

DECISION AB n° [XX]/2012

ESTABLISHING THE POLICY AND PROCEDURE FOR THE RECLASSIFICATION OF
TEMPORARY AGENTS

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

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as “ACER Regulation” and “ACER”), and in particular Article 28(2) thereof;

HAVING REGARD to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union (hereafter “CEOS”), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, and in particular Article 10 of the CEOS;

HAVING REGARD to Commission decision C(2005)5304 of 16 December 2005 concerning Guidelines on the staff policy for regulatory agencies;

HAVING REGARD to the Administrative Board Decision n° 25/2011 establishing the policy and procedure for the performance appraisal of staff with reference to Article 15(2) of the CEOS;

After the consultation of the Staff Committee of the Agency and in agreement with the European Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations;

Whereas,

1. It is possible to clearly indicate to temporary staff of ACER their career development within the Agency;
2. To this end, it is appropriate to set up for temporary staff with long term employment on permanent tasks an annual reclassification exercise under Article 10 of the CEOS;
3. The reclassification system applicable to ACER staff should aim to establish a close link between the actual reclassification and the performance, merit and individual aptitude, as appreciated in the annual evaluation reports under Article 15(2) of the CEOS;

HAS DECIDED AS FOLLOWS:

Article 1 **Definitions**

The assignment of temporary staff to employment corresponding to a grade superior to that to which they were initially employed constitutes a nomination to a higher grade in the function group to which the temporary agent belongs. It is allocated by decision of the authority entitled to conclude contracts of employment for temporary staff (hereinafter referred to as AHCC). For the purposes of this Decision, this procedure is hereinafter called “reclassification”.

By reclassification of temporary staff it is meant upgrading from the grade held to the next higher grade within the function group. This is the result of comparative examination of merits of the temporary staff, based in particular on their annual performance evaluation reports, on the use within the performance of their duties of languages other than the language they are supposed to have a detailed knowledge of according to Article 12(2)(e) of the CEOS and, where appropriate, on the level of responsibilities.

Article 2 **Scope**

1. The present Decision applies to long term employed temporary staff on permanent tasks (hereinafter referred to as “temporary staff”) remunerated on the appropriations of the ACER budget where the grade allows reclassification to a higher grade within their function group, other than temporary staff whose grade is higher than AD13.
2. Temporary staff that are eligible for reclassification and referred to in paragraph 1, must have on 31st December of the calendar year in which the reclassification exercise takes place a minimum of 2 years seniority in their grade.

3. Short-term employed temporary agents on short-term tasks do not take part in the annual reclassification exercise as defined in this Decision.

However, short-term employed temporary staff whose contract was concluded for duration equal to or higher than 3 years and whose duration of tasks, although limited in time, allows to envisage a renewal could benefit from a reclassification to the next higher grade in their function group on the basis of Article 10 of the CEOS.

This reclassification should preferably take place at the time of renewal of the contract and depends on the resources and the budgetary posts available at the end of the annual reclassification exercise for long-term employed temporary staff.

Article 3

Reclassification exercise

1. A reclassification exercise is organised every year. It starts after the evaluation exercise foreseen by Administrative Board Decision n° 25/2011 establishing the policy and procedure for the performance appraisal of staff with reference to Article 15(2) of the CEOS.
2. Reclassification is decided by the AHCC based on a proposal from the management committee.

Article 4

Management committee

1. The management committee is instructed to draw up, for every grade, a list of temporary agents to be proposed for reclassification. It meets at least once a year.
2. The management committee is composed of the Director, the Heads of Departments. It is chaired by the Director.
3. Meetings of the management committee are convened by the Director.
4. The committee's deliberations are only valid if all its members are present. The opinions of the committee are agreed on by consensus or, in the absence of consensus, by a simple majority vote by the members present. If there is a split vote, the vote of the chair shall be decisive. If it considers it necessary, the management committee can hear the managers of temporary agents concerned as well as any other person.
5. Any member of the management committee who is eligible for reclassification to a given grade cannot take part in the deliberations relating to the drawing up of the list of temporary agents proposed for reclassification in this grade.

Article 4a
Joint appraisal and reclassification committee

The Administrative Board Decision n° 25/2011 establishes the composition procedure and powers of the joint appraisal and reclassification committee (hereinafter referred to as JARC).

Article 5
Career plan and average career

The average career is defined by an indicative average duration of service in active employment to be carried out in each grade before being reclassified to the next higher grade. The rhythm of progression of the career of a temporary agent is determined by his/her merit. Moreover, the eligibility of temporary agents to reclassification should be considered with respect to their professional development over several years. It is therefore the merit accumulated year after year, in each grade, which justifies access to the next higher grade and which determines a more rapid or slower career profile than that of the average career.

In view of the statutory provisions, the current distribution of temporary agents in the various grades, the number of grades in each function group and the budgetary constraints, the indicative average duration to be spent in each grade before being reclassified to the next higher grade (average career) is in the following way:

Held grade	Indicative average duration in the grade, in years (average career)
AD 13	5
AD 12	4
AD 11	4
AD 10	4
AD 9	4
AD 8	3
AD 7	3
AD 6	3
AD 5	3
AST 10	5
AST 9	5
AST 8	4
AST 7	4
AST 6	4
AST 5	4
AST 4	3
AST 3	3

AST 2	3
AST 1	3

This career plan is based on Annex IB to the Staff Regulations, subject to a possible revision of the rates fixed by this annex and pursuant to the provisions of Article 6(4) of the Staff Regulations.

The concept of the average career is also dependent on other considerations, in particular on the availability of resources and authorised budgetary posts permitted each year by the budgetary authority.

The concept of the average career does not confer any individual right to reclassification which results from seniority in the grade.

Article 6 Special provisions

1. The years of service worked in the institutions, bodies, offices or Community agencies as an official or temporary servant are taken into account under the seniority criterion in the grade, in order to compare the career with the career profiles for the purposes of the reclassification exercise, subject to satisfying the following two conditions:
 - These years were worked without interruption between the various periods;
 - The periods of service took place in the same function group and the same grade, or in the same category and the same grade for servants recruited before 1st May 2004.
2. The periods mentioned in paragraph 1 are not taken into consideration to determine the minimum seniority required to have eligibility for reclassification, as defined in Article 2.

Article 7 Indicative threshold for reclassification

To be proposed for reclassification, temporary agents have to have a number of reclassification points equal or superior to the indicative threshold in reference.

For every grade, this threshold is fixed according to the average career plan established in Article 5 of the present Decision and budgetary resources available.

Held grade	Indicative average duration in the grade, in years (average career)	Indicative threshold in reference (reclassification points)
AD 13	5	11
AD 12	4	9
AD 11	4	9
AD 10	4	9
AD 9	4	9
AD 8	3	7
AD 7	3	7
AD 6	3	7
AD 5	3	6

AST 10	5	11
AST 9	5	11
AST 8	4	9
AST 7	4	9
AST 6	4	9
AST 5	4	9
AST 4	3	7
AST 3	3	7
AST 2	3	7
AST 1	3	6

These thresholds are re-examined as required according to resources and budgetary posts authorised each year by the budgetary authority.

Subject to a possible revision of the rates fixed in Annex IB pursuant to the provisions of Article 6(4) of the Staff Regulations:

- These reference indicative thresholds are fixed according to the career procedure established by Article 5, which takes for reference Annex IB of the Staff Regulations.

Article 8

Attribution of reclassification points

1. Temporary agents acquire, for every year in the grade under consideration, reclassification points in a range from 0 to 4.
2. Each Head of department attributes, according to art. 12(1), reclassification points to the temporary agents within his/her department. The immediate superior who draws up the annual appraisal report may give a recommendation to the responsible Head of department on how to assess the merits of use of languages, level of responsibility and

activities of general interest as stated in paragraph 3. The management committee on the basis of the points attributed by the Head of department, formulates a proposal to the AHCC.

3. The number of points attributed represents the merits of the temporary agent for the period between the first day following the previous reclassification exercise to the date of the start of the reclassification exercise for which points have to be allocated.

This number of points:

- Must be related to the evaluation carried out in the last definitive appraisal report at the time of attribution of reclassification points;
 - Take into consideration the use in the performance of their duties of languages other than the language of which they justified having detailed knowledge of in accordance with Article 28(f) of the Staff Regulations;
 - Take into account, if necessary, the level of responsibility;
 - Take into account, if necessary, the merits generated by activities of general interest for the Agency which already have not been taken into account in the estimate of the merits resulting from the evaluation report.
4. According to the evaluation carried out in the last final appraisal report, a number of minimum points is guaranteed to each temporary agent:
 - this number is fixed at a minimum of 3 points for temporary agents having obtained overall assessment: “The job-holder demonstrates a sustained outstanding performance in all appraised aspects (efficiency, abilities, and conduct in the service)”;
 - this number is fixed at a minimum of 2.25 points for temporary agents having obtained overall assessment: “The efficiency, the abilities and the aspects of conduct appraised are significantly above the levels required for the post occupied”;
 - this number is fixed at a minimum of 2 points for temporary agents having obtained overall assessment: “Overall, the efficiency, the abilities and the aspects of conduct appraised are above the levels required for the post occupied”;
 - this number is fixed at a minimum of 1.25 points for temporary agents having obtained overall assessment: “Overall, the efficiency, the abilities and the aspects of conduct appraised correspond to the level required for the post occupied”;
 - this number is fixed at a minimum of 0.5 points for temporary agents having obtained overall assessment: “The efficiency, the abilities and the aspects of conduct appraised are acceptable despite some weak points”;
 - no promotion point is allocated to temporary agents having obtained overall assessment:
 - “The efficiency, the abilities and the aspects of conduct appraised do not correspond to the level required for the post occupied. Improvements are needed”;
 - "The efficiency, the abilities and the aspects of conduct appraised are unacceptable in relation to the level required for the post occupied. Mandatory improvements are included in the attached action plan”.
 5. Reclassification points are not allocated to temporary agents at grade AST 11.

6. The amount of points allocated for each year in a grade constitutes the main reclassification points. These starting level points represent the merit accumulated year after year in the grade under consideration.
7. When the temporary agent passed less than one year in the grade concerned at the time of beginning the reclassification exercise, the number of points which is allocated is reduced proportionally to the period under consideration.
8. Temporary agents for less than three months in active service during the reference period and therefore not having obtained any performance appraisal report, shall get reclassification points in the following year according to their performance level of that year and proportionally augmented to the period served in the previous year.
9. Temporary agents benefiting from parental leave within the meaning of Article 42(a) of the Staff Regulations, or family leave within the meaning of Article 42(b) of the Staff Regulations, or carrying out part-time activity within the meaning of Article 55(a) of the Staff Regulations or half-time within the meaning of Article 55(b) of the Staff Regulations are considered, for the application of this Decision, as being in full-time active employment.

Article 9

Particular cases

Reclassification points can be allocated each year to staff, covered by this Decision, seconded full-time to the staff committee on a proposal from the Director based on the methods provided for in this Decision. For the purposes of the reclassification exercise, the staff committee will be considered following the same rules as any agency service. When the secondment of the interested party to the staff committee is part-time, the allocated points are adjusted proportionally to the time devoted to the staff committee. These will be added to the points obtained in the originating department which will also be adjusted proportionally to the time devoted to the originating department. When there is no formal detachment to the staff committee, its members will receive reclassification points following the general rules applicable to all temporary agents.

Article 10

Exceptional merit

1. In order to recognize the exceptional merits of certain temporary agents, Heads of departments have a quota of additional points, limited to 10% of the quota as defined in Article 12. The attribution of these points is added to that provided for in Articles 8 and 12 in an undifferentiated way.
2. However, despite exceptional point attribution, the allocated points cannot exceed:
 - for the individual agent, the limit of 4 points per person fixed at Article 8(1);
 - for all temporary staff assigned to a department, the total number of points available to allocate within that department, as resulting from the quota

defined in Article 12 and from the additional points as defined in the first paragraph of this Article.

In the event that within a department the total points provided for in Article 8 exceed the total number of points available to allocate, all points attributed to temporary agents of that department shall be proportionally reduced.

3. On the recommendation of the Director, the management committee can propose for reclassification a temporary agent who would not yet have reached the indicative reference threshold but who has shown particularly high merit, attested by his/her last appraisal report. This proposal has to obtain the unanimity of the management committee. If the AHCC would take such a reclassification decision, it would be communicated to the JARC.

Article 11

Reconstitution of starting level points

In the event of mobility of a temporary agent from an institution or from an agency towards ACER according to the conditions provided for in Article 6(2), it is advisable to reconstitute starting level points for reclassification.

These starting level points are made up of 2 points per year of seniority in the grade for the period prior to the entry into service in ACER, the total of the reconstituted points which cannot exceed the indicative reference threshold fixed at Article 7 for the corresponding grade minus 4 points.

Article 12

Reclassification procedure

1. Each Head of department has a quota of reclassification points to distribute, equal to double the number of temporary agents assigned to his/her department, except for the temporary agents on short-term employment or in grades AD 14 or higher and AST 11. These points can be allocated only to temporary agents.
2. Except than in exceptional circumstances and subject to availability of resources and/or of budgetary posts, the reclassification of a temporary agent is granted if he/she has reached or exceeded the indicative reference threshold for reclassification fixed for temporary agents in the grade under consideration. Before the first reclassification is granted, the temporary agent has also to satisfy the conditions stated in Article 45(2) of the Staff Regulations.

However, on the recommendation of a Director, the management committee can propose to defer the reclassification of a temporary agent who would have reached the indicative reference threshold, but whose last appraisal report is particularly negative. This proposal has to obtain the unanimity of the management committee. If the AHCC would take such a decision, it would be communicated to the JARC.

3. Each temporary agent is informed by the Human Resources unit of the number of points that the management committee proposed granting him/her for the year under consideration and of his/her cumulated starting level points.
4. Within the ten working days which follow the communication provided for in paragraph 3, the temporary agent can lodge an appeal to the JARC. This appeal has to be formulated in writing and justified to make it possible for the JARC to decide if the appeal is well founded.

After the internal appeals procedures foreseen in the previous sub-paragraph have been concluded, the temporary agent can lodge a complaint to the AHCC under Article 90(2) of the Staff Regulations.

5. The AHCC definitively fixes the number of points allocated to each temporary agent after having taken note of the proposals of the management committee and of the possible opinions of the JARC, at the latest three months after the communication provided for in paragraph 3.

Each temporary agent is notified individually of the final number of points allocated.

On the basis of this attribution, the accumulated points of each temporary agent are compared with the indicative promotion threshold corresponding to his/her grade and function group. A list of names of the temporary agents to be reclassified is drawn up. This list is approved and signed by the AHCC, and it is published to all staff.

Article 13

Taking effect of the reclassification of a temporary agent

Reclassification of a temporary agent can be decided by the AHCC with effect at 1st January of the year under consideration, provided the conditions given in the Articles 2 and 12 are satisfied at that date.

Article 14

Point transfer

In the event of reclassification, when the temporary agent has a point total higher than the indicative reference threshold for his/her grade, the number of points exceeding the threshold is deferred to the initial starting level points for the following grade of the same function group. The career plan is the same as that serving as a reference to Annex IB of the Staff Regulations.

Article 15

Transparency and evaluation of the reclassification exercises

In order to guarantee maximum transparency, the JARC is instructed to publish a report at the end of each reclassification exercise.

In order to allow the JARC to proceed, the Human Resources department is responsible for communicating the information considered useful by the JARC and those requested by its chairman.

The report will contain recommendations for the attention of the AHCC concerning the preparation of the next reclassification exercise. It will obligatorily contain an analysis of exceptional situations, in particular those provided for in Article 12(2), and in Article 10, last subparagraph, in compliance with the rules on protection of personal data.

This report will be communicated to the staff by the Human Resources unit.

Article 16

Entry into Force

This Decision shall take effect on the day following that of its adoption.

Done in Ljubljana on **20 June 2012**

For the Administrative Board:

Piotr Woźniak
Chairman of the ACER Administrative Board