

Implementing Rules to the EU Staff Regulations

66th Meeting of the Management Board 22-23 June 2022

Proposal

The Secretariat proposes four Implementing Rules (IRs) for adoption/endorsement by the Management Board (MB), as follows:

1. The MB is requested to adopt the following Commission IR for application by early analogy, that means before the nine months since notification have lapsed:

- Commission Decision C(2022)1788 of 24 March 2022 on working time and hybrid working

2. Secondly, the MB is requested to adopt the following Commission's model decision which follows the Agency's earlier opt-out from the respective Commission rules:

- Commission Decision C(2022) 497 of 25 January 2022 on giving the Commission's ex ante agreement to adoption by decentralised agencies and joint undertakings of implementing provisions on the conduct of administrative inquiries and disciplinary proceedings (C(2019)4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings;

3. Finally, the Management Board is requested to endorse that the following IRs will apply by analogy at the Agency nine months after their notification:

- Commission Decision C(2021) 8179 of 16 November 2021 laying down general implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations to staff members for the duration of temporary assignments to the seat of the institution or any other place of employment in the Union;
- Commission Decision C(2022) 1715 of 24 March 2022 on home leave for officials, temporary staff and contract staff serving in a third country and repealing Commission Decision C(2013) 9035 final of 16 December 2013.

ECHA's Staff Committee has been consulted on the respective IRs and agrees with the proposals therein. ECHA's management will work with the Staff Committee on a fair and consistent application of the new Implementing Rules.

Background

The EU Staff Regulations state that IRs, once adopted by the Commission, will apply by analogy in Agencies at the latest 9 months after they were notified¹. Alternatively, Agencies may decide to either apply the Rules earlier or decide to opt-out, either individually or in agreement with the

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

other Agencies and the Commission's 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. Its role is to review Commission IRs and 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 ('model decision'), which are drafted in cooperation with DG HR.

The European Commission ('Commission') notified ECHA of its adoption of three IRs and one model decision 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 Staff Committee has been consulted on the respective IRs and is in agreement with the proposals therein. ECHA's management will work with the Staff Committee with respect to implementation issues, taking into account specific concerns raised by staff members in a recent communication.

Rationale

a) Working time and hybrid working

Following a meeting that took place between Agencies' representatives and DG HR on 10 May 2022, ECHA was informed that the Commission agrees to work on a model decision for Agencies, and that any changes to the Commission rules would be restricted to matters of implementation. The Commission was also explicit in stating that it would not open discussions on what it considers as core elements of the rules, including the number of teleworking days from outside the place of employment. Work will now start on this model decision, and ECHA will, through its SWP representative, contribute to the drafting process. The preliminary timeline for adoption of the model decision is February 2023.

Given that the model decision, once adopted in early 2023, will provide for only limited changes, the Secretariat considers that there is no reason to postpone the application of the Commission rules beyond what can be reasonably considered as a transition period. It is, therefore, proposed that ECHA adopts the Commission Rules by early analogy and applies these rules with effect from 1 October 2022. ECHA reserves the right to change to the respective model decision for Agencies, if there are tangible benefits for ECHA, once adopted in Q1/ 2023.

b) Administrative inquiries and disciplinary proceedings

As indicated ahead of the 57th Meeting of the Management Board, the SWP agreed that an Agency-specific IR would be preferable as certain provisions of the Commission rules are not applicable in the Agencies' specific operating circumstances. 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) Education allowance and home leave

These Implementing Rules do not apply to ECHA, as ECHA is solely based in the EU. For the sake of efficiency, and following a recommendation from the SWP, it is proposed to do nothing regarding these sets of rules and have them apply by analogy 9 months after their notification. The rationale is that their provisions have no effect at ECHA and, therefore, the Commission's agreement to opt-out is not required.

Alternative options

If the proposals for adoption are not agreed, the respective Commission IRs and model decision would not apply at ECHA. It is considered that this alternative is not in ECHA's interest. The model decision on administrative inquiries and disciplinary proceedings would ensure that ECHA's

specific needs are duly taken into account. The IR on working time and hybrid working would enable ECHA to apply rules that have been specifically drafted for the new ways of working, placing office work and telework on equal footing.

As the education allowance and home leave rules are not relevant in the ECHA-specific context, and no other decision is needed in the absence of ECHA staff residing in third countries, it is recommended to follow the SWP's approach to let the Commission's Implementing Rules apply by analogy nine months after notification.

Drawbacks

There are no drawbacks associated with the requested adoptions. Agencies differ from the Commission, particularly with respect to their organisational structure, mandate and size. To date, ECHA has had its own policy with respect to administrative inquiries and disciplinary proceedings, however it is preferable to align with other Agencies. In addition, the model decision on this topic is more detailed and reflects the latest case law of the European Court of Justice in this area of staff policy. With respect to the IR on working time and hybrid working, ECHA reserves the right to change to the respective model decision for Agencies, if there are tangible benefits for ECHA, once adopted in Q1/ 2023.

Attachments:

For adoption:

- Annex 1: Commission Decision C(2022)1788 of 24 March 2022 on working time and hybrid working
- Annex 2: Commission Decision C(2022) 497 of 25.1.2022 on giving the Commission's ex ante agreement to adoption by decentralised agencies and joint undertakings of implementing provisions on the conduct of administrative inquiries and disciplinary proceedings (2a: Implementing Rules applying that model decision to ECHA; 2b: Commission adoption decision).

For application by analogy (no action required):

- Annex 3: Commission Decision C(2021) 8179 of 16.11.2021 laying down general implementing provisions regarding the payment of the education allowance provided for in Article 15 of Annex X to the Staff Regulations to staff members for the duration of temporary assignments to the seat of the institution or any other place of employment in the Union
- Annex 4: Commission Decision C(2022) 1715 of 24 March 2022 on home leave for officials, temporary staff and contract staff serving in a third country and repealing Commission Decision C(2013) 9035 final of 16 December 2013.

For questions: tuula.hakala@echa.europa.eu with copy to mb-secretariat@echa.europa.eu