

10th ACER Administrative Board meeting
Wednesday, 5 September 2012, 9.00 – 16.00
ACER, Trg republike 3, 1000 Ljubljana

Present:

Mr. Piotr Woźniak, Chair and with proxy from Mr. Detlef Dauke

Mr. Razvan Eugen Nicolescu, Vice-Chair

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

Mr. Luis Martin Oar, Member

Mr. Rene Tammist, Member

Mr. Alfonso Gonzalez Finat, Alternate, replacing Mr. Bortoni

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

Mr. Alberto Pototschnig, Director of ACER, Observer

Ms. Marie-Christine Jalabert, Adviser

Mr. Konrad Purcha a, Adviser

Main conclusions of the meeting

1. The Chairman will send a letter on issues related to the implementation of TEN-E regulation to the ITRE Committee of the EP, and a copy to the Commission.
2. The Board endorsed the IAS Strategic Audit Plan 2013 - 2015 for ACER, including the short list of prospective audit topics for the next three years.
3. Following the approval of the Work Programme by the BoR and after the consultation of the Commission, the AB adopted the ACER Work Programme 2013 with 6 votes in favour and 2 (EC representatives) votes against.
4. The ACER external communication guidelines will be submitted for Board's approval at its meeting on 5 December.
5. The Board decided to revert to the redrafted Conflict of Interest policy guidelines at its next meeting in December.
6. The Board adopted the Implementing Rules of ACER Financial Regulation (ANNEX 1).
7. The Board decided that the Director's appraisal would be conducted in early 2013 and cover the period from 18.3. 2011 to 31.12.2012

1. Approval of the Agenda

The following agenda of the 10th ACER Administrative Board meeting was approved:



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ACER, Trg republike 3, 1000 Ljubljana

DRAFT AGENDA V4

Agenda Topics	Accompanying documents	Rapporteur
<p>Opening</p> <p>1. Approval of the agenda</p> <p>2. Minutes of the 9th Administrative Board meeting</p>	<p>Doc 1 for approval</p> <p>Doc 2 for approval</p>	<p>AB Chair</p> <p>AB Chair</p>
<p>Reporting on developments</p> <p>3. Report on ACER developments (including REMIT, monitoring pursuant to Art. 11 Regulation (EC) No 713/2009, and on the activities of the Board of Regulators)</p> <p>4. Report on REMIT developments</p>	<p>Oral update</p> <p>For discussion</p>	<p>ACER Director BoR Chair</p> <p>ACER Director</p>
<p>General ACER work</p> <p>5. IAS Strategic Audit Plan 2013 - 2015 for ACER</p>	<p>Doc 5 for endorsement</p>	<p>AB Chair</p>

Agenda Topics	Accompanying documents	Rapporteur
6. ACER Work Programme 2013	Doc 6a for information Doc 6b for adoption Docs 6c and 6d for consideration	AB Chair
7. ACER external communication guidelines	Doc 7 for discussion	ACER Director
8. Conflict of Interest policy guidelines	Doc 8 for discussion	ACER Director
9. New ACER Premises – Update on the process	Oral update Doc 9 for information	ACER Director
Administration (HR)		
10. Decision AB n° [XX]/2012 regarding ACER administrative inquiries and disciplinary procedures (*)	Doc 10 for consideration	ACER Director
11. Decision AB n° [XX]/2012 on the Policy on Protecting the Dignity of the Person and Preventing Psychological Harassment and Sexual Harassment (*)	Doc 11 for consideration	ACER Director
12. Decision AB n° [XX]/2012 on teleworking (**)	Doc 12 for adoption	ACER Director
13. Implementing Rules for the outside activities of the Agency's staff	Oral update	ACER Director
Administration (Financial)		
14. Decision AB no. [...] /2012 on the adoption of the Implementing Rules of ACER Financial Regulation	Doc 14 for adoption	ACER Director
15. AOB Annual appraisal of the Director: state of play	Doc 15 for information	AB Vice-Chair and Commission

Agenda Topics	Accompanying documents	Rapporteur
AB meetings in 2012 and 2013		AB Chair

(*) Draft for consideration before being submitted to the Commission's inter-service consultation

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

2. Minutes of the 9th Administrative Board meeting

A discussion took place on whether at the previous meeting the Board decided to discuss, at its next meeting, the "guidelines" or the "rules" on how the Agency communicates with the outside world. The Board agreed that although the "rules" were proposed by the Vice-Chairman at the last meeting, the AB agreed on the "guidelines" for discussion.

The minutes of the 9th Administrative Board meeting were agreed with an amendment reflecting that at the previous meeting the Board decided that the "guidelines" and not the "rules" on how the Agency communicates with the outside world were decided to be discussed at its next meeting.

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

The Director updated the Board on the Agency's establishment plan: 54 staff members are in place, 3 appointed and an additional 4 positions are advertised (2 replacements); 59 positions are expected to be filled by the end of 2012 and, together with REMIT positions envisaged in 2012 and 2013, the total ACER staff is expected to amount to 72 (without EIP positions). He presented the nationality composition of the Agency staff, mentioning that there are 18 different nationalities present. He reported on the successful and fruitful ITRE Committee Delegation visit to the Agency on 30-31 August, where a wide-ranging discussion on ACER progress and future challenges, including REMIT, Infrastructure Package and RES Penetration and Market Design, took place.

On Framework Guidelines and Network Codes, the Agency received the Network Code on Electricity Grid Connections from ENTSO-E on 13 July, therefore ACER needs to provide its opinion by 13 October. Moreover, on 5 June the Agency issued a

reasoned opinion on the Network Code on Capacity Allocation Mechanisms in gas and is expecting a new version on 17 September, expecting it to be fully in compliance with the Agency's Framework Guideline and expressed hope that the Agency would be able to provide a clean recommendation to the Commission for adoption. The Director also informed that the Agency just launched a public consultation on the draft Gas Framework Guideline on Harmonised Transmission Tariffs Structure. The Agency does not envisage launching any new Framework Guidelines in 2013 (except some scoping on Harmonised Electricity Transmission Tariffs Structure and/or Incentive Rules), because it will prioritise providing opinions on the Network Codes (9 reasoned opinions), which is a challenging task.

Lord Mogg, as the Chairman of the BoR, endorsed the Director's report and went on to say that the Reasoned Opinions that had been identified would represent a full programme of work for the Agency until 2014 and would provide a sufficient basis for the achievement of the Internal Energy Market in 2014. The Agency would of course oversee the whole process throughout that period. He also mentioned that the more the Agency gets involved into the Network Codes, the more delicate issues are arising.

The Director clarified, in response to a question by one AB member, that the first Network Code (on Capacity Allocation Mechanism) is planned to be submitted to comitology at the end of 2012 and the latest one in Q2 2014. The Agency is still on track with its Work Programme 2012, as updated following agreement with the European Commission in the Planning Group meeting. The reviewed Work Programme was approved by the BoR and the AB in June. However, the gas Framework Guideline on Harmonised Transmission Tariffs Structure, is a difficult guideline and may have to be slightly postponed. On other regulatory activities, the Agency adopted the Opinion on the TYNDP of ENTSO-E and the Gas Summer Supply Outlook of ENTSOG.

The Chairman congratulated the Agency for taking the initiative when issuing a Recommendation on the Regulatory Regime for Financial Transmission Rights (FTR) to the Council and the European Parliament, recommending excluding FTR from the Financial Markets Regulation.

As regards the priorities for 2013, the Director indicated that the Agency is planning to issue an opinion on the TYNDP for gas, make a proposal for the annual Inter-TSO Compensation fund and propose best practice Guidelines on Exemptions in Gas as he expects that many requests for exemptions will be submitted to the NRAs.

Finally, the Agency is finalising the joint ACER-CEER Market Monitoring Report and expects to publish it the second half of November. The Commission is at the same time preparing its Communication on the Internal Energy Market, which is expected in October. Some discussion took place on whether the practice of a joint ACER-CEER market monitoring report would continue in the future. While there are benefits for the stakeholders and consumers, the ACER Regulation stipulates that the report is to be prepared by ACER in close cooperation by the Commission, Member States and the relevant national authorities including the NRAs.

The AB Member representing the Commission explained that the Commission's report will be more political and will focus on country reports.

Some discussion took place on whether the Agency should issue a recommendation to the European Parliament and the Commission regarding the availability of good quality data and whether the Agency should publicly consult on its draft report.

The Administrative Board underlined the need for consistency between the Commission's market monitoring report, expected to be more political, and the ACER-CEER one, focusing more on the industry. The Administrative Board also expressed expectation that the Agency publicly consults on its draft Market Monitoring Report in the future.

4. Report on REMIT developments

The Director updated the Board on REMIT developments. In September the Agency is planning to issue the 2nd Edition of its Guidance on the application of REMIT definitions and Recommendations to the Commission on the Records of Transactions.

In the course of 2012 the Agency launched 3 important tenders for the REMIT IT system: Tender 1 - Registration, data acquisition and consultancy (Jun 2012); Tender 2 - Hosting (Jun 2012); and Tender 3 - Market monitoring software (Aug 2012).

Budgetary and Staffing Challenges were discussed in great detail. The total cost of REMIT IT system over 4 years is expected to amount to approximately €8 million. The Board received reassurance from the Director that public procurement structures are in place at the Agency. IT architecture was put in place in consultation with the Commission and ESMA. He underlined that the Agency would need €4 million, of which € 1 million is already available in 2012, for the IT system to be able to go live with REMIT market monitoring, with the data acquisition and sharing being the most costly parts. If this has to take place in Q1 2014 as currently envisaged, the remaining funds need to be available in 2013.

Some concerns were raised about the continued reliance on external contractors once the framework contracts come to the end. Much will depend on the training of staff. Another concern was the duplication of the ACER IT system in some regulators, but the Director reassured the Board members that there is a great benefit of using the same IT system across the regulators. Moreover, the Agency, in the tender for the market monitoring tool, anticipates that the selected contractor makes available to those NRAs which are interested, licenses to access a dedicated part of the tool for their national monitoring and investigation purposes. Therefore, the Agency's system will be open to NRAs for a fee that will need to be paid to the contractor.

Lord Mogg, as the Chairman of the BoR, said that although some NRAs already have their own market surveillance arrangements (or relied on their financial regulators) most (and especially the smaller NRAs) would have to rely on the Agency given a

lack of resources and experienced staff. The AB member representing the Commission underlined that each NRA should put in place its own market monitoring/surveillance system and should not simply rely on ACER.

The Vice-Chairman said that there should be one system applied by 27 NRAs and the EU budget should cover the cost.

The Director explained that the NRAs will be registering market participants and ACER will make sure that if one trades in country A, he or she will be able to trade in other EU countries as well.

One AB member informed that the ITRE Committee voted in support of a budgetary amendment for REMIT.

Some discussion took place on the implementation of the new TEN-E Regulation. The Director explained that the text of the regulation is still being discussed in the Council, while the Agency is already called to start implementing it. However, the extra staff for these tasks are included in the Connecting Europe Facility, planned for 2014, which leaves the Agency without any TEN-E resources for 17 months. The first list of Projects of Common Interest (PCI) is expected to be ready in spring 2013.

The Chairman concluded that he will be sending a letter on issues related to the implementation of TEN-E regulation to the ITRE Committee of the EP, and a copy to the Commission. He thanked the Director for the report, information on the Agency's financial resources, and on the Agency's developments.

5. IAS Strategic Audit Plan 2013 - 2015 for ACER

The Chairman explained that the representatives of the Internal Audit Service of the Commission made the presentation of the IAS Strategic Audit Plan 2013-2015 for ACER at the last meeting in June. The AB members representing the Commission had no comment on the audit plan. The Director confirmed that the Strategic Audit Plan will not require any additional resources.

Action: The AB endorsed the IAS Strategic Audit Plan 2013 - 2015 for ACER, including the short list of prospective audit topics for the next three years.

6. ACER Work Programme 2013

The Director presented his note: On 6 June, ACER presented its main 2013 priorities at a workshop in Ljubljana. On 30 June the Director submitted the draft ACER Work Programme 2013 to the European Parliament, the Commission and the BoR. On 11 July the document was presented to the stakeholders in Brussels and to the ITRE committee. Stakeholders were invited to provide feedback by 31 July. ACER received

10 replies that were mainly taken into account. By 14 August the revised draft was sent to the BoR, which approved it on 4 September, after having received the Commission opinion on 31 August. The Director mentioned that the WP 2013 includes a paragraph on the risks concerning the implementation of REMIT and the TEN-E Regulation by ACER, primarily due to the lack of resources available to the Agency in time.

The AB member representing the Commission commented on the inclusion of Commission suggestions into the Work Programme. On gas, the Commission encourages the Agency to do preparatory work (i.e. scoping) for future framework guidelines/network codes, such as, for example, on rules for trading and rules on incremental capacity. Furthermore, the Commission suggests that ACER gets involved in the standardisation process related to smart grids. The draft Work Programme 2013 foresees 'Guidelines on exemptions for Major New Gas Infrastructure, based on article 36 of directive 2009/73/EC' as a new task under the gas sector deliverables. The Commission supports extending the scope of the guidelines to cover also exemptions of cross border electricity interconnectors.

The Director explained that the 2013 Work Programme is already very comprehensive and that the additional tasks proposed by the Commission would require additional resources and that the Agency is already very limited in resources for delivering on the existing tasks in the WP 2013. This is why he has been unable to accede to the request from the Commission.

The Commission representative underlined the Commission's position that the Agency Work Programme should be based on the draft budget as prepared by the Commission. The budget tables in the Agency's 2013 Work Programme contain figures not in line with the draft budget 2013 as adopted by the Commission on 25 April 2012 and need to be corrected accordingly. Regarding the resource issues, the Commission notes some differences in the number of staff foreseen by the budget and the numbers included in the Work Programme.

The Director stated that he has opted for maintaining, in the draft 2013 Work Programme, the draft 2013 Budget approved by the AB on 31 March 2012. In any case, Article 13(5) of ACER Regulation clarifies that the Work Programme shall be adopted without prejudice to the annual budgetary procedure. Thus he considered safer to have a Work Programme consistent with the activities envisaged. If the budgetary authority eventually adopts the Commission's proposal then the Work Programme will have to be reviewed.

Lord Mogg, as the Chair of the BoR, said that BoR approved the Work Programme, and that the CEER Work Programme and the ACER Work Programme will be presented in the same timeline.

The AB Chairman invited the AB members to stick to the consistent approach on ACER budget.

Action: Following the approval of the Work Programme by the BoR and after consulting the Commission, the AB adopted the Work programme with 6 votes in favour and 2 (EC representatives) votes against.

7. ACER external communication guidelines

The Chairman explained the reasons for including the item on the agenda. The Director presented the External communication guidelines and said that the guidelines would need to be reflected in the RoPs of different Boards. The idea was to ensure that the external communication consistently reflects the official position of the Agency, i.e. as defined by the acts adopted by the Agency. The Director, having the responsibility to represent the Agency should be consulted in case any member of any of the Boards would have doubts about the official position of the Agency. A disclaimer prepared by the Director should be used when personal views are expressed; however personal views should not be in contrast of the view of the Agency.

The Chairman underlined that the Board members should be speaking in the interest of the Agency. Lord Mogg, as the Chairman of the BoR, said that the BoR already has guidelines in its Rules of Procedure and that the further discussion should be focused on the AB and Board of Appeal consistent with the discussion and the advice of the Director. A fruitful discussion took place.

Action: The ACER external communication guidelines will be submitted for approval at the next AB meeting on 5 December.

8. Conflict of Interest policy guidelines

The Director presented the paper, underlining that the EU Agencies are witnessing increased scrutiny regarding potential conflicts of interest. The intention of the paper was therefore to address this issue by ACER. He explained that ACER staff is covered under the Staff Regulations which contain strict rules regarding conflict of interest. Some element of conflicting institutional interests is intrinsic in the Board of Regulators as its members are supposed to represent their institutions. However, in his view, the national provisions applicable to the NRAs should be sufficient to deal with any conflict of interest situations. Instead, in the other two Boards, the Administrative Board and the Board of Appeal, members are required to submit interest declarations on an annual basis. The paper under discussion proposed a procedure on how to deal with these declarations – the declarations would be

presented to the Chairmen of the Administrative Board and/or the Board of Appeal. The Director could also be consulted and his/her concerns would be reflected in the minutes.

A discussion took place on how to handle the declarations of the conflict of interest. An AB member suggested amending the paper to reflect that if a person is in conflict of interest he/she should not participate in the debate.

The AB member representing the Commission was in favour of the paper mitigating the risk. At the same time he proposed to remove references to the Staff Regulations to simplify the approval procedure of the paper.

Action: The Board decided to revert to the redrafted Conflict of Interest policy guidelines for adoption at its next meeting in December.

9. New ACER Premises – Update on the process

The Director reported that unfortunately ACER had to abandon the tendering procedure to find new ACER premises, launched on 17 April, due to technical and administrative reasons. He announced that a new procedure would however be launched in a few weeks' time. The Agency therefore will continue operating in its current premises for a few months after the 31 January. The Agency also registered an exception.

Action: The AB took note of the process to find new ACER premises.

10. Decision AB n° [XX]/2012 regarding ACER administrative inquiries and disciplinary procedures

The Director explained that the AB needs to consider the AB decision regarding ACER administrative inquiries and disciplinary procedures before the decision can be submitted to the inter-service consultation of the Commission.

The AB member representing the Commission commented that for disciplinary procedures the Agency has no margin of manoeuvre and the Commission rules need to be directly translated. He also proposed to enlarge the scope of the decision to the interimairees of the Agency.

Action: Decision AB n° [XX]/2012 regarding ACER administrative inquiries and disciplinary procedures was considered by the Board and a minor change proposed by the Commission was introduced. The decision will be submitted to the Commission for inter-service consultations.

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

The Director explained that the AB needs to consider the AB decision on the Policy on Protecting the Dignity of the Person and Preventing Psychological Harassment and Sexual Harassment before it can be submitted to the Commission for inter-service consultations. The AB member representing the Commission also proposed to enlarge the scope of the decision to the interimairees of the Agency.

Action: Decision AB n° [XX]/2012 on the Policy on Protecting the Dignity of the Person and Preventing Psychological Harassment and Sexual Harassment was considered by the Board and a minor change proposed by the Commission was introduced. The decision will be submitted to the Commission for inter-service consultations.

12. Decision AB n° [XX]/2012 on teleworking

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

Action: The Chairman declared the urgency of the matter in line with Article 9 of the Administrative Board's RoP. The written procedure for adoption would take place as soon as the Commission finalises the inter-service consultations.

13. Implementing Rules for the outside activities of the Agency's staff

The Director explained that a year ago the Administrative Board considered some flexibility on the Rules for the outside activities of the Agency's staff. For some time the Agency was discussing them with the Commission's DG HR, but lately they are reverting to strict implementation of the Commission rules without leaving flexibility to the Agency. The Director sought guidance of the Board members on whether they were considering proceeding with a different text than the one proposed by the Commission.

The AB member representing the Commission stated that the the Agency should not deviate from the Commission rules

The Commission's view on a similar matter was clearly stated in a recent letter from Director-General Lowe to the Chairman. The Commission is expecting a reply at the earliest convenience of the Board.

Action: The Chair concluded that the AB will revert to the Implementing Rules for the outside activities of the Agency's staff at its next meeting for adoption. The AB will also discuss the individual decision linked to the Director's outside activities at its meeting in December.

14. Decision AB no. [...] /2012 on the adoption of the Implementing Rules of ACER Financial Regulation

The Director said that the document went through the inter-service consultations of the Commission and is now ready for the adoption of the Board.

Action: The Board adopted the decision (ANNEX 1).

15. AOB

The AB member representing the Commission suggested that the next appraisal of the Director would take place in the first quarter of 2013 and would cover the period from 18.3.2011 to the end of 2012, given that the previous appraisal was done for the period up to 17.3. 2011. This proposal goes however against the AB Decision 26/11 on the appraisal of the Director, which stipulates that the reference period for the annual appraisal of the Director is from 1 January to 31 December of the preceding year. The Director agreed with this exception.

Action: The AB decided that the Director's appraisal would be conducted early 2013 and cover the period from 18.3. 2011 to the end of 2012.

Action: The AB agreed on the following dates and places of the AB meetings in 2013: 20 March (afternoon) in Ljubljana, 13 June (9.00-16.00) in Warsaw, 26 September (9.00-16.00) in Ljubljana and 12 December 9.00-16.00) in Ljubljana.

ANNEX1

DECISION AB n° 19/2012

on the adoption of the

IMPLEMENTING RULES

of the Agency for the Cooperation of Energy Regulators

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

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

HAVING REGARD to Commission Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Union and in particular, Article 185(1) thereof,

HAVING REGARD to Commission Regulation No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities;

HAVING REGARD to Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Union, thereof,

HAVING REGARD to the Financial Regulation of the Agency for the Cooperation of Energy Regulators, in particular Article 98, thereof,

HAVING consulted the Commission,

Whereas:

- 1) These implementing rules constitute a recasting of all existing rules for the application of the Financial Regulation of the Agency and are mainly inspired from the provisions applicable to the general budget of the EU, with minor adaptations taking into account the specific nature of the Agency's activities.
- 2) For the establishment and presentation of the budget, it is necessary to determine the content and structure of the budget, the working documents backing up the budget and the budgetary remarks to ensure the budget authority is fully informed. The definition and classification of the administrative appropriations are also set out.
- 3) Regarding the role of the financial actors, the tasks, responsibilities and principles of procedures to be observed must be laid down. The internalisation of the ex-ante controls requires, in particular, a clear distinction between initiation of tasks and the verification of budget implementation. The Agency shall draw up a code of professional standards applicable to staff responsible for the ex-ante and ex-post verifications. Provisions must be made for the responsibilities assumed covering the results of the ex-post verifications and their disclosure in the annual activity report. Provisions must also be made for the keeping of supporting documents related to the operations carried out by the Agency.

- 4) As regards the internal control of the Agency, an internal audit function is created to assist and support the Director in assessing the performance of the implemented internal control system and provide recommendations based on the audit results.
- 5) These implementing rules define the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third party files. The arrangements for the termination of the accounting officer's duties are also detailed.
- 6) Once the tasks and responsibilities of each actor are laid down, they may be held liable only under the conditions set out in the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants. A Financial Irregularities Panel is set up to determine whether irregularities of a financial nature may have occurred.
- 7) As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements have to be based must be defined. It is also necessary to specify the conditions for entering a transaction into the accounts and the rules for valuing assets and liabilities and the constitution of provisions. It should be specified that the accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash flow table, statement of changes in capital) and their annexes and the budget implementation statements (budget outturn account plus annex).
- 8) On accounting matters, it should be specified that the Agency's accounting officer should produce documents describing the organisation of accounts and the accounting procedures of the Agency and set out the conditions for the computerised accounting systems. For keeping the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the accounts balances and inventory items. The rules applicable to the registration of operations, in particular the double entry method, the rules for the conversion of transactions which are not denominated in euros and the supporting documents for the accounting entries must be laid down. The content of the accounting entries must be specified.
- 9) The rules relating to the property inventory are laid down and the respective responsibilities of the accounting officer and authorising officers in this field are clarified, together with the rules applicable to the resale of property entered in the inventory.
- 10) The various thresholds and amounts referred to in these Rules must be regularly updated by the European Union inflation index, with exception of the thresholds applicable to procurement.

HAS ADOPTED THESE IMPLEMENTING RULES:

TITLE I

SCOPE

Article 1 – Subject

This Regulation sets out the rules for implementing the provisions of the Agency for the Cooperation of Energy Regulators (ACER) Financial Regulation as adopted by the Administrative Board.

Article 2 – Definitions

(Article 2 of ACER Financial Regulation)

For the purpose of these Implementing Rules:

1. **'ACER Regulation'** shall mean Regulation (EC) No 713/2009¹ of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators;
2. **'ACER'** shall mean the Agency for the Cooperation of Energy Regulators set up by the ACER Regulation as an European body;
3. **'Administrative Board'** shall mean the body, referred to in Article 3(a) of the ACER Regulation;
4. **'Board of Regulators'** shall mean the body, referred to in Article 3(b) of the ACER Regulation;
5. **'Board of Appeal'** shall mean the body, referred to in Article 3(d) of the ACER Regulation;
6. **'Director'** shall mean the person referred to in Article 3(a) of the ACER Regulation;
7. **'Staff'** shall mean the Director, as well as the staff referred to in Article 28 of the ACER Regulation;
8. **'Budget'** shall mean the budget of ACER as referred to in Article 21 of the ACER Regulation;
9. **'Budgetary Authority'** shall mean the European Parliament and the Council of the European Union;
10. **'General Financial Regulation'** shall mean Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
11. **'Framework Financial Regulation'** shall mean Commission Regulation (EC, Euratom) No. 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Council Regulation (EC, Euratom) No. 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, amended by Commission Regulation (EC, Euratom) No. 652/2008 of 9 July 2008;
12. **'Implementing Rules to the general Financial Regulation'** shall mean Commission Regulation (EC, Euratom) No. 2342/2002² of 23 December 2002 laying down the detailed rules for the implementation of Council Regulation (EC, Euratom) No. 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities;
13. **'ACER Financial Implementing Rules'** shall mean these implementing rules;
14. **'ACER Financial Rules'** shall mean ACER Regulation, ACER Financial Regulation and these Implementing Rules;
15. **'Staff Regulations'** shall mean regulations and rules applicable to officials and other servants of the European Union.

¹ OJ L211, 14.8.2009, p. 1-14

² OJ L 357, 31.12.2002, p.1

TITLE II

BUDGETARY PRINCIPLES

CHAPTER 1 – Principle of annuality

Article 3 – Appropriations for the financial year

(Article 9(3) of ACER Financial Regulation)

The commitment appropriations and payment appropriations entered in the budget for a financial year and which have to be used during that year shall consist of the appropriations authorised for that financial year. The appropriations authorised for the financial year are:

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over; and,
- (c) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

Article 4 – Carryover of appropriations

(Article 10 of ACER Financial Regulation)

1. The commitment appropriations referred to in Article 10(3) of ACER Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 10(3) of ACER Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
 - (a) for global commitments within the meaning of Article 61(4) of ACER Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the units/services concerned for the adoption of the decision;
 - (b) for individual commitments within the meaning of Article 61(3) of ACER Financial Regulation, the advanced stage of preparation of the contracts or agreements. This advanced stage of preparation of the contracts or agreements shall mean the completion of the selection of potential contractors or beneficiaries.
3. Appropriations carried over in accordance with Article 10(3) of ACER Financial Regulation which have not been committed by 31 March of the following financial year shall be automatically cancelled.

The Agency shall inform the budgetary authority by 30 April of the appropriations cancelled in this way.

4. The accounts shall identify appropriations carried over in this way.
5. The appropriations for staff expenditure referred to in Article 10(2) of ACER Financial Regulation are those for remuneration and allowances for staff.

Article 5 – Provisional twelfths

(Article 14(2) of ACER Financial Regulation)

The total allotted appropriations of the previous financial year, as specified in Article 14(2) of ACER Financial Regulation, shall be understood to refer to the appropriations for the financial year referred to in Article 3 of this Regulation, after adjustment for the transfers made during that financial year.

CHAPTER 2 –Principle of unity of account

Article 6 – Rate of conversion between the euro and other currencies

(Article 17 of ACER Financial Regulation)

1. Conversion between the euro and other currencies shall be made by the responsible authorising officer using the daily euro exchange rate published in the C series of the *Official Journal of the European Union*.

Where conversion between the euro and another currency is to be made by the contractors or beneficiaries, the specific arrangements for conversion contained in procurement contracts, grant agreements or financing agreements shall apply.

2. If no daily euro exchange rate is published in the Official Journal of the European Union for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 3.
3. For the purposes of the accounts provided for in Articles 84 to 89 of the ACER Financial Regulation and subject to Article 105 of these Rules, conversion between the euro and another currency shall be made using the monthly accounting rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he/she regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

Article 7 – Rate to be used for the conversion between the euro and other currencies

(Article 17 of ACER Financial Regulation)

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements and financing agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which the payment order or recovery order is drawn up by the authorising department.
2. In case of euro imprest accounts, the rate to be used for the conversion between the euro and other currencies shall be determined by the date of the payment by the bank.
3. For the regularisation of imprest accounts in national currencies, as referred to in Article 17 of ACER Financial Regulation, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.
4. For the reimbursement of flat-rate expenditure, or expenditure arising from the Staff Regulations which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.

CHAPTER 3 – Principle of universality

Article 8 – Structure to accommodate assigned revenue and provision of corresponding appropriations

(Article 19 of ACER Financial Regulation)

1. The structure to accommodate assigned revenue in the budget shall comprise:
 - (a) in the statement of revenue, a budget line to receive the revenue;
 - (b) in the statement of expenditure, the budget remarks, including general remarks, shall show which lines may receive the appropriations corresponding to the assigned revenue which are made available.

In the case referred to in point (a) of the first subparagraph, a token entry (p.m.) shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by ACER. They shall be made available automatically.

Article 9

Assigned revenue resulting from the participation of EFTA States in certain Agency programmes

(Article 19 of the Financial Regulation)

1. The budget structure to accommodate the participation of the EFTA States in Agency activities shall be as follows:
 - (a) in the statement of revenue, a line with a token entry (p.m.) shall be entered to accommodate the full amount of the EFTA States' contribution for the year in question. The estimated amount shall be shown in the budget remarks;
 - (b) in the statement of expenditure:
 - i. the remarks for each line relating to the Agency activities in which the EFTA States participate shall show "for information" the estimated amount of the participation,
 - ii. an annex, forming an integral part of the budget, shall set out all the lines covering the Agency activities in which the EFTA States participate.

This annex referred to in point (b)(ii) of the first subparagraph reflects and is part of the structure to accommodate the appropriations corresponding to this participation, as provided for in paragraph 2, and to allow the expenditure to be implemented.

2. Under Article 82 of the Agreement on the European Economic Area, the amounts of the annual participation of the EFTA States, as confirmed to the Commission by the EEA Joint Committee in accordance with Article 1(5) of Protocol 32 annexed to that Agreement shall give rise to the provision, at the start of the year, of the full amounts of the corresponding appropriations for commitments and appropriations for payments.
3. If, in the course of the year, additional appropriations are provided on the budget lines with EFTA State participation without the EFTA States being able, during that year, to adjust their contributions in order to comply with the "proportionality factor" provided for in Article 82 of the Agreement on the European Economic Area, the Commission shall be authorised, as a provisional and exceptional measure, to use its cash resources to pre finance the share of the EFTA States. Whenever new appropriations are provided, the Commission shall, as soon as possible, call in the corresponding contributions from the EFTA States. The Commission shall inform the budgetary authority each year of the decisions taken.

The pre financing shall be regularised as soon as possible in the budget for the following year.

4. In accordance with Article 19(1) b of the Financial Regulation, the financial contributions of the EFTA States shall constitute assigned revenue. The accounting officer shall adopt appropriate measures to ensure that use of the revenue arising from these contributions and of the corresponding appropriations is monitored separately.

In the report provided for in Article 62 of the Financial Regulation, the Agency shall show separately the implementation, in both revenue and expenditure, corresponding to EFTA State participation.

Article 10 – Charges entailed by acceptance of donations to ACER

(Article 20(2) of ACER Financial Regulation)

For the purposes of the authorisation by the Administrative Board referred to in Article 20(2) of ACER Financial Regulation, the Director shall estimate and duly explain the financial charges, including follow-up costs, entailed by the acceptance of legacies, donations or grants, made to ACER.

CHAPTER 4 – Principle of specification

Article 11 – Rules concerning the calculation of percentage of transfers

(Article 23 of ACER Financial Regulation)

1. The percentage referred to in Article 23(1) of the ACER Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.
2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made.

CHAPTER 5 – Principle of sound financial management

Article 12 – Evaluation

(Article 25 of ACER Financial Regulation)

1. Evaluations according to Article 25(4) of ACER Financial Regulation shall address:
 - (a) the need to be met in the short or long term;
 - (b) the added value of ACER involvement;
 - (c) the objectives to be achieved;
 - (d) the policy options available, including the risks associated with them;
 - (e) the results and impacts expected, and the indicators and evaluation arrangement needed to measure them;
 - (f) the most appropriate method of implementation for the preferred option(s);
 - (g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;
 - (h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
 - (i) the lessons learned from similar experiences in the past.
2. The proposal shall set out the arrangements for monitoring, reporting and evaluation, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.
3. The activities financed on an annual basis shall have their results evaluated at least every 6 years or at least once in the case of multi-annual programmes.
4. The evaluations referred to in paragraph 1 shall be proportionate to the resources mobilised for and the impact of the programmes and activities.

Article 13 – Effective and efficient internal control

(Article 25a(1) of ACER Financial Regulation)

1. Effective internal control shall be based on best international practices and include in particular the following:
 - (a) segregation of tasks;
 - (b) an appropriate risk management and control strategy including controls at beneficiary level;
 - (c) avoidance of conflicts of interests;
 - (d) adequate audit trails and data integrity in data systems;
 - (e) procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;
 - (f) periodic assessment of the sound functioning of the control system.
2. Efficient internal control shall be based on the following elements:
 - (a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
 - (b) the accessibility of control results to all appropriate actors involved in the control chain;
 - (c) the timely application of corrective measures, including, where appropriate, dissuasive penalties;
 - (d) clear and unambiguous legislation underlying the policies;
 - (e) the elimination of multiple controls;
 - (f) the principle of improving the cost-benefit ratio of controls.

CHAPTER 8 – Principle of transparency

Article 14 – Provisional publication of the budget

(Article 26 of ACER Financial Regulation)

As soon as possible and no later than four weeks after the final adoption of the budget, the final detailed budget figures shall be published on the Internet site of ACER, pending official publication of the summary of the budget in the *Official Journal of the European Union*.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1 – Establishment of the budget

Article 15 – Draft amending budgets

(Article 28 of ACER Financial Regulation)

Draft amending budgets shall be accompanied by statements of grounds and the information on the implementation of the budget for the preceding and current financial years available at the time of their establishment.

CHAPTER 2 – Structure and presentation of the budget

Article 16 – Administrative appropriations

(Article 30 of ACER Financial Regulation)

Administrative appropriations shall be divided into separate headings according to the following classification:

- (a) expenditure on staff authorised in the establishment plan: there shall be an amount of appropriations and a number of employment posts corresponding to this expenditure;
- (b) management expenditure (including representation expenses and meeting expenses);
- (c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;
- (d) support expenditure.

Article 17 – Actual expenditure in the last financial year for which the accounts have been closed

(Article 31(2)(b) of ACER Financial Regulation)

For the purposes of establishing the budget, actual expenditure in the last financial year for which the accounts have been closed shall be determined as follows:

- (a) *in commitments*: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 3;
- (b) *in payments*: payments made during the financial year, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in the same article.

Article 18 – Budget remarks

(Article 31(2)(d) of ACER Financial Regulation)

The budget remarks shall include:

- (a) the references to ACER Regulation, where such exist;
- (b) all appropriate explanations concerning the nature and purpose of the appropriations.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1 – General provisions

Article 19 – Definition of a conflict of interest

(Article 35 of ACER Financial Regulation)

1. Acts likely to be vitiated by a conflict of interest within the meaning of Article 35(2) of ACER Financial Regulation may, *inter alia*, take one of the following forms:
 - (a) granting oneself or others unjustified direct or indirect advantages;
 - (b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
 - (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.
2. The competent authority referred to in Article 35(1) of ACER Financial Regulation shall be the hierarchical superior of the member of staff concerned. The hierarchical superior shall confirm in writing whether or not there is a conflict of interests. If there is, the hierarchical superior shall personally take any appropriate decision.
3. A conflict of interest shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior.

Article 20 – Compliance with the procurement rules

(Article 36 of ACER Financial Regulation)

Where ACER entrusts tasks to external private-sector entities or bodies under Article 36(2) of ACER Financial Regulation, it shall conclude a contract in accordance with the provisions of Title V of Part One of the General Financial Regulation and Title V of the Implementing Rules to the General Financial Regulation.

CHAPTER 2 – Financial actors

Section 1 – Principle of segregation of duties

Article 21 – Rights and obligations of the financial actors

(Article 37 of ACER Financial Regulation)

Each financial actor shall be provided with the resources required to perform his duties and a charter describing in detail his tasks, rights and obligations.

Section 2 – Authorising officer

Article 22 – Management and internal control procedures

(Article 38(4) of ACER Financial Regulation)

The management and internal control systems and procedures shall be designed to:

- (a) achieve the objectives of the programmes and actions of ACER in accordance with the principle of sound financial management;
- (b) comply with the rules of European Union law and minimum control standards established by ACER;
- (c) safeguard ACER's assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks and manage them effectively;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;
- (h) keep documents relating to advance guarantees for ACER and keep a log to enable such guarantees to be adequately monitored.

Article 23 – Keeping of supporting documents by authorising officers

(Article 38(6) of ACER Financial Regulation)

The management systems and procedures concerning the keeping of original supporting documents shall provide for:

- (a) such documents to be numbered;
- (b) such documents to be dated;
- (c) registers, which may be computerised, to be kept identifying the exact location of such documents;
- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate. Documents relating to operations not definitively closed shall be kept for longer, that is to say, until the end of the year following that in which the operations are closed.

Article 24 – Code of professional standards

(Article 39(6) of ACER Financial Regulation)

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.
2. ACER shall draw up a code of professional standards which shall determine, on matters of internal control, inspection and audit:
 - (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
 - (b) the obligation for such staff to undergo continuing training;
 - (c) the mission, role and tasks allocated to them;
 - (d) the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.
3. ACER shall put in place the appropriate structures to distribute to authorising units/services and update periodically appropriate information concerning the control standards and the methods and techniques available for that purpose.

Article 25 – Ex-post verification and annual activity report

(Article 40 of ACER Financial Regulation)

The result of the ex post verifications shall, with other matters, be set out in the annual activity report submitted by the Director to the Administrative Board.

Article 26 – Failure of the authorising officer to take action

(Article 41 of ACER Financial Regulation)

Failure by the authorising officer to take action, as referred to in Article 41 of the ACER Financial Regulation, shall mean the absence of any reply within a reasonable time given the circumstances of the case and, at all events, within a month at most.

Article 27 - Report on negotiated procedures

(Article 74 of the ACER Financial Regulation)

Authorising officers by delegation shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 126(1)(a) to (g), 127(1)(a) to (d) of the Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as amended. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Agency, the authorising officer responsible shall report to the Agency Administrative Board setting out any measures taken to reverse that trend. The Agency shall send a report on

negotiated procedures to the budgetary authority, preferably as an annex to the annual activity report.

Section 3 – Accounting officer

Article 28 – Appointment of the Accounting officer

(Article 43 of ACER Financial Regulation)

The Administrative Board shall appoint an accounting officer from officials or temporary agents subject to the Staff Regulations of Officials of the European Communities and Conditions of Employment of other Servants of the European Communities.

The accounting officer shall, obligatorily, be chosen on the grounds of his/her particular competence as evidenced by diplomas and/or by equivalent professional experience.

Article 29 – Termination of duties of the accounting officer

(Article 43 of ACER Financial Regulation)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. The trial balance accompanied by a handing over report shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by a staff member in his department to the new accounting officer.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and may make reservations.

The handing over report shall also contain the result of the trial balance and any reservations made.

3. ACER shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.

Article 30 – Transmission of financial and management information to the accounting officer

(Article 43 of ACER Financial Regulation)

The authorising officer shall send the accounting officer, in accordance with the rules adopted by the latter, the financial and management information required for the performance of the accounting officer's duties.

Article 31 – Opinion on accounting and inventory systems

(Article 43 of ACER Financial Regulation)

Where financial management systems set up by the authorising officer provide data for ACER's accounts or are used to substantiate data in those accounts, the accounting officer must give his agreement to the introduction or modification of such systems.

The accounting officer shall also be consulted regarding the introduction or modification by the authorising officers responsible of inventory systems and systems for valuing assets and liabilities.

Article 31 – Treasury management

(Article 43 of ACER Financial Regulation)

1. The accounting officer shall ensure that ACER has at its disposal sufficient funds to cover the cash requirements arising from budgetary implementation.

2. For the purposes of paragraph 1, the accounting officer shall set up cash management systems enabling him to draw up cash-flow forecasts.

Article 32 – Management of bank accounts

(Article 43 of ACER Financial Regulation)

1. For the requirements of treasury management, the accounting officer may open accounts in the name of ACER with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he/she may open accounts in currencies other than the euro.
2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
3. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts have been opened.
4. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions.

Article 33 – Signature on accounts

(Article 43 of ACER Financial Regulation)

The terms governing the opening, operation and use of accounts shall provide, depending on internal control requirements, that cheques, bank credit transfer orders or any other banking operations must be signed by one or more duly authorised members of staff.

To that end, the accounting officer of ACER shall communicate to all financial institutions with which ACER has opened accounts the names and specimen signatures of the authorised members of staff.

Article 34 – Management of account balances

(Article 43 of ACER Financial Regulation)

1. The accounting officer shall ensure that the balance on the bank accounts referred to in Article 36 does not deviate significantly from the cash-flow forecasts referred to in Article 35(2) and in any event:
 - (a) that none of those accounts is in debit;
 - (b) that the balance of accounts held in other currencies is periodically converted into euro.
2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to ACER as a result of exchange rate fluctuations.

Article 35 – Transfers and conversion operations

(Article 43 of ACER Financial Regulation)

Without prejudice to Article 42, the accounting officer shall conduct transfers between accounts opened in the name of ACER with financial institutions, and conduct currency conversion operations.

Article 36 – Methods of payment

(Article 43 of ACER Financial Regulation)

Payments shall be made by bank credit transfer by cheque.

Article 37 – Legal Entities Files

(Article 43 of ACER Financial Regulation)

1. The accounting officer may make payments by bank credit transfer only if the payee's bank account details and information confirming the payee's identity, or any modification, have first been entered in a common file.

Any such entry in the file of the payee's legal and bank account details or modification of those details shall be based on a supporting document, the form of which shall be defined by the Commission's accounting officer.

2. With a view to payment by bank credit transfer, authorising officers may enter into a commitment towards a third party on behalf of ACER only if that third party has provided the documentation required for its entry in the file.

Authorising officers shall inform the accounting officer of any change in the legal and bank account details communicated to them by the payee and shall check that these details are valid before a payment is made.

Article 38 – Keeping of supporting documents by the accounting officer

(Article 43 of ACER Financial Regulation)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 76 of ACER Financial Regulation shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept for longer, that is to say, until the end of the year following that in which the operations are closed.

Section 4 – Imprest administrator

Article 39 – Conditions of use of imprest accounts

(Article 44 of ACER Financial Regulation)

1. Where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up for the payment of such expenditure.
2. The imprest administrator may be authorised to provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out.
3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject to a decision by the accounting officer, on a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

Amendment of the operating terms for an imprest account shall also be the subject of a decision by the accounting officer on a duly substantiated proposal from the authorising officer responsible.

Article 40 – Conditions governing creation and payment

(Article 44 of ACER Financial Regulation)

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:

- (a) the maximum amount which may be initially provided as an imprest, and its purpose;
 - (b) whether it is opened in the form of a bank account or a post office giro account in the name of ACER;
 - (c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them;
 - (d) the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
 - (e) the procedure to be followed if the imprest has to be replenished;
 - (f) that imprest transactions will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
 - (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;
 - (h) the identity of the appointed imprest administrator.
2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:
 - (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
 - (b) imprest accounts are used only in substantiated cases.

The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall be specified in a separate policy but shall in any case not exceed EUR 1,000 for each item of expenditure.
3. The imprest administrator may make payments to third parties on the basis and within the limits of:
 - (a) prior budget and legal commitments signed by the authorising officer responsible;
 - (b) the positive residual balance of the imprest account, in cash or at the bank.
4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 80 of the General Financial Regulation, cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.
5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible.

Article 41 – Choice of imprest administrators

(Article 44 of ACER Financial Regulation)

Imprest administrators shall be chosen from temporary agents or, should the need arise and only in duly substantiated cases, from other members of staff. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 42 – Endowment of imprest accounts

(Article 44 of ACER Financial Regulation)

1. The accounting officer shall make payments endowing imprest accounts and shall monitor those accounts from the point of view of opening of bank accounts and delegation of signatures and controls on the spot and in the centralised accounts. The accounting officer shall endow the imprest accounts. Imprests shall be paid to the bank account opened for the imprest.

Imprest accounts may also be endowed directly by miscellaneous local revenue such as that arising from:

- (a) sales of equipment;
- (b) publications;
- (c) miscellaneous repayments;
- (d) interest.

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article.40 and the provisions of ACER Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

2. In order, in particular, to avoid any exchange losses, the imprest administrator may make transfers between different bank accounts relating to the same imprest.

Article 43 – Checks by authorising officers and accounting officer

(Article 44 of ACER Financial Regulation)

1. The imprest administrator shall keep an account of the funds at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of that account shall be accessible at all times to the authorising officer responsible and a list of transactions shall be established at least once a month and be sent in the following month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.
2. The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

Article 44 – Procurement procedures

(Article 44 of ACER Financial Regulation)

Payments of amounts less than or equal to EUR 500 made from imprest accounts may consist simply in the payment of costs against invoices, without prior acceptance of a tender.

CHAPTER 3 – Liability of the financial actors

Section 1 – General rules

Article 45 – Bodies responsible in matters of fraud

(Article 41 and 46(2) of ACER Financial Regulation)

The authorities and bodies referred to in Articles 41 and 46(2) of ACER Financial Regulation shall be understood to mean the bodies designated by the Staff Regulations and the decisions of the European Union institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the European Union' interests.

Section 2 – Rules applicable to the authorising officers and authorising officers by delegation or subdelegation

Article 45 – Financial irregularities

(Article 47(4) of ACER Financial Regulation)

Without prejudice to the powers of OLAF, the Panel referred to in Article 47(4) of ACER Financial Regulation (hereinafter “the panel”) shall be competent in respect of any infringement of a provision of ACER Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

Article 46 – Financial irregularities panel

(Article 47(4) of ACER Financial Regulation)

1. Cases of financial irregularities as referred to in Article 45 shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 47(4) of the ACER Financial Regulation.

An authorising officer by delegation or subdelegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 45 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

When the panel is directly informed of a matter by a member of staff in accordance with Article 41 of the Financial Regulation, it shall transmit the file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2. In the case of a joint panel established by several agencies, the participating agencies shall, depending on their own internal organisation, specify the operating arrangements of the panel and its composition, which shall include an external participant with the required qualifications and expertise.

CHAPTER 4 – Revenue operations

Section 1 – Estimate of amounts receivable

Article 47 – Estimate of amounts receivable

(Article 52 of ACER Financial Regulation)

1. Estimates of amounts receivable shall specify the type of revenue and the budget item to which they are to be booked and, as far as possible, the particulars of the debtor and the estimated amount.

When drawing up an estimate of amounts receivable, the authorising officer responsible shall check in particular that:

- (a) the revenue is booked to the correct budget item;
 - (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.
2. An estimate of amounts receivable shall not have the effect of making commitment appropriations available. In the cases referred to in Article 19 of the Financial Regulation, appropriations may be made available only after the sums due have been actually recovered by the Agency.

Section 3 – Establishment of the amounts receivable

Article 48 – Procedure

(Article 53 of ACER Financial Regulation)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of ACER in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.
2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note shall be to inform the debtor that:
 - (a) ACER has established the amount receivable;
 - (b) if payment of the debt is made before the deadline, no default interest will be due;
 - (c) failing payment by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 86 of the Implementing Rules to the General Financial Regulation, without any prejudice to any specific regulations applicable;
 - (d) failing payment by the deadline referred to in point (b) ACER shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;
 - (e) the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Union's financial interests when he has justified grounds to believe that the amount due to ACER would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
 - (f) if, after all those steps have been taken, the amount has not been recovered in full, ACER shall effect recovery by legal action.

The authorising officer shall send the debit note to the debtor with a copy to the accounting officer.

Article 49 – Establishment of amounts receivable

(Article 53 of ACER Financial Regulation)

To establish an amount receivable the authorising officer responsible shall ensure that:

- (a) the receivable is certain and not subject to any condition;
- (b) the receivable is of fixed amount, expressed precisely in cash terms;
- (c) the receivable is due and is not subject to any payment time;
- (d) the particulars of the debtor are correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 54(1).

Article 50 – Supporting documents for the establishment of amounts receivable

(Article 53 of ACER Financial Regulation)

1. The establishment of an amount receivable shall be based on supporting documents certifying ACER's entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 22 and 23.

Section 4 – Authorisation of recovery

Article 51 – Establishment of the recovery order

(Article 54 of ACER Financial Regulation)

1. The recovery order shall specify:
 - (a) the financial year to which the revenue is to be booked;
 - (b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
 - (c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
 - (d) the amount to be recovered, expressed in euro;
 - (e) the name and address of the debtor;
 - (f) the deadline referred to in Article 48(3)(b);
 - (g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.
2. The recovery order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

Section 5 – Recovery

Article 52 – Recovery by offsetting

(Article 55 of ACER Financial Regulation)

1. Where the debtor has a claim on ACER that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, following the deadline referred to in Article 48(3)(b) recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of ACER, when the accounting officer has justified reasons to believe that the amount due to ACER would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 48(3)(b).

2. Before proceeding with any recovery in accordance with paragraph 1, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before the deadline has passed.

3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge ACER for the amount of the debt and, where appropriate of the interest due.

Article 53 – Recovery procedure failing voluntary payment

(Article 55 of ACER Financial Regulation)

1. Without prejudice to Article 52, if the full amount has not been recovered by the deadline referred to in Article 48(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 52, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery secured by legal action.

Article 54 – Waiving of recovery of an established amount receivable

(Article 55 of ACER Financial Regulation)

1. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:
 - (a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the European Union's image;
 - (b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
 - (c) where recovery is inconsistent with the principle of proportionality.
2. In the case referred to in point (c) of paragraph 1, the authorising officer responsible shall act in accordance with predetermined procedures established within the Agency and shall apply the following criteria which are compulsory and applicable in all circumstances:
 - (a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
 - (b) the impact that waiving recovery would have on the operation of ACER and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

Depending on the circumstances of the case, the authorising officer responsible may also have to take the following additional criteria into account:

- (i) any distortion of competition that would be caused by the waiving of recovery;
 - (ii) the economic and social damage that would be caused were the debt to be recovered in full.
3. The waiver decision referred to in Article 55(3) of ACER Financial Regulation shall be substantiated and shall refer to the diligence exercised to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery following the rules set out in Article 51.
4. The waiving of recovery of an established amount receivable may not be delegated where the amount to be waived is EUR 5,000 or more;
5. Where a waiver decision involving EUR 100,000 or more is taken, ACER shall establish a report and annex it to the annual activity report referred to in Article 40(1) of ACER Financial Regulation.

Article 55 – Cancellation of an established amount receivable

(Article 55 of ACER Financial Regulation)

1. In the event of a mistake as to a point of law, the authorising officer responsible shall cancel the established amount receivable following the rules set out in Articles 50 and 51; cancellation shall be suitably substantiated.

Article 56 – Technical and adjustment of an established amount receivable

(Article 55 of ACER Financial Regulation)

1. The authorising officer responsible shall adjust the established amount receivable upwards or downwards if the discovery of an error of fact necessitates the alteration of the amount, provided that the correction does not imply relinquishment of the ACER's established entitlement. Such adjustment shall be made following the rules set out in Articles 50 and 51 and shall be suitably substantiated.

Article 57 – Additional time for payment

(Article 58 of ACER Financial Regulation)

The guarantee referred to in Article 58 point (b) of the ACER Financial Regulation may be replaced by a joint and several guarantee by a third party approved by the accounting officer.

Article 58 – Rules for limitation periods

(Article 58b of ACER Financial Regulation)

1. The limitation period for entitlements of ACER in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 48(3)(b).

The limitation period for entitlements of third parties in respect of ACER shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

2. The limitation period for entitlements of ACER in respect of third parties shall be interrupted by any act of ACER, notified to the third party and aiming at recovering the debt.

The limitation period for entitlements of third parties in respect of ACER shall be interrupted by any act notified to ACER by their creditors or on behalf of their creditors aiming at recovering the debt.

3. A new limitation period of five years shall begin to run on the day following the interruptions referred to in paragraph 2.
4. Any legal action relating to an amount receivable as referred to in paragraph 1, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. The new limitation period of five years shall not begin until a judgment having the force of *res judicata* is given or there is an extrajudicial settlement between the same parties on the same action.
5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 57, this shall be considered as an interruption of the limitation period. The new limitation period of 5 years shall begin to run on the day following the expiry of the extended time for payment.
6. Entitlements shall not be recovered after the expiry of the limitation period, as established in paragraphs 1 to 5.

CHAPTER 5 – Expenditure operations

Article 59 – Financing decision

(Article 60 of ACER Financial Regulation)

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.
2. For grants, the decision adopting the annual work programme shall be considered to be the financing decision within the meaning of Article 60 of ACER Financial Regulation, provided that it constitutes a sufficiently detailed framework.

As regards procurement, where the implementation of the corresponding appropriations is provided for by an annual work programme constituting a sufficiently detailed framework, this work programme shall also be considered to be the financing decision for the procurement contracts involved.

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Agency shall set out the following:
 - (a) For grants:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;
 - (iii) the essential eligibility and award criteria to be used to select the proposals;
 - (iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;
 - (v) the timetable and the indicative amount of the calls for proposals.
 - (b) For procurement:
 - (i) the global budgetary envelope reserved for the procurements during the year;
 - (ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;
 - (iii) the indicative timeframe for launching the procurement procedures.

If the annual work programme does not provide this detailed framework for one or more actions a specific financing decision must be adopted containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

4. Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

Section 1 – Commitment of expenditure

Article 60 – Global and provisional commitments

(Article 61 of ACER Financial Regulation)

The global budget commitment shall be implemented either by the conclusion of a financing agreement, itself providing for the subsequent conclusion of one or more legal commitments, or by the conclusion of one or more legal commitments.

Financing agreements in the field of financial assistance and budgetary support which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.

Article 61 – Adoption of a global commitment

(Article 61 of ACER Financial Regulation)

1. A global commitment shall be made on the basis of a financing decision.
The global commitment shall be made at the latest before the decision on the selection of beneficiaries is taken and, where implementation of the appropriations concerned involves the adoption of a work programme at the earliest after that programme has been adopted.
2. Where the global commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 1 shall not apply.

Article 62 – Single signature

(Article 61 of ACER Financial Regulation)

1. The rule that there be a single signatory for the budget commitment and the corresponding legal commitment may be departed from in the following cases alone:
 - (a) where the commitments are provisional;
 - (b) where the decision of the Director constitutes the legal commitment;
 - (c) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;
2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time-limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated, provided that that person has the status of authorising officer.

Article 63 – Administrative expenditure covered by provisional commitments

(Article 61 of ACER Financial Regulation)

Items regarded as routine administrative expenditure which may give rise to provisional commitments shall include the following:

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on seconded national experts and other human resources, on pensions and on the remuneration of experts;
- (b) expenditure relating Members of the institution;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;

- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

Article 64 – Registration of individual legal commitments

(Article 62 of ACER Financial Regulation)

In the case of a global budget commitment followed by several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of these successive individual legal commitments. The authorising officer responsible shall check that the aggregate amount does not exceed the amount of the global commitment covering them.

The registration in the accounts shall indicate the references of the global commitment against which the individual commitments are being booked.

The authorising officer responsible shall register the amounts in the accounts before signing the corresponding individual legal commitment.

Section 2 – Validation of expenditure

Article 65 – Validation and ‘passing for payment’

(Article 64 of ACER Financial Regulation)

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 72 attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done, before taking the decision validating the expenditure.
3. The validation decision shall be expressed by signing ‘passed for payment’ by the authorising officer responsible or by an official or other servant technically competent, empowered by formal decision of the authorising officer. Such empowerment decisions shall be kept for future reference.

Article 66 – Passing for payment of procurement contracts

(Article 64 of ACER Financial Regulation)

For payments corresponding to procurement contracts, the endorsement ‘passed for payment’ shall certify that:

- (a) ACER has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed ‘certified correct’ and signed by an official or other servant technically competent and duly empowered by the authorising officer responsible;
- (c) all aspects of the invoice have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

The endorsement 'certified correct', referred to in point (b) of the first paragraph, shall certify that the services provided for in the contract have been properly provided, or that the supplies provided for in the contract have been properly delivered, or that the work provided for in the contract has been properly carried out. For supplies and work, the official or other servant technically competent shall draw up a provisional acceptance certificate, then a final acceptance certificate at the end of the guarantee period laid down in the contract. Those two certificates shall count as the 'certified correct' endorsement.

Article 67 – Passing for payment of grants

(Article 64 of ACER Financial Regulation)

For payments corresponding to grants, the endorsement 'passed for payment' shall certify that:

- (a) ACER has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed 'certified correct' and signed by an official or other servant technically competent, empowered by the authorising officer responsible; by such endorsement, he certifies that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;
- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

Article 68 – Passing for payment of staff expenditure

(Article 64 of ACER Financial Regulation)

For payments corresponding to staff expenditure, the endorsement 'passed for payment' shall certify that the following supporting documents exist:

- (a) in respect of monthly salary:
 - (i) the complete list of staff, giving all the components of remuneration;
 - (ii) documents stating for all staff changes in any component of remuneration or any new recruitment or appointment;
- (b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;
- (d) in respect of mission expenses:
 - (i) the travel order signed by the competent authority;
 - (ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents;

- (e) in respect of other staff expenditure: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

Article 69 – Material form of ‘passed for payment’

(Article 64 of ACER Financial Regulation)

In a non-computerised system, ‘passed for payment’ shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 65(3). In a computerised system, ‘passed for payment’ shall take the form of an electronically secured validation by the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible.

Section 3 – Authorisation of expenditure

Article 70 – Checks on payments by the authorising officer

(Article 66 of ACER Financial Regulation)

When drawing up the payment order, the authorising officer responsible shall ensure that:

- (a) the payment order has been properly issued, meaning that a corresponding validation decision has been taken previously in the form of ‘passed for payment’, that the particulars of the payee are correct and that the amount is due;
- (b) the payment order corresponds to the budget commitment against which it is booked;
- (c) the expenditure is charged to the correct item in the budget;
- (d) appropriations are available.

Article 71 – Mandatory details on payment orders and transmission to the accounting officer

(Article 66 of ACER Financial Regulation)

1. The payment order shall state:
 - (a) the financial year to which the expenditure is to be booked;
 - (b) the budget line and any other subdivision that may apply;
 - (c) the references of the legal commitment giving rise to an entitlement to payment;
 - (d) the references of the budget commitment against which it is to be booked;
 - (e) the amount to be paid, expressed in euro;
 - (f) the name, address and bank account details of the payee;
 - (g) the object of the expenditure;
 - (h) the means of payment;
 - (i) the entry of items in the inventory in accordance with Article 114.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

Section 4 – Payment of expenditure

Article 72 – Supporting documents

(Article 67 of ACER Financial Regulation)

1. Pre-financing, including in cases where it is split into a number of payments, shall be paid either on the basis of the contract, the decision, the agreement or the basic act, or on the basis of supporting documents which make it possible to check the conformity of the actions financed with the terms of the contract, decision or agreement in question. If a date of payment for pre-financing is determined in those instruments, payment of the due amount shall not be dependent upon further demand.

Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the basic act or the decision in favour of the beneficiary, or in accordance with the terms of the contract or agreement concluded with the beneficiary.

2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with the basic act and the contracts and agreements concluded with the beneficiary. Interim and final technical and financial implementation reports shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Articles 21 and 22.

Article 73 – Booking of pre-financing and interim payments

(Article 67 of ACER Financial Regulation)

1. Pre-financing is intended to provide the beneficiary with a float. It may be split into a number of payments.
2. An interim payment, which may be repeated, is intended to reimburse expenditure incurred by the beneficiary on the basis of a statement of expenditure when the action is in progress. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act.
3. The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

CHAPTER 6 – IT systems

Article 74 – Description of IT systems

(Article 70 of ACER Financial Regulation)

Where computer systems and subsystems are used to process budget implementation operations, a full and up-to-date description of each system or subsystem shall be required.

Each description shall define the content of all data fields and describe how the system treats each individual operation. It shall show in detail how the system guarantees the existence of a complete audit trail for each operation.

Article 75 – Periodical save

(Article 70 of ACER Financial Regulation)

The data in computer systems and subsystems shall be saved periodically and kept in a safe place.

CHAPTER 7 – Internal auditor

Article 76 – Appointment of an internal auditor

(Article 71 of ACER Financial Regulation)

1. ACER shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. ACER shall inform the Court of auditors and the Internal Audit Service of the Commission of the appointment of the internal auditor.
2. ACER shall determine, in accordance with its specific features and its requirements, the scope of the mission of the internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.
3. ACER may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations chosen from nationals of the Member States.
4. ACER shall inform the Court of auditors and the Internal Audit Service of the Commission when the duties of the internal auditor are terminated.

Article 77 – Operational resources

(Article 72 of ACER Financial Regulation)

ACER shall provide the internal auditor with the resources required for the proper performance of his audit function and a mission charter detailing his tasks, duties and obligations.

Article 78 – Work programme

(Article 72 of ACER Financial Regulation)

1. The internal auditor shall adopt his work programme and shall submit it to the Administration Board and the Director.
2. ACER may ask the internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

Article 79 – Reports of the internal auditor

(Article 72(4) of ACER Financial Regulation)

1. ACER shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other agencies and EU bodies.
2. The internal auditor shall, during the elaboration of his report, particularly focus on the overall compliance with the principle of sound financial management and shall ensure that appropriate measures have been taken in order to steadily improve and enhance its application.

Article 80 – Independence

(Article 72 of ACER Financial Regulation)

The internal auditor shall enjoy complete independence in the conduct of his audits. He may not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his appointment, are assigned to him under the ACER Financial Regulation.

Article 81 – Liability of the internal auditor

(Article 73 of ACER Financial Regulation)

ACER alone, proceeding in accordance with this Article, may act to have the internal auditor, where this is an official or other servant subject to the Staff Regulations within ACER, declared liable for his actions.

ACER shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. ACER may put in charge of the investigation, under its direct responsibility, one or more staff member of a grade equal to or higher than that of the member of staff concerned. In the course of the investigation, the views of the interested party shall be heard.

The investigation report shall be communicated to the interested party, who shall then be heard by ACER on the subject of that report.

On the basis of the report and the hearing, ACER shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22, 86 and Annex IX of the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to the Court of Auditors and the other institutions.

The interested party may bring an action in respect of such decisions before the Court of Justice of the European Union, as provided for in the Staff Regulations.

Article 82 – Action before the Court of Justice of the European Union

(Article 73 of ACER Financial Regulation)

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Union in respect of any act relating to the performance of his/her duties as internal auditor. Such an action must be lodged within three months running from the calendar day on which the act in question is notified.

Such actions shall be investigated and heard as provided for in Article 91(5) of the Staff Regulations of Officials of the European Union.

TITLE V

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1 – Presentation of the accounts

Article 83 – Report on budgetary and financial management during the year

(Article 76 of ACER Financial Regulation)

The report on budgetary and financial management during the year shall give an accurate description of:

- (a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;
- (b) the financial situation and the events which have had a significant influence on activities during the year.

The report on budgetary and financial management shall be separate from the reports on implementation of the budget referred in Article 76 of the ACER Financial Regulation.

Article 84 – Exception to the accounting principles

(Article 78 of ACER Financial Regulation)

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles defined in Articles 86 to 93, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 96.

Article 85 – Going-concern principle

(Article 78 of ACER Financial Regulation)

1. The going-concern principle means that for the purposes of preparing the financial statements, ACER shall be deemed to be established for an indefinite duration.
2. If there are objective indications that ACER is to cease its activities, the accounting officer shall present that information in the annex, indicating the reasons. The accounting officer shall apply the accounting rules with a view to determining the liquidation value of ACER.

Article 86 – Principle of prudence

(Article 78 of ACER Financial Regulation)

The principle of prudence means that assets and income shall not be overstated and liabilities and charges shall not be understated. However, the principle of prudence does not allow the creation of hidden reserves or undue provisions.

Article 87 – Principle of consistent accounting methods

(Article 78 of ACER Financial Regulation)

The principle of consistent accounting methods means that the structure of the components of the financial statements and the accounting methods and valuation rules may not be changed from one year to the next, unless decided otherwise by the Commission's accounting officer.

Article 88 – Principle of comparability of information

(Article 78 of ACER Financial Regulation)

1. The principle of comparability of information means that for each item the financial statements shall also show the amount of the corresponding item the previous year.
2. Where, pursuant to paragraph 1, the presentation or the classification of one of the components of the financial statements is changed, the corresponding amounts for the previous year shall be made comparable and reclassified.

Where it is impossible to reclassify items, this shall be explained in the annex referred to in Article 96.

Article 89 – Materiality principle

(Article 78 of ACER Financial Regulation)

1. The materiality principle means that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality shall be assessed in particular by reference to the nature of the transaction or the amount.
2. Transactions may be aggregated where:
 - (a) the transactions are identical in nature, even if the amounts are large;
 - (b) the amounts are negligible;
 - (c) aggregation makes for clarity in the financial statements.

Article 90 – No-netting principle

(Article 78 of ACER Financial Regulation)

The no-netting principle means that receivables and debts may not be offset against each other, nor may charges and income, save where charges and income derive from the same transaction, from similar transactions or from hedging operations, and provided that they are not individually material.

Article 91 – Principle of reality over appearance

(Article 78 of ACER Financial Regulation)

The principle of reality over appearance means that accounting events recorded in the financial statements shall be presented by reference to their economic nature.

Article 92 – Accrual-based accounting principle

(Article 78 of ACER Financial Regulation)

1. The accrual-based accounting principle means that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered. They shall be booked to the financial years to which they relate.
2. The obligating event for the entry of each transaction in the accounts shall be determined in accordance with the accounting methods adopted by the Commission's accounting officer provided for in Article 133 of the General Financial Regulation.

Article 93 – Economic outturn account

(Article 80 of ACER Financial Regulation)

The economic outturn account shall show the income and charges for the year, classified according to their nature.

Article 94 – Cash flow table

(Article 80 of ACER Financial Regulation)

The cash flow table shall show treasury movements.

The treasury shall be made up of the following:

- (a) cash in hand;
- (b) bank accounts and deposits payable on demand; and
- (c) other disposable assets which can quickly be converted to cash and whose value is stable.

Article 95 – Annex to the financial statements

(Article 80 of ACER Financial Regulation)

The annex referred to in Article 80(2) of ACER Financial Regulation shall form an integral part of the financial statements. It shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for an accurate picture;

- (c) off-balance-sheet commitments showing entitlements and obligations not included in the balance sheet which could have a material impact on the assets and liabilities, the financial situation or the result of the entity concerned.

Article 96 – Explanatory notes

(Article 80 of ACER Financial Regulation)

The explanatory notes shall be presented with cross references to the items in the financial statements to which they relate and in the same order of presentation.

Article 97 – Budgetary outturn account

(Article 81 of ACER Financial Regulation)

The budgetary outturn account shall contain:

- (a) information on revenue comprising:
 - (i) changes in the revenue estimates in the budget;
 - (ii) the revenue outturn;
 - (iii) entitlements established;
- (b) information showing changes in the total commitment and payment appropriations available;
- (c) information showing the use made of the total commitment and payment appropriations available;
- (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.

Article 98 – Annex to the budgetary outturn account

(Article 81 of ACER Financial Regulation)

The annex to the budgetary outturn account referred to in Article 81(b) of ACER Financial Regulation shall contain at least:

- (a) information on the budget principles, types of appropriation and the structure of the budget;
- (b) information on commitments outstanding;
- (c) the information required for a proper understanding of the budget outturn.

CHAPTER 2 – Accounting

Section 1 – Common provisions

Article 99 – Organisation of the accounts

(Article 84 of ACER Financial Regulation)

1. The accounting officer of ACER shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of ACER.
2. In drawing up the financial statements, as little use as possible shall be made of information from outside the accounts.
3. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 100, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 100 – Computerised systems

(Article 84 of ACER Financial Regulation)

1. The accounts shall be kept with the help of an integrated computerised system.
2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.
3. That description shall define the content of all data fields and specify how the system treats individual operations. It shall state how the system guarantees the existence of a complete audit trail for each operation and for any change made to the computerised systems and subsystems so that it is possible at any time to identify the nature of the change and the person who made it.
4. The description of computerised accounting systems and subsystems shall indicate any links between those systems and the central accounting system, particularly as regards the transfer of data and the reconciliation of balances.
5. Access to the computerised systems and subsystems shall be confined to persons included on a list of authorised users which is kept and updated by ACER.

Section 2 – General accounts

Article 101 – Accounting ledgers

(Article 87 of ACER Financial Regulation)

1. ACER shall keep a journal, a general ledger and an inventory.
2. The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.
3. Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts.
4. The journal and the general ledger may be split into as many special journals and special ledgers as are necessary to meet requirements.
5. Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 102 – Trial balance

(Article 87 of ACER Financial Regulation)

ACER shall establish a trial balance covering all the accounts of the general accounts, including the accounts cleared during the year, with, in each case:

- (a) account number;
- (b) description;
- (c) total debits;
- (d) total credits;
- (e) balance.

Article 103 – Accounting reconciliations

(Article 87 of ACER Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
2. As regards the inventory of fixed assets, the provisions of Articles 112 to 119 shall apply.

Article 104 – Entries in the accounts

(Article 87 of ACER Financial Regulation)

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing an equivalence between the amount debited and the amount credited in the various accounts affected by that entry.
2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts.

Transactions in foreign currencies in accounts which can be revalued shall be revalued at least each time the accounts are closed.

That revaluation shall be based on the rates laid down in accordance with Article 7.

The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year N shall be that of the last working day of year N.

3. ACER shall apply the conversion and re-evaluation rules to be provided for the purposes of accrual accounting as adopted by the Commission's accounting officer under Article 133 of the General Financial Regulation.

Article 105 – Accounting records

(Article 87 of ACER Financial Regulation)

All accounting records shall specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

Article 106 – Supporting documents

(Article 87 of ACER Financial Regulation)

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 22(d).
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 107 – Recording in the journal

(Article 87 of ACER Financial Regulation)

Accounting operations shall be recorded in the journal by one of the following methods, which are not mutually exclusive:

- (a) day by day, operation by operation;
- (b) in the form of a monthly summary of the total amounts involved in operations, provided that all documents allowing verification of individual operations day by day are kept.

Article 108 – Validation of entries

(Article 87 of ACER Financial Regulation)

1. Entries in the journal and in an inventory ledger shall be made final by means of a validation procedure prohibiting any change to or deletion of the entry.
2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented at the latest before the final financial statements are presented.

Article 109 – Reconciliation of accounts

(Article 87 of ACER Financial Regulation)

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the general ledger referred to in Article 102 correspond to the actual situation, in particular as regards:
 - (a) cash at bank, by reconciliation of the statements of account from financial institutions;
 - (b) cash in cash offices, by reconciliation with the data in the cash book.

The fixed assets accounts shall be reviewed in accordance with Article 116.

3. The suspense accounts shall be reviewed annually by the accounting officer so that they can be cleared as soon as possible.

Section 3 – Budgetary accounts

Article 110 – Content and keeping of budget accounts

(Article 89 of ACER Financial Regulation)

1. The budget accounts shall show, for each subdivision of the budget:
 - (a) in the case of expenditure:
 - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;
 - (ii) the commitments and payments in respect of the financial year;
 - (b) in the case of revenue:
 - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;
 - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;
 - (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first subparagraph shall be entered and shown separately.

2. The budget accounts shall show separately:
 - (a) the use of appropriations carried over and the appropriations for the year;
 - (b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

3. The budget accounts may be organised in such a way as to develop a cost accounting system.
4. The budget accounts shall be kept using computer systems, in books or on file cards.

CHAPTER 3 – Property inventories

Article 111 – Property inventories

(Article 90 of ACER Financial Regulation)

The system of property inventories shall be established by the authorising officer with technical assistance from the accounting officer. That inventory system must supply all the information required for keeping the accounts and safeguarding assets.

Article 112 – Safeguarding property

(Article 90 of ACER Financial Regulation)

ACER shall adopt provisions on safeguarding the property included in its respective balance sheet and decide which administrative departments are responsible for the inventory system.

Article 113 – Entry of items in the inventory

(Article 90 of ACER Financial Regulation)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules adopted under Article 133 of the General Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.

Article 114 – Content of the inventory for each item

(Article 90 of ACER Financial Regulation)

The inventory shall contain an appropriate description of each item and specify its location, the date of acquisition and its unit cost.

Article 115 – Inventory checks

(Article 90 of ACER Financial Regulation)

Inventory checks carried out by ACER shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under an annual verification programme, save for tangible and intangible fixed assets, which shall be checked at least on a three-year basis.

Article 116 – Resale of property

(Article 90 of ACER Financial Regulation)

Members, officials or other servants and any other staff of ACER may not acquire items that are resold by ACER, save where those items are resold by public tender procedure.

Article 117 – Procedure for sale of fixed assets

(Article 90 of ACER Financial Regulation)

1. Sales of fixed assets shall be advertised locally in appropriate fashion, if the unit purchase value is EUR 8,100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than fourteen calendar days.

Sales shall be the subject of a notice of sale published in the Official Journal of the European Union, if the unit purchase value is EUR 391,100 or more. Appropriate advertising may also be placed in the Member States' press. The period between the date of publication of the notice in the Official Journal of the European Union and conclusion of the sales contract shall be no less than one month.

2. ACER may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. ACER shall always endeavour to obtain the best price for sales of fixed assets.

Article 118 – Procedure for disposing of fixed assets

(Article 90 of ACER Financial Regulation)

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory is sold, given away free of charge, scrapped, hired out or missing on account of loss, theft or any other reason.

The statement or record shall indicate in particular whether the item must be replaced at the expense of an official or other servant of the Union or any other person.

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report sent to the European Parliament and the Council when the preliminary draft budget is presented.

TRANSITIONAL AND FINAL PROVISIONS

Article 119 – Updating of thresholds and amounts

The thresholds and amounts laid down in Articles 40, 44 and 117 shall be updated every three years in line with changes in the consumer price index in the European Union, as published in the Official Journal of the European Union.

Article 120 – Entry into force

These rules shall enter into force on the day following their adoption by the Administrative Board and together with the ACER Financial Regulation.

Done at Ljubljana
5 September 2012

Piotr Woźniak
Chairman of the ACER Administrative Board