

**DECISION AB No [...] /2012**  
**OF THE ADMINISTRATIVE BOARD**  
**OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**  
**of [xx 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 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.

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

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

- (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:
  - 1 year where the staff member occupied a management function in the Agency,
  - 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).

**Comment [PM1]:** Although Article 17 is stated in Commission Decision C(2004)1597, the Staff Regulations do not contain an Article 17b. The Agency believes that the most appropriate reference is Article 17, as its second paragraph states that the official remains bound by the confidentiality clause also after leaving the service.



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 **day month** 2012

For the Administrative Board:

Piotr Woźniak

Chairman of the ACER Administrative Board

**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:
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- 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

(if YES, the proposed amount).....

<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.

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° [...] /2012 of day month 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? <input type="checkbox"/> Yes <input type="checkbox"/> No If not, explain why: ..... ..... .....  The requested external activity is: <input type="checkbox"/> authorised as requested from ...../...../..... to ...../...../..... <input type="checkbox"/> authorised with the following restrictions: ..... from ...../...../..... to ...../...../..... <input type="checkbox"/> refused for the following reasons: ..... ..... .....  <i>(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 €)</i>  Special leave is granted for ..... day(s): <input type="checkbox"/> YES <input type="checkbox"/> NO  Date: ..... Signature: .....
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**Original of decision to be sent to: ACER HR**  
*(a copy of the decision will be sent to the applicant)*