

## Note to the Management Board

### **Adoption of implementing rules to the Staff Regulations and Conditions of Employment of other Servants in line with Article 110 of the Staff Regulations**

#### **1. Background**

Under Article 110 of the Staff Regulations (SR), EFSA lays down staff-related implementing rules (IRs) according to one of the following modalities:

- adoption by analogy of Commission IRs (general principle);
- adoption of IRs based, when available, on Agency Model Decisions negotiated within the Standing Working Party ('SWP')<sup>1</sup>, to ensure common implementation of the SR across all agencies;
- adoption of IRs derogating from Commission IRs in case EFSA requires IRs which are specifically adapted to its own reality;
- opt-out Commission IRs which are not relevant or suitable for staff management at EFSA.

The decision-making power remains with the Management Board, on the basis of proposals of the Executive Director and following consultation with the Staff Committee.

An overview of IRs adopted so far by EFSA, following the 2013 review of the Staff Regulations, is provided in the Annex to the present note.

#### **2. IRs ready for adoption**

Four new Agency Model Decisions were negotiated within the SWP, and agreed by the Commission as regards the promotion of officials, the reclassification of temporary agents, the reclassification of contract agents (point 2.1.) and the protection of dignity and the prevention of psychosocial and sexual harassment (point 2.2.). The aim is to ensure common implementation across agencies of the legal framework applicable in these areas.

##### **2.1. Promotion/reclassification**

In line with the SR, a system is in place to allow EFSA to annually promote/reclassify a percentage of eligible staff members in the higher grade within their function group, taking into considerations budget availability and average career speed foreseen in the law. According to the current framework<sup>2</sup>, promotion and reclassification decisions are

<sup>1</sup> The Standing Working Party is composed of agencies' and Commission (DG HR) representatives and its mission is to negotiate General Implementing rules to be applied within agencies. EFSA is represented by the European Medicines Agency.

<sup>2</sup> There are three decisions currently in place: EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations); EFSA Decision of 22 April 2008 concerning the career of temporary staff and assignment to a post carrying a higher grade than that at which

taken following the comparison of merits of staff members EFSA-wide. That comparison is done taking into considerations the appraisal reports, the use of languages and, where appropriate, the level of responsibilities. The result of the assessment is translated in the award of promotion/reclassification points. To be proposed for promotion/reclassification, staff members must have accumulated a number of points equal or greater than a pre-defined reference threshold. The procedure is handled by the Management Committee on Promotions, consisting of EFSA senior managers with a member of Staff Committee designated as observer. A list of officials/temporary/contract staff for promotion/reclassification is proposed by this Committee to the Executive Director who bears the responsibility of the final decision.

The new proposed rules modify the system of promotion/reclassification on several aspects. Some changes leave to EFSA a margin of manoeuvre between different options, others don't.

### **2.1.1. Changes compared to the existing framework**

Changes for which **no flexibility** is left to EFSA:

- comparison of merits on which the promotion/reclassification is based is made by category of staff (*currently EFSA-wide comparison*);
- when comparing merits, together with the annual appraisal reports and the use of languages, systematic consideration is given to the level of responsibilities exercised (*currently level of responsibilities assessed where appropriate only*);
- in case of equal merit, other factors beyond standard criteria may be considered by the Executive Director;
- the Executive Director meets with Staff Committee before drawing up a list of staff members (per category) proposed for promotion/reclassification (*currently Staff Committee only observer in the Management Committee on promotions*);
- 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 (*currently under the responsibility of Management Committee on Promotions*);
- members designated by the Staff Committee are members of the JPRC (*currently Staff Committee only observer in the Management Committee on promotions*);
- staff members can access all relevant information related to their promotion/reclassification procedure;
- responsibilities to examine each promotion/reclassification exercise and draw up a report, eventually containing recommendations, is assigned to the Joint Committee;
- promotion/reclassification is effective as from 01/01 of the exercise year (*currently as from 01/03*).

Changes for which **flexibility** exists:

- system approach - the new rules leave EFSA to decide to:
  - either go for a qualitative system, abandoning thus the current system based on points award and pre-defined promotion/reclassification threshold.

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they were engaged (on the basis of Art. 10 of the Conditions of Employment of other Servants) and its Amendment N°1 of 23 July 2010; EFSA Decision of 23 July 2010 concerning the career of contract staff and assignment to a post carrying a higher grade than that at which they were engaged (on the basis of Art. 87(3) of the Conditions of Employment of other Servants).

Transitional measures are foreseen to allow for a smooth change from a qualitative to a qualitative approach; or

- maintain a quantitative system based on the award of points (abandoning anyway the mechanism of pre-defined threshold);
- procedure – the promotion/reclassification exercise is essentially structured in five main stages: i. first draft promotion/reclassification list drawn up by the Executive Director after managerial discussion, ii. first draft list discussed with the Staff Committee and possibly amended, iii. draft list published and open to complaints by staff, iv. assessment by the JPRC of the proposed list and of any complaints lodged by staff; possible changes proposed to this list, v. final decision taken by the Executive Director.

**Flexibility** between different options is foreseen as regards:

- stage i. (managerial discussion leading to first draft list) for which EFSA can decide between:
  - either a two-step procedure, consisting in a first discussion between the responsible reporting officers and the Heads of Department, and a subsequent discussion between Heads of Department and the Executive Director; or
  - a one-step procedure, where the first draft list is the result of a joint discussion between the Executive Director and the managerial community (i.e. Heads of Unit and Heads of Department);
- stage ii. (discussion between the Executive Director and the Staff Committee) for which EFSA can decide between:
  - either a discussion held with the full Staff Committee, or
  - a discussion held with a delegation appointed by the Staff Committee.

### **2.1.2. EFSA proposal**

EFSA assessed the new Agency Model Decisions on promotion/reclassification As regards the elements for which flexibility is left to EFSA, the following approach is suggested:

- System approach - opt for a qualitative system, abandoning thus the current system based on points award and pre-defined promotion/reclassification threshold.

*Rationale:*

- alignment with Sister Agencies (*e.g. EMA, ECHA*), EC and HR best practises,
- focus on merits rather than on scores,
- decreased complexities thanks to the removal of the requirement to meet thresholds.

- Procedure:

- stage i. – two-step procedure with a first discussion between the responsible reporting officers and the Heads of Department and a subsequent discussion between the Heads of Department and the Executive Director.

*Rationale:*

- It allows to discuss and compare merits in several steps enhancing the opportunity to have more reflective decision-making.
- stage ii. – involvement of the Staff Committee through a discussion held between the Executive Director and a delegation appointed by the Staff Committee.

*Rationale:*

- In line with best practice when discussing managerial decisions for on people's individual performance, allowing for effective but also efficient consultation mechanisms.

### **2.1.3. Staff Committee consultation**

EFSA Staff Committee (SC) was consulted and delivered its opinion. As regards the aspects of the new rules for which EFSA has flexibility the views of the SC were taken on board. The Staff Committee expressed its dissatisfaction on the fact that the Commission did not accept many of the suggestions that were formulated by both agencies and their Staff Committee, which however is out of the scope of the MB margin of manoeuvre. These essentially related to the wish to have one decision covering all categories of staff, to possibly improve the quality of the wording, allowing certainty in the interpretation and, in case the one-decision option was not accepted, to at least ensure consistency among the structure of the three decisions.

Thanks to the increased involvement of the Staff Committee in the promotion and reclassification procedure, the latter will be able to contribute to the definition of the concrete operational details, ensuring a fair, transparent and smooth application of the new framework.

## **2.2. Policy on protecting the dignity of the person and preventing psychological and sexual harassment**

EFSA is committed to foster a sound and non-discriminatory working environment by promoting a culture free of all forms of violence, where everyone in the workplace is treated with respect and dignity. In line with the SR, explicitly condemning psychological and sexual harassment, EFSA has in place a specific policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment, last amended by Decision dated 27 April 2012. The policy is built upon an informal procedure, where an amicable solution is sought, and a formal procedure, by means of which the alleged victim seeks the assistance of EFSA to establish facts and responsibility and, eventually, take remedial and disciplinary measures.

The core elements of the new proposed policy do not substantially differ from the EFSA current one. As regards the introduced changes, some of them leave to EFSA a margin of manoeuvre between different options, others don't.

### **2.2.1. Changes compared to the existing framework**

Changes for which **no flexibility** is left to EFSA:

- a formal requirement for close cooperation between concerned actors: Human Capital Unit, Legal & Assurance Services and the EFSA medical adviser (EFSA practice already aligned);
- enhanced responsibility of the line managers, called to play a key role in actively promoting and applying the policy, taking steps to prevent harassing conducts, raising awareness and informing their staff of the existing procedures (EFSA practice already aligned);
- replacement of the term 'Listening Points' with 'Confidential Counsellors' (i.e. the people appointed to facilitate an informal solution of the problem);
- timeframe within which a confidential counsellor can try to find a solution through the informal procedure limited to a maximum of two months (while the previous policy foresaw three months);

- minimum mandatory requirements for the training plan supporting the policy, including raising awareness compulsory sessions for staff joining EFSA and tailored made courses for managers (EFSA practice already aligned).

Changes for which **flexibility** exists:

- appointment of Confidential Counsellors by means of:
  - either an inter-agency call; or
  - an internal call (EFSA existing approach);
- possibility to establish a network of Confidential Counsellors in the agency and/or between agencies;
- possibility to introduce policy evaluation mechanisms (i.e. periodical statistics reports, ex-post evaluation, staff survey).

### **2.2.2. EFSA proposal**

EFSA assessed the new Agency Model Decision on prevention of harassment. As regards the elements for which flexibility is left to EFSA, the following approach is suggested:

- *appointment of the confidential counsellors*: it should be done via internal call only, therefore maintaining the approach currently applied at EFSA;
- *networks of confidential counsellors (in the agency and/or between agencies)*: EFSA should opt out from establishing the internal and inter-agency networks of Confidential Counsellors.

The *rationale* behind the above-said proposal (different from the approach proposed by the SC described below) resides on the following considerations:

- the selection of Confidential Counsellors through an inter-agency call was designed for smaller agencies that may not have sufficient internal resources and could benefit from an inter-agency network of Confidential Counsellors. Being EFSA a relatively big agency, such an inter-agency setup is neither required nor advisable;
- if a network of Confidential Counsellors is to be created, it would entail other agencies to adopt this Agency Model Decision. Information on which agencies have adopted the new rules is currently not available;
- the functioning of the networks and the recourse to inter-agency confidential counsellors would imply resources investments both in terms of budget (e.g. mission costs) and FTEs (e.g. more coordination activities).

Finally, it is proposed to introduce the afore-mentioned new policy evaluation mechanisms.

### **2.2.3. Staff Committee consultation**

EFSA Staff Committee (SC) was consulted and delivered its opinion, in particular as regards two out of three aspects of the new rules for which EFSA can decide the approach to take, namely:

- *appointment of the confidential counsellors*: SC would like to opt for the inter-agency call since this would allow to recourse to external confidential counsellors in case the internal ones are not available or cannot deal with the case for some reasons.
- *networks of confidential counsellors (in the agency and/or between agencies)*: SC would like to opt for the establishment of these networks.

The proposal of the SC appears disproportionate in view of the increased administrative burden and therefore inefficient for the reasons highlighted above.

## Annex

### Commission IRs adopted by analogy

- Commission Decision of 16.12.2013 laying down general provisions giving effect to Article 8 of Annex VII to the Staff Regulations C(2013) 8987;
- Commission Decision of 16.12.2013 repealing Commission Decision of 28.4.2004 adopting General implementing provisions on the early retirement of officials and temporary agents without reduction of pension rights (C(2004) 1588 final/5) C(2013) 9039;
- Commission Decision of 16.12.2013 laying down general implementing provisions concerning the criteria applicable to classification in step on appointment or engagement C(2013) 8970;
- Commission Decision of 16.12.2013 on general implementing provisions on granting the education allowance (Article 3 of Annex VII to the Staff Regulations) C(2013) 8971;
- Commission Decision of 16.12.2013 on leave C(2013) 9051;
- Commission Decision of 16.12.2013 on maternity leave and maternity pay for women whose maternity leave begins before the end of their contract (Articles 17 and 91 of CEOS) C(2013) 9020;
- Commission Decision of 8.1.2016 on Article 55a of the Staff Regulations and Annex IVa thereto concerning part-time work C(2015) 9720<sup>3</sup>;
- Commission Decision of 16.12.2013 laying down general implementing provisions to Article 7 (4) of Annex VII to the Staff Regulations on determining the place of origin C(2013) 8982;
- Commission Decision of 16.12.2013 on reimbursements due to officials assigned to non-member countries C(2013) 8990;
- Commission Decision C(2015)9151 of 17 December 2015 on the implementation of telework in Commission Departments;
- Commission Decision of 16.12.2013 on outside activities and assignments C(2013) 9037;
- Commission Decision of 16.12.2013 on General Implementing Provisions on removal expenses (Article 9 of Annex VII to the Staff Regulations) C(2013) 9040;
- Commission Decision of 16.12.2013 on rules for the implementation of housing policy in EU delegations C(2013) 8965,
- Commission Decision of 16.12.2013 on the living conditions allowance and the additional allowance referred to in Article 10 of Annex X to the Staff Regulations C(2013) 9032;
- Commission Decision of 16.12.2013 on home leave for officials, temporary agents and contract agents posted in third countries (second paragraph of Article 7 Annex V to the Staff Regulations) C(2013) 9035;
- Commission Decision of 16.12.2013 on management of rest leaves pursuant to Article 8 of Annex X to the Staff Regulations C(2013) 9027.

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<sup>3</sup> It replaces Commission Decision of 16.12.2013 on Article 55a of the Staff Regulations and Annex IVa thereto concerning part-time work C(2013) 9046.

### **IRs adopted based on Model agency rules**

- Decision of the MB laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under (2)(f) of the CEOS
- Decision of the MB laying down general provisions for implementing Article 43 of the SR and implementing the first paragraph of Article 44 of the SR for officials and temporary staff<sup>4</sup>;
- Decision of the MB laying down general provisions for implementing Article 87 (1) of the CEOS and implementing the first paragraph of Article 44 of the SR.
- Decision of the MB on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union<sup>5</sup>.
- Decision of the MB on setting up a Staff Committee<sup>6</sup>.

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<sup>4</sup> It replaces Commission Decision of 16.12.2013 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations C(2013) 8985, initially adopted by analogy by Decision of the Management Board of 26 June 2014 concerning the adoption of implementing provisions of the Staff Regulations by analogy (mb 26 06 14).

<sup>5</sup> It replaces Commission Decision of 16.12.2013 on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union C(2013) 9054, initially adopted by analogy by Decision of the Management Board of 26 June 2014 concerning the adoption of implementing provisions of the Staff Regulations by analogy (mb 26 06 14).

<sup>6</sup> It replaces EFSA Decision of 9 October 2012 concerning the establishment of a Staff Committee.