

DECISION AB n° 02/2011

**LAYING DOWN THE RULES ON THE SECONDMENT OF NATIONAL
EXPERTS TO THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS**

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

HAVING REGARD to Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and to Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas;

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "ACER"), and in particular to Article 28(2) and (4), and 31, thereof;

Whereas:

1. Seconded national experts (SNEs) should enable ACER to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available, especially in newly recruited staff.
2. It is highly desirable to foster the exchange of professional experience in, and knowledge of, European regulatory practice by temporarily assigning experts from the administrations of the Member States to ACER, even for short periods. For the same reason, steps should also be taken to facilitate the use of experts drawn from the public intergovernmental organisations (IGOs) established by the EU Member States.

3. In order to ensure that ACER's independence is not compromised by private interests, it should be stipulated that SNEs must come from a national, regional or local public administration or an IGO. The secondment of an SNE by an employer other than a national, regional or local public administration or an IGO should be authorised only on a case-by-case basis, once it has been ascertained that the SNE's employer is part of the public sector or is an independent university or research organisation that does not seek to make profit for redistribution.
4. In order to avoid any conflict of interests, the rights and obligations of SNEs, as set out in this Decision, should ensure that they carry out their duties solely in the interests of ACER.
5. In view of their special status, it should be stipulated that SNEs, when acting alone, will not exercise any of the responsibilities that belong to ACER by virtue of the powers conferred upon it, unless specially empowered to do so in writing by the Director of ACER.
6. It is desirable to consolidate the rules applicable to SNEs in a single text, preserving their specific features while also simplifying them in respect to the Commission rules on SNEs. Furthermore, in the case of working conditions and the granting of subsistence allowances, it is appropriate to align their status as much as possible to the rules defined in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, yet without assimilating SNEs to these categories;
7. The possibility of seconding national experts can be extended to third countries on the basis of the agreements referred to in Article 31 of the ACER Regulation.

HAS ADOPTED the following decision:

Chapter I: General provisions

Article 1

Scope

1. These rules shall apply to national experts seconded to ACER (hereinafter referred to as SNEs or seconded national experts).
2. Any reference in this Decision to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.



Article 2
Eligibility

1. Seconded national experts are staff employed by a national, regional or local public administration or an IGO, who are seconded to ACER so that the latter can use their expertise in a particular field.

For the purpose of this Decision, public administration means all State administrative services at central, federal and regional level, comprising ministries, government and parliament services, the courts, central banks, and the administrative services of local authorities, as well as the decentralised administrative services of the State and of such authorities. For the same purpose, the public administration also includes the regulatory authorities referred to in Article 35 of Directive 2009/72/EC and Article 39 of Directive 2009/73/EC.

The persons covered by this Decision must have worked for their employer on a permanent or contract basis for at least 12 months before their secondment and shall remain in the service of that employer throughout the period of secondment.

The SNE's employer shall thus continue to pay his salary, to maintain his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform the Director of ACER of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension. The termination of or change in the SNE's administrative status (permanent official or contract staff member) may lead to the termination of his secondment by ACER without notice, in accordance with Article 11(2)(c).

3. Notwithstanding the second subparagraph of paragraph 1, the Director of ACER may, on a case-by-case basis, authorise the secondment of an SNE from an employer other than a State public administration or an IGO if the interests of ACER warrant bringing in specific expertise as a temporary measure, provided that the SNE's employer:

- is an independent university or research organisation which does not set out to make profit for redistribution; or
- is in fact part of the public sector.

For the purposes of this Decision, to qualify as being part of the public sector, the SNE's employer must meet all the following conditions:

- it is attached to a public administration as defined in paragraph 1, and specifically it has been created by legislation or regulation;
- its resources come primarily from public funding;
- any activities in which it competes against other private or public entities on the market represent less than half of its activities.

Exceptionally and where justified by the interest of the service, the Director of ACER may authorise the secondment of an SNE by an employer that does not meet one or more of the above criteria.

4. Except where the Director of ACER grants derogation, an SNE must be a national of an EU.
5. When a secondment is being planned, ACER shall endeavour, if possible, to ensure the geographical and gender balance and compliance with the principle of equal opportunities, in accordance with the principles set out in Articles 1d and 27 of the Staff Regulations.
6. Secondment shall be effected by an exchange of letters between the Director of ACER and employer.

A copy of the rules applicable to SNEs shall be attached to the exchange of letters.

Article 3

Cost-free seconded national experts

1. For the purposes of this Decision, “cost-free SNEs” means SNEs for whom ACER does not pay any of the allowances provided for in Chapter III or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment.
2. Cost-free SNEs may be seconded from the public administration, as defined in Article 1(1), of an EU Member State or from an IGO established by the EU Member State, as part of an agreement and/or exchange programme with ACER.
3. The Director of ACER may authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the Department in question, the geographical balance and the work to be carried out.

Article 4

Selection procedure

SNEs shall be selected:

- a. either according to an open and transparent selection procedure. Vacancy notices shall be published for no less than one month before the closing date for applications and shall be advertised, at least, on the ACER website with a notification thereof on the EPSO portal and the Permanent Representations to the EU. Where appropriate, other means of advertisement shall be used;

- b. or by direct contact between ACER and the Administration where the candidate is working.

Article 5
Period of secondment

1. The initial period of secondment may not be less than six months or more than two years. It may be renewed once or more, up to a total period not exceeding four years. Exceptionally, at the request of the Department concerned and where the interest of the service warrants it, the Director of ACER may authorise one or more extensions of the secondment for a maximum of two more years at the end of the four-year period.
2. The initial duration of the secondment shall be specified in the exchange of letters between the Director of ACER and the SNE's employer. Any extension of the period of secondment shall be subject to a new exchange of letters.
3. An SNE who has already been seconded to ACER may be seconded to it a second time subject to any relevant internal rules laying down maximum periods during which such persons may be present in the Agency's Departments, and subject further to the following conditions:
 - a. the SNE must continue to meet the conditions for secondment;
 - b. a period of at least six years must have elapsed between the end of the previous period of secondment and a new secondment; if at the end of the first secondment, the SNE has received a contract with the Agency, the six year period shall begin to run from the expiry of that contract.

The condition in point (b) shall not prevent ACER from accepting the secondment of an SNE whose initial secondment has lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four year period, without prejudice to the possibility of extending it by up to two more years, as provided for in paragraph 1.

Article 6
Place of secondment

SNEs shall be seconded at ACER headquarters located in Ljubljana, Slovenia.

Article 7
Tasks

1. SNEs shall assist ACER's staff. They may not perform management duties, even when deputising for their immediate superior.



2. An SNE shall take part in missions or external meetings only as part of a delegation led by an ACER staff or, if on his own, as an observer or for information purposes.
3. In all other cases, by way of derogation from paragraph 2, the Head of department concerned may give a specific mandate to the SNE to participate on his own in one or more missions or external meetings, after having ensured that there is no potential conflict of interest.

In such cases the Head of department concerned shall give the SNE clear and specific written instructions on the position to be adopted during the missions or meetings in question.

Under no circumstances may an SNE on his own represent ACER with a view to entering into commitments, whether financial or otherwise, or negotiating on the Agency's behalf.

An SNE may, however, represent ACER in legal proceedings as co-agent with staff.

4. ACER shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
5. The Director of ACER, the SNE's employer and the SNE must ensure that there is no conflict of interest in relation to the SNE's duties while seconded to ACER. The SNE will sign declaration of confidentiality and absence of conflict of interest.

For this purpose, the department to which the SNE is to be assigned shall inform the SNE and his employer before the start of the secondment about the intended duties and ask them to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties.

The employer and the SNE shall also undertake to inform the Director of ACER of any change of circumstances during the secondment which could give rise to any such conflict.

6. Failure on the part of the SNE to comply with his obligations arising from paragraphs 2, 3 or 5 shall entitle ACER, if it sees fit, to terminate the secondment of the SNE pursuant to Article 11(2)(c).

Article 8
Rights and obligations

1. During the period of secondment:
 - a) The SNE shall carry out his duties and conduct himself solely with the interests of ACER in mind. He shall neither seek nor take instructions



from any government, authority, organisation or person outside ACER. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to ACER.

- b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside ACER shall be subject to ACER's rules on prior authorisation for ACER staff members¹. ACER shall consult the SNE's employer before issuing an authorisation.
- c) The SNE shall refrain from any action or behaviour which might reflect adversely upon his position and from any form of psychological or sexual harassment².
- d) The SNE shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interests such as to impair his independence, and, in particular, family and financial interests. If he has occasion in the performance of his duties to deal with such a matter, he shall immediately inform his Head of Department or Director, who will take any appropriate measure and may, in particular, relieve the SNE of responsibility in this matter.

The SNE may neither keep nor acquire, either directly or indirectly, in undertakings which are subject to the authority of ACER or which have dealings with ACER, any interests of such kind or magnitude as might impair his independence in the performance of his duties.

The SNE shall declare any gainful activity performed in a professional capacity by his spouse, as defined by the Staff Regulations.

- e) The SNE shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.
- f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to the work of the Agency shall inform the Director of ACER in advance. Where the Director of ACER is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of the Agency, he shall inform the SNE of his decision in writing within 30 working days of receipt of the information. If no such decision is notified within the

¹ Article 12b of the Staff Regulations and the provisions implementing this article shall apply mutandis.

² Article 12a of the Staff Regulations and the provisions implementing this article shall apply mutandis.



specified period, the Director of ACER shall be deemed to have had no objections.

- g) All rights in any work done by the SNE in the performance of his duties shall be the property of ACER.
 - h) The SNE shall reside at the place of secondment or at no greater distance there from as is compatible with the proper performance of his activities.
 - i) Based on his professional knowledge and experience, the SNE shall assist and tender advice to the superiors in ACER to whom he is assigned and shall be responsible to his superiors for performance of the tasks entrusted to him.
2. Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle ACER, if it sees fit, to terminate the SNE's secondment pursuant to Article 11(2)(c).
 3. At the end of the secondment the SNE shall continue to have a duty of loyalty to ACER and be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

Article 9

Professional experience and knowledge of languages

1. To qualify for secondment to the ACER a national expert must have at least three years' experience of administrative, legal, scientific, technical, advisory or supervisory functions which can be regarded as equivalent to those of function groups AD or AST – this latter function group being taken into consideration only for highly specialised job profiles – as defined in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.
2. An SNE must produce evidence of a thorough knowledge of one of the Community languages and a satisfactory knowledge of another Community language to the extent necessary for the performance of his duties. An SNE from a non-member country must produce evidence of a thorough knowledge of one Community language necessary for the performance of his duties.

Article 10

Suspension of secondment

1. At the written request of the SNE or his employer, and with the latter's agreement, ACER may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:

- a) the subsistence allowances referred to in Article 17 shall not be payable;
 - b) the travel expenses referred to in Article 19 shall not be payable.
2. The period of suspension shall not be counted in the period of secondment as defined in Article 3.

Article 11

Termination of periods of secondment

1. Subject to paragraph 2, the secondment may be terminated at the request of ACER or the SNE's employer, subject to three months' notice, or at the SNE's request, subject to the same period of notice and with the agreement of ACER and the SNE's employer.
2. In exceptional circumstances the secondment may be terminated without notice:
 - a) by the SNE's employer, if the employer's essential interests so require;
 - b) by ACER and the employer acting jointly, at the request of the SNE addressed to both parties, if the SNE's personal or professional interests so require;
 - c) by ACER in the event of failure by the SNE or his employer to respect their obligations under this Decision; ACER shall immediately inform the SNE and his employer accordingly.

Chapter II: Working conditions

Article 12

Social security

1. Before the period of secondment begins, the national public administration or IGO from which the SNE is to be seconded shall certify that, throughout the period of secondment, he will remain subject to the social security legislation applicable to the public administration that employs him and is responsible for expenses incurred abroad.
2. From the day on which his secondment begins, the SNE shall be covered by ACER against the risk of accident. ACER shall provide him with a copy of the terms of this cover on the day on taking up his duties.
3. An SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by the Commission Joint Sickness Insurance



Scheme. The SNE shall pay half the relevant insurance premium and his contribution shall be deducted monthly from the subsistence allowances referred to in Article 17.

Article 13
Working hours

1. The working hours for SNEs shall be the same as those in force at ACER³.
2. An SNE shall serve on a full-time basis throughout the period of secondment.

Following a duly justified request originating from the Department concerned, the Director of ACER may allow an SNE to work part time, provided the SNE's employer agrees and the arrangement is compatible with the smooth running of the Department.

For part-time SNEs leave days and subsistence allowances are reduced proportionally.

Article 14
Sick leave

1. The rules in force at ACER on absence due to sickness or accident shall apply to SNEs⁴.
2. Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the subsistence allowances referred to in Article 17 shall be automatically suspended.

Sick leave may not extend beyond the duration of the secondment of the person concerned.

3. SNEs who are affected by a work-related injury which occurs during the secondment shall continue to receive the subsistence allowances in full throughout the period during which they are unfit for work. These allowances shall not, however, be paid beyond the end of the period of secondment.

Article 15
Annual and special leave

1. With the exception of the provisions relating to grade, the rules in force at ACER on annual and special leave, applicable to temporary agents, shall apply to SNEs⁵.

³ Articles 55 to 56c of the Staff Regulations and the provisions implementing these articles shall apply mutatis mutandis.

⁴ Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

2. Leave shall be subject to prior authorisation by the Department to which the SNE is assigned. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid.
3. Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave by ACER in a 12-month period to visit his employer.
4. In the case of part-time work, the annual leave shall be reduced accordingly.
5. Days of annual leave not taken by the end of the period of secondment shall be forfeited.

Article 16
Maternity leave

1. The rules in force at ACER on maternity leave shall apply to SNEs⁶. While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 17.
2. Where the rules that are binding upon the SNE's employer provide for a period of maternity leave longer than that granted by ACER, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by ACER.

A period equivalent to the break may be added to the end of the secondment if the interest of the Agency warrants it.

3. An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.

Chapter III: Allowances and expenses

Article 17
Subsistence allowances

1. An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance.

Rates of the subsistence allowances applicable since 01.01.2011:

⁵ Articles 57 and 59a of and the Annex V to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

⁶ Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.



- the daily subsistence allowance shall be:
 - less than 150 km - 25% of the daily subsistence allowance: 31,92€
 - more than 150 km - 100% of the daily subsistence allowance: 127,65€
- the monthly subsistence allowance shall be paid in accordance with the following table:

Distance between place of origin and place of secondment (km)	Amount in €
0-150	0
> 150	82,05
> 300	145,86
> 500	237,05
> 800	382,92
> 1300	601,73
> 2000	720,27

For the purpose of the payments under this paragraph the distance within the meaning of these rules shall be determined by the shortest road distance as calculated by the Michelin route planner ViaMichelin (www.viamichelin.com).

2. These subsistence allowances shall be granted under the same conditions as the expatriation allowance for temporary agents⁷.
3. In the case of cost-free SNEs, the exchange of letters referred to in Article 2(4), shall stipulate that the allowances and expenses referred to in Chapter III except missions expenses, shall not be paid.
4. The subsistence allowances for SNEs seconded shall be subject to the relevant weighting factors set by the Council pursuant to Article 64 of the Staff Regulations.
5. The adjustments to remuneration adopted yearly by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances in the month following their adoption.

The Human Resources Unit of ACER shall be responsible for implementing this provision and shall publish the new rate for subsistence allowances on ACER intranet website.

6. These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and shall in no circumstances be construed as remuneration paid by ACER.

⁷ Article 4 of Annex VII of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis



The SNE shall inform the Human Resources Unit of ACER of any allowance similar to the subsistence allowances paid by ACER received from other sources. This amount shall be deducted from the subsistence allowances paid by ACER. Following a duly justified request from the employer, ACER may decide not to make this deduction.

7. Subsistence allowances shall be payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by ACER. The subsistence allowances are reduced proportionally in case of part-time work.
8. When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he is entitled shall be advanced in the form of a lump sum, and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum shall be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.
9. Subsistence allowances shall be paid no later than the 25th day of each month.

Article 18
Place of origin

1. For the purposes of this Decision, "place of origin" means the place where the SNE performed his duties for his employer at the time of his secondment. The place of secondment shall be the place where ACER headquarters are located. Both places shall be identified in the exchange of letters.
2. If, six months before his secondment to ACER as an SNE, a national expert already has his main residence in a place other than that in which the employer's headquarters is located, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

Article 19
Travel expenses

1. SNEs shall be entitled to reimbursement of the cost of their travel between their place of origin and the place of secondment, as defined in Article 18, at the beginning and end of their secondment. The travel costs for the SNEs family are not reimbursed by ACER.
2. Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at ACER⁸.

⁸ Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

3. By way of derogation from paragraph 1, an SNE who proves that he will be assigned to a place other than his place of origin at the end of the secondment shall be entitled to reimbursement of the travel expenses to that new place under the conditions laid down in paragraph 2. However, this reimbursement may not be more than the amount that would have been paid had the SNE returned to his place of origin.
4. ACER shall not reimburse any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body.

Article 20

Missions and mission expenses

1. SNEs may be sent on mission subject to Article 7(2).
2. Mission expenses shall be reimbursed in accordance with the relevant rules and conditions in force at ACER⁹.

Article 21

Training

SNEs shall have access to training courses on the same conditions as ACER staff members.

Article 22

Administrative provisions

SNEs shall report to the Human Resources Unit of ACER on the first day of secondment to complete the requisite administrative formalities. They shall take up duty on either the first or the sixteenth day of the month.

Chapter IV: Complaints

Article 23

Without prejudice to the possibilities for instituting proceedings after taking up his position, under the conditions and time limits laid down in Article 230 of the EC Treaty, any SNE may submit a complaint under Article 90 of the Staff Regulations to the Director of ACER about an act adopted by ACER services under this Decision

⁹ Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

which adversely affects him, with the exception of decisions which are direct consequences of decisions taken by his employer.

The complaint must be lodged within two months. The period shall start to run on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification. The Director of ACER shall notify the person concerned of his reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it.

Chapter V: Secondment of national experts from third countries

Article 24

The Director is delegated to extend the application of the provisions contained in this Decision to national experts from third countries, on the basis of the agreements referred to in Article 31 of the ACER Regulation.

Chapter VI: Final provisions

Article 25

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

Done at Ljubljana, on 3 March 2011

For the Administrative Board:



Piotr Woźniak

Chairman of the Administrative Board