

NOTE TO THE MANAGEMENT BOARD

Adoption by analogy of certain Commission Decisions on staff matters

1. Background

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

- adoption by analogy of Commission Implementing rules (general principle);
- adoption of Implementing rules based, when available, on Agency Model Decisions negotiated within the Standing Working Party¹, to ensure common implementation of the Staff Regulations across all agencies;
- adoption of Implementing rules derogating from Commission Implementing rules in case EFSA requires Implementing rules which are specifically adapted to its own reality;
- opt-out Commission Implementing rules 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 the Implementing rules adopted so far by EFSA is provided in the Annex to the present note.

2. Commission Decision on procedures for dealing with professional incompetence of officials (by analogy)

a. Background

Article 43 of the Staff Regulations (SR) (implemented by Decision of the EFSA's Management Board of 18.06.2015²) provides that the reports drawn up annually concerning the efficiency, ability, and conduct of officials shall state whether their performance has been overall satisfactory or unsatisfactory for appraisal purposes. The same provisions apply to temporary agents by analogy.

Exclusively with respect to officials, Article 51(1) of the SR also provides that procedures should be defined to identify, deal and remedy with professional incompetence, arising when the performance of an official is judged unsatisfactory by at least one annual report.

In this context, the Commission notified EFSA with Commission Decision C(2019)6855 of 4 October 2019 on procedures for dealing with professional incompetence. Since EFSA has few officials in its establishment plan, the Commission considers appropriate for EFSA to apply this Decision by analogy. Nevertheless, considering the limited number of officials, the impact of this Decision is limited.

b. Main elements

Definitions

¹ 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 (EMA).

² Decision of the Management Board laying down general provisions for Implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for officials and temporary staff, mb150618-a4.



- 'professional incompetence' – performance judged unsatisfactory by at least one final annual report drawn up in accordance with the Staff Regulations;
- 'Joint Advisory Annual Committee on Professional Incompetence' – composed in accordance with the Staff Regulations to emit opinions on adequate solutions to adopt for cases of incompetence.

Overview of the procedures

- The procedure is triggered when a final annual report shows unsatisfactory performance;
- doubts on the medical origin of the incompetence are resolved before taking any decision on downgrading or dismissal;
- main steps are as follows:
 - 1st unsatisfactory report: support plan drawn up by the reporting officer to improve the official's performance;
 - 2nd consecutive unsatisfactory report: submission of comments by the official and amendment of the support plan by the reporting officer;
 - 3rd consecutive unsatisfactory report: decision of EFSA on downgrade after consulting the Joint Advisory Committee on Professional Incompetence;
 - 5th consecutive unsatisfactory report: decision of EFSA on dismissal of the official after consulting the Joint Advisory Committee on Professional Incompetence.

3. Commission Decision amending the Decision on leave with regard to special leave for the arrival in the household of a newborn child (by analogy)

a. Background

The SR and CEOS provide that, for the arrival in the household of a newborn child following birth or adoption, staff members are entitled to maternity leave or special leave for adoption (Articles 57, 58 and Annex V of the SR and Articles 16 and 91 of the CEOS). Those provisions on leave are implemented by Commission Decision C(2013)9051, which is applicable to EFSA by analogy.

In light of the developments in reproductive medicine, laws on procreation and parenthood and the societal context, in some cases of parenthood the conditions foreseen in the current legal framework for maternity or adoption leave were not met when a newborn child arrived in a household.

In this context, the Commission notified the Decision C(2020)1559 of 16 March 2020 amending Decision C(2013)9051 on leave. The new provisions introduced therein aims at safeguarding the child's interest and ensuring inclusive interpretation of the statutory provisions.

b. Main elements

Definition

- Child or dependent child - legitimate, natural or adopted child of a staff member, or of his spouse, who is being maintained by the staff member including:
 - child maintained under a national judicial decision;
 - child for whom a procedure for **recognition of paternity/maternity (new)** or adoption has been initiated;

Scope: Officials, temporary and contract staff housing a dependent newborn child in their household without them or their partner meeting the conditions for maternity leave.

Rules on special leave for the arrival of a newborn child:

- On the special leave:



- application to single parents;
- duration equivalent to leave for maternity or adoption;
- start fixed at the earliest one week before the expected birthdate and at the latest one week after the birth;
- no cumulation of this leave with the adoption leave when the child is adopted after arrival in the household;
- Supporting documents:
 - when applying: sworn statement demonstrating intention to become parent;
 - following birth: steps taken to establish paternity/maternity
- Implementation:
 - assessment within two years following adoption of the child;
 - corrective measures possible.

4. Commission Decisions on the duties of drivers (by analogy)

Due to the nature of their tasks, drivers may be subject to a specific working organisation that may involve overtime. The SR and the Conditions of Employment of Other Servants (CEOS) provide that officials and temporary staff in grades AST 1 to AST 4 and contract staff in function groups I and II shall be entitled to compensatory leave or remuneration for overtime (Articles 56 and Article 3 of Annex VI of the SR and Articles 16 and 91 of the CEOS). For certain categories of staff, the appointing authority may decide to pay a fixed allowance for overtime in special conditions.

In this context, the Commission notified two decisions to EFSA:

- 1) Decision (C(2004)1318) of 7 April 2004 on the duties of Commission drivers, laying down rules on drivers' working time, work organisation and flat-rate allowance for overtime, and
- 2) Decision C(2019)7822 of 30 October 2019 amending Commission Decision C(2004)1318, slightly amending the rules on the flat-rate allowance.

These decisions are **not applicable de facto** to EFSA since it does not employ any drivers in the framework described by the Commission's implementing rules. Nevertheless, the Commission confirms that, from a formal point of view, all agencies should apply those Decisions by analogy.

5. EFSA Proposal

Following the assessment carried out by EFSA services and the favourable opinion the EFSA Staff Committee, it is proposed that the Management Board decides to apply by analogy:

- Commission Decision C(2019)6855 on procedures for dealing with professional incompetence;
- Commission Decision C(2020)1559 amending Decision C(2013)9051 on leave;
- Commission Decisions C(2004)1318 on the duties of drivers and C(2019)7822 amending Decision C(2004)1318.

The draft decision for this purpose is enclosed to the present note.



Annex

Commission implementing rules 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 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 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.
- Commission Decision C(2015)9720 concerning part-time work.
- Commission Decision of 27 September 2017 on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel C(2017) 5323.
- Commission Decision on outside activities and assignment and on occupational activities after leaving the service³.

³ It replaces Commission Decision of 16.12.2013 on outside activities and assignments C(2013) 9037.



Implementing rules adopted based on Model agency rules

- Decision of the Management Board laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under (2)(f) of the Conditions of Employment of Other Servants of the European Union;
- Decision of the Management Board laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations for officials and temporary staff⁴;
- Decision of the Management Board laying down general provisions for implementing Article 87 (1) of the Conditions of Employment of Other Servants of the European Union and implementing the first paragraph of Article 44 of the Staff Regulations;
- Decision of the Management Board on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union⁵;
- Decision of the Management Board on setting up a Staff Committee⁶;
- Decision of the Management Board laying down general implementing provisions regarding Article 45 of the Staff Regulations⁷;
- Decision of the Management Board laying down general implementing provisions regarding Article 54 of the Conditions of Employment of Other Servants of the European Union⁸;
- Decision of the Management Board laying down general implementing provisions regarding Article 87(3) of the Conditions of Employment of Other Servants of the European Union⁹;
- Decision of the Management Board on the policy of the European Food Safety Authority on protecting the dignity of the person and preventing psychological harassment and sexual harassment¹⁰;
- Decision of the Management Board on implementing rules laying down guidelines on whistleblowing;
- Decision of the Management Board on middle management staff¹¹;
- Decision of the Management Board concerning the function of adviser;
- Decision of the Management Board laying down implementing rules on temporary occupation of management posts;

⁴ 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).

⁵ 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).

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

⁷ It replaces EFSA Decision of 23 July 2010 concerning the career and the promotion of officials (on the basis of Art. 45 of the Staff Regulations).

⁸ It replaces 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 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.

⁹ It replaces 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).

¹⁰ It replaces EFSA Decision of 27 April 2012 concerning EFSA's policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment.

¹¹ It replaces EFSA Decision of 9 February 2011 on middle management staff.



- Decision of the Management Board on the Framework for Learning and Development¹²;
- Decision of the Management Board on Working Time¹³;
- Decision of the Management Board on the types of posts and posts titles in EFSA.

¹² It replaces EFSA Decision laying down the principles and guidelines concerning learning and development at EFSA of 26 June 2014 and EFSA Decision of 20 March 2013 concerning language training at EFSA are hereby repealed.

¹³ It replaces EFSA Decision of 1 December 2008 on the introduction of a flexitime policy.