

## NOTE TO THE MANAGEMENT BOARD

### Implementing rules on working time and hybrid working, and on home leave for officials, temporary staff and contract staff serving in a third country

#### 1. Introduction

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

- application by analogy of Commission Implementing rules (general principle);
- adoption of Implementing rules different from those of the Commission, based, when available, on Agency Model Decisions negotiated within the Standing Working Party<sup>1</sup> and receiving ex-ante agreement of the Commission;
- non-application of Commission Implementing rules which are not relevant or suitable for staff management at EFSA, on the basis of ex-ante or individual agreement of the Commission.

The decision-making power is with the Management Board, based on proposals of the Executive Director and following consultation with the Staff Committee, while the Executive Director is delegated the representation of the Management Board before the Commission.

#### 2. Commission Decision on working time and hybrid working (to be applied by analogy)

##### a) Background

Before the Covid-19 pandemic, EFSA had in place the following legal framework concerning working time and teleworking:

- EFSA Decision on Working Time, adopted in 2019 on the basis of a model decision,
- 2015 Commission Decision on the implementation of telework (applied by analogy).

During the Covid-19 pandemic, EFSA, likewise the Commission and other agencies, adopted special working guidelines to address the crisis. The EFSA guidelines, which set the current working arrangements, will be valid until 31 December 2022.

On 24 March 2022, the Commission notified agencies of the adoption of a new Decision on working time and hybrid working (hereinafter 'Commission Decision' or 'Commission rules'), aiming at regulating both working time and teleworking and which entered into force in the Commission on 1 April 2022. The entry into force in the Commission triggered the nine-month period within which EFSA could decide to either apply these rules by analogy or request the non-application (opt-out).

##### b) Main features

###### Rationale and general principles

The Commission Decision adapts the rules on working time and set up a new framework facilitating hybrid working, that is a combination of working at the office and teleworking, where both modalities are considered equivalent (new concept).

<sup>1</sup> The Standing Working Party is an *ad hoc* committee composed of representatives of the Directorate General of the Commission dealing with HR matters and of agencies and its mission is to negotiate General Implementing rules to be applied within agencies. EFSA is represented by the European Medicines Agency (EMA).



The aim is to establish a modern, digital and flexible working environment to protect staff health and wellbeing, enhance work efficiency and improve work-life balance.

A great emphasis is put on the fact that teleworking also contributes to reducing CO2 emissions arising from staff commuting and the resulting congestion and would therefore contribute towards supporting the Union's efforts, under the European Green Deal, to become climate neutral by 2050.

The new rules capitalise from the experiences of recent years, which showed that teleworking is essential for ensuring business continuity in times of crisis and allows for effectiveness and efficiency.

### Flexibility and autonomy

The innovative concept of hybrid working is combined with a greater flexibility for staff in organising their working time while ensuring their availability for teamwork to cater for the needs of the service. This is expected to bring along a higher degree of autonomy for staff, as well as a greater sense of responsibility, contributing to the development of a culture of trust within EFSA's working environment. This translates into the following key rules:

- default regime is flexitime meaning that staff can choose how to spread their working time daily, in agreement with their line managers (e.g. varying the time at which work starts and ends, offsetting or recuperation extra hours)
- the previous concept of core hours is replaced by the new notion of time slots in which staff should be available for interaction (i.e. reachable),
- teleworking arrangements (always on a voluntary basis) are agreed between the staff member and the line manager with less formality (up to 20 % is a right, between 20% and 60% can be agreed, so in principle work from the office for 40% of weekly working time). The line manager can require the presence of the staff members on a particular day. Teleworking should be performed from the place of employment or from a place allowing staff to physically come to the office with a reasonable time (outside the place of employment allowed for 10 working days per year and in exceptional circumstances).

As a result, line managers should shift to objective-based and result-oriented approach and develop an efficient remote management based on a culture of trust (no unnecessary controls) while ensuring proper work organisation and team members integration.

### Staff health and wellbeing

The new Commission rules takes into account the interest of staff and contributes to protecting its health and wellbeing. This implies:

- line managers to ensure that overall work assigned to staff is in principle manageable in standard working week, taking into account peak periods (when excess hours required by service needs, offsetting or recuperation available),
- the right to disconnect is now formalised in the rules (although already existing in the practice) and refers to an extent of time, in principle between 19.00 and 8.00, during which staff may not be contacted or requested to work, except in pre-determined cases (i.e. emergency, pre-agreement, nature of the tasks),
- hybrid working and teleworking should be implemented by adequately taking into account psychosocial risks such as those linked to digital overload, a blurred line between professional and private lives or social isolation as well as the need to building team spirit, monitoring performance, motivating team members, integrating newcomers (training for managers to be available).
- Emphasis on equality and fairness in implementing hybrid working (i.e. teleworking equally available to all staff, equal treatment in terms of workload, performance indicators, entitlements to training and career prospects).



## Monitoring and evaluation

EFSA should monitor the ratio of teleworking and working at the office, with special focus on the use of teleworking per gender. When monitoring that ratio, where relevant, it should analyse the options to encourage the equal use of teleworking by men and women. In doing so, it should consult the Joint Committee (in which the Staff Committee is represented). EFSA should carry out an evaluation of the implementation within a given timeline (to be confirmed by the Commission).

### **c) Further actions in the pipeline**

Furthermore, in order to better achieve the objectives of the Commission Decision, EFSA should adopt guidelines in cooperation with the Staff Committee to indicate criteria, procedures and good practices, ultimately ensuring consistent interpretation, fairness and equal treatment to staff.

In the meantime, the Standing Working Party (SWP) is currently negotiating the text of a model decision to establish a tailor-made framework for agencies. The negotiations are expected to reach a conclusion during spring of 2023, with the model decision being available for adoption around June 2023, although the timeline for the adoption by the Commission of the ex-ante agreement is still quite uncertain. Moreover, the first draft shared with agencies appears on substance very similar to the Commission Decision and with a little degree of flexibility granted to agencies are.

### **d) Staff Committee position**

EFSA Staff Committee plays a key role in the introduction of implementing rules to the Staff Regulations, channelling staff's opinion in EFSA decision-making. On 21 October 2022, EFSA Staff Committee was consulted as to whether they are in favour of the application by analogy of the Commission Decision or they would rather opt for the non-application of this Decision at this stage. In their opinion delivered on 31 October 2022, the EFSA Staff Committee agreed on the application by analogy of the Commission rules. They also expressed their commitment to collaborate to the development of the afore-mentioned guidelines. Finally, they underlined that they are looking forward to assessing the added value of the forthcoming model decision.

### **e) Proposal**

The Commission Decision introduces a new flexible framework for daily work, based on what we have learned from past years. In agreement with EFSA Staff Committee, EFSA proposes the application by analogy of these rules as of 1 January 2023 to provide the Authority with a modern, digital, and flexible framework. A draft decision for this purpose is enclosed to the present note as well as the related Commission Decision.

Once available, the model decision will be assessed in close collaboration with the Staff Committee in order to evaluate whether it could be a better tool for addressing EFSA's needs compared to the Commission Decision now being proposed for adoption.

## **3. Commission Decision on home leave for officials, temporary staff and contract staff serving in a third country (to be applied by analogy)**

### **a) Background**

Officials, temporary agents, and contract agents may perform their duties in a third country. Pursuant to Article 7, second paragraph, of Annex V of the Staff Regulations, the duration of the supplementary leave that staff members of the Union serving in a third country are entitled to every year for the purpose of visiting their home country ('home leave'), shall be fixed by special decision taking into account particular needs.

On 4 May 2022, EFSA was notified of Commission Decision of 24 March 2022 on home leave for officials, temporary staff and contract staff serving in a third country. The notification by the Commission triggered the nine-month period within which EFSA can decide to either apply these rules by analogy or opt-out.



EFSA does not currently have staff located in third countries. Thus, Article 7, second paragraph, of Annex V *de facto* does not apply to its staff. However, the adoption by analogy of the related implementing rules would adhere to the overall Commission approach aiming at avoiding unnecessary opt-out requests. Moreover, the adoption by analogy would ensure uniformity and legal certainty, should EFSA need to address this situation in the future.

### **b) Main features**

Staff serving in a third country are to be granted days of home leave per calendar year according to the geographical distance between the place of employment and the place of origin. The Commission Decision specifies the number of days that shall be granted in relation to the geographical distance and increases the number of home leave days granted to staff members posted where the geographical distance between the place of employment and the place of origin is 2001 kilometres or more.

### **c) Proposal**

In line with the approach explained above, EFSA proposes that the Management Board adopts this Commission Decision by analogy, taking into account the favourable opinion of the Staff Committee. A draft decision for this purpose is enclosed to the present note as well as the related Commission Decision.