

Implementing Rules to the EU Staff Regulations

57th Meeting of the Management Board 19-20 March 2020

Proposal

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

- Administrative inquiries and disciplinary proceedings (C(2019)4231 final)

Moreover, the Management Board is requested to adopt the Commission's model decision which enables the Agency to opt-out from the following Implementing Rules:

- Maximum duration for the recourse to non-permanent staff (C(2019) 2548 final)

Finally, the Management Board is hereby requested to endorse that the following Implementing Rules will apply by analogy at the Agency nine months after their notification:

- Commission drivers (C(2019) 7822 final)
- Professional incompetence (C(2019) 6855 final)

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 adoption¹. Alternatively, Agencies may either decide to apply the Rules 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, which are drafted in cooperation with DG HR.

The European Commission ('Commission') notified ECHA of its adoption of four Implementing Rules in different areas of the Staff Regulations. The Agencies have received advice from the SWP on how to deal with these rules in an efficient and consistent manner.

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

¹ Pursuant to Article 110(2) of the Staff Regulations.

Rationale

a) Administrative inquiries and disciplinary proceedings

These Implementing Rules contain a number of clarifications and lessons learnt from case law of the European Court of Justice. Their aim is to reinforce transparency and improve effectiveness in the procedure while clarifying the rights of staff involved in such inquiries. The SWP agreed that an Agency-specific Implementing Rule would be preferable as certain provisions of the Commission rules (for example, provisions on the Commission's own inquiry service IDOC) are not applicable in the Agencies' specific operating circumstances. Work on the Agency-specific rules has commenced and Agencies' management and Staff Committees are currently reviewing a draft thereof.

b) Maximum duration for the recourse to non-permanent staff

As regards the majority of temporary staff in the Agency, namely those referred to in Article 2(f) of the CEOS, as well as the unique category of contract staff employed in the Agency, namely those referred to in Article 3(a) of the CEOS, they do not fall under the scope of this Commission Decision. Therefore, this Commission Decision is not adapted to the ECHA's specificities. Consequently, the Commission already approved the Agencies' opt-out decision from these rules in the framework of a model decision, which is hereby proposed for adoption.

c) Commission drivers and professional incompetence

Both sets of Implementing Rules do not apply at ECHA, which employs neither drivers nor EU officials (that is, the only category of staff to whom the provisions on professional incompetence would apply). For the sake of efficiency, and following a recommendation from the SWP, it is therefore proposed to have the Rules apply by analogy 9 months after their adoption. The rationale is that their provisions have no effect at ECHA and it is, therefore, not needed to request the Commission's agreement to opt-out.

Alternative options

In the event that the opt-out proposals are not agreed, the respective Commission Implementing Rules would apply by analogy at ECHA. It is considered that this alternative is not in ECHA's interest. As regards the Rules on administrative inquiries and disciplinary proceedings, the Agency-specific Implementing Rules on these topics (which are currently being drafted) will ensure that ECHA's specific needs and structure is duly taken into account. The maximum duration for the recourse to non-permanent staff, on the other hand, entails the Commission's own employment policy with regard to employment of Temporary and Contract Agents, which does not reflect ECHA's own needs and realities. Hence, the alternative to allow the Commission's Implementing Rules affected by these opt-out requests to apply by analogy is not recommended.

Drawbacks

There are no drawbacks associated with these opt-out requests. 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 on administrative inquiries and disciplinary proceedings. As regards the maximum duration of employment contracts of TA's and CA's, ECHA already has its own policy established that fully reflects the organisation's needs.

Attachments:

For opt-out:

- Annex 1: Administrative inquiries and disciplinary proceedings (C(2019)4231 final) – requesting Commission’s agreement
- Annex 2: Maximum duration for the recourse to non-permanent staff (C(2019) 2548 final) – availing of the Commission’s ex-ante Decision

For application by analogy (no action required):

- Annex 3: Commission drivers (C(2019) 7822 final)
- Annex 4: Professional incompetence (C(2019) 6855 final)

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