

DECISION AB n° 06/2016

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

of 04 April 2016

**on general implementing provisions regarding Article 87(3) of the Conditions of
Employment of Other Servants of the European Union**

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

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 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 and Article 87(3) of the CEOS,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators², and, in particular, Article 28(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 Decision AB 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure of the Administrative Board, and, in particular, Article 9(2) thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2015) 9561 of 16 December 2015,

After consulting the Staff Committee,

Whereas:

- 1) On 16 May 2014, the Commission informed the Agency for the Cooperation of Energy Regulators that it adopted 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 on the same matter (hereinafter 'Commission Decision C(2014)2222').

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 211, 14.8.2009, p.1.

- 2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to the Agency for the Cooperation of Energy Regulators. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules. The Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.
- 3) Commission Decision C(2014)2222 is suitable to apply to contract staff of the Agency for the Cooperation of Energy Regulators (hereafter the 'Agency') provided that certain adjustments are made to take into account the peculiarities of the Agency. Those adjustments concern in particular the actors involved, the reclassification procedure and the transitional provisions.
- 4) The reclassification system applicable to contract staff recruited by the Agency under Article 3a of the CEOS is based on consideration of the comparative merits of the contract staff eligible for reclassification, taking account of the reports on the staff, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with Article 82(3) of the CEOS and the level of responsibilities exercised by them.
- 5) In the interest of clarity and legal certainty, Decision AB No 12/2012 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 20 June 2012 establishing the policy and procedure for the reclassification of contract staff should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1 — Scope

These general implementing provisions shall apply to members of the contract staff employed under Article 3a of the CEOS (hereinafter referred to as 'staff members').

Article 2 — Annual reclassification exercise

A reclassification exercise shall be held each year. It shall be launched by the Agency entity in charge of human resources by means of the publication of an administrative notice.

Article 3 — Staff members who may be the subject of a reclassification decision

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 ('AACC'), and
- their appraisal reports have been finalised in application of Article 6(8) or Article 7(4) of the Agency's general provisions for implementing Article 87(1) of the CEOS, if a report was required under the terms of Article 2 of those provisions. 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 shall nevertheless take part in the reclassification procedure on the basis of other valid information replacing the appraisal report and may therefore be the subject of a reclassification decision.

Article 4 — Basis of the reclassification procedure

1. The reclassification procedure shall be based on consideration of the comparative merits of the staff members eligible for reclassification. The secure electronic system used to administer the exercise shall contain the information required for this comparative examination. For the purposes of the examination, the AACC shall take into account, in particular:
 - (a) reports on the staff members drawn up since their last reclassification or, failing that, since their recruitment to the function group and grade in which they are classified at the time of the reclassification exercise, and in particular the appraisal reports drawn up in accordance with the Agency's general provisions for implementing Article 87(1) of the CEOS;
 - (b) the use by the staff members in the execution of their duties of languages other than the language for which they produced evidence of thorough knowledge in accordance with Article 82(3)(e) of the CEOS, and
 - (c) the level of responsibilities exercised by them.
2. If staff members eligible for reclassification have equal merit based on the three factors referred to in paragraph 1, the AACC may give subsidiary consideration to other factors.

Article 5 — Reclassification procedure

1. The reclassification exercise shall be launched only once the appraisal exercise organised in the same year has been finalised. The end of the appraisal exercise shall be announced by the Agency entity in charge of human resources by means of the publication of an administrative notice.
2. At the start of the reclassification exercise, the Head of the Administration of the Agency shall inform the Head of the Agency as referred to in the act(s) establishing the Agency (hereinafter referred to as 'the Director') of the arrangements for the current exercise, giving an indication of the financial resources available for the current year.

3. Within the Agency, the Director and the Heads of Unit or equivalent³ (hereinafter referred to as 'Heads of Department') shall proceed with the examination of the comparative merits of the staff members eligible for reclassification. By way of derogation from this paragraph, the Director and the Head(s) of Department who do not have any contract staff in their departments may decide not to take part in this examination.
4. Following the examination referred to in paragraph 3 above, the Director shall hold a discussion with the Staff Committee. Except where the Agency has more than 100 contract staff members, the Director may delegate this task to the Head of Department or the Head of Unit responsible for human resources or to another member of management. During this discussion the Director shall, at the request of the Staff Committee, specify the factors referred to in Article 4(2) of these general implementing provisions that were given subsidiary consideration in the case of equal merit.
5. Following the discussion referred to in paragraph 4 above, the Director shall draw up a list of staff members proposed for reclassification. That list may not exhaust the budgetary resources available for the reclassification of staff members for the current exercise.
6. The Director shall communicate to all the Agency's staff the list of the staff members he or she wishes to propose for reclassification and shall forward this list to the Joint Reclassification Committee referred to in Annex I.
7. The staff member shall have ten working days from the date of publication of this list in which to lodge a complaint with the Joint Reclassification Committee against the fact that he or she is not on the list, with supporting arguments. On receipt of the list referred to in paragraph 6, the Joint Reclassification Committee, taking into account any complaints it has received, shall compare the merits of the staff members eligible for reclassification and present for the attention of the AACC the list of staff members it recommends for reclassification. That recommendation may not exceed the budgetary resources available for the reclassification of staff members for the current exercise.

At the same time as the transmission of the recommendation to the AACC, the Joint Reclassification Committee shall forward to the AACC the complaints, the explanations as referred to in Article 2(2) of Annex III and the discrepancies, if any, referred to in Annex II.
8. Once it has received the information referred to in paragraph 7 above, and has at its disposal the files of all the staff members eligible for reclassification, the AACC shall carry out a final comparison of the merits of the eligible staff members and, taking into account the budgetary resources available for the current exercise, shall adopt the list of staff members reclassified. The staff members concerned shall be reclassified in the first step of the next higher grade in the function group to which they belong.
9. The list of staff members reclassified shall be published by means of the publication of an administrative notice. Without prejudice to the confidentiality principle referred to

³ Notwithstanding the title used in the Agency.

in Article 4 of Annex I, each staff member shall be given access to all relevant information related to his/her individual reclassification procedure.

10. Reclassification will take effect on 1 January of the year of the reclassification exercise. If, on that date, the staff member does not have the seniority in the grade required under Article 87(3) of the CEOS, the reclassification shall take effect on the first day of the first full month during which he or she possesses the necessary seniority.
11. Publication of the list of staff members reclassified referred to in paragraph 9 shall constitute communication of the decision within the meaning of Article 25 of the Staff Regulations. The period of three months in which to lodge a complaint, provided for in Article 90(2) of the Staff Regulations, shall start to run on publication of the list.
12. The Joint Committee shall examine each reclassification exercise. To this end, all relevant information shall be made available to the Joint Committee. After each reclassification exercise, the Joint Committee shall draw up a report that may contain recommendations. This report shall be sent to the Director and the Staff Committee and made public to all the Agency's staff.

Article 6 — Average time spent in the grade

For the purposes of the procedure in Article 5 of these general implementing provisions, and subject to the limits imposed by the budget, the AACC shall take account of the following table, which shows for each grade separately the desired average reclassification period.

Function group	Grade	Average number of years spent in the grade before reclassification into the next grade
IV	18	-
	17	between 6 and 10
	16	between 5 and 7
	15	between 4 and 6
	14	between 3 and 5
	13	between 3 and 5
III	12	-
	11	between 6 and 10
	10	between 5 and 7
	9	between 4 and 6

	8	between 3 and 5
II	7	-
	6	between 6 and 10
	5	between 5 and 7
	4	between 3 and 5
I	3	-
	2	between 6 and 10
	1	between 3 and 5

Article 7 — Final provisions

1. Annex III shall apply until staff members are flagged following the transitional provisions laid down in that Annex.
2. Decision AB No 12/2012 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 20 June 2012 establishing the policy and procedure for the reclassification of contract staff is repealed.
3. Commission Decision C(2014)2222 of 7 April 2014 does not apply by analogy to the Agency for the Cooperation of Energy Regulators.
4. The present general implementing provisions shall take effect on 1 May 2016 and shall apply as from the 2016 reclassification exercise.

Done at Ljubljana, on 04 April 2016

For the Administrative Board:

SIGNED

Dr. Romana Jordan
Chair of the Administrative Board

ANNEX I – JOINT RECLASSIFICATION COMMITTEE

1 – Role of the Joint Reclassification Committee

- 1.1 In accordance with Article 5(7) of these general implementing provisions, the Joint Reclassification Committee shall compare the merits of the staff members eligible for reclassification on the basis of the list of staff members proposed for reclassification by the Director, and take into account the complaints lodged against non-inclusion on the list. It shall then issue its recommendations regarding staff members to be reclassified, addressed to the AACC.
- 1.2 Although there is a single Joint Reclassification Committee for temporary and contract staff, it shall run a separate exercise for each category of staff.

2 – Composition and working methods of the Joint Reclassification Committee

- 2.1 The Joint Reclassification Committee shall be chaired by the Head of Administration Department. It shall consist of one Head of Department who is the most senior in the highest function and, secondly, the most senior in the highest grade, and one member designated by the Staff Committee. The Chair, the administration member and the Staff Committee member shall have, for each of these three actors, at least one alternate. The Chair shall be entitled to vote.
- 2.2 The Joint Reclassification Committee shall adopt its own rules of procedure and decide on its working methods. It may set up one or more joint working parties to carry out preparatory work. If necessary, the Joint Reclassification Committee shall adopt rules of procedure for these joint working parties and decide on their working methods.

3 – Conflict of interests

- 3.1 In accordance with Articles 11 and 11a of the Staff Regulations, all members of a Joint Reclassification Committee, including the Chair, shall carry out their duties and conduct themselves solely with the interests of the European Union in mind and shall not deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence.
- 3.2 If any member of a Joint Reclassification Committee, including the Chair, has a personal interest in a matter such as to impair his or her independence in the handling of that matter, he or she shall be replaced by the appropriate alternate member and refrain from participating in the work of the Committee.
- 3.3 A conflict of interests shall be any situation where a member of a Joint Reclassification Committee, including the Chair, is called upon to decide on a matter which could appear, in the eyes of an external third party, as a possible source affecting the staff member's independence on the matter.

4 — Confidentiality principle

The deliberations and documents of the Joint Reclassification Committee shall be confidential.

ANNEX II – STAFF REPRESENTATIVES

1. For the purposes of the reclassification exercise, where appropriate, the names of the staff members who are on more than 50% part-time assignment⁴ as staff representatives shall be communicated to the Director by the Chair of the Staff Committee. The name of the Chair of the Staff Committee shall be proposed to the Director following a decision by the members of the Staff Committee and communicated by the member who is the most senior in the highest grade.

Such communications shall take place before the discussion referred to in Article 5(4) of these general implementing provisions.

2. For the purposes of the reclassification exercise, staff members who are on 50% part-time assignment⁵ as staff representatives shall be considered to belong to the Department to which they are assigned.

The Chair of the Staff Committee shall communicate to the Director the names of the staff members he or she wishes to propose for reclassification. The name of the Chair of the Staff Committee, where appropriate, shall be proposed to the Director following a decision by the members of the Staff Committee and communicated by the member who is the most senior in the highest grade.

Such communications shall take place before the discussion referred to in Article 5(4) of these general implementing provisions.

In the event of a discrepancy between these proposals and that of the Director, the latter must inform the Joint Reclassification Committee of this discrepancy when forwarding the list of staff members referred to in Article 5(6) of these general implementing provisions.

3. For the purposes of the reclassification exercise, staff members who are on less than 50% part-time assignment⁶ as staff representatives or have no such assignment shall be considered to belong to the Department to which they are assigned.

⁴ In cases of assignment established in a framework agreement.

⁵ See footnote 7.

⁶ See footnote 7.

ANNEX III – TRANSITIONAL PROVISIONS

For agencies having a reclassification system based on both points and threshold and which abandon it

1 – Definitions

- 1.1 For the purposes of this Annex the following definitions shall apply:
- a) 'n' means the first year of application of this Decision;
 - b) 'T_{n-1}' means the reclassification threshold observed during the reclassification exercise n-1;
 - c) 'T_{n-2}' means the reclassification threshold observed during the reclassification exercise n-2;
 - d) 'P_{n-1}' means the total number of reclassification points accumulated by a staff member at the end of the reclassification exercise n-1, where applicable, following deduction for a reclassification;
 - e) 'M' means the maximum amount of reclassification points that could be acquired during the reclassification exercise n-1.

2 – Staff members close to the reclassification threshold in n-1

- 2.1 Staff members fulfilling the following condition: $\{T_{n-1} + (T_{n-1} - T_{n-2})\} - P_{n-1} \leq M$, shall be brought to the attention of the Director by the Head of Administration of the Agency. They will be flagged in the secure electronic⁷ system as long as they have not been reclassified in application of these general implementing provisions.
- 2.2 If, following a comparison of merits, staff members fulfilling the following condition: $\{T_{n-1} + (T_{n-1} - T_{n-2})\} - P_{n-1} \leq M/2$, are not included on the list of staff members proposed for reclassification referred to in Article 5(6) of these general implementing provisions, the list must be accompanied by an explanation. The explanation must be based on a comparison of merits in the grade in question.

⁷ In the absence of an electronic-based system, the procedure shall be carried out manually and the relevant provisions shall be applied *mutatis mutandis*.