



EUROPEAN  
COMMISSION

Brussels, 26.5.2016  
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**COMMISSION DECISION**

**of 26.5.2016**

**on giving agencies an ex ante agreement to the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services**

# COMMISSION DECISION

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## **on giving agencies an *ex ante* agreement to the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services**

THE EUROPEAN COMMISSION,

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

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, and in particular Article 110(2) of the Staff Regulations,

Having regard to 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 Article 13 of the Rules of Procedure of the Commission<sup>2</sup>, as last amended by Commission Decision C(2011)9000/2<sup>3</sup>, and the Rules giving effect to the Rules of Procedure<sup>4</sup>, as last amended by Commission Decision C(2013)3837<sup>5</sup>, in particular concerning the conditions for the exercise of powers,

Having regard to Commission Decision C(2014)7229 final<sup>6</sup> of 8 October 2014 empowering the Member of the Commission responsible for staff issues to adopt, on behalf of the Commission and under its responsibility, the decisions referred to in the third and fifth subparagraphs of Article 110(2) of the Staff Regulations,

Whereas:

- (1) The acts establishing all agencies refer to the Staff Regulations and the CEOS as the common legal framework for staff matters. Implementing rules lay down technical

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<sup>1</sup> 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.

<sup>2</sup> Rules of Procedure of the Commission C(2000) 3614 of 29 November 2000 (2000/773/EC); OJ L 308, 8.12.2000, p.26.

<sup>3</sup> Commission Decision C(2011)9000/2 of 9 November 2011, OJ L 296, 15.11.2011, p.58.

<sup>4</sup> Rules giving effect to the Rules of Procedure C(2001) 1 final of 12 January 2001.

<sup>5</sup> Commission Decision C(2013)3837 of 24 June 2013.

<sup>6</sup> Commission Decision C(2014) 7229 final of 8 October 2014 on the exercise of certain powers in respect of the agreement to be given by the Commission to the agencies before the adoption of implementing rules giving effect to the Staff Regulations in accordance with Article 110(2) thereof.

measures relevant to individual cases and supporting the consistent application of the Staff Regulations and the CEOS in the agencies.

- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules adopted by the Commission to give effect to the Staff Regulations are to apply by analogy to the agencies. However, by way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules.
- (3) Pursuant to Point 2.B of Communication C(2014)6543, the Commission may inform the agencies of its agreement to the non-application of certain rules, without the agencies having to submit a formal request.
- (4) On 17 December 2013, the Commission informed the agencies<sup>7</sup> that it adopted Decision C(2013)9028 of 16 December 2013 amending Commission Decision of 28 April 2004<sup>8</sup> on the maximum duration for the recourse to non-permanent staff in the Commission services, hereinafter 'Commission Decision C(2013)9028'.
- (5) Agencies differ from the Commission, particularly as regards the structure of their staff. In agencies, temporary agents referred to in Article 2(a) of the CEOS are exclusively the heads of agency, deputy heads of agency (whose contract duration is governed by acts establishing the given agency) and officials seconded in the interests of the service to an agency (who are not covered by Commission Decision C(2013)9028). The majority of other temporary staff are those referred to in Article 2(f) of the CEOS to whom Commission Decision C(2013)9028 does not apply and to whom potentially contracts for indefinite duration can be granted. As regards contract staff, agencies employ only those referred to in Article 3(a) of the CEOS who do not fall under the scope of Commission Decision C(2013)9028. Therefore, Commission Decision C(2013)9028 is not adapted to the agencies' reality.
- (6) Taking into account the way agencies operate, it is not appropriate to set a maximum duration of recourse to non-permanent staff, because such a rule could be detrimental to the functioning of agencies. Therefore, agencies should be able to derogate from applying Commission Decision C(2013)9028, instead of being required to submit for the Commission's agreement implementing rules which are different from that Decision.
- (7) Point 2.B of Communication C(2014)6543 states that *ex ante* agreements set out in detail the conditions and circumstances that must be fulfilled for agencies to be able to avail themselves of them.
- (8) The *ex ante* agreement given through this Decision should not rule out that an agency submits to the Commission, for its agreement, implementing rules which are different from Commission Decision C(2013)9028,

HAS DECIDED AS FOLLOWS:

#### *Article 1*

1. Pursuant to Article 110(2) of the Staff Regulations and Communication C(2014)6543, the Commission gives an *ex ante* agreement to agencies, referred to in

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<sup>7</sup> Regarding the recently created agency and joint undertakings, namely SRB, BBI JU, S2R JU, ECSEL JU, that information was communicated to them on 13 February 2015.

<sup>8</sup> Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, as amended by the Commission Decision C(2011)7071 of 5 October 2011.

Article 4, which decide not to apply Commission Decision C(2013)9028 and to adopt a decision on its non-application which is identical to the model decision laid down in Annex I to this Decision. Those agencies, without having to submit a formal request, shall be deemed to have received the Commission's agreement referred to in Article 110(2) of the Staff Regulations.

2. The *ex ante* agreement referred to in paragraph 1 also counts as the Commission's reply to any request from one or more agencies if those requests relate to rules which are identical to the model decision laid down in Annex I to this Decision.

#### *Article 2*

An agency may avail itself of the *ex ante* agreement referred to in Article 1 if both the following conditions are fulfilled:

- (a) it employs some of the following types of staff:
  - temporary agents referred to in Article 2(a) of the CEOS who are the heads of agency, deputy heads of agency or officials seconded in the interests of the service to that agency;
  - temporary staff referred to in Article 2(f) of the CEOS;
  - contract staff referred to in Article 3(a) of the CEOS.
- (b) it adopts a decision on the non-application of Commission Decision C(2013)9028 which is identical<sup>9</sup> to the one laid down in Annex I to this Decision save for the parts in square brackets which shall be adapted to the agency's specific situation according to the relevant instructions.

#### *Article 3*

1. This Decision shall cease to apply where a new Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services is adopted and communicated to agencies; the Commission may nevertheless uphold this Decision.
2. In the event of significant changes in the way an agency operates, for example resulting from a change in the act or acts establishing it, its tasks or its organisation, the agency shall assess whether it still fulfils the conditions laid down in Article 2. If those conditions are no longer fulfilled, the agency shall adopt appropriate measures to bring its rules implementing the Staff Regulations into line with the new conditions that apply.

#### *Article 4*

1. This Decision is addressed to the agencies referred to in paragraph 2 of Article 1(a) of the Staff Regulations.
2. Annex II lists the agencies in existence on the date of adoption of this Decision.

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<sup>9</sup> Except for technical adaptations that are necessary to ensure compliance with the act(s) establishing the Agency. These adaptations shall not alter the *ratio legis* of the model decision.

3. The Commission shall inform the agencies which are created after the adoption of this Decision of the existence of this Decision.

Done at Brussels, 26.5.2016

*For the Commission*  
*Kristalina GEORGIEVA*  
*Vice-President*



## ANNEX I

**Model decision for agencies on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services**

To reflect an agency's specific circumstances, text in [xxx] should be revised in line with the instructions in square brackets e.g. replace [Management Board] with 'Governing Board'.

## [Name of AGENCY] DECISION

of [date]

### **on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services**

[THE MANAGEMENT BOARD or the equivalent body referred to in the act(s) establishing the Agency],

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 259/68<sup>1</sup>,

Having regard to [Council Regulation (EC) / European Parliament and Council Regulation (EC) / Council Decision / Commission Decision] No [ ] of [date] establishing [name of AGENCY],

Having regard to 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 the rules of procedure of [name of AGENCY] and in particular Article [ ] thereof,]

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations [reference number of the Commission's Decision] of [date],

*[For agencies which have established a Staff Committee: After consulting the Staff Committee, or*

*for agencies which do not have a Staff Committee in place: After informing the staff],*

Whereas:

- 1) On [17 December 2013], the Commission informed [name of AGENCY] that it adopted Decision C(2013)9028 of 16 December 2013 amending the Commission Decision of 28 April 2004<sup>2</sup> on the maximum duration for the recourse to non-permanent staff in the Commission services, hereinafter 'Commission Decision C(2013)9028'.

<sup>1</sup> 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.

<sup>2</sup> Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, as amended by Commission Decision C(2011)7071 of 5 October 2011.

- 2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to [name of AGENCY]. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules.
- 3) In [name of AGENCY], [the majority of *or* all] temporary staff other than those referred to in Article 2(a) of the CEOS are those referred to in Article 2(f) of the CEOS [and all contract staff are the ones referred to in Article 3(a) of the CEOS].
- 4) In [name of AGENCY], temporary agents referred to in Article 2(a) of the CEOS [are/is] exclusively the head of the Agency [, deputy head(s) of the Agency (whose contract duration is governed by act(s) establishing the Agency) [and officials seconded in the interests of the service to the Agency (who are not covered by Commission Decision C(2013)9028)]. As regards the majority of temporary staff in the Agency, namely those referred to in Article 2(f) of the CEOS, they do not fall under the scope of Commission Decision C(2013)9028. The same applies to the unique category of contract staff employed in the Agency, namely those referred to in Article 3(a) of the CEOS. Commission Decision C(2013)9028 is therefore not adapted to [name of AGENCY]'s reality.
- 5) Taking into account the way the [name of AGENCY] operates, it is not appropriate to set a maximum duration of recourse to non-permanent staff, because such a rule could be detrimental to the functioning of the Agency.
- 6) The Commission has given its *ex ante* agreement to the non-application of Decision C(2013)9028 to the [name of AGENCY]
- 7) Commission Decision C(2013)9028 should not therefore apply to [name of AGENCY],

HAS DECIDED AS FOLLOWS:

*Article 1*

Commission Decision C(2013)9028 of 16 December 2013 amending Commission Decision of 28 April 2004<sup>3</sup> on the maximum duration for the recourse to non-permanent staff in the Commission services shall not apply to [name of AGENCY].

*Article 2*

This Decision shall take effect on [date] [the day following that of its adoption].

Done at [CITY], on [DATE]

For [Name of AGENCY]

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<sup>3</sup> See footnote 2.



## ANNEX II

### List of agencies

#### A. EXECUTIVE AGENCIES

(1) **Consumers, Health, Agriculture and Food Executive Agency (CHAFAEA)**

12, Rue Guillaume Kroll  
1882 Luxembourg, G.D. LUXEMBOURG

(2) **Education, Audiovisual and Culture Executive Agency (EACEA)**

Avenue Colonel Bourg 115  
1140 Bruxelles, BELGIUM

(3) **Executive Agency for Small and Medium Enterprises (EASME)**

Covent Garden Building, Office: 12/134  
Place Rogier 16  
1210 Brussels, BELGIUM

(4) **European Research Council Executive Agency (ERCEA)**

Covent Garden, COV2 24/130  
Place Rogier 16,  
1210 Saint-Josse-ten-Noode, BELGIUM

(5) **Research Executive Agency (REA)**

Covent Garden, COV2 18/132  
Place Rogier, 16  
1210 - Saint-Josse-Ten-Noode, BELGIUM

(6) **Innovation and Networks Executive Agency (INEA)**

Chaussée de Wavre 910  
1040 Brussels, BELGIUM

## B. DECENTRALISED AGENCIES

- (7) **European Agency for the Cooperation of Energy Regulators (ACER)**  
Trg republike 3,  
1000 Ljubljana, SLOVENIA
- (8) **Body of European Regulators for Electronic Communications and the Office (BEREC)**  
BEREC Office  
Z. A. Meierovica Bulv. 14, 2nd Floor  
Riga LV-1050, LATVIA
- (9) **Translation Centre for the Bodies of the European Union (CDT)**  
Rue Guillaume Kroll, 12e  
1882 Luxembourg, LUXEMBURG
- (10) **European Centre for the Development of Vocational Training (CEDEFOP)**  
PO BOX 22427, Finikas (Thessaloniki)  
55102, GREECE  
Europe 123,  
570 01 Thessaloniki (Pylea), GREECE
- (11) **European Police College (CEPOL)**  
Ó Utca 27  
1066 Budapest, Hungary
- (12) **Community Plant Variety Office (CPVO)**  
3, boulevard Maréchal Foch  
CS 10121  
49101 Angers CEDEX 2, France
- (13) **European Aviation Safety Agency (EASA)**  
Ottoplatz, 1  
50679 Koeln, GERMANY

**(14) European Asylum Support Office (EASO)**

MTC Block A, Winemakers Wharf,  
Grand Harbour Valletta,  
MRS 1917, MALTA

**(15) European Banking Authority (EBA)**

Floor 46  
One Canada Square  
Canary Wharf  
London E14 5AA, UNITED KINGDOM

**(16) European Centre for Disease Prevention and Control (ECDC)**

Tomtebodavägen 11a  
171 83 Stockholm, SWEDEN

**(17) European Chemicals Agency (ECHA)**

Annankatu 18  
00120 Helsinki, FINLAND

**(18) European Environment Agency (EEA)**

Kongens Nytorv 6  
1050 Copenhagen K, DENMARK

**(19) European Fisheries Control Agency (EFCA)**

Edificio Odriozola, Avenida García Barbón 4  
36201 Vigo, SPAIN

**(20) European Food Safety Authority (EFSA)**

Via Carlo Magno 1A  
43126 Parma, ITALY

**(21) European Institute for Gender Equality (EIGE)**

Gedimino pr. 16  
01103 Vilnius, LITHUANIA

- (22) **European Insurance and Occupational Pensions Authority (EIOPA)**  
Westhafenplatz 1  
60327 Frankfurt am Main, GERMANY
- (23) **European Institute of Innovation and Technology (EIT)**  
Infopark, Neumann Janos utca 1/E  
1117 Budapest, HUNGARY
- (24) **European Medicines Agency (EMA)**  
30 Churchill Place  
Canary Wharf  
London E14 5EU, UNITED KINGDOM
- (25) **European Maritime Safety Agency (EMSA)**  
Praça Europa 4  
1249-206 Lisboa, PORTUGAL
- (26) **European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)**  
Praça Europa, 1  
Cais do Sodré  
1249-289 Lisbon, PORTUGAL
- (27) **European Union Agency for Network and Information Security Agency (ENISA)**  
Science and Technology Park of Crete (ITE)  
N.Plastira street 100  
Vasilika Vouton  
700 13 Heraklion, GREECE
- (28) **European Railway Agency (ERA)**  
120 rue Marc Lefrancq  
59300 Valenciennes, FRANCE
- (29) **European Securities and Markets Authority (ESMA)**  
103 Rue de Grenelle  
75007 Paris, France

**(30) European Training Foundation (ETF)**

Villa Gualino  
viale Settimio Severo 65  
10133 Torino, ITALY

**(31) European Union Intellectual Property Office (EUIPO)**

Avenida de Europa, 4  
03008 Alicante, SPAIN

**(32) European Agency for the operational management of the large-scale IT systems in the area of freedom, security and justice (eu.LISA)**

EU House  
Rävala pst. 4  
10143 Tallinn, ESTONIA

**(33) European Agency for Safety and Health at Work (EU-OSHA)**

C/Santiago de Compostela 12, 5th floor  
48003 Bilbao, SPAIN

**(34) European Foundation for the Improvement of Living and Working Conditions (EUROFOUND)**

Wyattville Road  
Loughlinstown, D18 KP65  
Dublin 18, IRELAND

**(35) European Judicial Cooperation Unit (EUROJUST)**

P.O. Box 16183  
2500 BD The Hague, THE NETHERLANDS

**(36) European Police Office (EUROPOL)**

Eisenhowerlaan 73  
2517 KK The Hague, THE NETHERLANDS

**(37) European Union Agency for Fundamental Rights (FRA)**

Schwarzenbergplatz 11  
1040 Vienne, AUSTRIA

(38) **European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX)**

Plac Europejski 6  
00-844 Warsaw, POLAND

(39) **European GNSS Agency**

Janovskeho 438/2  
170 00 Praha 7, CZECH REPUBLIC

(40) **Single Resolution Board (SRB)**

Rue de la Science, 27  
1049 Brussels, BELGIUM

## C. JOINT UNDERTAKINGS

(41) **Bio-based Industries Joint Undertaking (BBI)**

White Atrium Building  
Avenue de la Toison d'Or 56-60, 3th Floor  
1060 Brussels, BELGIUM

(42) **Clean Sky 2 Joint Undertaking (CLEAN SKY 2)**

Avenue de la Toison d'Or 56-60, 4th Floor  
1060 Brussels, BELGIUM

(43) **Electronic Components and Systems for European Leadership Joint Undertaking (ECSEL)**

Avenue de la Toison d'Or 56-60 (5<sup>ème</sup> étage)  
1060 Bruxelles, BELGIUM

(44) **Fuel Cells and Hydrogen 2 Joint Undertaking (FCH 2)**

White Atrium Building  
Avenue de la Toison d'Or 56-60, office 04/21  
1049 Brussels, BELGIUM

(45) **The European Joint Undertaking for ITER and the Development of Fusion Energy (F4E)**

c/ Josep Pla, n° 2  
Torres Diagonal Litoral  
Edificio B3  
08019 Barcelona, SPAIN

(46) **Innovative Medicines Initiative 2 Joint Undertaking (IMI 2)**

Avenue de la Toison d'Or 56-60  
1060 Brussels, BELGIUM

(47) **SESAR Joint Undertaking (SJU)**

Avenue de Cortenberg 100  
1000 Brussels, BELGIUM

**(48) Shift2Rail Joint Undertaking (S2R JU)**

Rue de Mot 28 (DM28)  
1040 Brussels, BELGIUM