

**Explanatory Memorandum
to the Decision of the Management Committee of the Office of the
Body of European Regulators for Electronic Communications (the
BEREC Office) on general implementing provisions regarding
Article 87(3) of the Conditions of Employment of Other Servants of
the European Union (CEOS)
(MC/2016/07)**

Vienna, 3 June 2016

The BEREC Office is an Agency of the EU, established with the objective of providing administrative and professional support to the Body of European Regulators for Electronic Communications (BEREC). BEREC contributes to the development and better functioning of the internal market for electronic communications networks and services. BEREC and the BEREC Office were established by Regulation (EC) No 1211/2009 of the European Parliament and of the Council of 25 November 2009 ('the BEREC Regulation').

The BEREC Regulation refer to the Staff Regulations and the CEOS as the common legal framework for staff matters. The texts of these acts, however, are further detailed in implementing rules, which lay down the technical measures necessary to implement the Staff Regulations and the CEOS.

The current implementing rules which apply to the reclassification of contract staff at the BEREC Office are provided by the Commission Decision C(2014)2222 of 7 April 2014 on general provisions for implementing Article 87(3) of the CEOS amending Commission Decision C(2013)2529 of 3 May 2013.

However, Decision C(2014)2222 is suitable to contract staff of the EU agencies provided that certain adjustments are made to take into account their specifics. Those adjustments concern in particular the actors involved, the reclassification procedure applied and the transitional provisions. Therefore, to take into account the specific situation of the EU agencies and other EU bodies, the European Commission, with the assistance of a standing working party, composed of representatives of all interested parties, drafted a model decision for decentralised agencies and joint undertakings on the reclassification of contract agents which could be used as a basis for adopting the respective staff implementing rules. The agencies may opt out and submit to the Commission a draft of their own for which they need to obtain the Commission agreement before its final approval. In case that they use the model adopted by the Commission, provided that they do not introduce substantial changes, the agreement of the Commission is provided ex-ante with Commission Decision C(2015) 9561 final of 16/12/2015.

After examining the model decision provided by the Commission, the BEREC Office Management Committee concluded that its use would be appropriate to the BEREC Office with some minor adjustments, which could take into account the specificities of the BEREC Office. Therefore the Management Committee adopted Decision MC/2016/07 on general implementing provisions regarding Article 87(3) of the Conditions of Employment of other Servants of the European Union.

This Decision entered into force on the date of its adoption (3 June 2016) and shall apply as from the 2016 reclassification exercise.

According to the new rules in place a reclassification exercise shall be held each year. Staff members may be the subject of a reclassification decision if they satisfy all of the following conditions:

- by 31 December of the year of the reclassification exercise at the latest, they have achieved the minimum seniority in the grade required by Article 87(3) of the CEOS,
- they have a contract of at least three years, including renewals,

- they are in active employment, on parental or family leave or on leave for military service on the date on which the reclassification decisions are adopted by the authority authorised to conclude contracts of employment,
- their appraisal reports have been finalised in line with the applicable rules; in cases where an appraisal report has not been finalised as a result of a delay for which the staff member cannot be held responsible, the staff member can take part in the reclassification procedure on the basis of other valid information replacing the appraisal report.

The reclassification procedure shall be based on consideration of the comparative merits of the staff members eligible for reclassification. The reclassification exercise shall be launched only once the appraisal exercise organised in the same year has been finalised.

The new decision of the Management Committee also defines the procedure to be followed and introduces some provisions of transitional nature.
