

DECISION No 11/2018

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

of 6 September 2018

concerning the function of advisor

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 (hereinafter ‘Staff Regulations’) and the Conditions of Employment of Other Servants of the European Union (hereinafter ‘CEOS’) laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Articles 2, 4, 5, 7 and 29 of the Staff Regulations and Articles 6, 10(1) and 53 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 (‘Agency’),

Having regard to 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 No 08/2015 of 11 June 2015 laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the CEOS (hereinafter ‘GIPs on temporary staff 2(f)’),

Having regard to the Commission Decision of 16 December 2013 on types of post and post titles³ applied by analogy in the Agency,

Having regard to the rules of procedure of Administrative Board of the Agency for the Cooperation of Energy Regulators in Decision AB n° 03/2010 of 6 May 2010 and in particular Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2018) 2209 of 11 April 2018,

After consulting the Staff Committee on 2 August 2018,

Whereas:

- (1) On 8 July 2016, the Commission informed the Agency that it adopted Decision C(2016)3214 of 7 June 2016 concerning the function of adviser.

¹ OJ L 56, 4.3.1968, p.1.

² OJ L211, 14.8.2009, p.1.

³ C(2013) 8979, Administrative Notice No 70-2013.

- (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. 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(2016)3214 is suitable to apply to the Agency if it is adapted to the peculiarities of the Agency. Those peculiarities concern in particular the parties involved in the selection procedure and the eligibility of temporary staff referred to in Article 2(f) CEOS.
- (4) The legal framework established by the present Decision offers a scope for the mobility of advisers who would like to work in a new environment.
- (5) It is also necessary to take account of the revised Staff Regulations, which entered into force on 1 January 2014.

HAS DECIDED AS FOLLOWS:

SECTION 1

GENERAL PRINCIPLES

Article 1: Subject matter and scope⁴

1. The purpose of this Decision is to establish a legal framework setting out the rules of the Agency concerning:
 - the duties of advisers;
 - the position of advisers in the organisational structure of the Agency;
 - the procedures for the selection and appointment of advisers;
 - the arrangements for reassigning advisers to functions not appearing in the organisation chart *or* to the function of senior expert in certain circumstances.
2. This Decision shall apply to all Agency services.

Article 2: Definition

1. Adviser functions shall be those that meet all of the following criteria:
 - they involve duties that, in view of their horizontal nature (such as coordination, representation, analysis and advice), represent a high added value for the Agency;
 - without prejudice to the exceptions provided for in Article 3(2), they do not involve the direct management of human or financial resources or middle-management tasks;

⁴ Any reference in this Decision to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice versa, unless the context clearly indicates otherwise.

- they require special qualities of the person concerned and in particular special expert knowledge and/or special experience and the capacity to provide guidance of high added value.
- 2. Adviser functions must correspond to a need of the service, which may be permanent or temporary.
- 3. Advisers shall be appointed at grades AD 13/AD 14 (external publications are excluded).

Article 3: Administrative status

1. Advisers shall in principle be administratively attached to the Head of the Agency as referred to in the act(s) establishing the Agency ('the Director'). In exceptional and duly justified cases, they may be attached to a Head of Department⁵.
2. Advisers in principle don't exercise hierarchical authority over staff. However, a maximum of three staff members providing administrative support may be directly attached to an adviser. Moreover, advisers may head a small team during a specific mission or to implement a specific project.
3. Each adviser function must have a specific title, which shall appear in the organisation chart, and a full job description.

Article 4: The authority authorised to conclude contracts of employment ('AACC')

Unless otherwise provided for, the AACC powers for the provisions of this Decision shall be exercised by the Director.

SECTION 2

FILLING ADVISER FUNCTIONS – INTERNAL, INTER-AGENCY MOBILITY

Article 5: Filling the functions

The function shall in principle be filled by publication, according to Article 4 and 7 of the GIPs on temporary staff 2(f). A temporary staff may be reassigned to an adviser function in the interests of the service (Article 7(1) of the Staff Regulations⁶) when the conditions set out in Article 7(1) of this Decision are fulfilled.

Article 6: Publication of a function

In the case of publication, the Human Resources Management Team shall draw up a vacancy notice that is agreed by the Director and then shall publish it.

⁵ The term 'Head of Department' refers to all middle management functions.

⁶ Applicable to temporary staff by virtue of Article 10(1) of the CEOS.

Article 7: Eligibility

1. In the case of reassignment to an adviser function in the interests of the service within an Agency (in accordance with Article 7 of the Staff Regulations), the person must:
 - be an established temporary staff member referred to in Article 2(f) CEOS not serving their probationary period,
 - be in grade AD 13 or AD 14,
 - already occupy an adviser function or have occupied such a function.
2. Where a vacancy notice is published, candidates must, on the closing date for the receipt of applications:
 - be established temporary staff member referred to in Article 2(f) CEOS not serving their probationary period. As regards inter-agency publication, Article 9 of the GIPs on temporary staff 2(f) shall apply;
 - be in grade
 - AD 13 or AD 14, or
 - in case of an official or temporary agent of the same agency where the vacancy is to be filled, to be AD 12 and have a seniority of two years in that grade,
 - possess the qualifications specified in the vacancy notice.

Article 8: Selection and appointment

1. Selection:

In the case of publication of a vacancy notice, the stages in selection to be followed by the AACC shall be as follows:

 - (a) Definition of the job profile

The vacancy notice shall set out in detail the tasks and duties of the function to be filled, including those in the job description. It shall also specify the minimum qualifications which applicants must possess for their applications to be taken into consideration and any other desirable qualifications.
 - (b) Assessment of applications by the pre-selection panel

The Director shall set up a pre-selection panel comprising at least three members of a grade equal or superior to that of the function to be filled, including one member from another Department. Where there are no temporary agents in the agency fulfilling the requirement of the grade, the Director may decide to designate officials or temporary agents from another agency or institution who fulfil that condition. The Director may invite other persons to the pre-selection panel as observers. The Director must ensure whenever possible, that there is a balanced representation of men and women in the pre-selection panel.

Using assessment checklists, the pre-selection panel shall consider all applications received having regard to the vacancy notice and the CVs of the

applicants. Where appropriate, it shall conduct interviews. It shall draw up a shortlist of the applicants who best correspond to the profile sought, giving reasons for its choices.

(c) Interviews by the Director and two Heads of Departments

The Director and the members mentioned above shall interview the applicants on the shortlist. The Director may decide to interview other eligible applicants.

2. Appointment:

(a) The AACC shall appoint the successful applicant. The selected candidate shall be appointed in his current grade, except for candidates in grade AD 12 who shall be appointed in grade AD 13.

(b) Articles 6(2) and Article 10 of the GIPs on temporary staff 2(f) shall apply respectively to the selected candidates of the same and a different agency.

SECTION 3

REASSIGNMENT OF ADVISERS

Article 9: Reassignment of advisers to a senior expert function

1. Reassignment in case of unsatisfactory performance

A procedure for reassignment to a senior expert function may be launched by the Director if the performance of an adviser has been evaluated as unsatisfactory in the last annual report provided for in Article 43 of the Staff Regulations. It must be launched by the Director if the performance has been evaluated as unsatisfactory in two of the last three annual reports. Furthermore, the procedure may be launched by the Director in exceptional and duly justified cases.

The Director shall take the final decision, after hearing the temporary staff concerned and consulting the Chair of the Administrative Board.

2. Reassignment in case of revision of the organisation chart or the function of adviser ceases to exist

Where the function occupied by an adviser ceases to exist as a consequence of a revision of the organisation chart of the Agency, the Director may, after having examined the possibilities of transfer to a vacant adviser function in the Agency and after hearing the adviser, reassign him to a senior expert function.

3. Reassignment in other cases

In other cases, the Director may, with the agreement of the adviser, reassign him to a senior expert function.

SECTION 4

SPECIFIC CASES AND FINAL PROVISIONS

Article 10: Seconded advisers

1. A function of ‘seconded adviser’ may be created to permit the secondment of an adviser in the interests of the service (under Article 37(a) and Article 38 of the Staff Regulations, or Article 51 of the CEOS).
2. The function of ‘seconded adviser’ shall be created in the Agency of origin of the person concerned, in accordance with the applicable rules on modifications to the organisation chart. The function shall automatically cease to exist when, either at the end of the secondment or at the latest 12 months afterwards, the official is reassigned or appointed to a different function.
3. At the end of the secondment, the seconded adviser shall return to the Agency of origin and occupy the function of seconded adviser pending reassignment in the interest of the service or appointment (following the publication of a function) to an adviser function within 12 months.

If, at the end of that period, the temporary staff member has not been reassigned or appointed to an adviser function, the Director shall, after hearing the official, reassign him to a senior expert function.

Article 11: Final provisions

1. Commission Decision Commission Decision C(2004) 3623⁷ shall no longer apply to the Agency.
2. Commission Decision C(2016)3214 does not apply by analogy to the Agency.
3. This Decision shall take effect on the day following that of its adoption.

Done at Ljubljana, on 6 September 2018

For the Administrative Board

The Chair

Dr. R. JORDAN

⁷ Commission Decision C(2004) 3623 of 29 September 2004 concerning the function of adviser, as last amended by Decision C(2008) 5029 of 10 September 2008.