



DECISION

EFSA – European Food Safety Authority	Decision on the application by analogy at an earlier date of certain Commission Decisions on staff matters	Decision No.: wp200605-a5
	Effective Date: [to be completed once the date of adoption is known]	Supersedes: Not applicable.

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

Introduction	<p>On 9 October 2019, the Commission notified EFSA with a new Decision on procedures for dealing with professional incompetence of officials. On 12 November 2019, the Commission notified EFSA new Decisions on the duties of drivers. On 19 March 2020, the Commission notified EFSA with a new Decision on leave for the arrival in the household of a newborn child amending the existing rules on leave applicable to EFSA by analogy.</p> <p>The present Decision makes these notified Commission Decisions enter into force at a date earlier than nine months after notification of the Decisions to EFSA.</p>
Description	The new decisions lay down the rules for dealing with professional incompetence of officials and on the duties of Commission drivers, and amend the applicable rules on leave for the arrival of a newborn child.
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
ON THE APPLICATION BY ANALOGY AT AN EARLIER DATE OF CERTAIN
COMMISSION DECISIONS ON STAFF MATTERS**

THE MANAGEMENT BOARD

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

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS') laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 110(2) of the Staff Regulations,

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

Having regard to the Decision of the EFSA Management Board of 26 June 2014 concerning the delegation of specific powers to the Executive Director within the context of Article 110 of the Staff Regulations,

Having regard to the rules of procedure of EFSA's Management Board³ and in particular Articles 8 and 10 thereof,

After consulting the Staff Committee,

Whereas:

- (1) According to Article 110 of the Staff Regulations, as a rule, the implementing rules adopted by the Commission to give effect to those Regulations shall apply by analogy to the agencies nine months after the date on which the Commission informed the agencies of their adoption; an agency may also decide that such implementing rules are to enter in force at an earlier date.
- (2) On 9 October 2019, the Commission informed the agencies about the adoption of the Commission Decision C(2019)6855 of 4 October 2019 on procedures for dealing with professional incompetence.
- (3) On 12 November 2019, the Commission informed the agencies about the adoption of the Commission Decision C(2004)1318 of 7 April 2004 on the duties of Commission drivers and the Commission Decision C(2019)7822 of 30 October 2019 amending Commission Decision C(2004) 1318 of 7 April 2004 on the duties of Commission drivers.

¹ OJ L 56, 4.3.1968, p. 1.

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

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



- (4) On 19 March 2020, the Commission informed the agencies about the adoption of the Commission Decision C(2020)1559 of 16 March 2020 amending Decision C(2013)9051 of 16 December 2013 on leave applicable by analogy to EFSA.
- (5) In order to align EFSA legal framework to the most recent one of the Commission as regards procedures for dealing with professional incompetence, duties of Commission drivers and leave, it is appropriate to apply Commission Decision C(2019)6855, Commission Decision C(2019)7822, Commission Decision C(2004)1318 and Commission Decision C(2020)1559 by analogy at a date earlier than nine months after the notification of this Decision to EFSA.

HAS DECIDED AS FOLLOWS:

Sole Article

1. Commission Decision C(2019)6855 of 4 October 2019 on procedures for dealing with professional incompetence shall apply by analogy to EFSA.
2. Commission Decision C(2019)7822 of 30 October 2019 amending Commission Decision C(2004) 1318 of 7 April 2004 on the duties of Commission drivers shall apply by analogy to EFSA.
3. Commission Decision C(2004)1318 of 7 April 2004 on the duties of Commission drivers shall apply by analogy to EFSA.
4. Commission Decision C(2020)1559 of 16 March 2020 amending Decision C(2013)9051 of 16 December 2013 on leave shall apply by analogy to EFSA.
5. The present Decisions shall enter into force on the day following the date of its adoption.

Adopted by written procedure on XX June 2020
For EFSA's Management Board

[TO BE SIGNED]

Jaana Husu-Kallio
Chair of the Management Board



Brussels, 4.10.2019
C(2019) 6855 final

COMMISSION DECISION

of 4.10.2019

on procedures for dealing with professional incompetence

COMMISSION DECISION

of 4.10.2019

on procedures for dealing with professional incompetence

THE EUROPEAN COMMISSION,

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

Having regard to the Staff Regulations of Officials of the European Union (hereinafter referred to as 'Staff Regulations'), as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68,¹ in particular Articles 9, 43, 44, 51 and 110 thereof and Article 12 of Annex II thereto,

Having regard to the opinion of the Staff Committee,

Whereas:

- (1) Since the amendment to the Staff Regulations which came into force on 1 January 2014, Article 43 thereof provides that the annual report on ability, efficiency and conduct in the service shall state whether or not the performance level of the official has been satisfactory.
- (2) In addition, the first paragraph of Article 44 of the Staff Regulations provides that the official's advancement to a higher step is conditional on his/her performance not having been evaluated as unsatisfactory in the last annual report referred to in Article 43 of the Staff Regulations.
- (3) Article 51 of the Staff Regulations was also amended, entering into force on 1 January 2014, to lay down new procedures for dealing with incompetence. In accordance with Article 51(1) of the Staff Regulations, these amendments require new internal provisions to lay down the procedures for identifying, dealing with and remedying cases of incompetence in a timely and appropriate manner, with the constant concern to raise the official's performance level to a satisfactory level.
- (4) In addition, in June 2016, the Commission launched the Talent Management Strategy which aims to ensure the best possible match between staff competences and expectations, on the one hand, and service needs, on the other.
- (5) In addition to the pillar dedicated to the development of staff competences, the strategy also includes a pillar entitled 'recruitment and performance', under which this decision falls. This pillar includes other actions such as the development of guidelines and other soft tools aimed at helping officials in situations of professional incompetence to return to a satisfactory level of performance with the support of their line managers. To this end, the Directorate-General for Human Resources and Security ('DG HR') has published for the management a guide to best practices that can be implemented in performance management.
- (6) In this context, attention should be drawn to the detection, support and advisory role of the immediate superior of an official experiencing performance problems as part of

¹ OJ L 56, 4.3.1968, p. 1, as 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).

their personnel management role. The manager may be assisted in this by the services responsible for human resources. In addition, the medical service takes action when it is necessary to remove doubt as to the medical origin of the difficulties faced by an official.

- (7) The different measures provided for in this Decision are not intended to replace the existing mechanisms and services which pursue at least some of the same objectives. These services and mechanisms include: the Mediator², career guidance, psychological and social support, the medical service, the prevention of harassment (including the network of confidential counsellors³) and disciplinary proceedings⁴.
- (8) For the sake of clarity and legal certainty, the Commission Decision of 28 April 2004 on maintaining individual professional standards C (2004) 1597/7 should be replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1
Scope of application

This Decision shall apply to officials within the meaning of Article 1a of the Staff Regulations, without prejudice to the provisions specific to the management staff.⁵

Article 2
General principles

1. This Decision is part of the Commission's overall performance management policy. In addition to the Decision, this policy includes recommendations adapted to the specific situation of staff, such as the guide on best practices in performance management published by DG HR for management.
2. Detecting and resolving situations of professional incompetence of staff members are important elements in performance management. Management staff are supported and trained by DG HR for this purpose.
3. As part of his/her staff management role, the immediate superior provides support and advice to an official with performance problems so as to remedy them as quickly as possible. This is particularly appropriate where the immediate superior observes a situation which could lead him/her to indicate in the annual assessment that the official's performance is not satisfactory.

Article 3
Definitions and references

1. For the purposes of this Decision, 'professional incompetence' shall mean performance judged unsatisfactory by at least one annual report drawn up in accordance with Article 43 of the Staff Regulations which has become final.

² Commission Decision of 4 March 2002 on a reinforced Mediation Service C (2002) 601.

³ Commission decision of 26 April 2006 on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment – C(2006)1624/3

⁴ Article 86 of the Staff Regulations, Annex IX to the Staff Regulations, Commission Decision of 28 April 2004 – general implementing provisions on the conduct of administrative inquiries and disciplinary procedures C (2004)1588/4.

⁵ Article 14 of the Commission Decision of 15 June 2016 on middle management staff C (2016) 3288.

2. For the purposes of this Decision, and in accordance with the provisions implementing Article 43 of the Staff Regulations⁶, a report becomes final either at the time when the jobholder accepts the report or on expiry of the period of five working days from notification of the report if he or she does not reply or, if the jobholder refuses to accept the report, at the time when the appeal assessor takes a decision.
3. For the purposes of this Decision, the 'reporting officer' is defined in accordance with the provisions implementing Article 43 of the Staff Regulations.
4. With regard to the time limits referred to in this decision, Article 8 of the implementing provisions of Article 43 of the Staff Regulations shall apply *mutatis mutandis*.

Article 4

Procedure for dealing with professional incompetence

1. Where there is doubt about the medical origin of any difficulties encountered by an official in carrying out his/her duties, the administration shall take all necessary steps to resolve this doubt as soon as possible and in any event before a decision to downgrade or dismiss the official is proposed; in such cases, the matter shall be referred to the Medical Officer for an opinion.
2. The procedure for dealing with professional incompetence shall include at least the following measures: (a) a support plan, (b) downgrading following three consecutive unsatisfactory annual reports drawn up under Article 43 of the Staff Regulations which have become final, (c) dismissal following five consecutive unsatisfactory annual reports drawn up under Article 43 of the Staff Regulations which have become final.
3. The procedure for dealing with professional incompetence shall be triggered when an official's annual report drawn up under Article 43 of the Staff Regulations which has become final indicates that the performance level has not been satisfactory.

Article 5

Support plan

1. When an annual report drawn up under Article 43 of the Staff Regulations which has become final contains for the first time a conclusion stating that performance has not been satisfactory, the reporting officer shall, after a preliminary interview with the official, draw up a draft support plan in writing within one month of the annual report becoming final. The best practice guide drawn up by DG HR for management can be consulted when drawing up and determining the content of the draft accompanying plan. Articles 6(3) and 6(4) of the provisions implementing Article 43 of the Staff Regulations shall apply *mutatis mutandis* to this interview. The official may be accompanied at this meeting by a member of the Commission's staff. The draft support plan shall be notified to the official, who shall have five working days in which to submit any comments. No later than 15 working days after the end of this period, the reporting officer shall draw up the support plan, which shall take effect as soon as it has been notified to the official.
2. For the purposes of this Decision, the 'support plan' is a tool for managing efficiency, ability and conduct in the service, the purpose of which is to improve the performance of an official. This support plan shall be set up following an annual report indicating an unsatisfactory performance, drawn up in accordance with Article 43 of the

⁶ Commission Decision of 16 December 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.

Staff Regulations and having become final in accordance with the provisions implementing Article 43 of the Staff Regulations. The support plan shall establish:

- (a) specific professional objectives
- (b) the timetable and the means made available to the official to attain them
- (c) clear and measurable success criteria and
- (d) the role of the support person if a support person has been appointed.

If appropriate, these objectives may include preparation for mobility to another post. The support plan also provides for meetings between the reporting officer and the official in question to measure progress on the objectives set.

3. At the reporting officer's initiative, the support plan may be adjusted at any time, notably if a new annual report drawn up under Article 43 of the Staff Regulations which has become final once again indicates an unsatisfactory performance level. In this case, the official shall have 5 working days in which to submit any comments. No later than 5 working days after the end of this period, the reporting officer shall draw up the amended support plan, which shall take effect as soon as it has been notified to the official.
4. If, during the implementation of the support plan, the official concerned or the reporting officer is transferred to another service, the reporting officer shall send the support plan to the new reporting officer, who may adapt it in accordance with the procedure set out in paragraph 2 of this Article.
5. The support plan shall end upon notification to the official of the annual report drawn up pursuant to Article 43 of the Staff Regulations and which has become final, indicating a satisfactory performance level.
6. If a support plan has been drawn up for the reference period or a part of it, when drawing up the next annual report or a contribution thereto, the reporting officer shall give an assessment of the official's efforts to attain the objectives set out in the support plan. This assessment must be substantiated by factual elements if it concludes that the performance level is unsatisfactory.

Article 6

Support person

1. The reporting officer may either on his/her own initiative after consulting the official or on the initiative of the official, designate a support person to assist the official in fulfilling the support plan. The official may waive the right to designate a support person.
2. The support person shall advise the official during the duration of the support plan. He or she may participate in the meetings provided for in the support plan referred to in Article 3(4), if the reporting officer and the official agree.

Article 7

Procedure in the case of a third consecutive unsatisfactory evaluation

1. If the third annual report drawn up on the basis of Article 43 of the Staff Regulations and which has become final concludes that the performance level has been unsatisfactory, immediately following two consecutive annual reports leading to the same conclusion, the Appointing Authority shall prepare within two months from the date on which the annual report becomes final a reasoned proposal to downgrade pursuant to Article 51(1),

second paragraph, point (a) of the Staff Regulations. This proposal is communicated to the official in question. The official shall be informed of his/her rights under Article 51(2) of the Staff Regulations.

2. The Appointing Authority shall seek the opinion of the Joint Advisory Committee on Professional Incompetence established in accordance with Article 51(4) of the Staff Regulations. The Committee shall deliver a reasoned opinion indicating the measure which it considers appropriate in the light of the facts established at its request. These facts relate in particular to elements concerning the situation of professional incompetence raised by the individual cases submitted to the Committee for an opinion and to the taking into account of the career of the officials concerned. Within three months of the issuance of this opinion, the Appointing Authority shall take a reasoned decision on the action to be taken on the proposal to downgrade which it has presented in accordance with paragraph 1 of this Article. This decision shall be communicated to the official in question.
3. The downgrading is to the same step as that held by the official in question at the moment when the decision to downgrade is taken by the Appointing Authority. The rights and obligations relating to the new grade shall apply to the downgraded official. In particular, a downgraded official shall no longer be considered as in transition for the purposes of Article 30 of Annex XIII.
4. The measures set out in Articles 4 to 6 remain applicable in parallel with the procedure laid down in this Article.

Article 8

Procedure in the case of a fifth consecutive unsatisfactory evaluation

1. If the fifth annual report drawn up on the basis of Article 43 of the Staff Regulations and which has become final concludes that performance has been unsatisfactory, immediately following four consecutive annual reports leading to the same conclusion, the Appointing Authority shall prepare, within two months from the date on which the annual report becomes final, a reasoned proposal for dismissal of the official concerned pursuant to the second sentence of Article 51(1), second paragraph, point (a) of the Staff Regulations. This proposal is communicated to the official in question. The official shall be informed of his/her rights under Article 51(2) of the Staff Regulations.
2. The Appointing Authority shall seek the opinion of the Joint Advisory Committee on Professional Incompetence established in accordance with Article 51(4) of the Staff Regulations. The Committee shall deliver a reasoned opinion indicating the measure which it considers appropriate in the light of the facts established at its request. These facts shall relate in particular to elements concerning the situation of professional incompetence raised by the individual cases submitted to the Committee for an opinion and to the taking into account of the career of the officials concerned. Within three months of the issuance of this opinion, the Appointing Authority shall take a reasoned decision on the action to be taken with regard to the proposal for dismissal which it has presented in accordance with paragraph 1 of this Article. This decision shall be communicated to the official in question.
3. The measures set out in Articles 4 to 6 remain applicable in parallel with the procedure laid down in this Article.

Article 9
Sequence of annual reports

1. The absence of an annual report in the cases mentioned in Annex 1, points 1.2 and 1.3 of the general provisions for implementing Article 43 of the Staff Regulations shall not be considered to interrupt a series of ‘consecutive annual reports’ within the meaning of Article 51 of the Staff Regulations.

Article 10
Joint Advisory Committee on Professional Incompetence

1. The Joint Advisory Committee on Professional Incompetence shall be composed, and its chair and members designated, in accordance with the provisions of Article 12 of Annex II to the Staff Regulations. The Joint Advisory Committee on Professional Incompetence shall adopt its rules of procedure.
2. The proceedings of the Joint Advisory Committee on Professional Incompetence shall be secret.

Article 11
Role of the Directorate-General for Human Resources and Security (‘DG HR’)

1. DG HR shall monitor the cases and procedures related to professional incompetence in coordination with the Directorates-General concerned.
2. Taking into account the career of the staff members concerned is an important element in the management of professional incompetence. DG HR shall ensure the consistency of practices in the management of professional incompetence within the institution, in particular through the best practice guide published by DG HR for managers to be updated regularly.
3. Once a year, DG HR shall provide a state of play of management of professional incompetence within the Commission to the Joint Committee referred to in Article 10.
4. In all the steps taken to remedy problems of professional incompetence, DG HR shall point out that mobility to another post may be organised where appropriate.

Article 12
Repeal and transitional provisions

1. Decision C(2004) 1597/7 of 28 April 2004 on maintaining individual professional standards is repealed.
2. If a plan for supportive and corrective measures drawn up on the basis of the Commission Decision of 28 April 2004 on maintaining individual professional standards C(2004) 1597/7 or equivalent measures are in place on the day this decision takes effect, the reporting officer shall without delay make an assessment of the adjustments required by this Decision and, following this assessment, shall draw up a draft new support plan to replace the support and correction plan. This draft shall be notified to the official, who shall have five working days in which to submit any comments. No later than 15 working days after the end of this period, the reporting officer shall draw up the support plan, which shall take effect as soon as it has been notified to the official. The plan for supportive and corrective measures shall continue to apply until the support plan is established as described in these provisions.

Article 13
Five-year report

DG HR shall draw up a report to assess the implementation of this Decision within at most five years of the date of entry into force of this Decision.

Article 14
Entry into force

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels, 4.10.2019

For the Commission
Günther H. OETTINGER
Member of the Commission



Brussels, 30.10.2019
C(2019) 7822 final

COMMISSION DECISION

of 30.10.2019

**amending Commission Decision C(2004) 1318 of 7 April 2004 on the duties of
Commission drivers**

COMMISSION DECISION

of 30.10.2019

amending Commission Decision C(2004) 1318 of 7 April 2004 on the duties of Commission drivers

THE EUROPEAN COMMISSION,

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

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 259/68¹, and in particular Article 56 of the Staff Regulations, Article 3 of Annex VI and Article 31(5) of Annex XIII to the Staff Regulations, Article 16(1) and paragraph four of Article 91 of the CEOS,

After consulting the Joint Committee,

Whereas:

- (1) The implementation of the existing rules has shown that certain provisions on the calculation of the flat-rate allowance for overtime paid to Commission drivers should be clarified and adapted where needed,
- (2) It is therefore necessary to amend the Decision of 7 April 2004 on the duties of Commission drivers² as regards the rules for granting and calculating the flat-rate allowance for overtime,

HAS DECIDED AS FOLLOWS:

Article 1

Commission Decision C(2004) 1318 is amended as follows:

- (1) Footnote 3 is replaced by the following:
'Basic monthly salary for the last step of the last grade in which remuneration for overtime may be paid in the form of a fixed allowance. For officials and temporary agents that grade shall be AST 4. For contract agents it shall be grade 7 in function group II.'
- (2) Article 13 is replaced by the following:
'Officials who were recruited prior to 1 May 2004 and are part of the AST function group shall continue to receive the flat-rate allowance for overtime until they cease to perform the duties of drivers. The flat-rate allowance shall be awarded and calculated under the conditions laid down in this Decision'.

¹ OJ L 56, 4.3.1968, p. 1.

² C(2004) 1318.

Article 2

This Decision shall take effect on the first day of the month following that of its adoption.

Done at Brussels, 30.10.2019

For the Commission
Günther H. OETTINGER
Member of the Commission



COMMISSION EUROPÉENNE

Secrétariat Général

C(2004) 1318

Bruxelles, le 31 mars 2004

O/97/2004

Réunion spéciale des Chefs de cabinet

TEXTE EN

ADAPTATION DES DISPOSITIONS D'APPLICATION SUITE A LA REVISION DU
STATUT DES FONCTIONNAIRES ET DU REGIME APPLICABLE AUX AUTRES
AGENTS DES COMMUNAUTES EUROPEENNES

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DECISIONS DE LA COMMISSION :

1. RELATIVE AUX PRESTATIONS DES CHAUFFEURS DE LA COMMISSION
2. RELATIVE AUX MODALITES DE MISE EN ŒUVRE DE LA PROCEDURE
D'ATTESTATION
3. MODIFIANT LA REGLEMENTATION RELATIVE AUX CONSEILLERS SPECIAUX
4. RELATIVE A L'APPLICATION DE L'ARTICLE 1^{ER} *QUINQUIES*, § 4 DU STATUT
5. RELATIVE A L'INDEMNITE DE CONDITIONS DE VIE
(ART.10 DE L'ANNEXE X DU STATUT)

Communication de M. KINNOCK

Cette question est susceptible d'être inscrite à l'ordre du jour de la 1653ème réunion de la Commission le mercredi 7 avril 2004.

Destinataires : Membres de la Commission
Directeurs Généraux et chefs de service



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, XX.XX.2004
C(2004) XXX

Proposal for a

COMMISSION DECISION

on the duties of Commission drivers

Proposal for a

COMMISSION DECISION

on the duties of Commission drivers

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Staff Regulations of officials of the European Communities and the conditions of employment of other servants of the European Communities laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 (the 'Staff Regulations')¹, and in particular Article 56 thereof and Article 3 of Annex VI thereto,

Having regard to Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time²,

Having regard to the Commission Decision of 1 February 1984 on remuneration in the form of a flat-rate allowance for overtime and the Commission Decision of 30 November 2000, which entered into force on 1 December 2000, on rules on the duties of Commission drivers,

Whereas, as a result of the amendment of Article 56 of and Annex VI to the Staff Regulations by Regulation (EC) No XXXX/XX of XX XXXX 2004, it is necessary to replace the above Decisions with a new Decision,

HAS DECIDED AS FOLLOWS:

COMMON PROVISIONS

Article 1

The general weekly timetable, including flexitime, shall apply to all Commission drivers.

Article 2

In accordance with Directive 93/104/EC, the weekly timetable, including overtime, may not exceed 48 hours. The working day shall include a minimum rest period of 11 consecutive hours in each 24-hour period (at the week-end: 24 hours + 11 hours). Any day started shall be regarded as a day served.

¹ OJ L 56, 4.3.1968, p.1. Regulation as last amended by Regulation ...

² OJ L 307, 13.12.1993, p. 18. Directive as last amended by Directive 2000/34/EC of the European Parliament and of the Council (OJ L 195, 1.8.2000, p. 41).

Article 3

In accordance with Article 3 of Annex VI to the Staff Regulations, drivers shall receive a flat-rate allowance for overtime.

In the context of Article 56 of the Staff Regulations, which stipulates that total overtime shall not exceed 150 hours in any six months, overtime is limited to 25 hours per month and the flat-rate allowance is calculated and due on that basis.

In this context, the principle of a flat-rate allowance implies that when in any given month a smaller amount of overtime is worked entitlement to the flat-rate allowance shall be maintained.

The monthly amount of the flat-rate allowance for overtime to be granted to the group of drivers designated below shall be determined as follows:

- drivers
 - (a) assigned to a Member
 - of the Commission:
[(0.56% x 1.5 x 3.5) + (0.56% x 2 x 21.5)] x DEGA³,
 - from the pool who are or may be designated:
[(0.56% x 1.5 x 3.5) + (0.56% x 2 x 21.5)] x DEGA,
 - (b) non-designated drivers:
 - [(0.56% x 1.5 x 20) + (0.56% x 2 x 5)] x DEGA,
 - (c) drivers for the central mail Service 0.56% x 1.5 x 25 x DEGA.

Article 4

The conditions governing the award of these allowances shall be as follows:

- payment from the date on which the person concerned is assigned, by decision of the appointing authority, to the duties giving entitlement to the allowance;
- payment terminating on the date on which the person concerned, by decision of the appointing authority, ceases to satisfy the conditions for award of the allowance;
- payment during leave and during sick leave up to a maximum of 30 days. This limit shall not apply to absence due to annual leave. In the event of sickness, the flat-rate allowance shall be suspended prorata to the number of days of absence from the 31st day. Without prejudice to this provision, the whole of the allowance shall be due for the month which was begun when service was interrupted. When

³ Last step of the grade to which the driver belongs.

work is resumed, the allowance shall be due prorata to the number of days served from the actual resumption of work.

- These provisions shall not apply if the absence of the official is the consequence of an accident at work related to the exercise of his or her duties or on the journey to or from work.

PROVISIONS APPLICABLE TO DRIVERS OTHER THAN THOSE ASSIGNED OR DESIGNATED OR ELIGIBLE FOR DESIGNATION

Article 5

Overtime worked shall be accounted for monthly. The monthly overtime shall be cleared each month.

- (a) Pool drivers: Article 56 of the Staff Regulations shall continue to apply and round-the-clock availability may not be required on official Commission holidays.

The monitoring introduced shall ensure a fair distribution of duties among these drivers and compliance with the limit of 20% on the monthly total of overtime compulsorily weighted at 200%⁴.

- (b) Mail drivers: Article 56 of the Staff Regulations shall continue to apply and round-the-clock availability shall not be required. The monitoring introduced shall ensure a fair distribution of duties among these drivers. There shall be no provision for overtime in the time periods enhanced (statutorily weighted) at 200%.

Article 6

The logbooks of drivers other than those assigned and designated must show the nature of the duties (work, mission, training) or the reasons why no duties were performed (leave, sickness, etc).

SPECIAL PROVISIONS APPLYING TO DRIVERS FOR MEMBERS OF THE COMMISSION

Article 7

In accordance with Directive 93/104/EC, the reference period shall be the week.

- During the week, drivers who are assigned and designated shall alternate between round-the-clock availability and rest; they shall be entitled to at least one free weekend in two.

⁴ The aims of these paragraphs are to put an end to the systematic full use of 25 hours overtime per month by pool drivers and to introduce an operational limit of 20% of 'enhanced' overtime. These provisions in no way affect the conditions for awarding the flat-rate allowance.

- The day-to-day management of assigned drivers and reserve drivers who are or may be designated – when they are working for a Member of the Commission – shall be the responsibility of the Member’s Head of Cabinet.

Article 8:

The weekly programme of the Member of the Commission shall act as a reference, consistent with Article 2, for coordinating during the week the duties of the assigned driver and the reserve driver who is or may be designated, with these two drivers coordinating between themselves to ensure full availability.

If during the week a driver reaches the limits set out in Articles 2 and 3, he shall be replaced by the designated driver from the reserve pool.

If the services of the designated reserve driver are not fully used, he shall remain available to the Commission’s transport pool.

If neither the assigned driver nor the designated reserve driver is available in accordance with Article 2 or because of leave or sickness, the duties of reserve driver shall be performed, under the same conditions as those applicable to assigned or designated drivers, by a driver eligible for designation by the Transport Unit who satisfies the conditions laid down.

SERVICE CLOTHING

Article 9

Drivers shall be provided with sober or classic service clothing, including shoes, purchased each year by the Administration. They shall be given a choice of colours of cloth of the same quality and cost.

MISSIONS

Article 10

A driver on mission must be covered by a duly completed travel order. A driver covered by a travel order to drive the official car of a Member of the Commission in the absence of that Member or a member of his Office is also on mission when returning the vehicle from or taking it to the site of an official journey. If the journey takes place outside the general weekly timetable, including flexitime, the corresponding time shall be counted as overtime subject to the ceiling fixed by the Staff Regulations and this Decision.

PROTECTION OF THE DRIVER

Article 11

Drivers shall comply with the road traffic laws of the country where they are driving.

The Commission shall, as far as possible, assist drivers in any proceedings brought against them by the national authorities for offences committed while exercising their duties.

Where drivers infringe the Highway Code in the exercise of their duties, the Commission shall consider the circumstances of the event and, if appropriate, notify the competent national authorities that it intends to invoke the Protocol on Privileges and Immunities⁵.

Where appropriate, the person carrying out the mission may give the driver, in writing, any instructions needed for the mission to proceed successfully.

APPLICATION TO OTHER SERVANTS

Article 12

Within the limits resulting from Articles 16, 57 and 88a of the conditions of employment of other servants of the European Communities and Article 56 of and Annex VI to the Staff Regulations, this Decision shall apply by analogy to temporary, auxiliary and contract staff.

TRANSITIONAL PROVISIONS

Article 13

1. For officials in grade AST 2 (for the period from 1 May 2004 to 30 April 2006: grade D*2) who were in grade D 3 before 1 May 2004, the flat-rate allowance shall be calculated on the basis of the fifth step in grade AST 3 (for the period from 1 May 2004 to 30 April 2006: grade D*3).

For officials in grade AST 3 (for the period from 1 May 2004 to 30 April 2006: grade D*3) who were in grade D 2 before 1 May 2004, the flat-rate allowance shall be calculated on the basis of the fifth step in grade AST 4 (for the period from 1 May 2004 to 30 April 2006: grade D*4).

For officials in grade D 1 or in category C before 1 May 2004, the flat-rate allowance shall be calculated on the basis of the fifth step in grade AST 5 (for the period 1 May 2004 to 30 April 2006: grade D*5).

2. Officials in Categories C and D before 1 May 2004 who do not become a member of the assistants' function group without restriction in accordance with Article 10(3) of Annex XIII to the Staff Regulations and who are or will be reclassified or promoted to grades AST 5, AST 6 or AST 7 (for the period from 1 May 2004 to 30 April 2006: grades C*5/D*5, C*6 and C*7), shall continue to receive the flat-rate allowance for overtime until they cease to perform the duties of driver.

The flat-rate allowance for those officials shall be calculated on the basis of the fifth step in grade AST 5 (for the period from 1 May 2004 to 30 April 2006: grade D*5).

3. Under no circumstances shall the amount of the flat-rate allowance be less than that received before 1 May 2004.

⁵ In practice, this provision will apply only to the Members of the Commission.

ENTRY INTO FORCE

Article 14

This Decision shall enter into force on 1 May 2004.

It hereby repeals and replaces the Commission Decision of 1 February 1984 on remuneration in the form of a flat-rate allowance for overtime and the Commission Decision of 30 November 2000 on rules on the duties of Commission drivers.

Done at Brussels, [...]

For the Commission

[...]

Member of the Commission



Brussels, 16.3.2020
C(2020) 1559 final

COMMISSION DECISION

of 16.3.2020

amending Decision C(2013) 9051 of 16 December 2013 on leave

COMMISSION DECISION

of 16.3.2020

amending Decision C(2013) 9051 of 16 December 2013 on leave

THE EUROPEAN COMMISSION,

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

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (CEOS), originally laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68,¹ and in particular Articles 57 and 58 of the Staff Regulations and Annex V thereto, and Articles 16 and 91 of the CEOS,

Having regard to the opinion of the Central Staff Committee, issued on 23 September 2019,

Whereas:

- (1) Under the Staff Regulations, the arrival of a newborn child in a household following a birth or adoption entitles an official to maternity leave or special leave for adoption so that at least one of the parents can fully care for the child.
- (2) Experience has shown that, in the light of developments in reproductive medicine, laws on procreation and parenthood and the societal context, in some cases of parenthood the conditions for maternity or adoption leave to be granted were not met when a newborn child arrived in a household.
- (3) The Staff Regulations allow the Appointing Authority to grant special ad-hoc leave in order to take certain specific circumstances into account. On this basis, special leave to take into account the circumstances described in recital (2) has already been granted by the Appointing Authority in the past with the aim of safeguarding the child's overriding interest and ensuring inclusive interpretation of the statutory provisions.
- (4) This special leave also applies to single parents.
- (5) The duration of this special leave should be the same as that of maternity or adoption leave.

HAS DECIDED AS FOLLOWS:

Article 1

In the Annex to Decision C(2013) 9051, the following point II.a.13a is added:

‘II.a.13s Arrival in the household of a new-born child

Conditions for the granting of leave

¹ OJ L 56, 4.3.1968, p. 1. .

When a child is born and is then received by a staff member into his/her household, special leave equivalent to special leave for adoption shall be granted to the staff member where neither he/she nor his/her partner meets the conditions to benefit from maternity leave.

The term 'child' in the above paragraph means a dependent child within the meaning of the first and second paragraphs of Article 2(2) of Annex VII to the Staff Regulations, as well as a child for whom an official procedure for the recognition of paternity or maternity or equivalent procedure has been initiated.

This leave shall start at the earliest one week before the expected date of the birth and at the latest one week after the day on which the child is born.

Notwithstanding the above criteria, the arrangements applying to special leave for adoption shall apply *mutatis mutandis*.

Where such special leave has been granted and the child is later adopted by either or both spouses, no special leave shall be granted for the adoption of that child.

Supporting documents

When applying for special leave, the staff member shall submit a sworn statement to the administration, describing the steps taken that demonstrate the intention to become a parent.

Following the birth, the staff member shall supply all the documents relating to the official steps taken to establish the paternity or maternity relationship with the child, without delay and within six months at the latest'.

Article 2

The implementation of the provisions relating to special leave for the arrival in the household of a newborn child will be assessed within two years following his or her adoption; where applicable, corrective measures may be envisaged. The staff representatives will be able to provide any information they consider useful for carrying out that assessment.

Article 3

The decision shall take effect on the day after its adoption.

Done at Brussels, 16.3.2020

*For the Commission
Johannes HAHN
Member of the Commission*