

MANAGEMENT BOARD DECISION No 39/2015

of 28 October 2015

adopting implementing rules on reclassification of contract staff

THE MANAGEMENT BOARD

Having regard to the Frontex Regulation¹, in particular Article 17(4) thereof,

Having regard to the Staff Regulations and the Conditions of Employment of Other Servants of the European Union², in particular Article 110(2) of the Staff Regulations and Article 87(3) of the Conditions of Employment of Other Servants of the European Union,

Whereas:

- (1) Any implementing rules to the Staff Regulations shall be adopted by the Management Board.
- (2) On 12 February 2015, Frontex requested a derogation from application by analogy of the European Commission (EC) Decision C(2013) 2529 as amended by EC Decision C(2014) 2222 (hereinafter 'the EC implementing rules'), in an attempt to allow for more suitable rules for reclassification of contract staff in EU Agencies to be agreed by the EC and finally adopted in Frontex.
- (3) Significant delays experienced in the adoption process in the EC require Frontex to take an immediate and temporary measure to allow for reclassification of its contract staff in 2015, until the more suitable rules for reclassification of contract staff in Frontex are agreed by the EC.
- (3) The EC implementing rules are suitable to apply to Frontex contract staff by analogy as a temporary measure, provided that certain adjustments are made to take into account the peculiarities of Frontex.
- (4) Adjustments to the EC implementing rules will be done by Administrative Notice and concern, in particular, the identification of roles and rank of the actors in the procedure and specific cases.
- (4) The Frontex Staff Committee has been consulted on 14 September 2015.

¹ Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operation Cooperation at the External Borders of the Member States of the European Union OJ L 349, 25.11.2004, p.1, as last amended.

² Council Regulation (EEC, Euratom, ECSC), No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ L 56/01, 4.3.1968, as last amended.

HAS DECIDED AS FOLLOWS:

Article 1

Application by analogy

1. The EC implementing rules on reclassification of contract staff as provided in the Annex shall exceptionally apply by analogy in Frontex for the purpose of the reclassification exercise of contract staff in 2015.
2. These provisions will continue to apply until more suitable rules for reclassification of contract staff in Frontex are agreed by the EC, notified to Frontex and adopted by the Management Board.

Article 2

Entry into force

This decision enters into force on the day following the date of its adoption.

Done by written procedure, 28 October 2015

For the Management Board

[signed]

Ralf Göbel
Chairperson

ANNEX:

1. EC Decision of 3.5.2013 on general provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union.
 2. EC Decision of 7.4.2014 amending the Commission Decision of 3 May 2013 laying down general provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union
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EUROPEAN
COMMISSION

Brussels, 3.5.2013
C(2013) 2529 final

COMMISSION DECISION

of 3.5.2013

**on general provisions for implementing Article 87(3) of the Conditions of Employment
of Other Servants of the European Union**

COMMISSION DECISION

of 3.5.2013

on general provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union

THE EUROPEAN COMMISSION,

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, as laid down by Council Regulation 31 (EEC), 11 (EAEC)¹, and in particular Article 87(3) of the Conditions of Employment of Other Servants ('CEOS'),

After consulting the Staff Committee,

After consulting the Staff Regulations Committee,

Whereas:

- (1) On 14 November 2011, the Commission adopted general provisions for implementing Article 45 of the Staff Regulations² introducing a revised system for the promotion exercise for officials.
- (2) In the interests of consistency, the general principles which guide the promotion exercise for officials should also apply to the reclassification of contract staff employed under Article 3a of the CEOS.
- (3) It is therefore necessary to align the arrangements governing the reclassification exercise for contract staff employed under Article 3a of the CEOS on the new promotion system adopted by the Commission for officials, while providing for specific measures for contract staff to take account of the particular situation of that category of staff,

HAS ADOPTED THESE GENERAL IMPLEMENTING PROVISIONS:

Article 1 - Scope

These general implementing provisions shall apply to members of the contract staff employed under Article 3a of the CEOS (hereinafter referred to as 'staff members').

¹ OJ P 45, 14.6.1962, p. 1385.

² Commission Decision C(2011)8190.

Article 2 – Annual reclassification exercise

A reclassification exercise shall be held each year. It shall be launched by the directorate-general with responsibility for personnel by means of the publication of an administrative notice.

Article 3 – Staff members who may be the subject of a reclassification decision

Staff members may be the subject of a reclassification decision if they satisfy all of the following conditions:

- by 31 December of the year of the reclassification exercise at the latest, they have achieved the minimum seniority in the grade required by Article 87(3) of the CEOS,
- they have a contract of at least three years,
- they are in active employment, on parental or family leave or on leave for military service on the date on which the reclassification decisions are adopted by the authority authorised to conclude contracts of employment, and
- their appraisal reports have been finalised in application of Article 5(7) or Article 6(4) of the general provisions for implementing Article 87(1) of the CEOS³, if a report was required under the terms of Article 2 of those provisions. In cases where an appraisal report has not been finalised as a result of a delay for which the staff member cannot be held responsible, the staff member shall nevertheless take part in the reclassification procedure on the basis of other valid information replacing the appraisal report and may therefore be the subject of a reclassification decision.

Article 4 – Basis of the reclassification procedure

1. The reclassification procedure shall be based on consideration of the comparative merits of the staff members eligible for reclassification. The secure electronic system used to administer the exercise shall contain the information required for this comparative examination. For the purposes of the examination, the authority authorised to conclude contracts of employment shall take into account, in particular:
 - (a) reports on the staff members drawn up since their last reclassification or, failing that, since their recruitment to the function group and grade in which they are classified at the time of the reclassification exercise, and in particular the appraisal reports drawn up in accordance with the general provisions for implementing Article 87(1) of the CEOS;
 - (b) the use by the staff members in the execution of their duties of languages other than the language for which they produced evidence of thorough knowledge in accordance with Article 82(3)(e) of the CEOS, and

³ Any reference to the general provisions for implementing Article 87(1) of the Conditions of Employment of Other Servants of the European Union shall be understood as a reference to the Commission decision C(2013) 2528 final of 3.5.2013 on general provisions for implementing Article 87(1) of the Conditions of Employment of Other Servants of the European Union.

- (c) where appropriate, the level of responsibilities exercised by them.
2. If staff members eligible for reclassification have equal merit based on the three factors referred to in paragraph 1, the authority authorised to conclude contracts of employment may give subsidiary consideration to other factors.

Article 5 – Reclassification procedure

- 1 The reclassification exercise shall be launched only once the appraisal exercise organised in the same year has been finalised. The end of the appraisal exercise shall be announced by the directorate-general responsible for personnel by means of the publication of an administrative notice.
2. At the start of the exercise, the directorate-general for personnel shall notify the directorates-general of the arrangements for the current exercise, giving an indication of the financial resources available for the current year.
3. Within each directorate-general, the directors shall consult the reporting officer referred to in Article 3(1) of the general provisions for implementing Article 87(1) of the CEOS.
4. In each directorate-general, following the consultation under paragraph 3 above, the director-general, deputy directors-general, directors and, where appropriate, the principal advisers, shall proceed with the examination of the comparative merits of the staff members eligible for reclassification. By way of derogation from this paragraph, directors and, where appropriate, advisers who do not have any contract staff in their departments may decide not to take part in this examination.
5. Following the examination in paragraph 4 above, the director-general shall hold a discussion with a delegation appointed by the Central Staff Committee. Except where a directorate-general has more than 100 contract staff members, the director-general may delegate this task to the director responsible for human resources or to another member of senior management. During this discussion, the director-general shall, at the request of the delegation appointed by the Central Staff Committee, specify the factors referred to in Article 4(2) of these general implementing provisions that were given subsidiary consideration in the case of equal merit.
6. Following the discussion in paragraph 5 above, the director-general shall communicate to all the directorate-general's staff the list of the staff members he or she wishes to propose for reclassification and shall forward this list to the Joint Reclassification Committee referred to in Annex I.
7. The staff member shall have five working days from the date of publication of this list in which to lodge a complaint with the Joint Reclassification Committee against the fact that he or she is not on the list, with supporting arguments. On receipt of the lists referred to in paragraph 6, the Joint Reclassification Committee, taking into account any complaints it has received, shall compare the merits of the staff members eligible for reclassification and present for the attention of the authority authorised to conclude contracts of employment the list of staff members it recommends for reclassification. At the same time it shall forward the complaints,

the explanations as referred to in Article 1(3) of Annex II, and the discrepancies, if any, referred to in Annex III.

8. Once it has received the information referred to in paragraph 7 above, and has at its disposal the files of all the staff members eligible for reclassification, the authority authorised to conclude contracts of employment shall carry out a final comparison of the merits of the eligible staff members and, taking into account the budgetary resources available, shall adopt the list of staff members reclassified. The staff members concerned shall be reclassified in the next higher grade in the function group to which they belong.
9. The list of staff members reclassified shall be published by means of an administrative notice. Each staff member shall be invited to consult his/her reclassification file.
10. Reclassification will take effect on 1 January of the year of the reclassification exercise. If the staff member does not have the seniority in the grade required under Article 87(3) of the CEOS, the reclassification shall take effect on the first day of the month following that in which he or she attains the necessary seniority.
11. Publication of the list of staff members reclassified referred to in paragraph 9 shall constitute communication of the decision within the meaning of Article 25 of the Staff Regulations. The period of three months in which to lodge a complaint, provided for in Article 90(2) of the Staff Regulations, shall start to run on publication of the list.

Article 6 - Average time spent in the grade

For the purposes of the procedure in Article 5 of these general implementing provisions, and subject to the limits imposed by the budget, the authority authorised to conclude contracts of employment shall take account of the following table, which shows for each grade separately the desired average reclassification period.

Function group	Grade	Average number of years spent in the grade before reclassification into the next grade
IV	18	-
	17	between 6 and 10
	16	between 5 and 7
	15	between 4 and 6
	14	between 3 and 5
	13	between 3 and 5
III	12	-

	11	between 6 and 10
	10	between 5 and 7
	9	between 4 and 6
	8	between 3 and 5
II	7	-
	6	between 6 and 10
	5	between 5 and 7
	4	between 3 and 5
I	3	-
	2	between 6 and 10
	1	between 3 and 5

Article 7 - Final provisions

1. This Decision repeals Annexes VII, VIII and IX to the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union adopted by the Commission on 2 March 2011⁴, and Article 12 thereof.
2. The present general implementing provisions shall enter into force on the day of their adoption and shall apply as from the 2013 reclassification exercise.

Done at Brussels, 3.5.2013

For the Commission
Maroš ŠEFČOVIČ
Vice-président



⁴ C(2011) 1264 final.

ANNEX I – JOINT RECLASSIFICATION COMMITTEE

Article 1 – Role of the Joint Reclassification Committee

In accordance with Article 5(7) of these general implementing provisions, the Joint Reclassification Committee shall compare the merits of the staff members eligible for reclassification on the basis of the lists of staff members proposed for reclassification by the directors-general, and take into account the complaints lodged against non-inclusion on the lists. It shall then issue its recommendations regarding staff members to be reclassified, addressed to the authority authorised to conclude contracts of employment.

Article 2 – Composition and working methods of the Joint Reclassification Committee

The Joint Reclassification Committee shall be chaired by an AD official or temporary staff member appointed by the director-general of the Directorate-General for Human Resources. It shall be composed of five officials, temporary staff members or contract staff members appointed by the director-general of the Directorate-General for Human Resources, and five officials, temporary staff members or contract staff members designated by the Central Staff Committee. The Chair and full members shall each have at least one alternate. The Chair shall be entitled to vote. The Joint Reclassification Committee shall adopt its own rules of procedure and decide on its working methods. The Joint Reclassification Committee may set up one or more joint working parties to carry out preparatory work. If necessary, the Joint Reclassification Committee shall adopt rules of procedure for these joint working parties and decide on their working methods.

Article 3 - Conflict of interests

1. In accordance with Articles 11 and 11a of the Staff Regulations, all members of a Joint Reclassification Committee, including the Chair, shall carry out their duties and conduct themselves solely with the interests of the European Union in mind and shall not deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence.
2. If any member of a Joint Reclassification Committee, including the Chair, has a personal interest in a matter such as to impair his or her independence in the handling of that matter, he or she shall be replaced by the appropriate alternate member and refrain from participating in the work of the Committee.
3. A conflict of interests shall be any situation where a member of a Joint Reclassification Committee, including the Chair, is called upon to decide on a matter which could appear, in the eyes of an external third party, as a possible source affecting the staff member's independence on the matter.

Article 4 – Confidentiality principle

The deliberations and documents of the Joint Reclassification Committee shall be confidential.

Article 5 – Possibilities for reclassification reserved for the Joint Reclassification Committee

At the start of each reclassification exercise, the directorate-general with responsibility for personnel shall publish, by means of the administrative notice referred to in Article 2 of these general provisions, the percentage of possibilities for reclassification to be reserved for the work of the Joint Reclassification Committee and hence for its recommendations to the authority authorised to conclude contracts of employment regarding the staff members to be reclassified in the next grade.

ANNEX II – TRANSITIONAL PROVISIONS

Article 1 – Staff members close to the reclassification threshold in 2012

1. At the start of the 2013 reclassification exercise, the total number of reclassification points accumulated by each staff member, following deduction for a reclassification where appropriate, pursuant to Annexes VI and VII of the general provisions for implementing Article 79(2) of the CEOS⁵ adopted by the Commission on 2 March 2011, shall be compared with the reclassification threshold set at the end of the 2012 reclassification exercise in application of the same provisions. The result of this comparison shall be shown in the secure electronic system that administers the reclassification exercise.
2. Staff members who, at the end of the 2012 exercise, were six reclassification points or less below the reclassification threshold for their grade, shall be brought to the attention of their directorate-general by the directorate-general for personnel.
3. If, following a comparison of merits, a staff member who at the end of the 2012 exercise was three reclassification points or less below the reclassification threshold for his or her grade is not on the list of staff members proposed for reclassification referred to in Article 5(6) of these provisions, the list must be accompanied by an explanation. The explanation must be based on a comparison of merits in the grade in question.
4. The explanation referred to in paragraph 3 above must also be provided in the case of staff members who, following a comparison of merits, are not included on the list even though they were within four reclassification points of the reclassification threshold for their grade at the end of the 2012 exercise and received an average of at least four reclassification points over the last three reclassification exercises.
5. The staff members referred to in paragraph 2 will be flagged in the secure electronic system as long as they have not been reclassified in application of these general provisions.

Article 2 – Transitional arrangements affecting the Joint Reclassification Committee

By derogation from Article 5 of Annex I to these general implementing provisions, the percentage of possibilities for reclassification to be reserved for the work of the Joint Reclassification Committee, and hence for its recommendations to the authority authorised to conclude contracts of employment regarding the staff members to be reclassified in the next grade, shall be 5% in the first two reclassification exercises to which these general implementing provisions will apply, 4% in the third and fourth reclassification exercises and 3% in the fifth and sixth reclassification exercises.

⁵ C(2011) 1264 final.

ANNEX III – STAFF REPRESENTATIVES

1. For the purposes of the reclassification exercise, the staff members referred to in Article 3(1) of Annex I to the general provisions for implementing Article 87(1) of the CEOS shall be considered to be a single directorate-general. The Chair of the ad hoc group referred to in Article 3(3) of Annex I to those general provisions shall act as director-general.

By derogation from Article 5(5) of these general provisions, the Chair of the ad hoc group shall hold a discussion with the director-general of the directorate-general for personnel. The director-general may delegate this task to the director responsible for human resources or to another member of senior management.

2. For the purposes of the reclassification exercise, staff members referred to in Article 3(2)(a) of Annex I to the general provisions for implementing Article 87(1) of the CEOS shall be considered to belong to the directorate-general to which they are assigned.

The Chair of the ad hoc group must communicate the names of the staff members he or she wishes to propose for reclassification to the director-general in good time and in all cases before the discussion referred to in Article 5(5) of these general provisions. In the event of a discrepancy between this proposal and that of the director-general, the latter must inform the Joint Reclassification Committee of this discrepancy when forwarding the list of staff members referred to in Article 5(6) of these general provisions.

3. For the purposes of the reclassification exercise, staff members referred to in Article 3(2)(b) of Annex I to the general provisions for implementing Article 87(1) of the CEOS shall be considered to belong to the directorate-general to which they are assigned.



Brussels, 7.4.2014
C(2014) 2222 final

COMMISSION DECISION

of 7.4.2014

amending the Commission Decision of 3 May 2013 laying down general provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union

COMMISSION DECISION

of 7.4.2014

amending the Commission Decision of 3 May 2013 laying down general provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (the 'CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 87(3) of the CEOS,

Having regard to the opinion of the Staff Regulations Committee,

After consulting the Staff Committee,

Whereas:

- (1) The reclassification system applicable to contract staff recruited by the Commission under Article 3a of the CEOS is based on consideration of the comparative merits of the contract staff eligible for reclassification, taking account of the reports on the staff, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with Article 82(3) of the CEOS and the level of responsibilities exercised by them.
- (2) The Commission Decision of 3 May 2013 laying down general provisions for implementing Article 87(3) of the CEOS (C(2013) 2529) should be amended to take account of the amendment applicable from 1 January 2014 of the last sentence of Article 45(1) of the Staff Regulations, which applies by analogy to contract staff under Article 3a of the CEOS by virtue of Article 87(3) of the CEOS and of the adoption of new general provisions for implementing Article 87(1) of the CEOS.

HAS DECIDED AS FOLLOWS:

Article 1

The Commission Decision of 3 May 2013 laying down general provisions for implementing Article 87(3) of the CEOS is amended as follows.

1. The first sentence of the last indent of Article 3 is replaced by the following:
'- their appraisal reports have been finalised in application of Article 6(8) or Article 7(4) of the general provisions for implementing Article 87(1) of the CEOS, if a report was required under the terms of Article 2 of those provisions.'
2. Article 4(1)(c) is replaced by the following:
'(c) the level of responsibilities exercised by them.'
3. Footnote 3 is deleted.

¹ OJ L 56, 4.3.1968, p. 1.

Article 2

This Decision shall take effect on the date of its adoption and apply to reports established as of the 2014 appraisal exercise.

Done at Brussels, 7.4.2014

For the Commission
Maroš ŠEFČOVIČ
Vice-President