

Matter for Decision: Adoption of Implementing Rules to EU Staff Regulations

Meeting of the Management Board 16-17 December 2014, Rome

Item	13.2
Action	For adoption
Status	Final - Public

Proposal

The Management Board is invited to adopt a 4th cluster of Implementing Rules to the EU Staff Regulations.

- Endorse the request to opt-out from the Commission Implementing Rule on Working Time¹; and
- Take note of the update on further four Implementing Rules that are currently drafted specifically for Agencies' needs (that is, appraisal of Temporary Agents, engagement of Temporary Agents category 2f) of the Staff Regulations and unpaid leave for temporary and contract staff), hereinafter referred to as 'Agencies Rules'.

Background

Implementing rules for the EU Staff Regulations are adopted by the Management Board in agreement with the Commission. The new EU Staff Regulations foresee that, by default, Commission Implementing Rules apply by analogy in the Agencies at the latest nine months after their entry into force at the Commission. If justified, an Agency can during this period request an opt-out or submit an agency-specific proposal to the Commission.

The revision of the Staff Regulations entered into force in January 2014 requires that a high number of revised or new implementing rules are put in place. To this end, the Commission has established a so called "Standing Working Party" composed of Commission services and representatives from different types of agencies. This group works since autumn 2013 on the new implementing rules and the outcome comes batch-wise to the Management Board.

The opt-out request has undergone previous consultations with ECHA's managers as well as with the ECHA Staff Committee. Once submitted, ECHA expects to finally receive a reply from the Commission on its own, earlier version of working time rules previously submitted to the Commission for approval. Moreover, should the Commission object to this request or the opt-out request, ECHA would have more time for a thorough review of the rules concerned.

As regards the Agencies Rules, it is important to recall that the Management Board endorsed in its 35th meeting in September 2014 the opt-out request regarding four Commission Implementing Rules covering similar agency-specific areas. This request was based on the justification that specific rules for the Agencies are under preparation and that it would hence be against the interest of ECHA to let the Commission rules enter into force by analogy in the meantime.

¹ Commission Decision C(2014) 2502

On the opt-out request

On 7 April 2014, following the Management Board's endorsement as contained in the 2nd cluster of Implementing Rules, ECHA notified the Commission of its own rules on working time, which are based on the Commission Implementing Rules applicable at that time and contain specific changes agreed upon with ECHA's Staff Committee. To date, the Commission has not yet responded to this notification. In the meantime, however, new Commission rules on working time have been adopted on 15 April 2014 that differ significantly from the previous Commission rules on the same topic and are partly based on local "Brussels" working time requirements and demands from the Commission's staff members.

The working time rules subject to this opt-out request entered into force at the Commission on 1 June 2014 and would hence apply by analogy at ECHA as of 1 March 2015.

State of play of the implementation of other Staff Implementing Rules

ECHA has been informed by the Standing Working Party Meeting (SWP, formally known as the Permanent Group composed of representatives of the Commission and the Agencies) about the following latest developments:

- Engagement and use of Temporary Agents of category 2f: DG HR has provided a final draft which is now in the Commission inter-service consultations (ISC). Based on this, ECHA will start the final ECHA management and Staff Committee consultations. Depending on the point of time ECHA receives the Commission approval of this Agencies rule, adoption by the Management Board may be requested by written procedure or in the March 2015 meeting at the latest.
- Appraisal of Temporary Agents: ECHA has been active in the drafting of this Agencies rule. A first draft has already been submitted for ECHA management and Staff Committee consultations, and comments received have been fed back to the Standing Working Party. Based thereon, DG HR is currently preparing a final draft which it will send to the Standing Working Party soon. Once agreed within the Standing Working Party, these rules will be submitted for ISC as well. In order to be able to apply these rules for ECHA's 2014 appraisal exercise, ECHA must receive the final version as approved by the Commission before 21 December 2014. Adoption by the Management Board through written procedure would then take place in early January 2015. Should the final rules arrive significantly later, ECHA would have to undertake the 2014 appraisal exercise - which should start no later than February - still under the current rules, which have already been amended in order to be compliant with the changed Staff Regulations.
- Appraisal of Contract Agents: As these rules are quite similar to the appraisal rules for Temporary Agents, the Standing Working Party is also hoping to make quick progress here. Therefore, consultations have already been initiated with ECHA management and Staff Committee, and the comments received will be fed back to the Standing Working Party. Should the Commission adopt these rules before year end, ECHA would submit them to the Management Board for adoption by written procedure so that they can be applied in the 2014 appraisal exercise.
- Unpaid leave of temporary and contract staff: as above. There is, however, no immediate need for these rules as is for Temporary Agents' appraisal. This rule's is related to indefinite employment contracts (only one contract awarded to date in the Agency), nevertheless, the applicable Staff Regulations provide sufficient legal basis for deciding on any unpaid leave requests for staff member with fix-term employment contracts until March 2015. Therefore, ECHA does not envisage the necessity for a written adoption procedure by the Management Board for this rule
- Reclassification of Temporary Agents: the Standing Working Party has not yet started the drafting process on this rule, so adoption will not occur before late 2015, optimistically still in time for the 2015 promotion exercise.

Rationale

Informal contacts with DG HR revealed that the Commission may no longer review ECHA's notification of 7 April 2014, which could be considered superseded by the new Commission rules on working time. Hence ECHA is advised to submit a new notification on application of the working time rules with a clear reference to the new Commission rules as adopted on 15 April 2014 which is not necessary in the Agency's and its Staff Committees interest.

Any such new notification would however require a full consultation of the ECHA management and Staff Committee, which has not been able to date given that the new Staff Committee received its mandate only in late November. By submitting this opt-out request, ECHA suspends the nine-month period regarding the new rules and gains time for a more thorough consultation on these, should the Commission object to the initial ECHA rules on working time and this opt-out request, which appears very likely to happen.

Alternative options considered

Do nothing: The 15 April rules will not apply at ECHA before 1 March 2015, so there would still be time for a thorough Staff Committee consultation. However, this alternative was abandoned because by following this path, ECHA would not receive any feedback from the Commission on the notification of its own working time rules. Moreover, if the full consultations of both ECHA management and Staff Committee on the 15 April Commission rules result in the need to change those rules and hence notify new ECHA rules on working time, the Management Board would have to adopt these ECHA rules beforehand by written procedure.

Drawbacks

No drawbacks since ECHA reserves all options and gains more time for a thorough review of and consultations on the Commission rules on working time subject to this opt-out request.

Attachment:

- Annex: Commission Decision C(2014) 2502 on Working Time

For questions: shay.omalley@echa.europa.eu with copy to mb-secretariat@echa.europa.eu