



EUROPEAN
COMMISSION

Brussels, 18.12.2018
C(2018) 9086 final

COMMISSION DECISION

of 18.12.2018

on giving the Commission's agreement to the adoption by the Agency for Support for the Body of European Regulators for Electronic Communications (BEREC Office) of its implementing rules giving effect to the Staff Regulations regarding the delegation of the powers of the appointing authority and the authority authorised to conclude contracts of employment to the Director

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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 ('CEOS') of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 110(2) of the Staff Regulations,

Having regard to Regulation (EU) No 2018/1971² of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009 (BEREC Regulation), and in particular to Article 16(2) thereof,

Whereas:

- (1) Pursuant to Article 13 of the Rules of Procedure of the Commission³, and the Rules giving effect to the Rules of Procedure⁴, the Commission may empower one or more of its Members to take management or administrative measures on its behalf.
- (2) On 8 October 2014 the Commission adopted Decision C(2014) 7229⁵ 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.
- (3) On 26 September 2014 Communication C(2014) 6543 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 was adopted.

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 OJ L 321, 17.12.2018, p.1.

³ Rules of Procedure of the Commission C(2000) 3614 of 29 November 2000 (2000/773/EC) (OJ L 308, 8.12.2000, p.26), as last amended by 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, as last amended by Commission Decision C(2013) 3837 of 24 June 2013.

⁵ 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.

- (4) The acts establishing agencies refer to the Staff Regulations and the CEOS as the common legal framework for staff matters. Implementing rules lay down the technical measures relevant to specific cases and supporting the consistent application of the Staff Regulations and the CEOS in the agencies.
- (5) 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. An agency may also submit to the Commission, for its agreement, implementing rules which concern subjects other than the implementing rules adopted by the Commission.
- (6) Article 2(1) of the Staff Regulations provides that each institution determines who within it exercises the powers conferred by the Staff Regulations on the appointing authority. Article 6 of the CEOS provides for the same obligation regarding the authority authorised to conclude the contracts of employment.
- (7) According to Article 16(2) of the BEREC Regulation the Management Board are to delegate the powers referred to in Recital 6 of this Decision to the Director.
- (8) Commission Decision C(2013) 3288 of 4 June 2013⁶ implementing Article 2(1) of the Staff Regulations and Article 6 of the CEOS cannot be applied to the agencies because the organisational structures of the agencies are significantly different compared to that of the Commission.
- (9) The BEREC Office has submitted, for the Commission's agreement, draft implementing rules on delegating to the Director the powers referred to in Recital 6.
- (10) An in-depth examination has led to the conclusion that the draft implementing rules submitted by the BEREC Office comply with the Staff Regulations and the CEOS.
- (11) The BEREC Regulation enters into force 3 days after its publication in the *Official Journal of the European Union*. Therefore, the Commission agreement should be given under the condition that the BEREC Regulation enters into force,

HAS DECIDED AS FOLLOWS:

Article 1

The Commission gives its agreement, pursuant to Article 110(2) of the Staff Regulations, to the adoption by the BEREC Office of its implementing rules to the Staff Regulations and to the CEOS regarding the delegation of the powers conferred by the Staff Regulations on the appointing authority and by the CEOS on the authority empowered to conclude contracts of employment, to the Director, as provided for in the Annex to this Decision.

Article 2

The agreement referred to in Article 1 is given to the Agency under the condition that the BEREC Regulation enters into force.

⁶

Administrative Notice No 26-2013.

Article 3

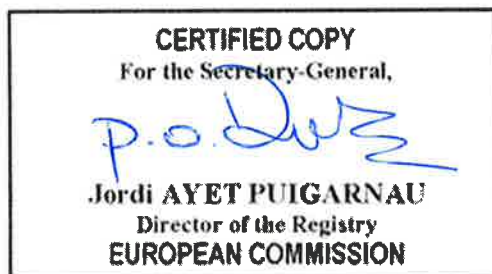
This Decision is addressed to BEREC.

Done at Brussels, 18.12.2018

For the Commission

Günther OETTINGER

Member of the Commission





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ANNEX

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to the Commission Decision on giving the Commission's agreement to the adoption by the Agency for Support for the Body of European Regulators for Electronic Communications (BEREC Office) of its implementing rules giving effect to the Staff Regulations regarding the delegation of the powers of the appointing authority and the authority authorised to conclude contracts of employment to the Director

Decision No MC/2018/XX

of the Management Board of the BEREC Office Delegating the powers conferred by the Staff Regulations on the appointing authority and by the Conditions of Employment of Other Servants on the authority empowered to conclude contracts of employment to the Director of the BEREC Office

The Management Board,

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 to Articles 2(1), 110(2) of the Staff Regulations and Article 6 of the CEOS,

Having regard to Regulation (EU) No 2018/1971 of xxx 2018 of the European Parliament and of the Council establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office) amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009² (hereinafter referred to as 'Agency Regulation') and in particular Article 16(1)(k) and Article 16(2) thereof,

Having informed the staff members,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2018)xxx of dd.mm.2018,

Whereas:

- 1) In accordance with Article 16(1)(k) of the Agency Regulation the powers of the appointing authority and the authority empowered to conclude contracts of employment are conferred on the Management Board of the BEREC Office.
- 2) Article 16(2) of the Agency Regulation provides that the Management Board is to adopt, in accordance with Article 110(2) of the Staff Regulations, a decision delegating the relevant powers of the appointing authority and the authority empowered to conclude contracts of employment to the Director and laying down the conditions under which that delegation of powers can be suspended. The Director should be authorised to sub-delegate those powers.
- 3) Pursuant to the second subparagraph of Article 16(2) of the Agency Regulation, where exceptional circumstances so require, the Management Board can decide to suspend temporarily the delegation of appointing authority powers to the Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member other than the Director.

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 OJ L 321, 17.12.2018, p.1.



- 4) Pursuant to the sixth subparagraph of Article 110(2) of the Staff Regulations, for the purposes of the adoption of implementing rules for giving effect to the Staff Regulations and the CEOS, the agencies are to be represented by the Management Board.
- 5) Decisions on the daily management of the BEREC Office, and in particular decisions in individual staff matters need to be taken at the most appropriate level.
- 6) The Director manages the BEREC Office and is in particular responsible for its day-to-day administration.
- 7) On the basis of Service Level Agreements, certain appointing authority powers of a technical nature could be sub-delegated by the Director to Commission services, in particular the Commission Paymaster's Office or DG Human Resources and Security, notably when those services are not available within the BEREC Office.
- 8) It is therefore necessary to adopt a decision delegating the relevant competences in the area of staff management to the Director,

HAS DECIDED AS FOLLOWS:

Article 1

1. The present decision concerns the exercise of the appointing authority and the authority empowered to conclude contracts of employment powers in respect of BEREC Office staff, except the Director and the appointment of the Accounting Officer.

Article 2

1. The powers conferred by the Staff Regulations on the appointing authority and by the CEOS on the authority empowered to conclude contracts of employment shall be delegated to the Director of the BEREC Office, except for the adoption of implementing rules to give effect to the Staff Regulations and to the CEOS.
2. The powers referred to in paragraph 1 are conferred on the Director without prejudice to those of the Management Board as provided in the Agency Regulation.
3. Decisions on extension of contract, termination of contract, appraisal and reclassification of the Accounting Officer shall be subject to approval by the Management Board.
4. The powers referred to in paragraph 1 concerning Article 90(2) of the Staff Regulations are exercised by the Management Board when the contested decision was taken at the level of the Director of the BEREC Office.

Article 3

1. The Director may sub-delegate the powers referred to in Article 1 to a member of temporary staff.
2. Temporary agents to whom powers are sub-delegated under paragraph 1 shall be designated by appropriate criteria, such as their function group and assignment to an organisational entity, by the job they hold or *ad personam*.
3. The Director shall inform the Management Board of such sub-delegations.
4. Sub-delegations shall be brought to the attention of the staff in a suitable form.
5. Where a person on whom powers have been conferred under Article 2 or under paragraph 1 of this Article is unable to act, those powers shall be exercised in accordance with the rules on deputising set out in the BEREK Office internal rules.
6. The Director may sub-delegate the relevant powers referred to in Article 1 to the services of the Commission. The sub-delegation shall be carried out in writing and brought to the attention of the staff.

Article 4

1. Where exceptional circumstances so require, the Management Board may, by way of a decision, temporarily suspend the delegation of appointing authority powers to the Director and those sub-delegated by the latter and exercise them itself or delegate them to one of its members or to a staff member of the BEREK Office other than the Director. The delegate shall report to the Management Board on the exercise of such a delegation.
2. The powers referred to in paragraph 1 may then be sub-delegated as necessary, in which case Article 3 shall apply *mutatis mutandis*.
3. The suspension shall be decided in accordance with the following provisions:
 - a. before adopting a decision on suspension the Management Board shall carefully consider any possible impacts on the functioning of the Agency. The suspension shall be limited to the duration and extent necessary to achieve its objective;
 - b. the decision on suspension shall be taken according to the voting rules of the Management Board provided for in the Agency Regulation;
 - c. the decision on suspension shall be communicated to the Director in writing and shall clearly define the powers being suspended, the exact duration of the suspension and any conditions thereto;
 - d. the decision on suspension shall automatically suspend any related sub-delegation, unless explicitly stated otherwise in the decision;
 - e. the decision on suspension shall specify who shall exercise the relevant powers during the period of suspension;
 - f. the decision on suspension shall be brought to the attention of staff in a suitable form.

Article 5

This Decision shall take effect on the day of its adoption.

It shall be brought to the attention of the staff in a suitable form.

Done at....., on 2018.

For the Management Board

Jeremy GODFREY
BEREC Chair 2019