the proposal of the Commission on the Energy Infrastructure that was submitted to the Council and the European Parliament. With respect to REMIT, whilst the uncertainties remain with regard to future arrangements, Lord Mogg stressed that the respective responsibilities of ACER and CEER had been helpfully resolved. He also said that the CEER is looking at ways of aligning the dates of their work programme with that of ACER.

The AB Chairman congratulated the BoR on the progress.

Some discussion on the need to be consistent with the monitoring report of the Commission took place. The exact timing of the Commission's report was unclear.

Action: The Board decided to amend the 2012 Work programme at its next meeting and update it in line with the decisions of the Planning Group on the framework guidelines and network codes.

7. Report on progress in the implementation of REMIT

The Director presented the progress achieved on REMIT in 2011, especially the publication on 20 December 2011 of the Guidance on the application of the definitions set out in article 2 of REMIT and the Q&A paper and the Web application for notifications that is on-line since 28 December 2011. In the first quarter of 2012 ACER met a number of key players, produced a discussion paper on REMIT registration format which will be used for a public consultation ahead of the definition of the format by 28 June and announced that experts group for REMIT will be set up. He presented the timeline for the implementation of REMIT. Most activities depend on the Commission adopting the Implementing acts. ACER will be ready to go live the 2nd half of 2013. The main element of risk remains the 2013 budget, the complexity of the reporting and monitoring, and the complexity of the procurement process.

8. NRAs' support in the implementation of REMIT

Lord Mogg, in his capacity as BoR Chair, outlined the content of the interim report of the Ad-hoc Group which had been tasked with assessing the NRAs expected activities under REMIT, including the possible support which they may be able to provide to the Agency. He explained that some NRAs are able to do the monitoring themselves while many others will count on to the Agency for support. For some countries it is still undecided as to which authority will be in charge for REMIT. In summary, it cannot be definitively stated that the NRAs will be in a position to support the Agency. The real challenge remains operational (software) and in this the risk is the Agency's general reputation (if it does not deliver).

A discussion on the procurement of the software took place. The issue of available resources (financial and staff) remains.

9. Internal procedure on the adoption of the monitoring report

This point was covered under 6. Report on ACER developments.

10. Staff committee elections

Noted without discussion.

11. Preliminary Tasks for ACER regarding the Energy Infrastructure Package

On the basis of the draft EC proposal on EIP that is subject to changes during the legislative process, the Director presented the expected Agency's tasks. The main activity will be the ACER Opinion on the PCI list, opinion on the cost-benefit methodology, opinion on incentives for PCIs, implementation and monitoring, decisions on cost allocation in case the NRAs cannot agree, and the eligibility of projects for community financing.

The Commission representative said that they would suggest to have made a proposal that the budgetary authority to address also the question looks into resources if new tasks are added for ACER in the adopted legislation.

12. Preliminary Draft Budget for the 2013 Financial Year

The Director presented the draft Budget for 2013, highlighting the differences with respect to the 2012 budget. These differences mainly arise from the additional resources needed for new tasks under REMIT and the new ACER premises, given the Slovenian government is only covering the cost of the existing premises until 31 January 2013.

The Commission representative said that the budget was not disproportionate. However, as of 2013 the Commission and the decentralized agencies, inter alia ACER, should already limit the growth of resources. The Commission is clear that the reduced budget also applies to the regulatory agencies. In the discussions it is recognised that REMIT involves new tasks (even though there is still some disagreement on IT, where the presented numbers are higher than initially envisaged). The political decision on the Commission draft budget will be taken on 25 April. As regards the rent for the new premises, the Commission is of the opinion that Title 1 and Title 2 have always included the budget for the premises.

The Director disagreed with this latter point, since, in the Commission's forecasts, Titles I and II were basically unchanged between 2012 and 2013, and therefore it is difficult to see how the cost for premises can be considered as included in the 2013 budget (unless it was already included in the 2012 budget, when the Agency has no requirement for it). Moreover, the Commission's estimates do not take into account the larger proportion of SNEs in the Agency's staff (1/4 of the Agency staff).

The BoR Chair supported the Director and underlined the huge potential reputational risk for the EU and the Agency, should the budget for REMIT not be sufficient. The 1 percent cut should not be applied to the ACER, given its new and anticipated tasks.

A suggestion was made to prepare a solid political argument for the proposed estimate of the budget.

Action: The Board adopted the budget estimate with 6 votes in favour and 2 against. A written procedure for a decision with expanded recitals and the inclusion of the BoR reasoned opinion on the 2013 budget estimate would follow. The urgency for the written procedure was also declared.

13. Estimate of revenue and expenditure of the Agency for the 2013 Financial Year

Same as previous point.

14. Multi-annual Staff Policy Plan 2013 – 2015

Action: The Board adopted the Multi-annual Staff Policy Plan 2013 – 2015 (ANNEX 1).

15. New ACER Premises - Information on the results of the market prospection

The Director summarised the information about the results of the recently conducted market research by the Agency. 10 replies were received. A tender procedure will soon be launched in order to select the contractor by October 2012.

The BoR Chair underlined that the new premises should be attractive and accessible to staff working at the Agency as well as to experts attending meetings in Ljubljana.

16. 1st Annual Activity Report- process

The Director informed about the process of the adoption of ACER first Annual Activity report. A discussion took place whether the next AB meeting would need to take place earlier in June in order to adopt the Annual Activity report by 15 June.

17. Accession of the Agency for the Cooperation of Energy Regulators (ACER) to the International Agreement of 25 May

1999, concerning internal investigations by the European Anti-Fraud Office

The Director informed the AB that the Agency was approached by OLAF and asked to accede to the interinstitutional agreement of 25 May 1999, concerning internal investigations by the European Anti-Fraud Office, to which the Board needs to give its consent.

Action: The Board adopted the Decision AB no. 5/2012 concerning the terms and conditions for internal investigations in relations to the prevention of fraud, corruption and any illegal activity detrimental to the Union's interest (ANNEX2).

18. Decision AB no. [...] /2012 on staff training

The Director highlighted that the Board had considered this decision in the past, now it has come back from the inter-service consultations (ISC).

Action: The Board adopted Decision AB no. 6/2012 on staff training (ANNEX3).

19. Decision AB no. [...] /2012 on temporary occupation of management posts

The Director highlighted that the Board had considered this decision in the past, now it has come back from the inter-service consultations (ISC).

Action: The Board adopted Decision no. 7/2012 on temporary occupation of management posts (ANNEX4).

20. Updated annex to the decision AB no 08/2010

The Director explained that this is the update of the contact point only.

Action: The Board adopted the updated annex to the decision AB no 08/2010.

21. AOB

Next meetings

The AB Chair will decide on 23 May, when he will receive the draft Annual Activity report, whether a meeting would need to be convened in early June (5. or 12). If not, the next AB meetings will be held on 20. June, 5. September and 5. December, all from 9.00-12.30, as previously envisaged.

The Director informed that the Regional Initiatives Status Review was going to be published the next day.

Done in Ljubljana on 20 June 2012

For the Administrative Board:

Signed

Razvan Nicolescu

Vice-Chairman of the ACER Administrative Board

ANNEX 1: omissis

ANNEX 2: omissis

ANNEX 3: DECISION AB no 5/2012

CONCERNING THE TERMS AND CONDITIONS FOR INTERNAL INVESTIGATIONS IN RELATION TO THE PREVENTION OF FRAUD, CORRUPTION AND ANY ILLEGAL ACTIVITY DETRIMENTAL TO THE COMMUNITIES' INTERESTS

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 the Agency for the Cooperation of Energy Regulators (hereafter referred to as the "Agency"), and in particular to Article 26 (2) thereof;

Whereas:

(1) Regulation (EC) No 1073/1999 of the European Parliament and of the Council¹ and Council Regulation (Euratom) No 1074/1999² concerning investigations conducted by the European Anti-fraud Office provide that the Office is to initiate and conduct administrative investigations within the institutions, bodies and offices and agencies established by or on the basis of the EC Treaty or the Euratom Treaty;

(2) The responsibility of the European Anti-fraud Office as established by the Commission extends beyond the protection of financial interests to include all activities relating to the need to safeguard Community interests against irregular conduct liable to give rise to administrative or criminal proceedings;

(3) The scope of the fight against fraud should be broadened and its effectiveness enhanced by exploiting existing expertise in the area of administrative investigations;

¹ OJ L 136, 31.5.1999, p. 1.

² OJ L 136, 31.5.1999, p. 8.

(4) Therefore, on the basis of their administrative autonomy, all the institutions, bodies and offices and agencies should entrust to the Office the task of conducting internal administrative investigations with a view to bringing to light serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials and servants of the Communities, as referred to in Articles 11, 12, second and third paragraphs, 13, 14, 16 and 17, first paragraph, of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter referred to as 'the Staff Regulations'), detrimental to the interests of those Communities and liable to result in disciplinary or, in appropriate cases, criminal proceedings, or serious misconduct, as referred to in Article 22 of the Staff Regulations, or a failure to comply with the analogous obligations of the Members, managers or members of staff of the institutions, bodies and offices and agencies of the Communities not subject to the Staff Regulations;

(5) Such investigations should be conducted in full compliance with the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, of the texts implementing them and the Staff Regulations;

(6) Such investigations should be carried out under equivalent conditions in all the Community institutions, bodies and offices and agencies; assignment of this task to the Office should not affect the responsibilities of the institutions, bodies, offices or agencies themselves and should in no way reduce the legal protection of the persons concerned;

(7) Pending the amendment of the Staff Regulations, practical arrangements should be laid down stipulating how the members of the institutions and bodies, the managers of the offices and agencies and the officials and servants of the institutions, bodies and offices and agencies are to cooperate in the smooth operation of the internal investigations,

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with the Office

1. The Director of the Agency, members of the Agency's bodies, any servant of the Agency and members of staff not subject to the Staff Regulations shall be required to cooperate fully with the Office's agents and to lend any assistance required to the investigation. With that aim in view, they shall supply the Office's agents with all useful information and explanations.

2. Without prejudice to the relevant provisions of the Treaties establishing the European Communities, in particular the Protocol on privileges and immunities, and of the texts implementing them, the Director of the Agency, members of the Agency's bodies, any servant of the Agency and members of staff not subject to the Staff Regulations shall cooperate fully with the Office.

Article 2

Duty to supply information

1. Any servant of the Agency, member of the Agency's bodies and member of staff not subject to the Staff Regulations who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Communities, or of serious situations relating to the discharge of professional duties which may constitute a failure to comply with the obligations of officials or servants of the Communities liable to result in disciplinary or, in appropriate cases, criminal proceedings, or a failure to comply with the analogous obligations of the members, managers or members of staff not subject to the Staff Regulations, shall inform without delay his manager or the Director or the Chairman of the Administrative Board or, if he considers it useful, the Office directly.
2. The Chairman of the Administrative Board, the Director or the managers of the Agency shall transmit without delay to the Office any evidence of which they are aware from which the existence of irregularities as referred to in the first paragraph may be presumed.
3. Servants of the Agency, managers, members of the Agency's bodies, or members of staff not subject to the Staff Regulations must in no way suffer inequitable or discriminatory treatment as a result of having communicated the information referred to in the first and second paragraphs.

Article 3

Assistance from the security office

1. At the request of the Director of the Office, the Agency's Local Informatics Security Officer (LISO) and deputy LISO shall assist the Office in the practical conduct of investigations.

Article 4

Informing the interested party

1. Where the possible implication of a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations emerges, the interested party shall be informed rapidly as long as this would not be harmful to the investigation. In any event, conclusions referring by name to a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations may not be drawn once the investigation has been completed without

the interested party's having been enabled to express his views on all the facts which concern him.

2. In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations to give his views may be deferred in agreement with the Chairman of the Administrative Board or the Director.

Article 5

Information on the closing of the investigation with no further action taken

1. If, following an internal investigation, no case can be made out against a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations against whom allegations have been made, the internal investigation concerning him shall be closed, with no further action taken, by decision of the Director of the Office, who shall inform the interested party in writing.

Article 6

Waiver of immunity

1. Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of a servant of the Agency, member of the Agency's bodies, or member of staff not subject to the Staff Regulations concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director of the Office for his opinion. If a request for waiver of immunity concerns a member of the Agency, the Office shall be informed.

Article 7

Effective date

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

Done at Ljubljana on 13 March 2012

For the Administrative Board:

Piotr Woźniak
Chairman of the ACER Administrative Board

ANNEX 4:

DECISION AB n° 06/2012

ON STAFF TRAINING

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 the Agency for the Cooperation of Energy Regulators (hereafter referred to as “ACER Regulation” and “ACER”), in particular Article 28(2), thereof;

HAVING REGARD to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereafter “CEOS”), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, and in particular Article 24 (a) thereto;

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

Whereas,

- (1) ACER needs to establish a training scheme for the systematic development of knowledge, understanding and skills for its staff and to encourage development of professional and personal potentials.
- (2) ACER staff is the main asset and investing in staff training is essential for the continued success of the Agency. Organisational excellence begins with recruiting the right people, but rapidly requires their further training and development.
- (3) It is essential that staff who work at ACER are provided with sustained and accessible means of adding to their knowledge and strengthening their skills.

HAS DECIDED AS FOLLOWS:

Section 1 – General Guiding Principles and Objectives

Article 1 ***Guiding principles***

Staff training at ACER shall be guided by the following main principles³:

(a) Learning is both a right and a duty for all persons working at ACER, regardless of their assigned functions or their place of employment.

ACER can achieve its goals better if its staff learns and develops continuously. In a changing world, life-long learning is essential.

(b) Training is an integral part of ACER's human resource policy and serves the interests of the individual as well as of ACER. Staff training shall be managed as part of the overall human resource policy of ACER.

(c) Responsibility for training is shared between the individual and ACER. For training to be effective there must be a close and active collaboration between staff members, the Human Resources (HR) section and management.

(d) Staff training is an investment which shall generate a return in terms of better achievement of ACER's goals. Thus, ACER will ensure, in line with its overall budget and development policy, that adequate resources are invested in staff training and will expect a return on this investment in terms of better achievement of ACER's goals.

(e) Training shall promote inclusiveness and strengthen the sense of belonging of each and every person working in ACER. The present Decision shall apply to all staff working at ACER, covered by the Staff Regulations.

(f) Training shall be managed by ACER in such a way as to contribute actively to the process of staff development, but also to effectively reaching ACER's objectives.

(g) Training shall always take account of and promote equal opportunities between women and men. Equal opportunities will be an essential component of all management development programmes and other training provisions as appropriate.

(h) Language learning shall also be encouraged at ACER.

³ Commission-wide principles

(i) ACER will give extra priority to the language courses for staff members who have to comply with the third language requirement (Article 45(2) of the Staff Regulations) for their first reclassification.

Article 2
Objectives

(a) Staff training of ACER employees shall aim at the fundamental objective to expand and improve individuals' competencies so that each staff member can contribute optimally to the achievement of ACER's goals.

(b) At the individual level, training shall serve to improve professional effectiveness and contribute to every staff member's sense of fulfilment, belonging and commitment at the workplace. By developing relevant knowledge, skills and attitudes, training shall further help individuals to develop professionally and make desired career moves.

(c) At organisational level, training shall allow for building synergies across ACER, creating a strong institutional structure, establishing managerial excellence, assuring quality and rallying staff in pursuit of the objectives set by ACER.

Article 3
Staff Time Devoted to Training

An average of 10 working days shall be devoted to training activities per staff member per annum, comprising general training (courses, conferences, workshops, seminars, e-learning courses, etc.), technical and in-house trainings, language and other less formal training and development (coaching, mentoring, job shadowing, etc.).

Working days, dedicated to training, shall be initially discussed with and approved by the employee hierarchical supervisor and shall correspond to the employee's normal duties as described in his/her job description. Specialized training shall always respect the initially identified needs and serve the interest of both the service and the individual.

Section 2 - General Applicable Rules for Training Enrolment

Article 4

Application Procedure for trainings, covered by ACER⁴

The following steps shall be respected with regards to training and development activities:

4.1. Identification of Training Needs

Any identified training need shall, in the first place, be discussed between the staff member and his/her hierarchical supervisor. This shall be done through a specifically dedicated dialogue between the employee and his/her superior at the time of the annual appraisal. To that end, ACER maintains a Learning and Development Framework, which will be reviewed annually.

4.2. Receipt of Approval

All staff training and development activities, supported by ACER, have to receive the hierarchical supervisor's prior approval. Only upon receipt of approval, the staff member is allowed to search for appropriate training options to meet those needs. Trainings shall be related to the staff member typical responsibilities or to the identified need for undertaking new tasks and/or career development.

4.3. Training Request Submission

The selected course/training shall be communicated to the hierarchical supervisor to receive a prior authorisation for enrolment. The form 'Training request', annexed to this Decision, shall be used for this purpose.

4.4. Enrolment in Trainings

After approval has been granted, the employee is allowed to enrol in the course and shall prepare a mission for participation in the training as soon as possible. This process has to take place, if possible, at least 3-4 weeks before the start date of the training.

4.5. Training Report

For all externally provided trainings, supported by ACER (except for language training), staff members shall be obliged to submit a 'Training report', providing the following general information: training objectives, scope and schedule; results from the training undertaken; added value to the employee's immediate responsibilities.

⁴ For all training initiatives, supported by ACER, the following procedure shall be strictly respected. Otherwise, all staff members have the right to choose and enrol for courses, which they cover themselves, given those do not affect their typical responsibilities and availability at work, unless other conditions apply.

4.6. Priorities

ACER aims at meeting all properly identified training needs without undue delay. Where limited resources do not allow all identified training needs to be met within a given timeframe, priorities shall be assigned as follows:

1. First priority shall be given to the needs in the strategic interest of ACER, as identified both by senior management, the Annual Work Programme and the HR section.
2. Second priority shall be accorded to the needs which are primarily at the level of the respective Departments.
3. Third priority shall be given to training activities stemming primarily from personal interests in the wider organisational context.

Section 3 – Specific Responsibilities

Article 5

ACER Director and Heads of Departments

ACER Director and Heads of the respective Departments shall, within their areas of responsibility:

- (a) Ensure effective implementation of the present Decision and ACER's Learning and Development Framework.
- (b) Put mechanisms in place to manage trainings of ACER staff. These mechanisms shall include provisions for the approval of all training activities to be undertaken by ACER staff and to ensure compliance with both ACER's needs and the individual training needs.
- (c) Evaluate the effectiveness of training and ensure that it contributes both for the effective implementation of the individual tasks in line with ACER's objectives, and for the employee individual career development.

Article 6

Hierarchical Supervisors

All hierarchical supervisors (i.e. line managers) shall, within their areas of responsibility:

- (a) Implement the current Decision in their units/services.

(b) Identify the needs of their staff, taking into account ACER's Learning and Development Framework.

(c) Keep the HR section informed of the needs as identified and take all the necessary arrangements to ensure that the targets are achieved.

(d) Ensure that action is taken to meet the identified needs; further to approving proposals for appropriate training activities, managers shall ensure that necessary practical arrangements are made to enable staff members concerned to participate fully in the approved activities – including arranging cover for the absent staff member.

(e) Organise informal and job-based/in-house training activities, such as coaching and mentoring of new staff members, to complement the more formal activities. Such in-house training activities shall contribute to the better understanding of all internal processes and procedures within ACER and to better compliance with the applicable procedures and regulations.

(f) Evaluate the effectiveness of training and the results achieved.

Article 7

ACER Human Resources Section

ACER HR section shall, within their overall responsibility for staff administration, training and development:

(a) Manage the overall implementation of this Decision, communicate recommendations and instructions for its proper application;

(b) Set the policy context and priorities for training in ACER within its Learning and Development Framework;

(c) Cooperate with management (hierarchical supervisors) in identifying training needs at the level of individual staff members;

(d) Support individual staff members and hierarchical supervisors in identifying appropriate training activities to meet the identified needs;

(e) Approve all training activities for ACER staff to be supported by ACER;

(f) Organise and coordinate internal training actions - organise necessary training activities centrally, where this is the most (cost) effective approach and/or where this approach is necessary in order to ensure access to the training by staff who need it;

- (g) Manage ACER training budget, together with the Head of Administration and Finance section;
- (h) Monitor progress and keep staff accountable for trainings carried out;
- (i) Where staff is underperforming, support hierarchical supervisors in identifying appropriate training actions and, if required, establishing the appropriate measures;
- (j) Advise ACER staff on training and staff development issues in general;
- (k) Maintain a record of all staff training activities.

Article 8
Individual Staff Members

Staff members are encouraged to play an active role in promoting their own training. Specifically, once a training need has been identified in respect of the immediate individual staff member duties, the person concerned shall normally present one or more proposals for specific training actions to meet the identified need. Those should always be discussed with and approved by the employee's hierarchical supervisor and the HR section before any further action is undertaken.

Thus, individual staff member has the responsibility to:

- (a) Work actively with his/her hierarchical supervisors to identify his/her training needs.
- (b) Take action to meet the identified training needs.
- (c) Apply new learning in the workplace.
- (d) Follow strictly the requirements and provisions of the present Decision.

Section 4 - Other provisions

Article 9

General Provisions

- (1) Training serves the interests of ACER, as well as the individual and, accordingly, the training function shall be managed by ACER in such a way as to contribute actively to the process of individual development.
- (2) Where a training or development need is part of identified underperformance, the hierarchical supervisor and the HR section may designate certain activities, such as attendance of training courses and seminars, as compulsory for the staff member concerned.
- (3) Once a training proposal presented by a staff member has been approved by both the hierarchical supervisor and the HR section, participation in the designated training activity shall be considered as a work requirement for the staff member concerned and undue hindrance shall not be placed in his/her way in participating in the said activity. Where, for whatever reason, a staff member has not been able to participate in whole or in part in a designated training activity, this fact, together with an explanation for not completing the training, shall be noted formally to their hierarchical supervisor and the HR section.
- (4) In the event of disagreement between an individual and her/his hierarchical supervisor concerning the proper implementation of a measure contained in the individual's Training Map, the final decision should be taken by ACER's Director, considering all general provisions of the current Decision, ACER's Learning and Development Framework and resources available.
- (5) ACER's Staff Committee shall play an active role in relation to ACER's Learning and Development Framework and activities. Furthermore, the Committee will provide the forum for addressing any issues arising in relation to the implementation of the terms of this Decision.
- (6) Care should be taken that all training activities take account of the professional and private life balance. Timing of courses undertaken should generally be within the normal working hours of ACER, except for the regular language courses. Where staff wishes to avail of training while on parental leave, this should be facilitated.

Article 10 *Mechanisms*

10.1. Identification of training needs and actions at ACER

HR staff will be centrally responsible for identifying training needs which lie in the interest of achieving ACER's goals. Account will be taken of:

- (a) Strategic reflection at the level of ACER; e.g. need for new skills and attitudes, better induction and management training.
- (b) Analysis of special trainings, involving professional skills and qualifications; e.g. accountancy, auditing, staff management, training, information technology.
- (c) Analysis of ACER functions and roles; e.g. appraisal techniques, selection interview techniques, coaching and mentoring skills, etc.

Based on these needs, the HR section will formulate recommendations and instructions, as appropriate, to the respective hierarchical supervisors and staff members, covering training activities in the interest of ACER.

10.2. Compulsory training and essential training

The HR section will, as appropriate, designate activities which:

1. Have a compulsory character; participation in these activities is mandatory;
2. Are essential pre-conditions for certain career steps, especially for access to designated posts, functions or promotion. Likewise, appointment to different specialist functions – e.g. HR posts, financial management posts – will be made dependant on participation in specific preparatory training courses.

10.3. ACER Learning and Development Framework

ACER Learning and Development Framework will constitute a set of standing instructions on training from top management to individual staff members. It will cover the full range of training needs, including needs stemming from personal interests of staff members. The framework will be updated by the HR section as required, but at least once per year.

10.4. Ensuring that action is coherent with strategy

The HR section will ensure that training activities within ACER are coherent with its Learning and Development Framework and Annual Work Programme objectives. The HR section will also have the responsibility for managing the budget for training at ACER, together with the Head of Administration and Finance section. Therefore, the HR section will

be involved in the approval of every proposal for training activities in compliance with the budget available. The HR section's approval shall mean that the proposal (a) is coherent with the overall policy and (b) represents value-for-money within the given budget.

Article 11

Link with the Performance Appraisal Report

(a) Dialogue between a staff member and his/her hierarchical supervisors to identify needs should be an on-going process but, in any event, shall take place in the context of preparing each staff member's Performance Appraisal Report.

(b) The outcome of each and every training dialogue between a staff member and hierarchical supervisors shall be recorded in two parts: a retrospective section, recording all training activities undertaken by the staff member, known as the **Training Passport** and a section, known as the **Training Map**, noting the staff member's current training needs including, if available, initial ideas on activities, such as attendance of courses or seminars, to meet the identified needs. On the occasion of preparing each staff member's Performance Appraisal Report, both the Training Passport and the Training Map shall be brought up to date and noted in the report.

Article 12

Entry into Force

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

Done in Ljubljana on 13 March 2012

For the Administrative Board:

Piotr Woźniak
Chairman of the Administrative Board

ANNEX 5: DECISION AB n° 07/2012

ON TEMPORARY OCCUPATION OF MANAGEMENT POSTS

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 the Agency for the Cooperation of Energy Regulators (hereafter referred to as “ACER Regulation” and “ACER”), in particular Article 28(2), thereof;

HAVING REGARD to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (hereafter “CEOS”), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, and in particular Article 7(2) of the Staff Regulations and Article 10 of the CEOS;

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

Whereas,

- (1) Rules should be laid down for the application of Article 7(2) of the Staff Regulations, which provides that the Appointing Authority may call upon temporary agent to occupy a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to replace a temporary agent who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave
- (2) Exceptionally and upon due justification, the Appointing Authority may decide to extend the temporary posting beyond one year, also in other cases than the ones explicitly provided for in the Staff Regulations, when it is considered that this is required in view of the interest of the service and necessary for guaranteeing fair treatment of the staff member concerned.
- (3) It is necessary to adopt rules on temporary postings on the basis of Article 7(2) of the Staff Regulations which should take into account in a more appropriate manner the need to recognise the efforts made by temporary agent to temporarily ensure the continuity of the service and the principle of equitable treatment.

- (4) Article 7(2) should apply only where the temporary agent is called upon to assume temporarily duties which entail responsibilities substantially greater than those involved in his/her own post. Only the difference in the level of responsibilities between non-management and management (not advisory)⁵ posts and between management posts of different levels can be considered as substantial for the purpose of applying Article 7(2) of the Staff Regulations.
- (5) The rationale of Article 7(2) is to grant to the temporary agent who takes up duties which entail responsibilities substantially greater than those involved in his/her own post for a substantial period a remuneration which corresponds to those greater responsibilities⁶.
- (6) It is necessary to ensure that Article 7(2) is applied in an appropriate manner in view of the career system, in which there is a high degree of separation of grade and duties, as confirmed by the Court of First Instance⁷.
- (7) Deputising arrangements are to be distinguished from temporary postings and are not covered by this Decision.

HAS DECIDED AS FOLLOWS:

Article 1

Posts to which temporary postings may be made

The main middle and senior management posts which a temporary agent may be called upon to occupy on a temporary basis shall be:

- Director post in grade AD 14 and equivalent;
- Head of Department posts in grades AD 9 to AD 12 and equivalent.

Article 2

Conditions for temporary postings

Temporary postings may be made:

- (1) where a new or vacant management post cannot be filled in the short term;

⁵ Middle and senior management functions as defined in the Decision AB No. 24/2011 On Middle Management Staff.

⁶ COJ, C 5/70, Prelle/Commission.

⁷ CFI, T-56/07P, Commission/Economidis.

- (2) to replace a temporary agent who is seconded to another post in the interests of the service, is called up for military service or is absent on protracted sick leave or for other reasons preventing him/her from exercising his function.

The above-mentioned situations shall, as a rule, involve periods lasting longer than three months. Only a full-time and uninterrupted absence of the job holder can give rise to a temporary posting.

Only established temporary agents who are not serving their probationary period can be called upon to temporarily occupy a post within the meaning of Article 7(2) of the Staff Regulations.

Article 3

Reference grade

For the purpose of calculating the differential allowance, the "reference grade" for a temporary posting will be fixed as follows:

- (1) As regards Director post and equivalent as defined in Article 1, the reference grade shall be grade AD 14.
- (2) As regards Head of Department posts and equivalent as defined in Article 1, the reference grade shall be as a rule⁸:
 - (a) where the post is published, the lowest grade in the range for which the post is published, grade AD 9 for the range AD 9 - AD 12;
 - (b) where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD 9 or as set by the Appointing Authority after consultation of the Head of the Department concerned or in case of unavailability the Head of the Administration Department.

Article 4

Differential allowance

From the beginning of the fourth month of a temporary posting, the temporary agent concerned may receive a differential allowance equal to the difference in current remuneration of the temporary agent and the remuneration according to the level of the temporary posting, as follows:

- (1) If the temporary agent is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of

⁸ Where the level of a post is fixed at a single grade, this grade is the reference grade for the purpose of calculating the differential allowance.

the temporary agent throughout the relevant period and the remuneration he/she would receive if he/she was promoted to the reference grade⁹.

- (2) In duly justified circumstances where the temporary agent is in one of the grades below the grade immediately below the reference grade, as the differential allowance cannot be calculated by analogy to a promotion, it shall be equal to the difference between the remuneration of the temporary agent throughout the relevant period and the remuneration he/she would receive if he/she was newly recruited in the reference grade. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
- (3) If the temporary agent is in a grade equal to or above the reference grade, except where the temporary agent already receives the benefit on the basis of his/her post of assignment, the remuneration of the temporary agent is increased according to Articles 44 and 46 of the Staff Regulations.

The increase in remuneration according to Articles 44 and 46 of the Staff Regulations will be calculated either on the basis of the grade of the temporary agent concerned, or on the basis of the reference grade of the post that the temporary agent temporarily occupies, depending on which option is the most favourable for the temporary agent concerned¹⁰.

Article 5

Management experience

Management experience acquired through a temporary posting shall be taken into account for eligibility purposes in the context of applications for management positions.

Article 6

Successive periods of temporary posting

Where the same temporary agent is the subject of two or more temporary postings in respect of the same functions and those postings are consecutive, the second temporary posting shall be considered as a continuation of the first and the differential allowance shall not be discontinued during the first three months of the second temporary posting.

For the purposes of this provision, a subsequent posting shall be considered to be consecutive if it begins no longer than three months after the end of the previous posting.

⁹ Taking account of the provision regarding non-cumulation, as provided in Conclusion 240/05 of the Heads of Administration (see Administrative Notice N° 48-2005), this remuneration will be increased according to Articles 44 and 46 of the Staff Regulations.

¹⁰ The amount of the benefit shall be calculated in accordance with the method laid down in Conclusion 240/05 of the Heads of Administration (see Administrative Notice n° 48-2005).

Article 7

Procedure for temporary postings

- (1) Where the conditions in Article 2 are met, the Head of the Department concerned or in case of unavailability the Head of the Administration Department may submit a proposal for a temporary posting, stating the reasons and providing all relevant information. The temporary posting is proposed to the Appointing Authority after the Human Resources section has examined the application.
- (2) The effective date of a temporary posting is fixed by the Appointing Authority in the temporary posting decision pursuant to Article 7(2), taking account of the proposal submitted by the Head of the Department concerned or the Head of the Administration Department.
- (3) Abolition of the post on which a temporary posting has been made as a result of an amendment to the organisation chart automatically entails termination of the temporary posting.

Article 8

Entry into Force

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

Done in Ljubljana on 13 March 2012

For the Administrative Board:

Piotr Woźniak
Chairman of the ACER Administrative Board