

DECISION AB n° 07/2016

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

of 04 April 2016

**laying down general implementing provisions regarding Article 54 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 54 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, (hereinafter referred to as the "Agency"), 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)9560 final of 16.12.2015,

After consulting the Staff Committee,

Whereas:

- 1) Each Agency shall adopt general provisions for the implementation of Article 54 of the CEOS.

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) Taking into account the need to define a consistent staff policy for temporary staff referred to in Article 2(f) of the CEOS in agencies, it is necessary to lay down specific coherent rules for the reclassification of such staff aiming, *inter alia*, at facilitating their mobility between agencies.
- 3) The reclassification system applicable to temporary staff of the Agency for the Cooperation of Energy Regulators (hereafter “the Agency) referred to in Article 2(f) of the CEOS is based on consideration of the comparative merits of the temporary staff eligible for reclassification, taking account of the reports on them, 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 12(2)(e) of the CEOS and the level of responsibilities exercised by them.
- 4) In the interest of clarity and legal certainty, the Decision AB No 11/2012 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 temporary staff should be repealed and replaced by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1 – Scope

The general implementing provisions laid down by this Decision shall apply to the classification in the next higher grade (‘reclassification’) of temporary staff referred to in Article 2(f) of the CEOS (‘temporary staff’), with the exception of those in a grade higher than AD 13.

Article 2 – Annual reclassification exercise

1. A reclassification exercise shall be organised every year.
2. It shall be launched by the Agency entity in charge of human resources by means of the publication of an administrative notice.

Article 3 – Temporary staff eligible for reclassification

Temporary staff may be reclassified 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 grade required by Article 54(1) of the CEOS;
- at the time of the launch of the reclassification exercise pursuant to Article 2(2), they occupy a post which corresponds to one of the types of post set out in Annex I,

- Section A³, or in Article 30(1) or Article 31(1) of Annex XIII⁴ to the Staff Regulations for the grade to which they may be reclassified;
- they have demonstrated before their first reclassification after engagement the ability to work in a third language among those referred to in Article 55(1) of the Treaty on European Union⁵;
 - they are in active employment, on parental or family leave, on leave for military service or seconded in the interests of the 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 become final in application of the Agency's general provisions for implementing Article 43 of the Staff Regulations⁶, if a report was required under the terms of those provisions. In cases where an appraisal report has not been finalised as a result of a delay for which the temporary staff cannot be held responsible, the temporary staff shall nevertheless take part in the reclassification procedure on the basis of other valid information replacing the staff report and may therefore be reclassified.

Article 4 — Basis of the reclassification procedure

1. The reclassification procedure shall be based on the consideration of the comparative merits of the temporary staff 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 temporary staff drawn up since their last reclassification or, failing that, since their recruitment, and in particular temporary staff reports drawn up in accordance with the Agency's general provisions for implementing Article 43 of the Staff Regulations;
 - (b) the use by the temporary staff in the execution of their duties of languages other than the language for which they produced evidence of thorough knowledge in accordance with Article 12(2)(e) of the CEOS; and
 - (c) the level of responsibilities exercised by them.

³ Applicable to temporary staff by virtue of Article 10 of the CEOS.

⁴ Applicable to temporary staff by virtue of Article 1 of the Annex to the CEOS.

⁵ In accordance with the common rules laying down the procedure for implementing Article 45(2) of the Staff Regulations (common accord recorded by the President of the Court of Justice on 13 December 2006).

⁶ Applicable to temporary staff by virtue of Article 15(2) of the CEOS.

2. If temporary staff 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 Administration of the Agency shall inform the Head of the Agency as referred to in the act establishing the Agency ('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 equivalent* ('Heads of Department') shall proceed with the examination of the comparative merits of the temporary staff eligible for reclassification.
4. Following the examination referred to in paragraph 3, the Director shall hold a discussion with the Staff Committee. 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, the Director shall draw up a list of temporary staff proposed for reclassification. This list shall fulfil the following conditions:
 - a) it may not exhaust the budgetary resources available for the reclassification of temporary staff for the current exercise; and
 - b) it may not exceed the multiplication rates for guiding average career equivalence, implemented as described in Annex II.
6. The Director shall communicate to all the Agency's staff the list referred to in the previous paragraph and shall forward this list to the Joint Reclassification Committee referred to in Annex I.
7. Temporary staff 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 temporary staff eligible for reclassification and present for the attention of the AACC the list of temporary staff it recommends for reclassification. That recommendation shall fulfil the following conditions:

- a) it may not exceed the budgetary resources available for the reclassification of temporary staff for the current exercise; and
- b) it may not exceed the multiplication rates for guiding average career equivalence, implemented as described in Annex II.

At the same time as the recommendation is transmitted to the AACC, the Joint Reclassification Committee shall forward to the AACC the complaints and the discrepancies, if any, referred to in Annex III.

8. Once it has received the information referred to in paragraph 7, and has at its disposal the files of all the temporary staff eligible for reclassification, the AACC shall carry out a final comparison of the merits of the eligible temporary staff and, taking into account the budgetary resources available for the current exercise and the need to respect the multiplication rates for guiding average career equivalence, implemented as described in Annex II, shall adopt the list of temporary staff reclassified. Reclassification shall entail the classification of the temporary staff concerned to the first step of the next higher grade in the function group to which he or she belongs.
9. The list of temporary staff reclassified shall be published for the attention of all the Agency's staff, by means of the publication of an administrative notice. Without prejudice to the confidentiality principle referred to in Article 4 of Annex I, each temporary staff member shall be given access to all relevant information related to his/her individual reclassification procedure.
10. Reclassifications shall take effect on 1 January of the year of the reclassification exercise. If, on that date, the temporary staff member does not have the seniority in the grade or does not occupy a post of the type required under Article 54 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 or occupies a post of the required type.
11. Publication of the list of temporary staff reclassified referred to in paragraph 9 constitutes communication of the decision within the meaning of Article 25 of the Staff Regulations⁷. The period of three months in which to lodge a complaint, provided for in Article 90(2) of the Staff Regulations⁸, starts to run on the day following that of the 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.

⁷ Applicable by analogy to temporary staff by virtue of Article 11 of the CEOS.

⁸ Applicable by analogy to temporary staff by virtue of Article 46 of the CEOS.

Article 6 — Final provisions

1. Annex IV shall apply until temporary staff members are flagged following the transitional provisions laid down in that Annex.
2. Decision AB No 11/2012 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 temporary staff is repealed.
3. This Decision 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 temporary staff eligible for reclassification on the basis of the list of temporary staff 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 temporary staff 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. 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 intermediate joint working parties to carry out preparatory work. If necessary, the Joint Reclassification Committee shall adopt rules of procedure for these intermediate 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 Regulations⁹, all members of the 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 the 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 Joint Reclassification Committee.
- 3.3. A conflict of interests shall be any circumstance which the member of a Joint Reclassification Committee, including the Chair, who is called upon to decide on a

⁹ Applicable to temporary staff by virtue of Article 11 of the CEOS.

matter must reasonably understand as being such as to be seen by third parties as a possible source of impairment of his or her independence in that matter.

4 — Confidentiality principle

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

ANNEX II — AVERAGE CAREER EQUIVALENCE

1. The multiplication rates for guiding average career equivalence may not exceed those set out in Section B of Annex I to the Staff Regulations. These rates apply on a five-year average basis as from 1 January 2014.

To this end, reference shall be made to the average seniority in grade of temporary staff reclassified, calculated on the date when the reclassification takes effect. That average is calculated for each exercise on the basis of the last five reclassification exercises, which means the current and four previous exercises (hereinafter 'the reference period'). That average shall not be less than the figure indicated in the table under point 2 below (hereinafter 'target average').

Where, in a given grade, the number of reclassifications over the reference period is equal to or less than three (hereinafter 'small group'), that average may be lower. However, in that case reference shall also be made to all reclassified temporary staff within the same function group.

2. The average, indicative duration of a career, per type of post and grade, is as follows:

a) Adviser or equivalent

Grade occupied	Average duration in the grade, in years
AD 13	6.7

b) Head of unit or equivalent

Grade occupied	Average duration in the grade, in years
AD 13	6.7

AD 12	6.7
AD 11	4
AD 10	4
AD 9	4

c) Administrator

Grade occupied	Average duration in the grade, in years
AD 11	4
AD 10	4
AD 9	4
AD 8	3
AD 7	2.8
AD 6	2.8
AD 5	2.8

d) Senior assistant

Grade occupied	Average duration in the grade, in years
AST 10	5

e) Assistant

Grade occupied	Average duration in the grade, in years
AST 8	4
AST 7	4

AST 6	4
AST 5	4
AST 4	3
AST 3	3
AST 2	3
AST 1	3

f) Secretary/Clerk

Grade occupied	Average duration in the grade, in years
AST/SC 5	8.3
AST/SC 4	6.7
AST/SC 3	5.9
AST/SC 2	5
AST/SC 1	4

3. Reclassification of temporary staff from AST 9 to AST 10 and from AD 12 to AD 13 who are not occupying a 'Head of Unit or equivalent' type of post is not covered by this Decision. However, regarding those grades, the Agency shall ensure that the multiplication rates for guiding average career equivalence do not exceed those set out in Section B of Annex I to the Staff Regulations.

ANNEX III — STAFF REPRESENTATIVES

1. For the purposes of the reclassification exercise, where appropriate, the names of the temporary staff who are on more than 50% part-time assignment¹⁰ 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 of 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, temporary staff who are on 50% part-time assignment¹¹ 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 temporary staff he or she wishes to propose for reclassification. The name of the Chair of the Staff Committee shall, where appropriate, be proposed to the Director following a decision of 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 temporary staff referred to in Article 5(6) of these general implementing provisions.

3. For the purposes of the reclassification exercise, temporary staff who are on less than 50% part-time assignment¹² as staff representatives or who have no such assignment shall be considered to belong to the Department to which they are assigned.

¹⁰ In cases of assignment established in a framework agreement.

¹¹ See footnote 10.

¹² See footnote 10.

ANNEX IV — TRANSITIONAL PROVISIONS

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 temporary 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 — Temporary staff close to the reclassification threshold in n-1

- 2.1 Temporary staff 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 They will be flagged in the secure electronic¹³ system as long as they have not been reclassified in application of these general implementing provisions.
- 2.2 If, following a comparison of merits, temporary staff 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 temporary staff 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.

¹³ In the absence of an electronic-based system, the procedure shall be carried out manually and the relevant provisions shall be applied *mutatis mutandis*.