

**DECISION No 5/2020**

**OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION AGENCY FOR  
THE COOPERATION OF ENERGY REGULATORS**

**of 17 June 2020**

**on the adoption by analogy of the Commission Decision on procedures for dealing with  
professional incompetence**

THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION AGENCY FOR THE  
COOPERATION OF ENERGY REGULATORS,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of  
5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators,<sup>1</sup>

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 259/68<sup>2</sup>, and in particular Article 110(2) of the Staff  
Regulations,

Having regard to Commission Decision C(2019) 6855 of 4 October 2019 on procedures for  
dealing with professional incompetence,

After consulting the Staff Committee on 29 April 2020,

Whereas:

- (1) On 9 October 2019, the Commission informed the European Union Agency for the  
Cooperation of Energy Regulators (hereinafter referred to as 'the Agency') that on 4  
October 2019, it had adopted Commission Decision C(2019) 6855 on procedures for  
dealing with professional incompetence.
- (2) In application of Article 110(2) of the Staff Regulations, in absence of derogation from  
these implementing rules, Commission Decision C(2019) 6855 should apply by analogy  
to the Agency within nine months after the date of notification.

HAS DECIDED AS FOLLOWS:

*Article 1*

Commission Decision C(2019) 6855 of 4 October 2019 on procedures for dealing with  
professional incompetence, hereby attached, shall apply by analogy to the Agency.

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<sup>1</sup> OJ L 158, 14.6.2019, p. 22–53

<sup>2</sup> 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.

*Article 2*

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

Done at Ljubljana, on 17 June 2020

*For the Administrative Board*

*The Chair*

*Dr. J. PENKER*



Brussels, 4.10.2019  
C(2019) 6855 final

**COMMISSION DECISION**

**of 4.10.2019**

**on procedures for dealing with professional incompetence**

# COMMISSION DECISION

of 4.10.2019

## on procedures for dealing with professional incompetence

THE EUROPEAN COMMISSION,

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

Having regard to the Staff Regulations of Officials of the European Union (hereinafter referred to as 'Staff Regulations'), as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68,<sup>1</sup> in particular Articles 9, 43, 44, 51 and 110 thereof and Article 12 of Annex II thereto,

Having regard to the opinion of the Staff Committee,

Whereas:

- (1) Since the amendment to the Staff Regulations which came into force on 1 January 2014, Article 43 thereof provides that the annual report on ability, efficiency and conduct in the service shall state whether or not the performance level of the official has been satisfactory.
- (2) In addition, the first paragraph of Article 44 of the Staff Regulations provides that the official's advancement to a higher step is conditional on his/her performance not having been evaluated as unsatisfactory in the last annual report referred to in Article 43 of the Staff Regulations.
- (3) Article 51 of the Staff Regulations was also amended, entering into force on 1 January 2014, to lay down new procedures for dealing with incompetence. In accordance with Article 51(1) of the Staff Regulations, these amendments require new internal provisions to lay down the procedures for identifying, dealing with and remedying cases of incompetence in a timely and appropriate manner, with the constant concern to raise the official's performance level to a satisfactory level.
- (4) In addition, in June 2016, the Commission launched the Talent Management Strategy which aims to ensure the best possible match between staff competences and expectations, on the one hand, and service needs, on the other.
- (5) In addition to the pillar dedicated to the development of staff competences, the strategy also includes a pillar entitled 'recruitment and performance', under which this decision falls. This pillar includes other actions such as the development of guidelines and other soft tools aimed at helping officials in situations of professional incompetence to return to a satisfactory level of performance with the support of their line managers. To this end, the Directorate-General for Human Resources and Security ('DG HR') has published for the management a guide to best practices that can be implemented in performance management.
- (6) In this context, attention should be drawn to the detection, support and advisory role of the immediate superior of an official experiencing performance problems as part of

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1, as 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).

their personnel management role. The manager may be assisted in this by the services responsible for human resources. In addition, the medical service takes action when it is necessary to remove doubt as to the medical origin of the difficulties faced by an official.

- (7) The different measures provided for in this Decision are not intended to replace the existing mechanisms and services which pursue at least some of the same objectives. These services and mechanisms include: the Mediator<sup>2</sup>, career guidance, psychological and social support, the medical service, the prevention of harassment (including the network of confidential counsellors<sup>3</sup>) and disciplinary proceedings<sup>4</sup>.
- (8) For the sake of clarity and legal certainty, the Commission Decision of 28 April 2004 on maintaining individual professional standards C (2004) 1597/7 should be replaced by this Decision,

HAS DECIDED AS FOLLOWS:

*Article 1*  
*Scope of application*

This Decision shall apply to officials within the meaning of Article 1a of the Staff Regulations, without prejudice to the provisions specific to the management staff.<sup>5</sup>

*Article 2*  
*General principles*

1. This Decision is part of the Commission's overall performance management policy. In addition to the Decision, this policy includes recommendations adapted to the specific situation of staff, such as the guide on best practices in performance management published by DG HR for management.
2. Detecting and resolving situations of professional incompetence of staff members are important elements in performance management. Management staff are supported and trained by DG HR for this purpose.
3. As part of his/her staff management role, the immediate superior provides support and advice to an official with performance problems so as to remedy them as quickly as possible. This is particularly appropriate where the immediate superior observes a situation which could lead him/her to indicate in the annual assessment that the official's performance is not satisfactory.

*Article 3*  
*Definitions and references*

1. For the purposes of this Decision, 'professional incompetence' shall mean performance judged unsatisfactory by at least one annual report drawn up in accordance with Article 43 of the Staff Regulations which has become final.

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<sup>2</sup> Commission Decision of 4 March 2002 on a reinforced Mediation Service C (2002) 601.

<sup>3</sup> Commission decision of 26 April 2006 on the European Commission policy on protecting the dignity of the person and preventing psychological harassment and sexual harassment – C(2006)1624/3

<sup>4</sup> Article 86 of the Staff Regulations, Annex IX to the Staff Regulations, Commission Decision of 28 April 2004 – general implementing provisions on the conduct of administrative inquiries and disciplinary procedures C (2004)1588/4.

<sup>5</sup> Article 14 of the Commission Decision of 15 June 2016 on middle management staff C (2016) 3288.

2. For the purposes of this Decision, and in accordance with the provisions implementing Article 43 of the Staff Regulations<sup>6</sup>, a report becomes final either at the time when the jobholder accepts the report or on expiry of the period of five working days from notification of the report if he or she does not reply or, if the jobholder refuses to accept the report, at the time when the appeal assessor takes a decision.
3. For the purposes of this Decision, the 'reporting officer' is defined in accordance with the provisions implementing Article 43 of the Staff Regulations.
4. With regard to the time limits referred to in this decision, Article 8 of the implementing provisions of Article 43 of the Staff Regulations shall apply *mutatis mutandis*.

#### *Article 4*

##### *Procedure for dealing with professional incompetence*

1. Where there is doubt about the medical origin of any difficulties encountered by an official in carrying out his/her duties, the administration shall take all necessary steps to resolve this doubt as soon as possible and in any event before a decision to downgrade or dismiss the official is proposed; in such cases, the matter shall be referred to the Medical Officer for an opinion.
2. The procedure for dealing with professional incompetence shall include at least the following measures: (a) a support plan, (b) downgrading following three consecutive unsatisfactory annual reports drawn up under Article 43 of the Staff Regulations which have become final, (c) dismissal following five consecutive unsatisfactory annual reports drawn up under Article 43 of the Staff Regulations which have become final.
3. The procedure for dealing with professional incompetence shall be triggered when an official's annual report drawn up under Article 43 of the Staff Regulations which has become final indicates that the performance level has not been satisfactory.

#### *Article 5*

##### *Support plan*

1. When an annual report drawn up under Article 43 of the Staff Regulations which has become final contains for the first time a conclusion stating that performance has not been satisfactory, the reporting officer shall, after a preliminary interview with the official, draw up a draft support plan in writing within one month of the annual report becoming final. The best practice guide drawn up by DG HR for management can be consulted when drawing up and determining the content of the draft accompanying plan. Articles 6(3) and 6(4) of the provisions implementing Article 43 of the Staff Regulations shall apply *mutatis mutandis* to this interview. The official may be accompanied at this meeting by a member of the Commission's staff. The draft support plan shall be notified to the official, who shall have five working days in which to submit any comments. No later than 15 working days after the end of this period, the reporting officer shall draw up the support plan, which shall take effect as soon as it has been notified to the official.
2. For the purposes of this Decision, the 'support plan' is a tool for managing efficiency, ability and conduct in the service, the purpose of which is to improve the performance of an official. This support plan shall be set up following an annual report indicating an unsatisfactory performance, drawn up in accordance with Article 43 of the

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<sup>6</sup> Commission Decision of 16 December 2013 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations, C (2013) 8985.

Staff Regulations and having become final in accordance with the provisions implementing Article 43 of the Staff Regulations. The support plan shall establish:

- (a) specific professional objectives
- (b) the timetable and the means made available to the official to attain them
- (c) clear and measurable success criteria and
- (d) the role of the support person if a support person has been appointed.

If appropriate, these objectives may include preparation for mobility to another post. The support plan also provides for meetings between the reporting officer and the official in question to measure progress on the objectives set.

3. At the reporting officer's initiative, the support plan may be adjusted at any time, notably if a new annual report drawn up under Article 43 of the Staff Regulations which has become final once again indicates an unsatisfactory performance level. In this case, the official shall have 5 working days in which to submit any comments. No later than 5 working days after the end of this period, the reporting officer shall draw up the amended support plan, which shall take effect as soon as it has been notified to the official.
4. If, during the implementation of the support plan, the official concerned or the reporting officer is transferred to another service, the reporting officer shall send the support plan to the new reporting officer, who may adapt it in accordance with the procedure set out in paragraph 2 of this Article.
5. The support plan shall end upon notification to the official of the annual report drawn up pursuant to Article 43 of the Staff Regulations and which has become final, indicating a satisfactory performance level.
6. If a support plan has been drawn up for the reference period or a part of it, when drawing up the next annual report or a contribution thereto, the reporting officer shall give an assessment of the official's efforts to attain the objectives set out in the support plan. This assessment must be substantiated by factual elements if it concludes that the performance level is unsatisfactory.

#### *Article 6*

##### *Support person*

1. The reporting officer may either on his/her own initiative after consulting the official or on the initiative of the official, designate a support person to assist the official in fulfilling the support plan. The official may waive the right to designate a support person.
2. The support person shall advise the official during the duration of the support plan. He or she may participate in the meetings provided for in the support plan referred to in Article 3(4), if the reporting officer and the official agree.

#### *Article 7*

##### *Procedure in the case of a third consecutive unsatisfactory evaluation*

1. If the third annual report drawn up on the basis of Article 43 of the Staff Regulations and which has become final concludes that the performance level has been unsatisfactory, immediately following two consecutive annual reports leading to the same conclusion, the Appointing Authority shall prepare within two months from the date on which the annual report becomes final a reasoned proposal to downgrade pursuant to Article 51(1),

second paragraph, point (a) of the Staff Regulations. This proposal is communicated to the official in question. The official shall be informed of his/her rights under Article 51(2) of the Staff Regulations.

2. The Appointing Authority shall seek the opinion of the Joint Advisory Committee on Professional Incompetence established in accordance with Article 51(4) of the Staff Regulations. The Committee shall deliver a reasoned opinion indicating the measure which it considers appropriate in the light of the facts established at its request. These facts relate in particular to elements concerning the situation of professional incompetence raised by the individual cases submitted to the Committee for an opinion and to the taking into account of the career of the officials concerned. Within three months of the issuance of this opinion, the Appointing Authority shall take a reasoned decision on the action to be taken on the proposal to downgrade which it has presented in accordance with paragraph 1 of this Article. This decision shall be communicated to the official in question.
3. The downgrading is to the same step as that held by the official in question at the moment when the decision to downgrade is taken by the Appointing Authority. The rights and obligations relating to the new grade shall apply to the downgraded official. In particular, a downgraded official shall no longer be considered as in transition for the purposes of Article 30 of Annex XIII.
4. The measures set out in Articles 4 to 6 remain applicable in parallel with the procedure laid down in this Article.

#### *Article 8*

##### *Procedure in the case of a fifth consecutive unsatisfactory evaluation*

1. If the fifth annual report drawn up on the basis of Article 43 of the Staff Regulations and which has become final concludes that performance has been unsatisfactory, immediately following four consecutive annual reports leading to the same conclusion, the Appointing Authority shall prepare, within two months from the date on which the annual report becomes final, a reasoned proposal for dismissal of the official concerned pursuant to the second sentence of Article 51(1), second paragraph, point (a) of the Staff Regulations. This proposal is communicated to the official in question. The official shall be informed of his/her rights under Article 51(2) of the Staff Regulations.
2. The Appointing Authority shall seek the opinion of the Joint Advisory Committee on Professional Incompetence established in accordance with Article 51(4) of the Staff Regulations. The Committee shall deliver a reasoned opinion indicating the measure which it considers appropriate in the light of the facts established at its request. These facts shall relate in particular to elements concerning the situation of professional incompetence raised by the individual cases submitted to the Committee for an opinion and to the taking into account of the career of the officials concerned. Within three months of the issuance of this opinion, the Appointing Authority shall take a reasoned decision on the action to be taken with regard to the proposal for dismissal which it has presented in accordance with paragraph 1 of this Article. This decision shall be communicated to the official in question.
3. The measures set out in Articles 4 to 6 remain applicable in parallel with the procedure laid down in this Article.



*Article 9*  
*Sequence of annual reports*

1. The absence of an annual report in the cases mentioned in Annex 1, points 1.2 and 1.3 of the general provisions for implementing Article 43 of the Staff Regulations shall not be considered to interrupt a series of ‘consecutive annual reports’ within the meaning of Article 51 of the Staff Regulations.

*Article 10*  
*Joint Advisory Committee on Professional Incompetence*

1. The Joint Advisory Committee on Professional Incompetence shall be composed, and its chair and members designated, in accordance with the provisions of Article 12 of Annex II to the Staff Regulations. The Joint Advisory Committee on Professional Incompetence shall adopt its rules of procedure.
2. The proceedings of the Joint Advisory Committee on Professional Incompetence shall be secret.

*Article 11*  
*Role of the Directorate-General for Human Resources and Security (‘DG HR’)*

1. DG HR shall monitor the cases and procedures related to professional incompetence in coordination with the Directorates-General concerned.
2. Taking into account the career of the staff members concerned is an important element in the management of professional incompetence. DG HR shall ensure the consistency of practices in the management of professional incompetence within the institution, in particular through the best practice guide published by DG HR for managers to be updated regularly.
3. Once a year, DG HR shall provide a state of play of management of professional incompetence within the Commission to the Joint Committee referred to in Article 10.
4. In all the steps taken to remedy problems of professional incompetence, DG HR shall point out that mobility to another post may be organised where appropriate.

*Article 12*  
*Repeal and transitional provisions*

1. Decision C(2004) 1597/7 of 28 April 2004 on maintaining individual professional standards is repealed.
2. If a plan for supportive and corrective measures drawn up on the basis of the Commission Decision of 28 April 2004 on maintaining individual professional standards C(2004) 1597/7 or equivalent measures are in place on the day this decision takes effect, the reporting officer shall without delay make an assessment of the adjustments required by this Decision and, following this assessment, shall draw up a draft new support plan to replace the support and correction plan. This draft shall be notified to the official, who shall have five working days in which to submit any comments. No later than 15 working days after the end of this period, the reporting officer shall draw up the support plan, which shall take effect as soon as it has been notified to the official. The plan for supportive and corrective measures shall continue to apply until the support plan is established as described in these provisions.

*Article 13*  
*Five-year report*

DG HR shall draw up a report to assess the implementation of this Decision within at most five years of the date of entry into force of this Decision.

*Article 14*  
*Entry into force*

This Decision shall enter into force on the day following that of its adoption.

Done at Brussels, 4.10.2019

*For the Commission*  
*Günther H. OETTINGER*  
*Member of the Commission*