

LEGAL & ASSURANCE SERVICES

## NOTE TO THE MANAGEMENT BOARD

### **Adoption of model decisions on middle management, adviser and temporary occupation of management posts**

#### **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 Party<sup>1</sup>, 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. Decision on middle management staff (based on Agency model Decision)**

##### **a. Background**

The term middle management refers to the EFSA community of Heads of Unit and Heads of Department. To govern how middle management staff is selected and appointed, EFSA adopted on 9 February 2011 a decision on Middle Management Staff. Taking inspiration from the corresponding Commission rules, EFSA decision establishes the requirements and procedures, including when appropriate the trial period, to fill in middle management posts according to four possible channels: reassignment of an already Head of Unit/Department to the vacant middle management post, internal publication, inter-agency publication or external publication of the post. The decision also lays down provisions allowing middle management staff to opt-out or the Executive Director the re-assign Heads of Unit/Department to a non-managerial position in case of insufficient managerial ability or when, as a result of a re-organisation, the middle management post ceases to exist.

On 27 April 2018, the Commission notified to agencies an *ex-ante* agreement on a model decision on implementing rules on middle management staff (i.e. Commission's Decision C(2018)2542).

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<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 (EMA).

## b. Main changes

Compared to the current framework, the new model decision introduces the following changes:

### Internal and inter-agency publication

- Clear differentiation of grade(s) of internal/inter-agency publication for, on the one hand, Head of Unit, on the other hand, Head of Department:
  - Head of Unit → AD9-AD14;
  - Head of Department → AD12-AD14.
- Expanded eligibility for internal publication:
  - to internally apply to a middle management position, it is sufficient to be in grade AD8 with two years of seniority in grade (for Head of Unit positions) or AD11 with two years of seniority (for Head of Department positions);
  - in this case the appointment implies a reclassification to a higher grade.

### Selection procedure

The selection procedure to fill middle management posts remains largely unchanged, with the exception of the following elements:

- short-listed candidates systematically interviewed by the Executive Director and two members of a grade and management function equal or superior to that of the function to be filled.

### Career

- Mobility:
  - not obligatory;
  - DG HR sees links with Agencies' policy on sensitive functions, responding to the same *rationale* of the above recommendations.
- Voluntary opt-out:
  - Right to managerial allowance for one year.
- Re-assignment to non-managerial function:
  - reasons - reasons for which the re-assignment to non-managerial function can be justified are the same: i.e. insufficient managerial ability, following the trial period or at any time during the career of the manager, and suppression of the post as a result of a re-organisation.
  - conditions - as regards the insufficient managerial ability raised during the career of the manager, the underlying conditions change:
    - the Executive Director may launch the related procedure when:
      - performance of a head of unit or his managerial performance has been evaluated as unsatisfactory in the last annual report (≠ from the current framework for which two successive reports showing deficiencies are necessary);
      - in exceptional and duly justified cases (new).
    - the Executive Director must launch the related procedure when:
      - the performance or managerial performance has been evaluated as unsatisfactory in two of the last three annual reports (new).

## c. EFSA proposal

Following the assessment carried out by EFSA services, and following the positive opinion of the EFSA Staff Committee, it is proposed that the Management Board adopts

implementing rules based on the model decision agreed by the Commission (Commission's Decision C(2018)2542)). A draft decision for this purpose is enclosed to the present note.

### **3. Decision on the function of adviser (based on Agency model Decision)**

#### **a. Background**

Annex I, Section A to the Staff Regulations establishes the types of posts for each function group of staff. Within the function group AD (i.e. with University degree), there is a specific type of post called "adviser", for which the career grade bracket is AD13-14. EFSA does not have any of those posts in its organigram and there is no framework in place governing the function of adviser.

On 13 April 2018, the Commission notified to agencies an *ex-ante* agreement on a model decision on implementing rules on the function of adviser (i.e. Commission's Decision C(2018)2209).

#### **b. Main elements**

The rules on the function of adviser largely mirror the ones for middle management. The following elements are, however, specific of this function:

- the duties of advisers are of horizontal nature (such as coordination, representation, analysis and advice) and represent a high added value for the Intitution; apart for exceptional cases, they do not involve the direct management of human or financial resources or middle-management tasks;
- advisers are appointed at grades AD 13/AD 14 (external publications are excluded);
- in principle advisers are administratively attached to the Head of the Agency.

#### **c. EFSA proposal**

Following the assessment carried out by EFSA services, and following the positive opinion of the EFSA Staff Committee, it is proposed that the Management Board adopts implementing rules based on the model decision agreed by the Commission (Commission's Decision C(2018)2209)). A draft decision for this purpose is enclosed to the present note.

### **4. Decision on temporary occupation of management posts (based on Agency model Decision)**

#### **a. Background**

Article 7(2) of the Staff Regulations states that the Appointing Authority may call upon servants to occupy a post in their function group in a grade which is higher than their own grade (i.e. "ad interim" appointments). This provision applies only where the servant is called upon to assume temporarily duties which entail responsibilities substantially greater than those involved in their own post. Only the difference in the level of responsibilities between non-management and management posts and between management posts of different levels can be considered as substantial for the purpose of applying Article 7(2) of the Staff Regulations.

To govern the temporary occupation of management posts, EFSA has relied so far to the existing rules of the Commission (Commission Decision C(2009)7839), without however ever formally introducing those rules in its legal framework.

On 6 November 2017, the Commission notified to agencies an *ex-ante* agreement on a model decision regarding implementing rules on the temporary occupation of management posts (i.e. Commission's Decision C(2017)7332).

### **b. Main elements**

The rules on the temporary occupation of management posts responds to the need to recognise the efforts made by officials or temporary staff members "ad interims" to temporarily ensure the continuity of the service in line with the principle of equitable treatment. The main elements are the following:

- the concerned arrangements apply when the vacancy of the post to be temporarily filled in involve periods lasting longer than three months;
- a differential allowance shall be paid to ensure equitable principle and compensate the remuneration for the difference in terms of:
  - grade (AD 9 for Head of Unit, AD 12 for Head of Department and AD 14 for Director);
  - managerial function;
- procedure – the decision on temporary occupation of management posts are taken by the Executive Director, following the proposal of the unit in charge with human resources and after having sought the opinion of the Joint Committee.

### **c. EFSA proposal**

Following the assessment carried out by EFSA services, and following the positive opinion of the EFSA Staff Committee, it is proposed that the Management Board adopts implementing rules based on the model decision agreed by the Commission (Commission's Decision C(2017)7332). A draft decision for this purpose is enclosed to the present note.

## 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 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.
- 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.

## **IRs 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 staff<sup>2</sup>;
- 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 Union<sup>3</sup>;
- Decision of the Management Board on setting up a Staff Committee<sup>4</sup>;
- Decision of the Management Board laying down general implementing provisions regarding Article 45 of the Staff Regulations<sup>5</sup>;
- Decision of the Management Board laying down general implementing provisions regarding Article 54 of the Conditions of Employment of Other Servants of the European Union<sup>6</sup>;
- 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 Union<sup>7</sup>;
- 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 harassment<sup>8</sup>.
- Decision of the Management Board on implementing rules laying down guidelines on whistleblowing.

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<sup>2</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>3</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>4</sup> It replaces EFSA Decision of 9 October 2012 concerning the establishment of a Staff Committee.

<sup>5</sup> 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).

<sup>6</sup> 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.

<sup>7</sup> 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).

<sup>8</sup> 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.