

DECISION No 7/2018
OF THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE
COOPERATION OF ENERGY REGULATORS

of 7 June 2018

laying down implementing rules on temporary occupation of management posts

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 to 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 7(2) of the Staff Regulations and Article 10 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 the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2017)7332 of 6 November 2017,

After consulting the Staff Committee on 23 February 2018,

Whereas:

- (1) Rules should be laid down for the application of Article 7(2) of the Staff Regulations, which is applicable by analogy to temporary staff by virtue of Article 10 of the CEOS. Article 7(2) of the Staff Regulations states that the Appointing Authority may call upon officials to occupy a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to replace an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave.
- (2) It is necessary to adopt rules on temporary postings on the basis of Article 7(2) of the Staff Regulations which should take into account in an appropriate manner the need to recognise the efforts made by temporary staff members to temporarily ensure the continuity of the service and the principle of equitable treatment.

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, 14.08.2009, p. 1.

- (3) Article 7(2) of the Staff Regulations should apply only where the temporary staff member is called upon to assume temporarily duties which entail responsibilities substantially greater than those involved in their own post. Only the difference in the level of responsibilities between non-management and management (not advisory)³ posts and between management posts of different levels can be considered as substantial for the purpose of applying Article 7(2) of the Staff Regulations.
- (4) The rationale of Article 7(2) of the Staff Regulations is to grant to the [official or] temporary staff member who takes up duties which entail responsibilities substantially greater than those involved in their own post for a substantial period a remuneration which corresponds to those greater responsibilities⁴.
- (5) It is necessary to ensure that Article 7(2) of the Staff Regulations is applied in an appropriate manner in view of the career system, in which there is a high degree of separation of grade and duties, as confirmed by the General Court⁵.
- (6) Deputising arrangements as governed by Decision No 15/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 September 2015 laying down the policy and the procedure for deputising⁶, are to be distinguished from temporary postings and are not covered by this Decision.
- (7) In the interest of clarity and legal certainty, Decision No 07/2012 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 13 March 2012 on temporary occupation of management posts should be repealed and replaced by this Decision,

HAS ADOPTED THIS DECISION:

Article 1

Posts to which temporary postings may be made

The middle and senior management posts which a temporary staff member may be called upon to occupy on a temporary basis shall be:

- (a) director posts in grade AD 14 or AD 15 and equivalent;
- (b) head of department⁷ posts in grades AD12 to AD 14⁸ and equivalent;
- (c) head of department posts in grades AD 9 to AD 14⁹ and equivalent.

³ Middle and senior management functions as defined in the relevant Agency's decisions and relevant decisions applicable to the Agency.

⁴ COJ, C-5/70, Prelle/Commission (ECLI:EU:C:1970:109).

⁵ CFI, T-56/07P, Commission/Economidis (ECLI:EU:T:2008:260).

⁶ Decision No 15/2015 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 17 September 2015 laying down the policy and procedure for deputising.

⁷ 'Head of department' refers to all middle management functions.

⁸ Within the limits of the establishment plan.

⁹ See footnote 7.

Article 2

Conditions for temporary postings

- (1) Temporary postings may be made:
 - (a) where a new or vacant management post cannot be filled in the short term, or
 - (b) to replace a temporary staff member who is seconded to another post in the interests of the service, is called up for military service or is absent on protracted sick leave or for other reasons preventing a temporary agent from exercising the assigned function.
- (2) The above-mentioned situations shall as a rule involve periods lasting longer than three months. Only a full-time and uninterrupted absence of the job holder can give rise to a temporary posting.
- (3) Only established temporary staff members who are not serving their probationary period can be called upon to temporarily occupy a post within the meaning of Article 7(2) of the Staff Regulations.

Article 3

Reference grade

- (1) For the purpose of calculating the differential allowance, the ‘reference grade’ for a temporary posting will be fixed as follows:
 - (a) as regards director posts and equivalent as defined in Article 1, the reference grade shall be grade AD 14.
 - (b) As regards head of department posts and equivalent as defined in Article 1, the reference grade shall be as a rule:
 - (i) where the post is published, the lowest grade in the range for which the post is published, as follows:
 - grade AD 9 for the range AD 9/AD 14 (for internal and inter-agency publication);
 - grade AD12 for the range AD12/AD 14 (for internal and inter-agency publication);
 - the grade of the external publication (publications of a single grade from AD 9 to AD 12).
 - (ii) where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD 9 or AD12 as set by the Authority authorised to conclude the contracts (‘AACC’).

Article 4

Differential allowance

- (1) From the beginning of the fourth month of a temporary posting, the temporary staff member concerned may receive a differential allowance equal to the difference in

current remuneration of the temporary staff member and the remuneration according to the level of the temporary posting, as follows:

- (a) If the temporary staff member is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of the temporary staff member throughout the relevant period and the remuneration they would receive if they were reclassified to the reference grade¹⁰.
 - (b) In duly justified circumstances where the temporary staff member is in one of the grades below the grade immediately below the reference grade, as the differential allowance cannot be calculated by analogy to a reclassification, it shall be equal to the difference between the remuneration of the temporary staff member throughout the relevant period and the remuneration they would receive if they were newly recruited in the reference grade¹¹. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
 - (c) If the temporary staff member is in a grade equal to or above the reference grade, except where the temporary staff member already receives the benefit on the basis of their post of assignment, the remuneration of the temporary staff member is increased according to Articles 44 and 46 of the Staff Regulations, which are applicable by analogy to temporary staff by virtue of Articles 20(4) and 15 respectively of the CEOS.
- (2) The increase in remuneration according to Articles 44 and 46 of the Staff Regulations will be calculated either on the basis of the grade of the temporary staff member concerned, or on the basis of the reference grade of the post that the temporary staff member temporarily occupies, depending on which option is the most favourable for the temporary staff member concerned¹².

Article 5

Management experience

Management experience acquired through a temporary posting shall be taken into account for eligibility purposes in the context of applications for management positions.

Article 6

Successive periods of temporary posting

- (1) Where the same temporary staff member is the subject of two or more temporary postings in respect of the same functions and those postings are consecutive, the second temporary posting shall be considered as a continuation of the first and the differential

¹⁰ Taking account of the provision regarding non-cumulation, as provided in Conclusion 240/05 of the Heads of Administration (see <https://myintracomm.ec.testa.eu/infoadm/enu/2005/Pages/ia05048.aspx>) this remuneration will be increased according to Articles 44 and 46 of the Staff Regulations.

¹¹ See footnote 9.

¹² The amount of the benefit shall be calculated in accordance with the method laid down in Conclusion 240/05 of the Heads of Administration (see [*document/publication of that Conclusion*]).

allowance shall not be discontinued during the first three months of the second temporary posting.

- (2) For the purposes of this provision, a subsequent posting shall be considered to be consecutive if it begins no longer than three months after the end of the previous posting.

Article 7

Procedure for temporary postings

- (1) Where the conditions in Article 2 are met, the Human Resources Management Team may submit a proposal for a temporary posting, stating the reasons and providing all relevant information. The temporary posting is proposed to the AACC.
- (2) The effective date of a temporary posting is fixed by the AACC in the temporary posting decision pursuant to Article 7(2) of the Staff Regulations, taking account of the proposal submitted by the Human Resources Management Team.
- (3) Abolition of the post on which a temporary posting has been made as a result of an amendment to the organisation chart automatically entails termination of the temporary posting.

Article 8

Final provision

Decision No 07/2012 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 13 March 2012 on temporary occupation of management posts is repealed.

Article 9

Date of application

This Decision shall enter into force on the date of its adoption.

Done at Ljubljana, 7 June 2018.

For the Administrative Board

The Chair

Dr. R. JORDAN