

DECISION AB n° 26/2011

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

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and
of the Council of 13 July 2009 establishing a European Agency for the Cooperation of
Energy Regulators (hereafter referred to as the "ACER Regulation" and "ACER"), and
in particular to Article 28(2) thereof;

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

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

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

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

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

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

Whereas:

- (1) The Director of ACER shall be subject to an annual appraisal, to a probationary period and to a management trial period. These various procedures aim to assess the achievements of the Director with regard to his ability, efficiency and conduct in the service;
- (2) The specific rules which govern the various appraisals, to which the Director shall be subject, determine the role of each actor and identify the various stages to be achieved in order to ensure the transparency of these procedures.

HAS DECIDED AS FOLLOWS:

I. Annual appraisal

Article 1

Scope

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

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

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

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

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

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

Article 2

Role of the various actors

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

2. In case of appeal, the appeal assessor makes the final decision on report of the Director after consultation of the Administrative Board.

Article 3

Designation of the reporting officers and the appeal assessor

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

2. The appeal assessor is the Chairperson of the Administrative Board.

Article 4

Carryover

1. A carryover consists of drawing up a report whose content is identical to the preceding annual appraisal report. The report to be drawn up is closed if the Director and the reporting officers agree on the carryover, without it being necessary to follow the procedure set out in Article 6 hereof.

2. The carryover is authorised if there has been no significant change in the efficiency, competencies and/or conduct in the service of the Director.

3. In case of a carryover, a formal dialogue which covers the objectives set up and the training plan has to be organised between the reporting officers and the Director in accordance with Article 6(3) hereof. An annual appraisal report cannot be carried over more than once.

Article 5

Contents and form of the performance appraisal report

1. The appraisal report shall contain comments on efficiency, competencies and conduct in the service of the Director.

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

Article 6

Appraisal procedure

1. Preferably, the annual appraisal takes place during the first semester of the year following the reference period.

2. The Director establishes, within ten working days after the reporting officers' request, a self-assessment which is incorporated into the performance appraisal report.

3. At the latest ten working days after the self-assessment is communicated by the Director, the reporting officers and the Director hold a formal dialogue. If the Director refuses to finalise his self-assessment within the required time, the reporting officers can decide to hold the dialogue when the deadline referred to in paragraph 2 has expired.

The dialogue covers the following elements:

a) the reporting officers examine the Director's efficiency based on the fulfilment of objectives and the implementing of the agency work programme, adopted each year by the agency, the competencies shown and the conduct in the service of the Director, for the reference period.

b) the Director and the reporting officers set the objectives for the following reference period and, - if necessary-, a training plan which takes into account the objectives in relation to the agency annual work programme and the personal development goals.

4. At the latest ten working days after the formal dialogue, the reporting officers draw up a draft performance appraisal report. This draft comprises a general appraisal which takes into account the appraisals given on efficiency, competencies and conduct in the service of the Director, in accordance with the criteria defined in the appraisal report.

5. The report is notified in writing to the Director.

6. The Director has five working days to accept the report without making any comments, accept it after adding comments in the appropriate section of the report, or refuse the report by justifying the revision request in the appropriate section. If the report is accepted by the Director, the appraisal report is closed. A report is deemed to be accepted in case of absence of reaction of the Director within the time foreseen.

7. The closed report is transmitted to the chairman of the Administrative Board for information.

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

Article 7 *Appeal procedure*

1. The reasoned refusal is transmitted to the appeal assessor. The appeal assessor gives his opinion within ten working days as from the date of submission.

2. After consultation with the Administrative Board, at which the members of the Administrative Board might be invited to vote, the appeal assessor confirms or amends the report. When the appeal assessor departs from the opinion of the Administrative

Board, he must justify his decision. The reporting officers are excluded from these consultations and votes.

3. The report is then closed and communicated to the Director and to the Administrative Board.

Article 8
Particular case

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

II. Probationary period

Article 9

Scope

1. The newly nominated Director of ACER shall be subject to a probationary period, in accordance with Article 14 of the CEOS.

2. If the newly nominated Director is an official on secondment in the interest of the service, he is exempted from this probationary period.

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

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

Article 10

Role of the various actors

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

Article 11

Contents and form of the probationary report

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

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

Article 12

Appraisal procedure for the probationary period

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

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

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

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

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

Article 13

Appeal procedure

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

III. Management probationary period

Article 14

Scope

1. The Director performing for the first time senior management functions shall serve a management probationary period of nine months, in accordance with Articles 44 and 46 of the Staff Regulations applicable by analogy to the temporary staff under the conditions foreseen in the conclusions of the heads of administration of 20 June 2005.
2. The Director performing senior management functions including managerial tasks at the time of the engagement or having served at least two years in such management functions in any other European Institution is exempted from the management probationary period.
3. The management probationary period begins the first day of entry into service of the probationer and finishes at the end of a nine-month-period.

Article 15

Role of the various actors

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

Article 16

Contents and form of the management report

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

Article 17

Appraisal procedure for the management probationary period

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

4. After having being notified of the report in writing, the probationer has five working days to comment on the report. A report is deemed to be accepted in case of absence of reaction of the probationer within the time foreseen.

Article 18

Management allowance

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

2. The management allowance is paid retroactively as from the date of appointment of the probationer.

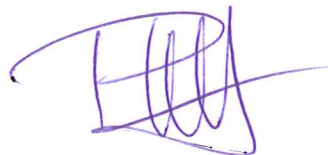
Article 19

Entry into force

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

Done at Ljubljana, on 22 September 2011

For the Administrative Board:



Piotr Woźniak

Chairman of the ACER Administrative Board