

DECISION AB n° [XX]/2012

ESTABLISHING THE POLICY AND PROCEDURE FOR THE
RECLASSIFICATION OF CONTRACT STAFF

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 87(3) 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 Articles 15(2) and 87(1) 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) An indication should be given to contract staff as regards their career development within the Agency;
- 2) To this end, it is appropriate to set up an annual reclassification exercise under Article 87(3) of the CEOS for contract staff with a contract (or a series of contracts) for a total duration of at least three years, whereof a minimum of 2 years need to be completed in the current grade;
- 3) The principles which guide the evaluation and reclassification exercise for temporary staff employed under Article 2(a) of the CEOS should also apply to the evaluation and reclassification of contract staff employed under Article 3(a) of the CEOS;
- 4) 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 87(1) of the CEOS;
- 5) Specific measures should be envisaged for contract staff to take account of the particular situation of this category of staff;
- 6) Contract agents will be attributed points according to the rules of the present Decision, following the same principles as applied for the appraisal of temporary agents. The point count is confirmed by dedicated letters to contract staff;

HAS DECIDED AS FOLLOWS:

Article 1 **Definitions**

The assignment of contract 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 contract agent belongs. It is allocated by decision of the authority entitled to conclude contracts of employment for contract staff (hereinafter referred to as AHCC). For the purposes of this Decision, this procedure is hereinafter called “reclassification”. By reclassification of contract 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 contract 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

Contract agents with a contract with ACER (or a series of contracts with ACER) for a total duration of at least three years, and who have completed a minimum period of two years in their grade on 31st December of the calendar year in which the reclassification exercise takes place and where the grade still allows for reclassification to the first step of the next higher grade in the same function group, shall be eligible for reclassification.

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 87(1) 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 contract agents to be proposed for reclassification. It meets at least once a year.
2. The management committee is composed of the Director and 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 contract agents concerned as well as any other person.

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 first step of the next higher grade.

The rhythm of progression of the career of a contract agent is determined by his/her merit. Moreover, the eligibility of contract 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 contract 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:

Function Group	Held grade	Indicative average duration in the grade, in years (average career)
IV	18	
	17	8
	16	6
	15	5
	14	4
	13	4
III	12	
	11	8
	10	6
	9	5
	8	4
II	7	
	6	8
	5	6
	4	4
I	3	
	2	8

	1	4
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The concept of the average career is also dependent on other considerations, in particular on the availability of resources authorised 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 a contract agent 3bis 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.
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, contract 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.

Function Group	Held grade	Indicative average duration in the grade, in years (average career)	Indicative threshold in reference (reclassification points)
IV	18		
	17	8	18
	16	6	13
	15	5	11
	14	4	9
	13	4	9
III	12		
	11	8	18

	10	6	13
	9	5	11
	8	4	9
II	7		
	6	8	18
	5	6	13
	4	4	9
I	3		
	2	8	18
	1	4	9

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

Article 8

Attribution of reclassification points

1. Contract 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 Article 12(1), reclassification points to the contract 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 contract 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 contract agent:

- this number is fixed at a minimum of 3 points for contract 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 contract 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 contract 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 contract 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 contract agents having obtained overall assessment: “The efficiency, the abilities and the aspects of conduct appraised are acceptable despite some weak points”;
 - no reclassification point is allocated to contract 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. No appraisal based reclassification points shall be awarded to contract agents in Function Group I grade 3, Function Group II grade 7, Function Group III grade 12 or Function Group IV grade 18.
 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 contract 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. Contract 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. Contract 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 contract agents.

Article 10
Exceptional merit

1. In order to recognize the exceptional merits of certain contract 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 contract 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 contract staff of that department shall be proportionally reduced.

3. On the recommendation of the Director, the management committee can propose for reclassification a contract 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 contract agent 3bis from an institution or from an agency towards ACER according to the conditions provided for in Article 6(1), 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 contract agents assigned to his/her department, except for the contract agents in Function Group I grade 3, Function Group II grade 7, Function Group III grade 12 or Function Group IV grade 18. These points can be allocated only to contract agents.
2. Except than in exceptional circumstances and subject to availability of resources, the reclassification of a contract agent is granted if he/she has reached or exceeded the indicative reference threshold for reclassification fixed for contract agents in the grade under consideration.

However, on the recommendation of a Director, the management committee can propose to defer the reclassification of a contract 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 contract 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 contract 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 contract 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 contract 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 contract agent is notified individually of the final number of points allocated. On the basis of this attribution, the accumulated points of each contract agent are compared with the indicative reclassification threshold corresponding to his/her grade and function group. A list of names of the contract 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 contract agent

Reclassification of a contract 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 contract 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.

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 10(2), and in Article 9, 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