



EUROPEAN
COMMISSION

Brussels, 6.11.2017
C(2017) 7332 final

COMMISSION DECISION

of 6.11.2017

**giving agencies an *ex ante* agreement regarding implementing rules on temporary
occupation of management posts**

COMMISSION DECISION

of 6.11.2017

giving agencies an *ex ante* agreement regarding implementing rules on temporary occupation of management posts

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) thereof,

Having regard to the 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 to give effect to the Rules of Procedure⁴, as last amended by Commission Decision C(2013)3837⁵, in particular as regards the conditions for the exercise of powers,

Having regard to Commission Decision C(2014)7229 final⁶ 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 measures which are important for individual cases and the consistent application of the Staff Regulations and the CEOS in the agencies.
- (2) Agencies should lay down rules for the application of Article 7(2) of the Staff Regulations⁷, which provides that the Appointing Authority may call upon officials to occupy temporarily a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to

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 to give effect to the Rules of Procedure of Commission 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.

⁷ Applicable by analogy to temporary staff by virtue of Article 10 of the CEOS.

replace an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave.

- (3) Specific situation of agencies, such as the nature of their staff may justify that the Commission authorises the agencies to adopt rules that are adapted to their peculiarities. The Commission, with the assistance of the standing working party, has therefore drafted a model decision for adoption by the agencies on implementing rules as regards temporary occupation of management posts.
- (4) 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 to take advantage of them.
- (5) The *ex ante* agreement in this Decision does not rule out that an agency submits to the Commission, for its agreement, implementing rules which are different from the model decision.

HAS ADOPTED THIS DECISION:

Article 1

1. Pursuant to Article 110(2) of the Staff Regulations and to Communication C(2014)6543, the Commission gives an *ex ante* agreement to the agencies, referred to in Article 4 of this Decision, which decide to adopt implementing rules on temporary occupation of management posts which are identical to the model decision set out in Annex I to this Decision. Those agencies shall be deemed to have received the Commission's agreement referred to in Article 110(2) of the Staff Regulations, without having to submit a formal request.
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 all of the following conditions are fulfilled:

- (a) The agency adopts the implementing rules on temporary occupation of management posts which are set out in Annex I to this Decision;
- (b) The rules referred to in subparagraph (a) above are identical⁸ to the model decision set out in Annex I to this Decision with the exception of 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 if a new Commission Decision laying down implementing rules on temporary occupation of management posts is adopted and communicated to agencies; the Commission may nevertheless uphold this Decision.

⁸ 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.

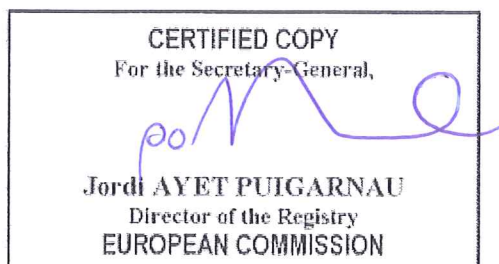
2. In the event of significant changes in the way the agency operates, for example resulting from a change in the act or acts establishing it, its tasks or its organisation, the agency shall assess whether it still fulfils the conditions laid down in Article 2. If those conditions are no longer fulfilled, 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.
3. The Commission shall inform of the existence of this Decision agencies which are created after the adoption of this Decision.

Done at Brussels, 6.11.2017

For the Commission
Günther OETTINGER
Member of the Commission



ANNEX I

Model decision for agencies laying down implementing rules as regards temporary occupation of management posts

To reflect an agency's specific circumstances, text in [xxx] should be revised in line with the instructions in square brackets e.g. replace [Management Board] with 'Governing Board.'

[Name of AGENCY] DECISION

of [date]

laying down implementing rules on temporary occupation of management posts

[THE MANAGEMENT BOARD *or the equivalent body referred to in the act(s) establishing the Agency*],

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union ('Staff Regulations') and to 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 7(2) of the Staff Regulations and Article 10 of the CEOS,

Having regard to [*choose the correct option* Council Regulation (EC) / European Parliament and Council Regulation (EC)/ Commission Decision] No [number] establishing [name of AGENCY],

Having regard to the 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 the rules of procedure of [name of AGENCY] and in particular Article [number] thereof,]

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations [*reference number of the Commission's Decision*] of [date],

[*For agencies that have established a Staff Committee: After consulting the Staff Committee, or for agencies that do not have a Staff Committee in place: After informing the staff,*

Whereas:

- 1) Rules should be laid down for the application of Article 7(2) of the Staff Regulations, which is applicable by analogy to temporary staff by virtue of Article 10 of the CEOS. Article 7(2) of the Staff Regulations states that the Appointing Authority may call upon officials to occupy a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to replace an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave.

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) It is necessary to adopt rules on temporary postings on the basis of Article 7(2) of the Staff Regulations which should take into account in an appropriate manner the need to recognise the efforts made by [officials or] temporary staff members to temporarily ensure the continuity of the service and the principle of equitable treatment.
- 3) Article 7(2) of the Staff Regulations should apply only where the [official or] temporary staff member 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 (not advisory)² 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.
- 4) The rationale of Article 7(2) of the Staff Regulations is to grant to the [official or] temporary staff member who takes up duties which entail responsibilities substantially greater than those involved in their own post for a substantial period a remuneration which corresponds to those greater responsibilities³.
- 5) It is necessary to ensure that Article 7(2) of the Staff Regulations is applied in an appropriate manner in view of the career system, in which there is a high degree of separation of grade and duties, as confirmed by the General Court⁴.
- 6) Deputising arrangements [as governed by the Agency's Rules of Procedure⁵ or *equivalent rules*] are to be distinguished from temporary postings and are not covered by this Decision.
- 7) [In the interest of clarity and legal certainty, the [*name of AGENCY*] Decision of [*date*] [on temporary occupation of management posts or *equivalent rules*] should be repealed and replaced by this Decision.]

HAS DECIDED AS FOLLOWS:

Article 1: Posts to which temporary postings may be made

The middle and senior management posts which a[n official or a] temporary staff member may be called upon to occupy on a temporary basis shall be:

- director posts in grade AD 14 or AD 15 and equivalent;
- [head of unit⁶ or another equivalent term used in the Agency] posts in grades [AD 13 or, if the Agency has head of department posts at grade AD12, AD12] to AD 14⁷ and equivalent;

² Middle and senior management functions as defined in the relevant Agency's decisions and relevant decisions applicable to the Agency.

³ COJ, C-5/70, Prelle/Commission (ECLI:EU:C:1970:109).

⁴ CFI, T-56/07P, Commission/Economidis (ECLI:EU:T:2008:260).

⁵ [Reference to the Agency's rules governing deputising.]

- [head of unit *or another equivalent term used in the Agency*] posts in grades AD 9 to AD 14⁸ and equivalent.

Article 2: Conditions for temporary postings

Temporary postings may be made:

- (1) where a new or vacant management post cannot be filled in the short term, or
- (2) to replace a[n official, or a] temporary staff member who is seconded to another post in the interests of the service, is called up for military service or is absent on protracted sick leave or for other reasons preventing [an official or] a temporary agent from exercising the assigned function.

The above-mentioned situations shall as a rule involve periods lasting longer than three months. Only a full-time and uninterrupted absence of the job holder can give rise to a temporary posting.

Only established [officials and] temporary staff members who are not serving their probationary period can be called upon to temporarily occupy a post within the meaning of Article 7(2) of the Staff Regulations.

Article 3: Reference grade

For the purpose of calculating the differential allowance, the 'reference grade' for a temporary posting will be fixed as follows:

- (1) As regards director posts and equivalent as defined in Article 1, the reference grade shall be grade AD 14.
- (2) As regards [head of unit posts *or another equivalent term used in the Agency*] and equivalent as defined in Article 1, the reference grade shall be as a rule:
 - (a) where the post is published, the lowest grade in the range for which the post is published, as follows:
 - grade AD 9 for the range AD 9/AD 14 (for internal and inter-agency publication);
 - grade [AD 13 *or, if the agency has head of department posts at grade AD12, AD12*] for the range [AD 13 *or, if the agency has head of department posts at grade AD12, AD12*] /AD 14 (for internal and inter-agency publication);

⁶ 'Head of unit' refers to all middle management functions.

⁷ Within the limits of the establishment plan.

⁸ See footnote 7.

- the grade of the external publication (publications of a single grade from AD 9 to AD 12).
- (b) where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD 9 or AD 13 [*or, if the agency has head of department posts at grade AD12, AD12*] as set by the [Appointing Authority, or the] Authority authorised to conclude the contracts ('AACC').

Article 4: Differential allowance

From the beginning of the fourth month of a temporary posting, the [official or] temporary staff member concerned may receive a differential allowance equal to the difference in current remuneration of the [official or] temporary staff member and the remuneration according to the level of the temporary posting, as follows:

- (1) If the [official or] temporary staff member is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of the [official or] temporary staff member throughout the relevant period and the remuneration they would receive if they were [promoted or] reclassified to the reference grade⁹.
- (2) In duly justified circumstances where the [official or] temporary staff member is in one of the grades below the grade immediately below the reference grade, as the differential allowance cannot be calculated by analogy to a [promotion or] reclassification, it shall be equal to the difference between the remuneration of the [official or] temporary staff member throughout the relevant period and the remuneration they would receive if they were newly recruited in the reference grade¹⁰. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
- (3) If the [official or] temporary staff member is in a grade equal to or above the reference grade, except where the [official or] temporary staff member already receives the benefit on the basis of their post of assignment, the remuneration of the [official or] temporary staff member is increased according to Articles 44 and 46 of the Staff Regulations, which are applicable by analogy to temporary staff by virtue of Articles 20(4) and 15 respectively of the CEOS.

The increase in remuneration according to Articles 44 and 46 of the Staff Regulations will be calculated either on the basis of the grade of the [official or] temporary staff member concerned, or on the basis of the reference grade of the post that the [official or] temporary

⁹ Taking account of the provision regarding non-cumulation, as provided in Conclusion 240/05 of the Heads of Administration (see [document/publication of that Conclusion]), this remuneration will be increased according to Articles 44 and 46 of the Staff Regulations.

¹⁰ See footnote 9.

staff member temporarily occupies, depending on which option is the most favourable for the [official or] temporary staff member concerned¹¹.

Article 5: Management experience

Management experience acquired through a temporary posting shall be taken into account for eligibility purposes in the context of applications for management positions.

Article 6: Successive periods of temporary posting

Where the same [official or] temporary staff member is the subject of two or more temporary postings in respect of the same functions and those postings are consecutive, the second temporary posting shall be considered as a continuation of the first and the differential allowance shall not be discontinued during the first three months of the second temporary posting.

For the purposes of this provision, a subsequent posting shall be considered to be consecutive if it begins no longer than three months after the end of the previous posting.

Article 7: Procedure for temporary postings

- (1) Where the conditions in Article 2 are met, the [Agency entity in charge of human resources *or an equivalent Agency entity*] may submit a proposal for a temporary posting, stating the reasons and providing all relevant information. The temporary posting is proposed to the [Appointing Authority, or to the] AACC.
- [(2)] [Decisions to temporarily fill a middle management post shall be taken after consulting the Joint Committee].
- [(3)] The effective date of a temporary posting is fixed by the [Appointing Authority, or the] AACC in the temporary posting decision pursuant to Article 7(2) of the Staff Regulations, taking account of the proposal submitted by the [Agency entity in charge of human resources *or an equivalent Agency entity*].
- [(4)] Abolition of the post on which a temporary posting has been made as a result of an amendment to the organisation chart automatically entails termination of the temporary posting.

¹¹ The amount of the benefit shall be calculated in accordance with the method laid down in Conclusion 240/05 of the Heads of Administration (see [*document/publication of that Conclusion*]).

[Article 8: Final provision

The [*name of AGENCY*] Decision of [*date*] [laying down rules on implementing Article 7(2) of the Staff Regulations as regards the temporary occupation of management posts *or equivalent rules*] is repealed.]

Article [9 or 8]: Date of application

This Decision shall take effect on [*date or the day following that of its adoption*].

Done at [*CITY*], on [*DATE*]

For [*Name of AGENCY*]

ANNEX II

List of agencies

A. DECENTRALISED AGENCIES

- (1) **European Agency for the Cooperation of Energy Regulators (ACER)**
Trg republike 3,
1000 Ljubljana, SLOVENIA

- (2) **Body of European Regulators for Electronic Communications and the Office (BEREC)**
BEREC Office
Z. A. Meierovica Bulv. 14, 2nd Floor
Riga LV-1050, LATVIA

- (3) **Translation Centre for the Bodies of the European Union (CDT)**
Rue Guillaume Kroll, 12e
1882 Luxembourg, LUXEMBURG

- (4) **European Centre for the Development of Vocational Training (CEDEFOP)**
Europe 123,
570 01 Thessaloniki (Pylea), GREECE

- (5) **Agency for Law Enforcement Training (CEPOL)**
Ó Utca 27
1066 Budapest, HUNGARY

- (6) **Community Plant Variety Office (CPVO)**
3, boulevard Maréchal Foch
CS 10121
49101 Angers CEDEX 2, FRANCE

- (7) **European Aviation Safety Agency (EASA)**
Konrad-Adenauer-Ufer 3
D-50668 Cologne, GERMANY

(8) **European Asylum Support Office (EASO)**

MTC Block A, Winemakers Wharf,
Grand Harbour Valletta,
MRS 1917, MALTA

(9) **European Banking Authority (EBA)**

Floor 46
One Canada Square
Canary Wharf
London E14 5AA, UNITED KINGDOM

(10) **European Centre for Disease Prevention and Control (ECDC)**

Tomtebodavägen 11a
171 83 Stockholm, SWEDEN

(11) **European Chemicals Agency (ECHA)**

Annankatu 18
00121 Helsinki, FINLAND

(12) **European Environment Agency (EEA)**

Kongens Nytorv 6
1050 Copenhagen K, DENMARK

(13) **European Fisheries Control Agency (EFCA)**

Edificio Odriozola, Avenida García Barbón 4
36201 Vigo, SPAIN

(14) **European Food Safety Authority (EFSA)**

Via Carlo Magno 1A
43126 Parma, ITALY

(15) **European Institute for Gender Equality (EIGE)**

Gedimino pr. 16
01103 Vilnius, LITHUANIA

- (16) **European Insurance and Occupational Pensions Authority (EIOPA)**
Westhafenplatz 1
60327 Frankfurt am Main, GERMANY
- (17) **European Institute of Innovation and Technology (EIT)**
Infopark, Neumann Janos utca 1/E
1117 Budapest, HUNGARY
- (18) **European Medicines Agency (EMA)**
30 Churchill Place
Canary Wharf
London E14 5EU, UNITED KINGDOM
- (19) **European Maritime Safety Agency (EMSA)**
Praça Europa 4
1249-206 Lisboa, PORTUGAL
- (20) **European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)**
Praça Europa, 1
Cais do Sodré
1249-289 Lisbon, PORTUGAL
- (21) **European Union Agency for Network and Information Security Agency (ENISA)**
Science and Technology Park of Crete (ITE)
N.Plastira street 100
Vasilika Vouton
700 13 Heraklion, GREECE
- (22) **European Railway Agency (ERA)**
120 rue Marc Lefrancq
59300 Valenciennes, FRANCE
- (23) **European Securities and Markets Authority (ESMA)**
103 Rue de Grenelle
75007 Paris, FRANCE

(24) European Training Foundation (ETF)

Villa Gualino
viale Settimio Severo 65
10133 Torino, ITALY

(25) European Union Intellectual Property Office (EUIPO)

Avenida de Europa, 4
03008 Alicante, SPAIN

(26) European Agency for the operational management of the large-scale IT systems in the area of freedom, security and justice (eu.LISA)

EU House
Rävala pst. 4
10143 Tallinn, ESTONIA

(27) European Agency for Safety and Health at Work (EU-OSHA)

C/Santiago de Compostela 12, 5th floor
48003 Bilbao, SPAIN

(28) European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)

Wyattville Road
Loughlinstown, D18 KP65
Dublin 18, IRELAND

(29) European Judicial Cooperation Unit (EUROJUST)

Johan de Wittlaan 9, 2517 JR
The Hague, THE NETHERLANDS

(30) European Police Office (EUROPOL)

Eisenhowerlaan 73
2517 KK The Hague, THE NETHERLANDS

(31) European Union Agency for Fundamental Rights (FRA)

Schwarzenbergplatz 11
1040 Vienne, AUSTRIA

(32) **European Border and Coast Guard Agency (FRONTEX)**

Plac Europejski 6
00-844 Warsaw, POLAND

(33) **European GNSS Agency**

Janovskeho 438/2
170 00 Praha 7, CZECH REPUBLIC

(34) **Single Resolution Board (SRB)**

Rue Treurenberg 22
1049 Brussels, BELGIUM

B. JOINT UNDERTAKINGS

(35) **Bio-based Industries Joint Undertaking (BBI)**

White Atrium Building
Avenue de la Toison d'Or 56-60, 3th Floor
1060 Brussels, BELGIUM

(36) **Clean Sky 2 Joint Undertaking (CLEAN SKY 2)**

Avenue de la Toison d'Or 56-60, 4th Floor
1060 Brussels, BELGIUM

(37) **Electronic Components and Systems for European Leadership Joint Undertaking (ECSEL)**

Avenue de la Toison d'Or 56-60 (5^{ème} étage)
1060 Bruxelles, BELGIUM

(38) **Fuel Cells and Hydrogen 2 Joint Undertaking (FCH 2)**

White Atrium Building
Avenue de la Toison d'Or 56-60, office 04/21
1060 Brussels, BELGIUM

(39) **The European Joint Undertaking for ITER and the Development of Fusion Energy (F4E)**

c/ Josep Pla, n° 2
Torres Diagonal Litoral
Edificio B3
08019 Barcelona, SPAIN

(40) **Innovative Medicines Initiative 2 Joint Undertaking (IMI 2)**

Avenue de la Toison d'Or 56-60
1060 Brussels, BELGIUM

(41) **SESAR Joint Undertaking (SJU)**

Avenue de Cortenberg 100
1000 Brussels, BELGIUM

(42) Shift2Rail Joint Undertaking (S2R JU)

White Atrium Building, 2nd floor
Avenue de la Toison d'Or 56-60
1060 Brussels, BELGIUM

C. EXECUTIVE AGENCIES

(43) Consumers, Health, Agriculture and Food Executive Agency (CHAFEA)

12, rue Guillaume Kroll
L-1882 Luxembourg, G.D. LUXEMBOURG

(44) Education, Audiovisual and Culture Executive Agency (EACEA)

Avenue du Bourget 1
J59 BE-1049 Brussels, BELGIUM

(45) Executive Agency for Small and Medium Enterprises (EASME)

Covent Garden, COV2 12/134
Place Rogier 16
1210 Brussels, BELGIUM

(46) European Research Council Executive Agency (ERCEA)

Covent Garden, COV2 24/130
Place Rogier 16,
1210 Saint-Josse-ten-Noode, BELGIUM

(47) Research Executive Agency (REA)

Covent Garden, COV2 18/132
Place Rogier, 16
1210 Brussels, BELGIUM

(48) Innovation and Networks Executive Agency (INEA)

Chaussée de Wavre 910
1040 Brussels, BELGIUM