

## Implementing Rules to the EU Staff Regulations – opt-out from three European Commission rules

45<sup>th</sup> Meeting of the Management Board 30-31 March 2017

### Proposal

It is proposed that the Management Board requests the Commission's approval to opt-out from the following Implementing Rules on:

- implementation of the learning strategy (C(2016)3828)
- training on the own initiative of staff (C(2016)3855)
- middle management (C(2016)3288)
- the function of adviser (C(2016)3214).

The Management Board is also invited to endorse the approach that Implementing Rule C(2016)3827, repealing the rules on learning and development, applies by analogy at ECHA (as it does *de facto* not apply to Agencies).

### Background

The EU Staff Regulations state that Implementing Rules, once adopted by the Commission, will apply by analogy in Agencies at the latest 9 months after their adoption<sup>1</sup>. Alternatively, Agencies may either decide to apply them earlier or decide to opt-out, either individually or in agreement with the other Agencies and DG HR. In order to ensure a coherent approach among Agencies and to increase efficiency, a Standing Working Party (SWP) has been established. The SWP comprises representatives from EU Agencies and experts from DG HR of the Commission. Its role is to review Commission Implementing Rules and to assess whether they require adaptation to the specific needs of EU Agencies. If the SWP agrees on the need for specific Agencies' rules, it advises the individual Agencies to opt-out from the respective Commission rules in order to avail of the Agencies' version.

On 8 July 2016, the European Commission ('Commission') notified ECHA of its adoption of three Implementing Rules in the area of learning and development. On the same day, the Commission also notified ECHA of the adoption of two other Implementing Rules; on middle management and the function of adviser.

ECHA's management and Staff Committee have been consulted on the respective Implementing Rules and are in agreement with the proposals contained herein.

### Rationale

#### a) Learning and Development

Following a round of consultations, the SWP decided that two of the Commission rules on learning and development area - C(2016)3828 and C(2016)3855 - would not suit the needs of Agencies and should be replaced by one Agency-specific Implementing Rule on learning and development. The third Implementing Rule (C(2016)3827) would *de facto* not apply to Agencies (as Agencies

<sup>1</sup> Pursuant to Article 110(2) of the Staff Regulations

did not adopt the initial Commission Implementing Rule that is being repealed). Therefore, there is no need to opt-out from it.

#### b) Middle Management

Commission Decision C(2016)3288 on middle management (MM) establishes the legal framework for:

- the selection and recruitment of MM;
- their role and position;
- the mobility of MM;
- the arrangements for their reassignment to non-managerial functions; and
- their probationary period, if recruited as a manager for the first time.

The SWP agreed that an Agency-specific Implementing Rule on MM would be preferable as certain provisions of the Commission Implementing Rule (for example, provisions on mobility) are not compatible with Agencies' specific operating circumstances.

#### c) Function of Adviser

Commission Decision C(2016)3214 concerning the function of adviser contains the following elements:

- duties of advisers;
- their position within the organisation;
- their selection and appointment; and
- arrangements for reassignment of advisers.

The SWP also agreed that an Agency-specific Implementing Rule on the function of adviser would be preferable as certain provisions of the Commission Implementing Rule are not compatible with Agencies' specific operating circumstances.

As the drafting process on the Implementing Rules for Agencies in these three policy areas is not yet finalised, and in order to facilitate ECHA to assess them once adopted, it is proposed to request the Commission's approval to opt-out from the Commission Implementing Rules, which would otherwise apply by analogy, as of 8 April 2017. The Management Board is also invited to endorse the approach that Implementing Rule C(2016)3827, repealing the rules on learning and development, applies by analogy at ECHA (as it does *de facto* not apply to Agencies).

### **Alternative options**

In the event that the opt-out proposal is not agreed, the respective Commission Implementing Rules would apply by analogy at ECHA<sup>2</sup>. It is considered that this alternative is not in ECHA's interest before a more informed decision can be made, following a careful analysis of the Agency-specific Implementing Rules on these topics (which are currently being drafted). This alternative (that is, to allow the Commission Implementing Rules affected by this opt-out request to apply by analogy) is not recommended.

### **Drawbacks**

There are no drawbacks associated with this opt-out request. Agencies differ from the Commission, particularly with respect to their organisational structure, mandate and size. As with the Implementing Rules on working time, appraisal and reclassification, which were drafted specifically for Agencies to better reflect the operating environment, it is more beneficial to await the adoption of the new Agency-specific Implementing Rules by the SWP.

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<sup>2</sup> pursuant to Article 110(2) of the Staff Regulations

**Attachments:**

For opt-out:

- Annex 1: C(2016)3828 on the implementation of the learning strategy
- Annexes 2a-b: C(2016)3855 on training on the own initiative of staff
- Annexes 3a-b: C(2016)3288 on middle management
- Annex 4: C(2016)3214 on the function of adviser.

For application by analogy (no action required):

- Annex 5: C(2016)3827 repealing the rules on learning and development.

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