

## Implementing Rules to the Staff Regulations

52<sup>nd</sup> Meeting of the Management Board 13-14 December 2018

### Proposal

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

1. ECHA IR concerning the function of adviser
2. ECHA IR on middle management staff
3. ECHA IR concerning the probationary period appraisal, managerial trial appraisal and the annual performance appraisal of the Executive Director and the members of the Board of Appeal, implementing Articles 43 and 44 of the Staff Regulations and Articles 14 and 15(2) 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.

### Rationale

Based on prior work at the Standing Working Party<sup>1</sup> (SWP) and internal review, as well as feedback received from the Commission, the following IRs are proposed for adoption:

#### *1) Commission Decision C(2018)2209 final model decision concerning the function of adviser*

After ECHA opted out of the Commission IR concerning the function of adviser in March 2017, the SWP drafted specific rules for the Agencies that provide a common framework for defining the function of adviser and how to fill such posts. These rules cater for Agencies' specificities with respect to the parties involved in the selection procedure and the eligibility of temporary staff pursuant to Article 2(f) CEOS. They contain a reference to an IR on types of posts and post titles, for which the SWP also provided Agency-specific rules. ECHA had planned to avail of these rules and use them as a reference point for the IR on advisers. However, as the Commission did not adopt the respective Agency rules on types of post and post titles in due time, these rules together with the IR concerning the function of adviser, were taken off the agenda for the Management Board's September 2018 meeting. To date, this situation has not changed. In order not to further postpone the application of this IR, reference is now made

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<sup>1</sup> The Standing Working Party (SWP) 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.

to the Commission's own IR on types of post and post titles, rather than awaiting the adoption of respective Agency rules. As this change to the initial draft is a formality, with no implications on the content, the amended rules are hereby proposed for adoption.

2) *Commission Decision C(2018)2542 final model decision on middle management staff*

ECHA opted out of the respective Commission IR on middle management staff in March 2017. The Agency-specific rules that were drafted by the SWP take into account the special rules applying to Temporary Agents, pursuant to Article 2(f) CEOS, modifies the parties involved in the selection process, differentiates between an internal, inter-Agency and external publication and renders mobility between middle management posts voluntary. The same rationale regarding the underlying IR on types of post and post titles as pertains for the IR concerning the function of adviser applies to these rules, and it is proposed that the IR should be adopted.

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

The Secretariat, following guidance received from the MB WG on BoA, prepared ECHA-specific rules pertaining to contractual matters for the Executive Director and of the members of the Board of Appeal Members. These rules were adopted by the Management Board in its September 2018 meeting. The Commission, however, has notified ECHA that it cannot agree to certain aspects of these rules and, specifically, to the proposal related to reclassification. Based on this feedback, the Secretariat has prepared an amended version that contains only those elements with which the Commission has agreed. The subject of reclassification of the Executive Director and of the Members of the Board of Appeal will be dealt with separately, at a later stage. With this proposal, ECHA aims to secure timely agreement from the Commission so that the IR would be available when the new Chair of the Board of Appeal is appointed.

## 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:

Annex 1: ECHA IR concerning the function of adviser

Annex 2: ECHA IR on middle management staff

Annex 3: ECHA IR concerning the probationary period appraisal, managerial trial appraisal and the annual performance appraisal of the Executive Director and the members of the Board of Appeal, implementing Articles 43 and 44 of the Staff Regulations and Articles 14 and 15(2) of the CEOS, incl. letter from the Commission services

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