



EUROPEAN
COMMISSION

Brussels, 26.5.2016
C(2016) 2421 final

COMMISSION DECISION

of 26.5.2016

on giving agencies an ex ante agreement to the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services

COMMISSION DECISION

of 26.5.2016

on giving agencies an *ex ante* agreement to the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services

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 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 Communication C(2014)6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to Article 13 of the Rules of Procedure of the Commission², as last amended by Commission Decision C(2011)9000/2³, and the Rules giving effect to the Rules of Procedure⁴, as last amended by Commission Decision C(2013)3837⁵, in particular concerning the conditions for the exercise of powers,

Having regard to Commission Decision C(2014)7229 final⁶ of 8 October 2014 empowering the Member of the Commission responsible for staff issues to adopt, on behalf of the Commission and under its responsibility, the decisions referred to in the third and fifth subparagraphs of Article 110(2) of the Staff Regulations,

Whereas:

- (1) The acts establishing all agencies refer to the Staff Regulations and the CEOS as the common legal framework for staff matters. Implementing rules lay down technical

¹ OJ L 56, 4.3.1968, p.1, as last 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.

² Rules of Procedure of the Commission C(2000) 3614 of 29 November 2000 (2000/773/EC); OJ L 308, 8.12.2000, p.26.

³ Commission Decision C(2011)9000/2 of 9 November 2011, OJ L 296, 15.11.2011, p.58.

⁴ Rules giving effect to the Rules of Procedure C(2001) 1 final of 12 January 2001.

⁵ Commission Decision C(2013)3837 of 24 June 2013.

⁶ Commission Decision C(2014) 7229 final of 8 October 2014 on the exercise of certain powers in respect of the agreement to be given by the Commission to the agencies before the adoption of implementing rules giving effect to the Staff Regulations in accordance with Article 110(2) thereof.

measures relevant to individual cases and supporting the consistent application of the Staff Regulations and the CEOS in the agencies.

- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules adopted by the Commission to give effect to the Staff Regulations are to apply by analogy to the agencies. However, by way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules.
- (3) Pursuant to Point 2.B of Communication C(2014)6543, the Commission may inform the agencies of its agreement to the non-application of certain rules, without the agencies having to submit a formal request.
- (4) On 17 December 2013, the Commission informed the agencies⁷ that it adopted Decision C(2013)9028 of 16 December 2013 amending Commission Decision of 28 April 2004⁸ on the maximum duration for the recourse to non-permanent staff in the Commission services, hereinafter 'Commission Decision C(2013)9028'.
- (5) Agencies differ from the Commission, particularly as regards the structure of their staff. In agencies, temporary agents referred to in Article 2(a) of the CEOS are exclusively the heads of agency, deputy heads of agency (whose contract duration is governed by acts establishing the given agency) and officials seconded in the interests of the service to an agency (who are not covered by Commission Decision C(2013)9028). The majority of other temporary staff are those referred to in Article 2(f) of the CEOS to whom Commission Decision C(2013)9028 does not apply and to whom potentially contracts for indefinite duration can be granted. As regards contract staff, agencies employ only those referred to in Article 3(a) of the CEOS who do not fall under the scope of Commission Decision C(2013)9028. Therefore, Commission Decision C(2013)9028 is not adapted to the agencies' reality.
- (6) Taking into account the way agencies operate, it is not appropriate to set a maximum duration of recourse to non-permanent staff, because such a rule could be detrimental to the functioning of agencies. Therefore, agencies should be able to derogate from applying Commission Decision C(2013)9028, instead of being required to submit for the Commission's agreement implementing rules which are different from that Decision.
- (7) Point 2.B of Communication C(2014)6543 states that *ex ante* agreements set out in detail the conditions and circumstances that must be fulfilled for agencies to be able to avail themselves of them.
- (8) The *ex ante* agreement given through this Decision should not rule out that an agency submits to the Commission, for its agreement, implementing rules which are different from Commission Decision C(2013)9028,

HAS DECIDED AS FOLLOWS:

Article 1

1. Pursuant to Article 110(2) of the Staff Regulations and Communication C(2014)6543, the Commission gives an *ex ante* agreement to agencies, referred to in

⁷ Regarding the recently created agency and joint undertakings, namely SRB, BBI JU, S2R JU, ECSEL JU, that information was communicated to them on 13 February 2015.

⁸ Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, as amended by the Commission Decision C(2011)7071 of 5 October 2011.

Article 4, which decide not to apply Commission Decision C(2013)9028 and to adopt a decision on its non-application which is identical to the model decision laid down in Annex I to this Decision. Those agencies, without having to submit a formal request, shall be deemed to have received the Commission's agreement referred to in Article 110(2) of the Staff Regulations.

2. The *ex ante* agreement referred to in paragraph 1 also counts as the Commission's reply to any request from one or more agencies if those requests relate to rules which are identical to the model decision laid down in Annex I to this Decision.

Article 2

An agency may avail itself of the *ex ante* agreement referred to in Article 1 if both the following conditions are fulfilled:

- (a) it employs some of the following types of staff:
 - temporary agents referred to in Article 2(a) of the CEOS who are the heads of agency, deputy heads of agency or officials seconded in the interests of the service to that agency;
 - temporary staff referred to in Article 2(f) of the CEOS;
 - contract staff referred to in Article 3(a) of the CEOS.
- (b) it adopts a decision on the non-application of Commission Decision C(2013)9028 which is identical⁹ to the one laid down in Annex I to this Decision save for the parts in square brackets which shall be adapted to the agency's specific situation according to the relevant instructions.

Article 3

1. This Decision shall cease to apply where a new Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services is adopted and communicated to agencies; the Commission may nevertheless uphold this Decision.
2. In the event of significant changes in the way an agency operates, for example resulting from a change in the act or acts establishing it, its tasks or its organisation, the agency shall assess whether it still fulfils the conditions laid down in Article 2. If those conditions are no longer fulfilled, the agency shall adopt appropriate measures to bring its rules implementing the Staff Regulations into line with the new conditions that apply.

Article 4

1. This Decision is addressed to the agencies referred to in paragraph 2 of Article 1(a) of the Staff Regulations.
2. Annex II lists the agencies in existence on the date of adoption of this Decision.

⁹

Except for technical adaptations that are necessary to ensure compliance with the act(s) establishing the Agency. These adaptations shall not alter the *ratio legis* of the model decision.

3. The Commission shall inform the agencies which are created after the adoption of this Decision of the existence of this Decision.

Done at Brussels, 26.5.2016

For the Commission
Kristalina GEORGIEVA
Vice-President

