

**DECISION AB [NN]/2015 OF THE ADMINISTRATIVE BOARD OF THE AGENCY FOR
THE COOPERATION OF ENERGY REGULATORS**

of [DD] December 2015

**laying down general provisions for implementing Article 43 of the Staff Regulations and
implementing the first paragraph of Article 44 of the Staff Regulations for temporary
staff**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

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

Having regard to the Staff Regulations of Officials of the European Union ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/681, and in particular Articles 43, 44 and 110(2) of the Staff Regulations and Article 15(2) and Article 20(4) of the CEOS,

Having regard to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, (hereinafter referred to as the "Agency"), and, in particular, Article 28(2) thereof,

Having regard to the Communication C(2014)6543 final of 26 September 2014 from Vice President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to Decision AB 03/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 6 May 2010 on the Rules of Procedure of the Administrative Board, and, in particular, Article 8 thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2015)1513 final of 4 March 2015,

After consulting the Staff Committee,

Whereas:

- 1) On 17 December 2013, the Commission informed the Agency for the Cooperation of Energy Regulators that it adopted Decision C(2013)8985 of 16 December 2013 laying down general provisions for implementing Article 43 of the Staff Regulations and implementing the first paragraph of Article 44 of the Staff Regulations.
- 2) Article 110(2) of the Staff Regulations states that implementing rules referred to in Recital 1 shall apply by analogy to the Agency for the Cooperation of Energy Regulators. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules. The Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.
- 3) Commission Decision C(2013)8985 is suitable to apply to the Agency for the Cooperation of Energy Regulators provided it is made clear that its scope covers temporary staff under

1 OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

Article 2(f) of the CEOS and certain adjustments are made to take into account the peculiarities of the Agency. Those adjustments concern in particular the identification of roles and rank of the actors in the procedure and specific cases laid down in the Annexes to that Decision.

- 4) The appraisal system applicable to the staff of the Agency for the Cooperation of Energy Regulators is intended to provide regular and structured feedback in order to improve performance and contribute to future career development.
- 5) Under Article 43 of the Staff Regulations, applicable to temporary staff by virtue of Article 15(2) of the CEOS, the annual report has to contain a statement as to whether the jobholder's performance has been satisfactory. Given the importance of this statement for the jobholder's career and remuneration, a procedural framework should be put in place.
- 6) Under Article 44 of the Staff Regulations, applicable to temporary staff by virtue of Article 20(4) of the CEOS, the jobholder's advancement in step is made conditional on his performance not having been evaluated as unsatisfactory in the last annual report. An annex to this Decision should set out in more detail how to put this rule into practice.
- 7) For the sake of clarity and legal certainty, Decision AB 25/2011 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 22 September 2011 establishing the policy and procedure for the performance appraisal of staff, laying down general provisions for implementing Article 43 of the Staff Regulations, should be repealed at the end of the 2014 appraisal exercise² and replaced by this Decision³,

HAS DECIDED AS FOLLOWS:

Article 1 - Scope

1. The general implementing provisions laid down by this Decision shall apply to temporary staff within the meaning of Article 2 of the CEOS, with the exception of Heads of agencies (hereinafter 'Director') as referred to in the act(s) establishing the Agency.
2. The temporary staff as defined above are referred to hereinafter as 'jobholders', unless otherwise specified.

² Assessing the period from 01 January 2014 to 31 December 2014.

³ With regard to its provisions related to temporary staff.

Article 2 - Annual appraisal exercise

1. Every year, a report covering the period from 1 January to 31 December of the preceding year (hereinafter referred to as 'the reporting period') shall be drawn up for each jobholder who was in active employment or seconded in the interests of the service for a continuous period of at least one month during the reporting period.
2. Each report shall include an individual qualitative appraisal of the jobholder's efficiency, ability and conduct in the service. The report shall be concerned with all the jobholder's professional activities.
3. Each report shall also include a conclusion on whether the jobholder's performance has been satisfactory. The conclusion that the jobholder's performance has been unsatisfactory shall be based on factual elements.

Article 3 - Respective roles and rank

1. The reporting officer shall be the jobholder's direct superior and, as a general rule, the jobholder's Head of Department on 1 December of the reporting period.

The Director shall assume the role of reporting officer for jobholders of whom he is the direct superior.

2. The appeal assessor shall be the direct superior of the reporting officer at the time of the superior's first intervention in the appraisal procedure as laid down in Article 6.

Where the Director acts as reporting officer, the appeal assessor shall be the Commission representative on the Administrative Board who is the most senior in the highest grade.

A jobholder who has provided information under Article 22a(1) and (2) of the Staff Regulations, applicable to temporary staff by virtue of Article 11 of the CEOS, may, at the time of his reasoned refusal to accept the report, as provided for in Article 7(1), request that the Commission representative on the Administrative Board who is the most senior in the highest grade act as appeal assessor.

3. In exceptional cases, justified by the desire to act in the interests of the jobholder or in the event of a change in the organisation chart of a service, the Director may derogate from paragraphs 1 and 2 above to take account of the specific context arising from the circumstances or the change respectively.
4. In departments comprising more than 20 temporary staff, Head of Department may, subject to the agreement of his Director and after notifying the jobholders concerned, delegate the role of reporting officer to AD officials or temporary agents who manage and supervise AST or AST/SC jobholders and whom he considers capable of taking on this role. In that case, the head of unit shall approve the appraisal report and the head of unit's direct superior shall act as appeal assessor. The Head of Department may at any time withdraw the delegation of the role of reporting officer and perform that role himself.

Heads of Departments may, without relinquishing their role as reporting officer, delegate the preparatory work for the appraisal of jobholders in their department to an official or a temporary agent assigned to the department whom they consider, in the light of the duties he performs within the department and his abilities, to be capable of assuming that role.

5. Where a report needs to be drawn up and the reporting officer and/or appeal assessor, as defined in paragraphs 1 and 2 above, have in the meantime left the Agency definitively, the Director shall designate the most appropriate reporting officer and/or appeal assessor, taking into account the interests of the jobholders concerned, and shall notify the jobholders accordingly.
6. In the event of a derogation from the provisions of paragraphs 1 and 2, jobholders shall be told the name of the persons who are to act as reporting officer and appeal assessor.

**Article 4 -
Responsibilities in case of an assessment of the jobholder's performance as
unsatisfactory**

1. A report concluding that the jobholder's performance has been unsatisfactory needs to be confirmed by a countersigning officer, except where the Director acts as reporting officer.
2. Countersigning officer shall be the direct superior of the reporting officer, except when the direct superior is the Director, in which case the countersigning officer shall be the Head of Department in the Agency who is the most senior in the highest grade. Article 3, paragraphs 3, 5 and 6, shall apply mutatis mutandis.
3. The appeal assessor shall be the Director carrying out this duty at the time of his first intervention in the appraisal procedure. Where the Director acts as reporting officer, the appeal assessor shall be the Commission representative on the Administrative Board who is the most senior in the highest grade.

Article 5 - Basis of the appraisal

The individual qualitative appraisal shall be based on the ability, efficiency and conduct in the service of the jobholder, taking account of the context within which the jobholder has performed his duties. The individual qualitative appraisal shall not include a comparison with the performance of other individual jobholders.

Article 6 - Appraisal procedure

1. The appraisal exercise shall be launched by the Agency entity in charge of human resources by publication of an administrative notice. It shall be administered by means of a secure electronic⁴ system.
2. For each jobholder, the appraisal report is launched electronically⁵. Once the report has been launched, a request to produce a self-assessment shall automatically be sent to the jobholder. Within eight working days of receiving this request, the jobholder shall submit a self-assessment, which will be entered in the appropriate section of the report. The purpose of

⁴ Where the agency does not have an electronic system, the procedure shall be carried out manually and the relevant provisions shall be applied mutatis mutandis

⁵ See footnote 4

this self-assessment is to prepare for the dialogue provided for in paragraph 3.

If the jobholder does not submit a self-assessment within the allotted time, without having been prevented from doing so by a justified absence, the reporting officer may immediately proceed to the formal dialogue provided for in paragraph 3.

3. The reporting officer shall then hold a formal dialogue with the jobholder. With the agreement of the jobholder, the reporting officer may ask one or more other jobholders who have supervised the jobholder's work to take part in the dialogue.

This dialogue shall constitute one of the reporting officer's basic management duties. In the course of this dialogue, the reporting officer shall, jointly with the jobholder:

- a) assess the jobholder's performance during the reporting period. The reporting officer shall, jointly with the jobholder, consider the latter's efficiency, the ability he has demonstrated and his conduct in the service during the reporting period;
 - b) identify the jobholder's training needs.
4. If the jobholder does not act on the invitation to take part in the formal dialogue, without having been prevented from doing so by a justified absence, the reporting officer may immediately draw up an individual qualitative appraisal as provided for in paragraph 5.
 5. Within ten working days of the formal dialogue, the reporting officer shall draw up an individual qualitative appraisal of the jobholder's efficiency, ability and conduct in the service. For this purpose, the jobholder's justified absences may not be used to his disadvantage.
 6. In the cases referred to in Article 4(1) the report shall then be transmitted to the countersigning officer.

The countersigning officer shall verify whether the appraisal procedure has been respected and whether the report has been drafted in a coherent manner, in accordance with these general implementing provisions and consistent with the jobholder's performance. He shall confirm, complete or modify the report.

7. In cases other than those referred to in Article 4(1) or after completion of the procedure provided for in paragraph 6, the report shall then be sent to the jobholder.
8. Within five working days of the date on which the jobholder was invited to consult his report, he may either accept the report, with or without adding comments in the appropriate section, or refuse to accept the report, stating the reasons for refusal.

If the jobholder does not refuse to accept the report within the time limit referred to in the preceding subparagraph, the report shall become final.

Article 7 - Appeal procedure

1. The jobholder's reasoned refusal to accept the report in accordance with Article 6(8) shall automatically mean referral of the matter to the appeal assessor. The jobholder may withdraw his reasoned refusal to accept the report at any time.
2. Upon a request by the jobholder expressed in his reasoned refusal to accept the report, the appeal assessor shall hold a dialogue with the jobholder within ten working days of the date of the reasoned refusal. The jobholder may arrange for another jobholder, other than the reporting

officer, to assist him during the dialogue. The appeal assessor may ask another jobholder, other than the reporting officer, to assist him at the dialogue.

3. Within 20 working days of the date of the reasoned refusal to accept the report and following the dialogue provided for in paragraph 2, the appeal assessor shall confirm the report or amend it, giving reasons.

In the case of a report assessing the jobholder's performance as unsatisfactory, the appeal assessor shall consult the Agency entity in charge of human resources before taking his decision; the latter may in turn consult the Joint Committee.

The decision of the appeal assessor may not be based on facts which the jobholder has not yet had an opportunity to comment upon in the course of the appraisal or the appeal procedure, unless he is given an opportunity to do so by the appeal assessor in good time.

4. The report shall become final by decision of the appeal assessor. The jobholder shall be notified, by e-mail or other means, that the decision rendering the report final has been adopted, pursuant to this Article or Article 6, and that it may be consulted in the electronic system⁶. If the decision rendering the report final was adopted under this Article, the jobholder shall at this point also have access to the appeal assessor's decision. Such notification constitutes communication 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, starts to run on communication of the information.

Article 8 - Time limits

1. The time limits referred to in Articles 6 and 7 as they concern the jobholder shall be calculated only from the time when the relevant decision has been notified to the person concerned or, at the latest, when the latter, acting as a diligent agent, may be expected to be aware of the content of that decision and the reasons for it.
2. These time limits shall be suspended, however, if and for as long as the jobholder is unable to use the electronic⁷ system.

Article 9 - Final provisions

1. Alongside the general rules laid down above, specific rules governing certain aspects of the appraisal procedure are defined in Annex I. These provisions shall apply by way of derogation from Articles 1 to 8.
2. The consequences for the advancement in step of an appraisal report concluding that the jobholder's performance level was unsatisfactory are set out in Annex II.
3. The Commission Decision C(2013)8985 of 16 December 2013 does not apply by analogy at the Agency for the Cooperation of Energy Regulators.

⁶ See footnote 4

⁷ See footnote 4

4. This Decision shall take effect on the day following that of its adoption and shall apply to reports established as of the 2015 appraisal exercise.

Done at Ljubljana, [DD] December 2015.

For the Administrative Board:

Razvan Eugen Nicolescu

Chairman of the ACER Administrative Board

ANNEX I - SPECIAL CASES

1 - Specific situations

- 1.1. If, in the course of the reporting period referred to in Article 2 of the general implementing provisions laid down by this Decision or during the year following the reporting period, the jobholder has left the service definitively under Article 47 of the Staff Regulations, or the jobholder's employment has been terminated under Articles 47 to 50 of the CEOS, it is only necessary to draw up a report if the jobholder submits an express request to that effect, in writing, to the reporting officer referred to in Article 3(1) of these general implementing provisions, in the three weeks following the launch of the appraisal exercise.
- 1.2. Jobholders who, at their own request, have been granted unpaid leave on personal grounds in accordance with Article 40 of the Staff Regulations, or unpaid leave on compelling personal grounds in accordance with Article 17 or 52 of the CEOS shall receive a report covering the reporting period until the date on which the leave took effect. Following their reinstatement, a report shall be drawn up on such jobholders covering the period from reinstatement until the end of the reporting period. If the period covered by these reports is too short for the jobholder to be fully appraised during the reporting period concerned, the reporting officer will draft the report but make a note of this specific circumstance.
- 1.3. Where a jobholder was unable to carry out his duties for an extended period by reason of illness, accident, parental leave or family leave, maternity leave or leave for military service, and as a result the period covered by the report was too short for the jobholder to be fully appraised during the reporting period concerned, the reporting officer will draft the report but make a note of this specific circumstance.

2 - Mobility

If, during the reporting period but not less than four months after the period covered by the previous report or by the previous contribution included in the report,

- (i) the jobholder is moved or transferred to another post within the Agency or seconded under the terms of Article 51 of the CEOS, his direct superior shall draw up a contribution on the jobholder's performance, which will be incorporated in the report;
- (ii) a jobholder leaves a post by virtue of which he would have been called upon to carry out the duties of reporting officer with respect to another jobholder, he shall draw up a contribution on the jobholder's performance, which will be incorporated in the report;
- (iii) a jobholder is employed by another Agency or body of the Union, a contribution on the jobholder's performance shall be drawn up.

3 - Staff on secondment

- 3.1. Reports on jobholders who, at the time when the appraisal procedure is launched, are seconded by the appointing authority under Article 51 of the CEOS shall be drawn up in accordance with the procedure set out in Article 6 of the general implementing provisions laid down by this Decision by a reporting officer appointed by the Director of the Agency of origin. The Director shall appoint the most appropriate person in the Agency to act as

reporting officer in view of the jobholder's tasks and activities and career so far.

- 3.2. If the reporting period includes a period of secondment of four months or more, the reporting officer shall ask the host department to ensure that the jobholder's superiors within that department provide a contribution on the jobholder's performance for inclusion in the appraisal report.

4 - Staff representatives

- 4.1. Reports on jobholders who are assigned full-time or 50 % part-time⁸ as staff representatives shall be drawn up by the Chair of the Staff Committee, who shall act as the reporting officer. In the case of the Chair of the Staff Committee, the report shall be drawn up by another member of the Staff Committee as decided in writing and notified to the jobholder by the Staff Committee, and that member of the Staff Committee shall act as the reporting officer.
- 4.2. A report on a 50% part-time assignment shall be incorporated into the main report prepared pursuant to Article 6 of the general implementing provisions laid down by this Decision and the countersigning officer and appeal assessor shall be defined in accordance with Articles 3 and 4 of the general implementing provisions laid down by this Decision. The report shall cover the part of the jobholder's activity which is devoted to staff representation activities.
- 4.3. If no assignment takes place or when jobholders dedicate less than 50 % of their time to staff representation activities, a relevant contribution to the report referred to in Article 6 of the general implementing provisions laid down by this Decision shall be drawn up only upon request by the jobholder to the Staff Committee. That contribution shall be sent to the jobholder's reporting officer pursuant to Article 6 of the general implementing provisions laid down by this Decision.

ANNEX II - BLOCKING OF ADVANCEMENT IN STEP

1. In application of the first paragraph of Article 44 of the Staff Regulations and of Article 20(4) of the CEOS, a jobholder shall not advance to the next step in his grade if the last finalised report concluded that his performance was unsatisfactory.
In the cases referred to in point 4.2 of Annex I, the consequences mentioned in the preceding subparagraph shall apply if either of the two reports to be established assesses the jobholder's performance as unsatisfactory.
2. If the advancement in step is blocked pursuant to point 1, the jobholder shall again become due for an advancement after one year, subject to the provisions of point 1.
3. Four years after his entry in the grade or his last advancement in step, the jobholder shall advance in step regardless of his reports.

⁸ In cases of assignment established by a framework agreement