

Implementing Rules to the Staff Regulations

51st Meeting of the Management Board 20-21 September 2018

Proposal

The Secretariat proposes three Implementing Rules (IRs) for endorsement/adoption by the Management Board, as follows;

IR for endorsement

ECHA proposes to apply the following IR by early analogy without any changes to its substance and, hence, the Management Board is requested to endorse its application by analogy.

- Commission Decision C(2018)4048 final on outside activities and assignments and on occupational activities after leaving the Service

IRs for adoption

In this category, there is one IR (listed below) adopted specifically for the Agencies, in collaboration with the Standing Working Party¹ (SWP). In addition, it is proposed to put forward the ECHA-specific rules on the contractual arrangements for the Executive Director and Members of the Board of Appeal for Management Board adoption.

- ECHA IR on guidelines on whistleblowing
- ECHA IR concerning the probationary period appraisal and managerial trial appraisal, annual appraisal and reclassification of the Executive Director and of the members of the Board of Appeal, implementing Articles 43, 44 and 46 of the Staff Regulations and Articles 14, 15(2) and 54 of the CEOS

ECHA's management and Staff Committee have been consulted on the respective Implementing Rules and agree with the proposals herein.

Background

In accordance with Article 110(2) of the Staff Regulations, IRs adopted by the Commission shall apply by analogy to ECHA either nine months after the date of the Commission notification or by decision of the Management Board at an earlier date. Alternatively, ECHA may request the Commission agreement either to adopt modified rules or not to apply certain rules adopted by the Commission. Such requests for derogation should be submitted to the Commission within the above-mentioned nine months period. It is in the context of this legal background that ECHA needs to assess and decide whether (and when) to adopt the Commission rules by analogy or to opt-out from them.

¹ The Standing Working Party is the working group chaired by DG HR that comprises representatives of various EU Agencies that reviews IRs and decides whether application by analogy is feasible for Agencies or whether specific Agencies' rules are necessary.

Rationale

Based on prior work at the SWP and internal review, it is recommended to categorise the IRs for decision into two separate groups, as follows:

1. Rule for endorsement:

a) *Commission Decision C(2018)4048 final on outside activities and assignments and on occupational activities after leaving the Service*

In June 2018, ECHA was notified of the Commission's review of the rules applying to outside activities and post-employment rules, which aims at updating the regulatory framework and allows for more discretionary decisions. As the Agency is modifying its rules and procedures on staff ethics following the recent audit by the Commission's Internal Audit Service (IAS), it is considered opportune to now apply these Commission rules in advance of the expiry of the nine months timeline following Commission notification.

2. Rules for adoption

b) *Commission Decision C(2018)1362 final model decision on guidelines on whistleblowing*

According to the Staff Regulations, each EU Institution, body or Agency must provide its staff with guidance on the application of the provisions pertaining to whistleblowing. To date, ECHA provided such guidance by means of an Executive Director (ED) Decision, however, the Commission has advised agencies to follow the procedure of Article 110(2) SR and adopt the required guidance by means of a Management Board decision that received prior Commission approval. Hence, this IR is necessary to fulfil a formal requirement (with no substantial changes to the existing guidance text) and is, therefore, proposed for adoption.

c) *ECHA IR concerning the probationary period appraisal and managerial trial appraisal, annual appraisal and reclassification of the Executive Director and of the members of the Board of Appeal, implementing Articles 43, 44 and 46 of the Staff Regulations and Articles 14, 15(2) and 54 of the CEOS*

Finally, the Secretariat, following guidance received from the MB WG on BoA, prepared ECHA-specific rules pertaining to contractual matters for the Executive Director and Board of Appeal Members. These rules provide clarification on the different actors and procedures involved when recruiting, assessing the performance and considering reclassification for the functions concerned, reflecting recommendations received from the IAS after its recent audit at ECHA. It is considered that adoption of these rules would be timely due to the pending selection procedure of the new Chair for the Board of Appeal. The adoption of this rule is subject to the agreement of the European Commission and would, after Management Board approval, be submitted to the Commission for formal agreement. The secretariat has already informally consulted the Commission service in charge of this matter and taken into account certain technical remarks.

Drawbacks

Implementing rules aim at ensuring a consistent and coherent application of the Staff Regulations and Conditions of Employment of Other Servants throughout the EU Institutions, bodies and Agencies. ECHA and its Staff Committee were consulted in the drafting of the specific Agency rules that are proposed for adoption herein and, therefore, the IRs proposed for adoption reflect ECHA's needs without any drawbacks.

Attachments:1. IRs for endorsement

Annex: Commission Decision C(2018)4048 final on outside activities and assignments and on occupational activities after leaving the Service

2. IRs for adoption

Annex: ECHA IR on guidelines on whistleblowing

Annex: ECHA IR concerning the probationary period appraisal and managerial trial appraisal, annual appraisal and reclassification of the Executive Director and of the members of the Board of Appeal, implementing Articles 43, 44 and 46 of the Staff Regulations and Articles 14, 15(2) and 54 of the CEOS

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