

DECISION AB n° 08/2016

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

**of 04 April 2016
on Working Time**

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 (the CEOS), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 55 of the Staff Regulations and Articles 16 and 91 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 Regulators, 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) 9562 of 16 December 2015,

After consulting the Staff Committee,

Whereas:

- 1) The Staff Regulations in force since 1 January 2014 have introduced a minimum number of 40 working hours per week.
- 2) The Staff Regulations as amended with effect from 1 January 2014 have also introduced an explicit provision relating to flexible working time arrangements referred to below as 'flexitime'.

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

- 3) Flexitime allows staff to vary the time at which they start and finish their assigned work. Flexitime allows eligible staff to recuperate, as a secondary option and under certain conditions, additional hours worked in the form of full days or half days. Such recuperation is always subject to prior approval by the hierarchical superior.
- 4) A flexible approach to working time is an essential component of modern human resources management. Staff can adjust their working hours while taking into consideration the needs of the service. Staff can more easily balance their work-life needs, in particular in situations where their expatriate status does not allow them to rely on family networks.
- 5) Flexitime will be made available to all staff members of the Agency for the Cooperation of Energy Regulators and thereby shall become the default working time regime, except for those who are subject to specific working time regimes covered by the Staff Regulations or linked to other particular service requirements, owing to the nature of their duties. This acknowledges a situation whereby a majority of staff already works flexibly.
- 6) On 16 May 2014, the Commission informed the Agency for the Cooperation of Energy Regulators that it adopted Decision C(2014)2502 of 15 April 2014 on working time.
- 7) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 6 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.
- 8) Commission Decision C(2014)2502 is not suitable to apply by analogy to staff of the Agency for the Cooperation of Energy Regulators because the provisions governing working hours are not commensurate with the Agency's specificities and needs.
- 9) It is therefore necessary to adopt a decision on working time within the Agency for the Cooperation of Energy Regulators,

HAS DECIDED AS FOLLOWS:

Article 1- Scope of application

1. This Decision shall apply to all staff of the Agency for the Cooperation of Energy Regulators (hereinafter the 'Agency') covered by the Staff Regulations or by the CEOS², regardless of function group or grade. It shall also apply to seconded national experts (SNEs).

This Decision shall not apply to Agency temporary staff, contract staff, SNEs and local staff working in the premises of another European Union institution. Their

² Temporary staff and contract staff.

applicable working time arrangements shall be those which are in force in that institution.

2. This Decision shall not apply to other categories of staff working at the Agency who are covered by working time arrangements defined and adopted by the competent authorities.

Article 2 — Working time regime

1. The normal number of working hours shall be 40 hours per week, spread out over 5 working days, from Monday to Friday. Thus, the normal working time shall be 8 hours for a day and 4 hours for a half day. This paragraph applies on a pro rata basis for persons authorised to work part-time.
2. One rest break of at least 20 minutes per working day shall be taken outside core time when the time worked during the day is 5 hours or more. This break does not count as working time.
3. The default working time regime applicable to Agency staff shall be flexitime, except for those staff members who are subject to specific working time regimes as referred to in paragraphs 4 and 5 below. Agency staff working under the flexitime regime shall also be eligible for recuperation, under the conditions laid down in Article 7(2) and Article 7(3).
4. Due to particular service requirements linked to the nature of their duties, the Head of Agency (hereinafter 'the Director') may exclude certain groups of staff from applying flexitime and determine alternative working hours for these groups after consultation of the Staff Committee (SC). Such alternative hours must be consistent with the 40-hour statutory requirement and cases of exclusion or restriction must be duly justified.
5. Staff members to whom the provisions of the second paragraph of Article 44 of the Staff Regulations³ apply shall manage their working-time in agreement with their hierarchical superiors, while duly taking into account the interest of the service. All provisions of this Decision with the exception of Article 4(2), Article 7(2) and Article 7(3) shall be applicable to them.

Article 3 — Basic principles

1. Managing working time, while taking into consideration the need to ensure a proper work-life balance, requires planning. Managers shall ensure that a continued effective service is provided and that work is being performed effectively and efficiently. They shall also ensure that the overall work assigned to their staff is manageable within the context of a standard 40-hour working week, while having regard to inevitable peak periods during the year.

³ Applicable to temporary staff by virtue of Article 20(4) of the CEOS.

2. Both managers and staff shall have a key role to play in ensuring an effective application of time management. While managers can delegate the execution of administrative tasks related to the implementation of this Decision, it is their responsibility to ensure that individual staff members placed under their authority know and respect the applicable rules and that they correctly and regularly record their working hours. In this context, it is good practice for managers to clarify in advance with their staff their expectations regarding working time and flexible working arrangements and the conditions under which excess hours can be recuperated.
3. Flexitime shall be used by staff to vary the time when they start and finish their work while keeping a sufficient degree of regularity in their schedule and thus allowing services to run effectively. It shall not be used as a way to accumulate excess hours in order to request recuperation in the form of days or half-days.
4. Managers and their staff shall try to solve any possible problem by dialogue.

Article 4 — Daily working hours

1. The bandwidth, i.e. the period between the earliest possible start time allowed and the latest possible finishing time⁴, shall be from 7:00 to 20:30, from Monday to Friday.
Work done *at the workplace*⁵ outside the bandwidth shall be considered as working time, unless the hierarchical superior objects.
Under exceptional circumstances, subject to prior approval by the hierarchical superior work done *outside the workplace*⁶ outside the bandwidth may also be considered as working time.
2. Core time, i.e. the period during which as a general rule staff must be present shall be:
 - on Monday from 10:30 to 12:00 and from 14:00 to 16:00,
 - on Tuesday from 9:30 to 12:00 and from 14:00 to 15:30,
 - on Wednesday from 9:30 to 12:00 and from 14:00 to 15:30,
 - on Thursday from 9:30 to 12:00 and from 14:00 to 15:30,
 - on Friday from 9:30 to 12:00 and from 14:00 to 15:00⁷.Core time shall be binding for all Agency entities.
 - (a) In individual cases, the hierarchical superior may adjust core time at the request of a staff member, provided that the interest of the service is upheld.

⁴ Subject to possible restrictions under Article 4(3).

⁵ By extension, the workplace includes any workplace where staff attend meetings or are sent on mission.

⁶ This includes, in particular, the member of staff's private residence.

⁷ Stand-by allowances (under Regulation 495/77 as last amended on 11 December 2006) cannot normally be paid during the period 8:30-17:30.

The exact definition of core time for staff working part-time shall be decided by the hierarchical superior after consultation of the person concerned and taking into account the interest of the service.

- (b) At Agency entity level, derogations to core time may be allowed to take account of specific service needs. Such derogations shall be authorised by the Director, who will inform the SC. In particular, derogations may be given where necessary to ensure the operation of mechanisms designed to ensure the continuity and delivery of required services.
 - (c) For authorising absences during core time to attend medical appointments, a flexible approach shall be taken. The Agency's medical officer may be asked to give an opinion on the merits of repeated absences to attend medical appointments.
3. Flexible hours, i.e. the hours during which staff choose the time of their arrival, rest break and departure, shall be:
- on Monday from 7:00 to 10:30, from 12:00 to 14:00 and from 16:00 to 20:30,
 - on Tuesday from 7:00 to 9:30, from 12:00 to 14:00 and from 15:30 to 20:30,
 - on Wednesday from 7:00 to 9:30, from 12:00 to 14:00 and from 15:30 to 20:30,
 - on Thursday from 7:00 to 9:30, from 12:00 to 14:00 and from 15:30 to 20:30,
 - on Friday from 7:00 to 9:30, from 12:00 to 14:00 and from 15:00 to 20:30.

Agency entities may impose restrictions on this choice in order to ensure an adequate presence of staff to meet operational requirements, subject to the agreement of the Director, who will inform the SC.

Under exceptional circumstances, subject to prior approval by the hierarchical superior, and subject to presence at the office during core time, work done *outside the workplace* within these flexible working hours may also be considered as working time⁸.

Article 5 — Time Accounting

1. **Hours recorded:** All hours worked by staff members and accepted by the superior shall be recorded. Hours worked shall be computed on a calendar monthly basis (hereinafter the 'accounting period'). This shall be the reference for the compliance with the normal number of working hours per week under Article 2(1).
2. **Credit/debit balance:** For the purpose of calculating the credit/debit balance, the computation of daily working hours may not exceed a total of 10 hours, including for staff working part-time.

⁸ This is not considered as telework as regulated by the Agency's rules on the implementation of teleworking. The minimum teleworking shift is half a day, taken as a single block.

The credit balance shall be compared to the normal working time specified in Article 2(1). Where a staff member has worked more than the normal working time, he or she is credited with the corresponding amount of time (credit), but if he or she has worked less than the normal working time, the corresponding amount shall be debited (debit).

The balance of credits and debits shall be calculated at the end of each month. Any credit balance in excess of 20 hours at the end of the month shall be automatically reduced to 20 hours, which are carried over to the next month. A debit balance shall not exceed 16 hours. The debit balance shall be carried over to the next month.

However, a credit balance exceeding 20 hours or debit balance exceeding 16 hours at the end of the month may exceptionally be carried over to the next month where service reasons, sick leave or *force majeure* prevented the person concerned from adjusting the balance appropriately.

Article 6 — Time Accounting — Specific situations

1. ABSENCES

Absences for annual leave, special leave and sick leave shall be accounted for on the basis of a normal working day of 8 hours in the case of a full day and 4 hours in the case of a half day. For part-time work, the number of hours accounted for shall be proportionally lower.

2. MISSIONS

A mission of one or more full days shall be accounted for as 8 hours per day. Where real working hours or combined working and travel hours are higher, they shall be counted up to a maximum of 10 hours per day. A mission beginning or ending during a day, with the remainder of the day being worked in the office, shall be accounted for as the combined mission and office working time, up to a maximum of 10 hours.

Real working hours shall be credited for travel at a weekend or on public holidays for missions inside the EU or outside the EU, up to a maximum of 8 hours.

Where a mission finishes with an overnight flight and a morning return to the place of work, a special half day's compensation leave shall be granted for that day.

3. PART-TIME

Time-accounting provisions shall apply on a pro rata basis to persons authorised to work part-time⁹. In such cases, the normal working time specified in Article 1(2), Article 2(1), Article 2(4) and Article 3(1), the time counted for absences under Article 6(1) and the time credited or debited as described in Article 5(2) and Article 7 shall be reduced in proportion to the reduced working time.

⁹ This pro-rata shall not apply to missions.

4. TELEWORK

For staff authorised to telework¹⁰, days or half days of telework shall be counted as normal working days of 8 hours or half days of 4 hours¹¹. Time-accounting provisions apply on a pro rata basis to persons authorised to work part-time.

5. TRAINING

Professional training approved by the hierarchical superior in line with the applicable rules shall be counted as working time.

Article 7 — Offsetting credit or debit working hours and recuperation of credit hours

1. As a general rule, a monthly credit balance shall be offset by subsequent shorter working time compared with the daily average of 8 hours, while a debit balance shall be offset by longer working time in the following accounting period.
2. Where the balance is in credit, staff members eligible for recuperation may request recuperation of the hours in credit. Any recuperation involving absence during core time shall be subject to prior approval by the hierarchical superior. In accordance with Article 55(4) of the Staff Regulations¹² and Article 91(2) of the CEOS, requests for recuperation may be made according to the following rules:
 - For staff members in grades AD8/AST8 and lower, in function group AST/SC, contract staff and SNEs, recuperation can take the form of half a day (counted as a 4-hour debit) or a full day (8 hours). No more than 2 full days or 4 half days may be taken off as recuperation each calendar month.
 - For staff members in grades AD9/AST9 and higher, recuperation can only take the form of half a day (counted as a 4-hour debit). Entire days of recuperation shall not be taken. No more than 4 half days may be taken as recuperation each calendar month.
3. Upon an individual request for recuperation from a staff member, the hierarchical superior, having due regard to the basic principles as laid down in Article 3, may approve it if:
 - excess hours are justified by the staff member's work; and
 - the interest of the service is upheld.
4. For a debit balance in excess of 16 hours at the end of the monthly accounting period, the excess hours shall be considered as unauthorised absence and shall be offset by a deduction of a corresponding number of half or full days of annual leave in the following accounting period.

¹⁰ Structural or occasional.

¹¹ Including in cases where staff work outside the bandwidth during their (half-) day of telework.

¹² Applicable by analogy to temporary staff by virtue of Article 16 of the CEOS.

Article 8 — Recording procedure and validation of monthly timesheets

1. The Director shall ensure that the working hours of his staff are recorded by following the procedure as established.
2. For this purpose, working hours accounted for in accordance with the present Decision shall be recorded by the staff and validated via the Agency's HR Tool. All time-recording arrangements adopted at entity level shall be agreed with the Director, and shall be duly communicated to the staff concerned.
3. In exceptional cases owing to the nature of their duties or their specific working conditions, Agency entities may determine alternative time-recording systems, subject to the agreement of the Director, who will inform the SC.
4. Any time-recording systems shall be both proportionate to the objective set out in Article 2(1) and in conformity with Regulation (EC) No 45/2001 on the protection of personal data processed by Union institutions and bodies and on the free movement of such data.
5. Staff members may consult their working time account. At the beginning of each month they shall validate simultaneously in their timesheet of the preceding month:
 - their recorded working hours; and
 - their proposed debit or credit balance, if any.
6. At the beginning of each month the hierarchical superior or his or her delegate shall check, correct (if necessary and after discussion with the person concerned) and approve as soon as possible:
 - the timesheets of each member of their staff, showing all the working hours recorded during the preceding month; and simultaneously
 - the debit or credit balance, if any, to be carried over for the next accounting period.

Article 9 — Final provisions

1. The Agency entity in charge of human resources shall be responsible for monitoring the implementation of this Decision on Working Time within the Agency, in cooperation with the Joint Committee. The implementation of this Decision shall be subject to an analysis at least one year after its entry into force.
2. More detailed provisions and practical procedures for the application of working time provisions may be adopted by the Director.
3. In addition to the cases expressly referred to in Article 2(4), Article 4(2)b, Article 4(3), Agency entities with specific service requirements may need to adjust or complement working time provisions. In such duly justified cases, the specific provisions and practical procedures for the application of working time provisions in

those entities shall be submitted for approval to the Director, who will consult the SC.

4. The Commission's Decision C(2014)2502 of 15 April 2014 does not apply by analogy at the Agency for the Cooperation of Energy Regulators.
5. The present Decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 04 April 2016

For the Administrative Board:

SIGNED

*Dr. Romana Jordan
Chair of the Administrative Board*