

MANAGEMENT BOARD

DECISION

EFSA – European Food Safety Authority	Decision of the Executive Director on laying down general implementing provisions regarding Article 45 of the Staff Regulations	Decision No.: mb170621-a4
	Effective Date: 1 September 2017	Supersedes: EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations)

Approvals	Signature	Name
Originator		Bernhard Url (Executive Director)
Management Board	See Decision	Jaana Husu-Kallio (Chair of the MB)

Introduction	On 18 December 2015, the European Commission informed EFSA of its <i>ex ante</i> agreement C(2015) 9563 to adopt general implementing provisions regarding Article 45 of the Staff Regulations that are identical to the model decision drafted by the Commission with the assistance of the Standing Working Party.
Description	Compared to the previous framework applicable to the promotion of officials, the new general implementing provisions introduces the following main changes: <ul style="list-style-type: none"> - comparison of merits on which the promotion is based is made within the category of staff of officials only; - the promotion procedure consists of a qualitative assessment with no establishment of predefined promotion thresholds and award of promotion points; a transitional mechanism is foreseen to move to the new qualitative approach; - when comparing merits, together with the annual appraisal reports and the use of languages, systematic consideration is given to the level of responsibilities exercised; - in case of equal merit, other factors beyond standard criteria may be considered by the Executive Director;

	<ul style="list-style-type: none"> - the Executive Director meets with Staff Committee before drawing up a list of officials proposed for reclassification; - Joint Promotion/Reclassification Committee (JPRC) assesses the Executive Director's proposed list of staff and any possible complaints lodged by staff and may propose changes to this list; - members designated by the Staff Committee are members of the JPRC; - staff members can access all relevant information related to their reclassification procedure; - responsibilities to examine each promotion exercise and draw up a report, eventually containing recommendations, is assigned to the Joint Committee; - promotion is effective as from 01/01 of the exercise year.
References	Regulation (EC) No 178/2002 Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants of the European Union
Abbreviations	<i>See Decision</i>

DECISION OF THE EUROPEAN FOOD SAFETY AUTHORITY LAYING DOWN GENERAL IMPLEMENTING PROVISIONS REGARDING ARTICLE 45 OF THE STAFF REGULATIONS

THE MANAGEMENT BOARD OF THE EUROPEAN FOOD SAFETY AUTHORITY,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union ('Staff Regulations'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 45 thereof,

Having regard to Regulation (EC) No 178/2002 of the European Parliament and the Council of 28 January 2002 laying down the general principles of food law, establishing the European Food Safety Authority ('EFSA') and laying down procedures in relation to food safety², and in particular Article 25, 26 and 48,

Having regard to the Communication C(2014)6543 final of 26 September 2014 from Vice- President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to the rules of procedure of the Management Board of the European Food Safety Authority³, and in particular Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2015)9563 of 16 December 2015,

After consulting the Staff Committee,

Whereas:

- (1) On 17 December 2013, the Commission informed EFSA that it adopted Decision C(2013) 8968 of 16 December 2013 laying down general provisions for implementing Article 45 of the Staff Regulations.
- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to EFSA. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules. The Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.

¹ 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.

² OJ L 31, 1.2.2002, p.1, as last amended.

³ mb 27 06 13 - Revised Management Board Rules of Procedure – ADOPTED.

- (3) Commission Decision C(2013)8968 is suitable to apply to EFSA officials provided that certain adjustments are made to take into account the peculiarities of the Agency. Those adjustments concern in particular the actors involved, the promotion procedure and the transitional provisions.
- (4) The promotion system applicable to EFSA officials is based on consideration of the comparative merits of the officials eligible for promotion, taking account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with Article 28(f) of the Staff Regulations and the level of responsibilities exercised by them.
- (5) In the interest of clarity and legal certainty, EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations) should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1 - Scope

1. The general implementing provisions laid down by this Decision shall apply to the promotion of officials, with the exception of those in a grade higher than AD 13.
2. They shall not apply to promotions pursuant to Article 29(1)(a)(iii) of the Staff Regulations.

Article 2 — Annual promotion exercise

1. A promotion exercise shall be organised every year.
2. It shall be launched by the Agency entity in charge of human resources by means of the publication of a piece of communication.

Article 3 — Officials eligible for promotion

Officials may be promoted if they satisfy all of the following conditions:

- by 31 December of the year of the promotion exercise, at the latest, they have achieved the minimum seniority in grade required by Article 45(1) of the Staff Regulations,
- at the time of the launch of the promotion exercise pursuant to Article 2(2), they occupy a post which corresponds to one of the types of post set out in Annex I, Section A, or in Article 30(1) or Article 31(1) of Annex XIII to the Staff Regulations for the grade to which they may be promoted,

- they have demonstrated before their first promotion after recruitment the ability to work in a third language among those referred to in Article 55(1) of the Treaty on European Union⁴,
- they are in active employment, on parental or family leave, on leave for military service or seconded in the interests of the service on the date on which the promotion decisions are adopted by the appointing authority, and
- their appraisal reports have become final in application of the Agency's general provisions for implementing Article 43 of the Staff Regulations, if a report was required under the terms of those provisions. In cases where an appraisal report has not been finalised as a result of a delay for which the jobholder cannot be held responsible, the jobholder shall nevertheless take part in the promotion procedure on the basis of other valid information replacing the staff report and may therefore be promoted.

Article 4 – Basis of the promotion procedure

1. The promotion procedure shall be based on the consideration of the comparative merits of the officials eligible for promotion. The secure electronic⁵ system used to administer the exercise shall contain the information required for this comparative examination. For the purposes of the examination, the appointing authority shall take into account, in particular:
 - (a) reports on the officials drawn up since their last promotion or, failing that, since their recruitment, and in particular staff reports drawn up in accordance with the Agency's general provisions for implementing Article 43 of the Staff Regulations;
 - (b) the use by the officials in the execution of their duties of languages other than the language for which they produced evidence of thorough knowledge in accordance with Article 28(f) of the Staff Regulations, and
 - (c) the level of responsibilities exercised by them.
2. If officials eligible for promotion have equal merit based on the three factors referred to in paragraph 1, the appointing authority may give subsidiary consideration to other factors.

⁴ In accordance with the common rules laying down the procedure for implementing Article 45(2) of the Staff Regulations (common accord recorded by the President of the Court of Justice on 13 December 2006).

⁵ In the absence of an electronic-based system, the procedure shall be carried out manually and the relevant provisions shall be applied *mutatis mutandis*.

Article 5 — Promotion procedure

1. The promotion exercise shall be launched only once the appraisal exercise organised in the same year has been finalised. The end of the appraisal exercise shall be announced by the Agency entity in charge of human resources by means of the publication of a communication.
2. At the start of the exercise, the Agency entity in charge of human resources shall inform the Head of the Agency as referred to in the act(s) establishing the Agency ('the Executive Director') of the arrangements for the current exercise, giving an indication of the financial resources available for the current year.
3. Within the Agency, the Heads of Department shall consult the reporting officers referred to in the Agency's general provisions for implementing Article 43 of the Staff Regulations.

Following that consultation, the Executive Director, and the Heads of Department shall proceed with the examination of the comparative merits of the officials eligible for promotion.
4. Following the examination referred to in paragraph 3 above, the Executive Director shall hold a discussion with a delegation appointed by the Staff Committee. During this discussion, the Executive Director shall, at the request of the delegation appointed by the Staff Committee, specify the factors referred to in Article 4(2) of these general implementing provisions that were given subsidiary consideration in the case of equal merit.
5. Following the discussion referred to in paragraph 4, the Executive Director shall draw up a list of officials proposed for promotion. This list may not exhaust the budgetary resources available for the promotion of officials for the current exercise.
6. The Executive Director shall communicate to all the Agency's staff the list of the officials he or she wishes to propose for promotion and shall forward this list to the Joint Promotion and Reclassification Committee referred to in Annex I.
7. Officials shall have ten working days from the date of publication of this list in which to lodge a complaint with the Joint Promotion and Reclassification Committee against the fact that he or she is not on the list, with supporting arguments. On receipt of the list referred to in paragraph 6, the Joint Promotion and Reclassification Committee, taking into account any complaints it has received, shall compare the merits of the officials eligible for promotion and present for the attention of the appointing authority the list of officials it recommends for promotion. That recommendation may not exceed the budgetary resources available for the promotion of officials for the current exercise. At the same time, it shall forward the complaints and the discrepancies, if any, referred to in Annex II.

8. Once it has received the information referred to in paragraph 7 above, and has at its disposal the files of all the officials eligible for promotion, the appointing authority shall carry out a final comparison of the merits of the eligible officials and, taking into account the budgetary resources available, shall adopt the list of officials promoted. Promotion shall entail the appointment of the official concerned to the first step of the next higher grade in the function group to which he or she belongs.
9. The list of officials promoted shall be published for the attention of all the Agency's staff, including the officials seconded in the interest of the service, by means of the publication of a communication. Without prejudice to the confidentiality principle referred to in Article 4 of Annex I, each official shall be given access to all relevant information related to his/her individual promotion procedure.
10. Promotions shall take effect on 1 January of the year of the promotion exercise. If, on that date, the official does not have the seniority in the grade or does not occupy a post of the type required under Article 45(1) of the Staff Regulations, the promotion shall take effect on the first day of the first full month during which he or she possesses the necessary seniority or occupies a post of the required type.
11. Publication of the list of officials promoted referred to in paragraph 9 constitutes communication of the decision within the meaning of Article 25 of the Staff Regulations. The period of three months in which to lodge a complaint, provided for in Article 90(2) of the Staff Regulations, starts to run on the day following that of the publication of the list.
12. The Joint Committee shall examine each promotion exercise. To this end, all relevant information shall be made available to the Joint Committee. After each promotion exercise, the Joint Committee shall draw up a report that may contain recommendations. This report shall be sent to the Executive Director and the Staff Committee and made public to all the Agency's staff.

Article 6 — Final provisions

1. Annex III shall apply until officials are flagged following the transitional provisions laid down in that Annex.
2. EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations) is repealed.
3. Commission Decision C(2013)8968 does not apply by analogy to EFSA.

4. This Decision shall take effect on 1 September 2017 and shall apply as from the 2018 promotion exercise.

Adopted on 21 June 2017
For EFSA's Management Board

Jaana Husu-Kallio
Chair of the Management Board

DRAFT

ANNEX I — JOINT PROMOTION AND RECLASSIFICATION COMMITTEE

1 — Role of the Joint Promotion and Reclassification Committee

- 1.1. In accordance with Article 5(7) of these general implementing provisions, the Joint Promotion and Reclassification Committee shall compare the merits of the officials eligible for promotion on the basis of the list of officials proposed for promotion by the Executive Director, and take into account the complaints lodged against non-inclusion on the list. It shall then issue its recommendations regarding officials to be promoted, addressed to the appointing authority.
- 1.2. Although there is a single Joint Promotion and Reclassification Committee for officials, temporary and contract staff, it shall run a separate exercise for each category of staff.

2 — Composition and working methods of the Joint Promotion and Reclassification Committee

- 2.1. The Joint Promotion and Reclassification Committee shall be chaired by the Head of Business Services Department. It shall consist of two Heads of Unit who are the most senior in the highest function and, secondly, the most senior in the highest grade, and two members designated by the Staff Committee. The Chair, the administration members and the Staff Committee members shall have, for each of these three actors, at least one alternate. The Chair shall be entitled to vote.
- 2.2. The Joint Promotion and Reclassification Committee shall adopt its own rules of procedure and decide on its working methods. It may set up one or more intermediate joint working parties to carry out preparatory work. If necessary, the Joint Promotion and Reclassification Committee shall adopt rules of procedure for these intermediate joint working parties and decide on their working methods.

3 — Conflict of interests

- 3.1. In accordance with Articles 11 and 11a of the Staff Regulations, all members of a Joint Promotion and Reclassification Committee, including the Chair, shall carry out their duties and conduct themselves solely with the interests of the European Union in mind and shall not deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence.

- 3.2. If any member of a Joint Promotion and Reclassification Committee, including the Chair, has a personal interest in a matter such as to impair his or her independence in the handling of that matter, he or she shall be replaced by the appropriate alternate member and refrain from participating in the work of the Joint Promotion and Reclassification Committee.
- 3.3. A conflict of interests shall be any circumstance which the member of a Joint Promotion and Reclassification Committee, including the Chair, who is called upon to decide on a matter must reasonably understand as being such as to be seen by third parties as a possible source of impairment of his or her independence in that matter.

4 – Confidentiality principle

The deliberations and documents of the Joint Promotion and Reclassification Committee shall be confidential.

ANNEX II – STAFF REPRESENTATIVES

1. For the purposes of the promotion exercise, where appropriate, the names of the officials who are on more than 50 % part-time assignment⁶ as staff representatives shall be communicated to the Executive Director by the Chair of the Staff Committee. The name of the Chair of the Staff Committee shall be proposed to the Executive Director following a decision of the members of the Staff Committee and communicated by the member who is the most senior in the highest grade.

Such communications shall take place before the discussion referred to in Article 5(4) of these general implementing provisions.

2. For the purposes of the promotion exercise, officials who are on 50 % part-time assignment⁷ shall be considered to belong to the Department or Unit to which they are assigned.

The Chair of the Staff Committee shall communicate to the Executive Director the names of the officials he or she wishes to propose for promotion. The name of the Chair of the Staff Committee shall,

⁶ In cases of assignment established in a framework agreement.
⁷ See footnote 6.

where appropriate, be proposed to the Executive Director following a decision of the members of the Staff Committee and communicated by the member who is the most senior in the highest grade.

Such communications shall take place before the discussion referred to in Article 5(4) of these general implementing provisions.

In the event of a discrepancy between these proposals and that of the Executive Director, the latter must inform the Joint Promotion and Reclassification Committee of this discrepancy when forwarding the list of officials referred to in Article 5(6) of these general implementing provisions.

3. For the purposes of the promotion exercise, officials who are on less than 50 % part-time assignment⁸ as staff representatives or who have no such assignment shall be considered to belong to the Department or Unit to which they are assigned.

⁸ See footnote 6.

ANNEX III – TRANSITIONAL PROVISIONS

1 – Definitions

1.1. For the purposes of this Annex the following definitions shall apply:

- a) 'n' means the first year of application of this Decision;
- b) ' T_{n-1} ' means the promotion threshold observed during the promotion exercise n-1;
- c) ' T_{n-2} ' means the promotion threshold observed during the promotion exercise n-2;
- d) ' P_{n-1} ' means the total number of promotion points accumulated by an official at the end of the promotion exercise n-1, where applicable, following deduction for a promotion;
- e) 'M' means the maximum amount of promotion points that could be acquired during the promotion exercise n-1.

2 – Officials close to the promotion threshold in n-1

- 2.1. Officials fulfilling the condition that $\{T_{n-1} + (T_{n-1} - T_{n-2})\} - P_{n-1} \leq M$, shall be brought to the attention of the Executive Director by the Agency entity in charge of human resources. They will be flagged in the secure electronic⁹ system as long as they have not been promoted in application of these general implementing provisions.
- 2.2. If, following a comparison of merits, officials fulfilling the condition that $\{T_{n-1} + (T_{n-1} - T_{n-2})\} - P_{n-1} \leq M/2$, are not included on the list of officials proposed for promotion referred to in Article 5(6) of these general implementing provisions, the list must be accompanied by an explanation. The explanation must be based on a comparison of merits in the grade in question.

⁹ In the absence of an electronic-based system, the procedure shall be carried out manually and the relevant provisions shall be applied *mutatis mutandis*.