

DECISION No 13/2020

**OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION
AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

of 4 September 2020

granting permission to Mr Alberto POTOTSCHNIG to engage in post-employment activities

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

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators¹ and, in particular, Article 19(1)(h) thereof,

Having regard to the Staff Regulations of Officials of the European Union, and, in particular, Article 16, and to the Conditions of Employment of Other Servants of the European Union, and, in particular, Article 11 thereof,

Having regard to Decision No 16/2018 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 13 December 2018 on the adoption by analogy of the Commission Decision on outside activities and assignments and on occupational activities after leaving the Service,

Whereas:

- (1) The contract of employment of Mr Alberto POTOTSCHNIG (hereinafter ‘Mr POTOTSCHNIG’) with the European Union Agency for the Cooperation of Energy Regulators (hereinafter ‘the Agency’) ended on 31 December 2019.
- (2) On 13 July 2020, Mr POTOTSCHNIG submitted an application for authorisation to engage in paid post-employment activities with the Florence School of Regulation of the European University Institute (hereinafter referred to as ‘FSR’) as Deputy-Director for the World of Practice.
- (3) Mr POTOTSCHNIG reported that the Florence School of Regulation is a centre of excellence for independent discussion and knowledge exchange with the purpose of improving the quality of European regulation and policy and delivers academic research, training and policy events in the areas of Energy & Climate, Communications & Media, Transport and Water.
- (4) Mr POTOTSCHNIG informed the Agency that in the above-mentioned role he would be called to perform the following activities:

¹ OJ L 158, 14.6.2019, p. 22–53.

- (i) informing the FSR Director on the actual trends and priorities of the World of Practice² in the area of energy policy and regulation;
 - (ii) liaising with leaders and key representatives of the World of Practice;
 - (iii) acting as ambassador of the FSR's work and knowledge vis-à-vis leaders and key representatives of the World of Practice;
 - (iv) representing the FSR in key selected events particularly relevant for the World of Practice;
 - (v) contributing to key dialogue events, trainings, and key research programmes organised by the FSR;
 - (vi) advising the FSR Director on the initiatives and actions to keep the closest links with and the highest possible relevance for the World of Practice.
- (5) In light of the above, the activities to be performed by Mr POTOTSCHNIG as Deputy-Director for the World of Practice with FRS, although falling, at general level, within the field of activities of the Agency, do not appear to lead to a conflict with the legitimate interest of the Agency, and therefore, Mr POTOTSCHNIG can be granted permission.
- (6) On 15 July 2020, Mr POTOTSCHNIG submitted an application for authorisation to engage in paid post-employment activities as consultant in the field of economic analysis and advice, both in his personal capacity and as Partner of DFC Economics.
- (7) In this regard, Mr POTOTSCHNIG reported that the envisaged activity would consist in providing advice to energy sector entities and other entities – including public authorities and international organisations – on strategic, policy and regulatory issues.
- (8) In addition, Mr POTOTSCHNIG reported that DFC Economics delivers independent, evidence-based economic analysis and advice on complex business and regulatory issues. It offers its clients a wide range of services with a focus on utility sectors.
- (9) In accordance with Article 16 of the Staff Regulations, and balancing the need to ensure integrity through temporary prohibitions and restrictions and the need to respect Mr POTOTSCHNIG's fundamental right to engage in work and to pursue a freely chosen or accepted occupation, it is therefore necessary to determine whether to forbid Mr POTOTSCHNIG from undertaking the intended new occupational activity, or to establish the conditions under which the ACER gives its approval.
- (10) The Administrative Board, acting as Appointing Authority, shall assess whether the notified activities could lead to a conflict with the legitimate interests of the Agency.

² The World of Practice includes the Institutions, bodies and other agencies of the Union, the National Energy Regulators, the Countries Energy Administrations, energy companies and others sectors stakeholders within or outside the Union.

In doing so, the Administrative Board shall take into account factors such as:

- (i) the relation between the occupational activity and the work carried out by the former staff member during the last three years of service;
 - (ii) whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service;
 - (ii) whether the occupational activity would risk harming the reputation of the former staff member and the Commission (e.g.) by retroactively casting doubt on the former staff member's impartiality while he or she was still in service, thereby tarnishing the Commission's image;
 - (iv) the quality of a future employer (e.g. whether it is a public authority or a private/commercial company) or the situation of self-employment;
 - (v) whether the envisaged activity would involve representing outside interests vis-à-vis the Agency.
- (11) In light of the above, the activities to be performed by Mr POTOTSCHNIG, both in his personal capacity and as a partner in DFC Economics, fall within the field of activities of the Agency.
- (12) In addition, based on the submissions of Mr POTOTSCHNIG and having regard to the past activities performed by DFC Economics and its partners in the last five years, the envisaged activities could lead to a potential conflict with the legitimate interest of the Agency.
- (13) As a result, the paid post-employment activities identified by Mr POTOTSCHNIG in his application of 15 July 2020 can be authorised. However, it appears proportionated that, for a period of two years after leaving the service, Mr POTOTSCHNIG shall be prohibited from:
- a. dealing with files, cases or matters related to the work carried out by him during his last three years of service, including related or subsequent cases and/or court proceedings;
 - b. engaging in lobbying or advocacy, vis-à-vis the Agency and its staff, on behalf of his business or clients on matters for which he was responsible during the last three years of service with the Agency;
 - c. having professional contacts, whether direct or indirect, with his former colleagues in ACER;
- (14) In addition, and without time limit, Mr POTOTSCHNIG shall be prohibited from disclosing information received in the line of duty during his work at ACER, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations).

HAS ADOPTED THIS DECISION:

Article 1

Mr Alberto POTOTSCHNIG is granted permission to engage in paid post-employment activities as Deputy-Director for the World of Practice of the Florence School of Regulation to perform the tasks indicated in his application of 13 July 2020.

Article 2

Mr Alberto POTOTSCHNIG is granted permission to engage in post-employment activities as consultant in the field of economic analysis and advice, both in his personal capacity and as partner of DFC Economics, as per his application of 15 July 2020, subject to limitations.

Mr Alberto POTOTSCHNIG is prohibited, for a period of two years after leaving the service, from dealing with files, cases or matters related to the work carried out by him during his last three years of service, including related or subsequent cases and/or court proceedings.

Mr Alberto POTOTSCHNIG is prohibited, for a period of two years after leaving the service, from engaging in lobbying or advocacy, vis-à-vis staff of ACER, on behalf of his business or clients on matters for which he was responsible during the last three years in the service.

Article 3

Mr Alberto POTOTSCHNIG shall abstain during the same period of two years after having left the service, from having professional contacts, whether direct or indirect, with his former colleagues in ACER. However, the prohibition to have professional contacts does not affect general exchanges of and on publicly available information, e.g. in meetings or panel discussions.

Mr Alberto POTOTSCHNIG remains bound without time limit by the statutory obligation to refrain from any unauthorised disclosure of information received in the line of duty during his work at ACER, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations). This statutory obligation also entails refraining from exploiting insights of confidential nature in policy, strategy or internal processes that he may have acquired in the line of service and that have not yet been public or are not commonly available in the public domain.

Article 4

The Chair of the Administrative Board is mandated to implement this Decision and undertake any procedural step related to the permission granted with this Decision.

Article 5

This Decision shall take effect on the day of its adoption and shall be notified to Mr Alberto POTOTSCHNIG.

Done at Ljubljana, on 4 September 2020

For the Administrative Board

A handwritten signature in black ink, appearing to read 'J. Penker', written in a cursive style.

The Chair

J. PENKER

DECISION No 15/2020

**OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION
AGENCY FOR THE COOPERATION OF ENERGY REGULATORS**

of 11 November 2020

**repealing Decision No 13/2020 of the Administrative Board of the European
Union Agency for the Cooperation of Energy Regulators of 4 September 2020
granting permission to Mr Alberto POTOTSCHNIG to engage in post-
employment activities**

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

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the
Council of 5 June 2019 establishing a European Union Agency for the Cooperation of
Energy Regulators¹, and, in particular, Article 19(1)(h) thereof,

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the
Conditions of Employment of Other Servants ('CEOS') of the European Union, laid
down by Council Regulation (EEC, Euratom, ECSC) No 259/68², and in particular,
Article 16 of the Staff Regulations and Article 11 CEOS,

Whereas:

- (1) The contract of employment of Mr Alberto POTOTSCHNIG (hereinafter 'Mr POTOTSCHNIG') with the European Union Agency for the Cooperation of Energy Regulators (hereinafter 'the Agency') ended on 31 December 2019.
- (2) On 13 July 2020, Mr POTOTSCHNIG submitted an application for authorisation to engage in paid post-employment activities with the Florence School of Regulation of the European University Institute (hereinafter referred to as 'FSR') as Deputy-Director for the World of Practice.
- (3) Mr POTOTSCHNIG reported that the Florence School of Regulation is a centre of excellence for independent discussion and knowledge exchange with the purpose of improving the quality of European regulation and policy and delivers academic research, training and policy events in the areas of Energy & Climate, Communications & Media, Transport and Water.
- (4) Mr POTOTSCHNIG informed the Agency that in the above-mentioned role he would be called to perform the following activities:

¹ OJ L 158, 14.6.2019, p. 22–53.

² OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p. 15.

- (i) informing the FSR Director on the actual trends and priorities of the World of Practice³ in the area of energy policy and regulation;
 - (ii) liaising with leaders and key representatives of the World of Practice;
 - (iii) acting as ambassador of the FSR's work and knowledge vis-à-vis leaders and key representatives of the World of Practice;
 - (iv) representing the FSR in key selected events particularly relevant for the World of Practice;
 - (v) contributing to key dialogue events, trainings, and key research programmes organised by the FSR;
 - (vi) advising the FSR Director on the initiatives and actions to keep the closest links with and the highest possible relevance for the World of Practice.
- (5) In light of the above, the activities to be performed by Mr POTOTSCHNIG as Deputy-Director for the World of Practice with FRS, although falling, at general level, within the field of activities of the Agency, did not appear to lead to a conflict with the legitimate interest of the Agency, and therefore, Mr POTOTSCHNIG can be granted permission.
- (6) On 15 July 2020, Mr POTOTSCHNIG submitted an application for authorisation to engage in paid post-employment activities as consultant in the field of economic analysis and advice, both in his personal capacity and as Partner of DFC Economics.
- (7) In this regard, Mr POTOTSCHNIG reported that the envisaged activity would consist in providing advice to energy sector entities and other entities – including public authorities and international organisations – on strategic, policy and regulatory issues.
- (8) In addition, Mr POTOTSCHNIG reported that DFC Economics delivers independent, evidence-based economic analysis and advice on complex business and regulatory issues. It offers its clients a wide range of services with a focus on utility sectors.
- (9) The Administrative Board, acting as Appointing Authority, assessed whether the notified activities could have led to a conflict with the legitimate interests of the Agency and concluded that the activities to be performed by Mr POTOTSCHNIG, both in his personal capacity and as a partner in DFC Economics, would have fallen within the field of activities of the Agency.
- (10) In addition, based on the submissions of Mr POTOTSCHNIG and having regard to the past activities performed by DFC Economics and its partners in the last five years, the Administrative Board concluded that the envisaged activities could have

³ The World of Practice includes the Institutions, bodies and other agencies of the Union, the National Energy Regulators, the Countries Energy Administrations, energy companies and others sectors stakeholders within or outside the Union.

led to a potential conflict with the legitimate interest of the Agency.

- (11) In light of the above, on 4 September 2020, the Administrative Board adopted Decision No 13/2020 establishing that the paid post-employment activities identified by Mr POTOTSCHNIG in his application of 15 July 2020 could be authorised subject to limitations.
- (12) Upon request of review from Mr POTOTSCHNIG of 7 September 2020, the Administrative Board has found that Decision No 13/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 4 September 2020, granting permission to Mr POTOTSCHNIG to engage in post-employment activities, was adopted out of the term of 30 working days foreseen in Article 16(2) of the Staff Regulations. In light of the above, this Decision shall be repealed.
- (13) As the statutory delay of 30 working days was not kept, the post- employment activities are deemed to be accepted.
- (14) In spite of the above, the notified post-employment activities are still subject to the provisions of Article 16 and 17 of the Staff Regulations, and Mr POTOTSCHNIG will be reminded accordingly.

HAS ADOPTED THIS DECISION:

Article 1

Decision No 13/2020 of the Administrative Board of the European Union Agency for the Cooperation of Energy Regulators of 4 September 2020, granting permission to Mr Alberto POTOTSCHNIG to engage in post-employment activities, is hereby repealed.

Article 2

This Decision shall take effect on the day of its adoption and is addressed to Mr Alberto POTOTSCHNIG.

Done at Ljubljana, 11 November 2020

For the Administrative Board



The Chair

J. PENKER

Stefano VAONA (ACER)

From: Jochen PENKER (ACER)
Sent: 12 November 2020 19:35
To: Alberto Pototschnig
Cc: ABsecretariat
Subject: Application of Article 16 Staff Regulations to post-employment activities - Alberto Pototschnig
Attachments: Letter to Mr Pototschnig - 11.11.2020 - Application of Article 16 SR.pdf

Dear Alberto,

I hope this finds you well. I take the opportunity to reply directly to you concerning your post-employment activities both with Florence School and as a consultant.

The Administrative Board has carefully assessed your request of the past 7 September and, as you have been informed, we repealed our Decision, being no. 13 of this year.

I would still invite you to consider accepting the conditions that are included in the attached letter, bringing my signature and conveying a proposal from the Administrative Board beyond the obligations stemming from the Staff Regulations.

Kind regards,

Jochen

Ljubljana, 11 November 2020

Mr Alberto POTOTSCHNIG

By e-mail only

Subject: Application of Article 16 of the Staff Regulations in the exercise of post-employment activities as Vice-Director of the Florence School of Regulation and as Consultant

Dear Mr POTOTSCHNIG, dear Alberto,

I am contacting you within the framework of the authorisation of the post-employment activities that have been notified to the Agency on the past 13 and 15 July, the subsequent communications on the matter at hand, and, in particular, your e-mails dated 3 and 7 September 2020.

First of all, I would like to inform you that, following your request of the past 7 September, on [9] November 2020, the Administrative Board has repealed Decision No 13 of 4 September 2020 granting to you the permission to engage in post-employment activities subject to limitations. A separate communication has been transmitted to you to that effect.

In light of the above, the Administrative Board would like to invite you to commit to abide to the following restrictions in the exercise of the post-employment activities notified the past 13 and 15 July. These restrictions, subject to your kind acceptance, aim at preventing situations that might create a risk of real, potential or perceived conflict of interests and therefore derive, in our view, directly from the spirit and objectives of Article 11 CEOS and Article 16 of the Staff Regulations¹, provisions of ethical nature that are applicable irrespective of the above-mentioned repealed Decision.

In your applications of the past 13 and 15 July, it was sought authorisation to engage in post-employment activities as Deputy-Director for the World of Practice with the Florence School of Regulation of the European University Institute and as consultant in the field of economic analysis and advice, both in your personal capacity and as a partner of DFC Economics.

¹ Council Regulation (EEC, Euratom, ECSC) No 259/682, OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p. 15.

In light of the above and with reference to all the activities reported above for which authorisation was sought, the Administrative Board considers that the above-reported activities shall not entail dealing with files, cases or matters related to the work carried out during the last three years of service with the Agency. This restriction applies to the extent that the above-reported activities might entail relying upon information received in the line of duty and that have not been made public. This restriction, applicable for a period of two years after leaving the service, shall include also related or subsequent cases and/or court proceedings.

For the same period of time, and with reference to the same activities reported above, the Administrative Board considers that those activities shall be performed abstaining from lobbying or engaging in advocacy vis-à-vis staff of the Agency, on behalf of your business or clients, on matters for which you have been responsible during the last three years of service with the Agency.

With specific regard to the proposed activities as consultant, both in your personal capacity and as a partner of DFC Economics, the above referred provisions of the Staff Regulations entail that the exercise of those functions shall be performed abstaining from having professional contacts, whether direct or indirect, with former colleagues at the Agency. The Administrative Board would like to maintain that this prohibition to have professional contacts does not affect general exchanges of and on publicly available information, e.g. in meetings or panel discussions.

In addition, in accordance with Article 17 of the Staff Regulations, the Administrative Board would like to draw your attention to the fact that you remain bound by the statutory obligation to refrain from any unauthorised disclosure of information received during your service with the Agency, unless that information has already been made public or is accessible to the public. This statutory obligation also entails refraining from exploiting insights of confidential nature in policy, strategy or internal processes that you may have acquired in the line of service and that have not yet been made public or are not commonly available in the public domain. This obligation is not subject to time limits.

The Administrative Board takes the opportunity to recall that any situation that might create a risk of real, potential or perceived conflict of interests shall also be avoided and the Agency should be informed in case you intend to engage in any other additional occupational activity, whether gainful or not, within two years of leaving the service.

I would be grateful if you could confirm your agreement to the proposed restrictions.

Yours sincerely,

For the Administrative Board

A handwritten signature in black ink, appearing to read 'J. Penker', with a long horizontal flourish extending to the right.

Dr Jochen PENKER

The Chair

Stefano VAONA (ACER)

From: Alberto Pototschnig
Sent: 15 November 2020 08:34
To: Jochen PENKER (ACER)
Cc: ABsecretariat
Subject: RE: Application of Article 16 Staff Regulations to post-employmentactivities - Alberto Pototschnig

Dear Jochen, good morning,

Thank you for your message which finds me well. I hope you and your family are also well,

As I indicated in my previous message of 30 October, I would have no problem in agreeing with the restrictions proposed by the Administrative Board. However, as I also mentioned there, my agreement with these restrictions must be subject to DG ENER positively clarifying on my participation in the Florence, Madrid and Copenhagen Fora.

I will revert to you as soon as I do.

the best and have a good Sunday.

Alberto

From: [Jochen PENKER \(ACER\)](#)
Sent: 12 November 2020 19:34
To: [Alberto Pototschnig](#)
Cc: [ABsecretariat](#)
Subject: Application of Article 16 Staff Regulations to post-employmentactivities - Alberto Pototschnig

Dear Alberto,

I hope this finds you well. I take the opportunity to reply directly to you concerning your post-employment activities both with Florence School and as a consultant.

The Administrative Board has carefully assessed your request of the past 7 September and, as you have been informed, we repealed our Decision, being no. 13 of this year.

I would still invite you to consider accepting the conditions that are included in the attached letter, bringing my signature and conveying a proposal from the Administrative Board beyond the obligations stemming from the Staff Regulations.

Kind regards,

Jochen

Stefano VAONA (ACER)

From: Alberto Pototschnig
Sent: 26 January 2021 19:58
To: Jochen PENKER (ACER)
Cc: ABsecretariat
Subject: RE: Application of Article 16 Staff Regulations to post-employmentactivities - Alberto Pototschnig

Dear Jochen,

I hope this email finds you well,

I refer to your letter of 12 November and I apologise if it has taken me so long to get back to you, but there were some final formalities to be completed.

It is on this basis that I am happy to agree to the post-employment restrictions that you propose in the above-mentioned letter. I would like also to reassure you that, even pending this agreement, I have already adhered to the spirit of the proposed restrictions.

I am pleased that we have finally resolved this situation and I would like to thank you for your understanding over these months.

Kind regards

Alberto

From: [Jochen PENKER \(ACER\)](#)
Sent: 12 November 2020 19:34
To: [Alberto Pototschnig](#)
Cc: [ABsecretariat](#)
Subject: Application of Article 16 Staff Regulations to post-employmentactivities - Alberto Pototschnig

Dear Alberto,

I hope this finds you well. I take the opportunity to reply directly to you concerning your post-employment activities both with Florence School and as a consultant.

The Administrative Board has carefully assessed your request of the past 7 September and, as you have been informed, we repealed our Decision, being no. 13 of this year.

I would still invite you to consider accepting the conditions that are included in the attached letter, bringing my signature and conveying a proposal from the Administrative Board beyond the obligations stemming from the Staff Regulations.

Kind regards,

Jochen