

Implementing Rules to the EU Staff Regulations

60th Meeting of the Management Board 16-17 December 2020

Proposal

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

IRs for endorsement

ECHA proposes to apply the following IR by early analogy without any changes to its substance:

- Commission Decision C(2020) 1559 of 16 March 2020, amending Decision C(2013) 9051 of 16 December 2013 on leave.
- Commission Decision C(2020) 4818 of 20 July 2020, amending the Commission Decision C(2011)1278 of 3 March 2011 on the general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on the transfer of pension rights.

IR for adoption

It is proposed that the MB adopts amended Implementing Rules on reclassification of Temporary Agents¹. The amendments were prepared in close cooperation with the Directorate General - Human Resources and Security (DG HR) of the European Commission (Commission). The amended rules specifically cater for the needs of the Members of the Board of Appeal (BoA), for whom a specific process applies in order to ensure their independence.

- General provisions for implementing Article 54 of the Conditions of Employment of Other Servants of the European Union

ECHA's management and Staff Committee have been consulted on the respective Implementing Rules and agree with the proposals herein. The MB Subgroup Board of Appeal discussed the IR for adoption during its meeting of 11 November 2020 and recommends its adoption.

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's 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 MB adopted the original Implementing Rules in 2016 (MB Decision 5/2016.)

Rationale

Based on prior work at the Standing Working Party² and internal review, it is recommended to categorise the IRs for decision into two separate groups, as follows:

1. Rules for endorsement:

- a) *Commission Decision C(2020) 1559 of 16 March 2020, amending Decision C(2013) 9051 of 16 December 2013 on leave*

According to developments in reproductive medicine, laws on procreation and parenthood and the societal context, in some cases of parenthood the conditions for maternity or adoption leave under the previous leave rules were not met when a new-born child arrived in a household. Therefore, special leave for the arrival of a new-born child in the household of a staff member is hereby added to the rules, also applicable to single parents, in cases where neither the staff member nor his/her partner meets the conditions to benefit from maternity leave.

- b) *Commission Decision C(2020) 4818 of 20 July 2020, amending the Commission Decision C(2011)1278 of 3 March 2011 on the general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on the transfer of pension rights*

These technical amendments to the IR of the Commission that ECHA already applies by analogy are necessary to include updated conversion coefficients, as calculated by Eurostat. Conversion coefficients are used for the calculation of the actuarial equivalent that can be transferred in application of Article 11(1) and Article 12 of Annex VIII to the Staff Regulations, on the one hand, and for the calculation of the number of years of pensionable service to be credited in application of Article 11(2) and (3) of Annex VIII to the Staff Regulations, on the other.

Having considered the contents of these Commission Decisions, there is no reason to delay their application at ECHA and, hence, an early application by analogy is hereby recommended.

2. Rule for adoption

- a) General provisions for implementing Article 54 of the Conditions of Employment of Other Servants of the European Union

Since it has been clarified that the Members of ECHA's Board of Appeal (BoA) are employed as temporary agents (TAs) pursuant to Article 2(f) of the CEOS - as is the case for all TAs at the Agency with the exception of the Executive Director - the rules for reclassification applicable to TAs at ECHA required adaptation to ensure the independence of BoA members. More specifically, the reclassification rules applicable at ECHA needed to be amended to specify the Reporting Officers of the BoA Members (who are MB members) and that any final decision on their reclassification must be adopted in agreement with the Management Board (as their Appointing Authority). In agreement with the Commission, these changes can be accommodated by means of technical changes to the previous rules³, thereby not requiring another official Commission agreement. Instead, it is sufficient that the Management Board adopts these amended rules, which will supersede the previous version, and thereby opens the reclassification procedure for BoA Members at ECHA.

The MB Subgroup BoA discussed this proposal during its meeting of 11 November 2020 and decided to recommend its adoption to the MB. The SG furthermore requested the Secretariat to provide the MB with background information on the reclassification process applied in the Agency for TAs, together with the relevant statistics on the average duration in the grade. This background information is available under Annex 4 and will be made available to the BoA Reporting Officers in the future.

² The Standing Working Party is the working group chaired by DG HR comprising 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.

³ MB Decision 5/2016.

Alternative options

The Management Board could also decide not to endorse/adopt the referenced IRs, which would however harm the interest of the Agency, as explained above.

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 worked closely with the Commission on the specific Agency rules on reclassification of TA's that are proposed for adoption herein, as amended, and, therefore, these rules reflect ECHA's needs without any drawbacks.

Attachments:

- 1. IRs for endorsement
 - Annex 1: Commission Decision C(2020) 1559 of 16 March 2020, amending Decision C(2013) 9051 of 16 December 2013 on leave
 - Annex 2: Commission Decision C(2020) 4818 of 20 July 2020, amending the Commission Decision C(2011)1278 of 3 March 2011 on the general implementing provisions for Articles 11 and 12 of Annex VIII to the Staff Regulations on the transfer of pension right
- 2. IR for adoption
 - Annex 3: General provisions for implementing Article 54 of the Conditions of Employment of Other Servants of the European Union
- Annex 4: Background information on reclassification process

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