

## DECISION n° 124

### *of the Administrative Board of the European Railway Agency adopting measures concerning unpaid leave for temporary and contract staff*

#### **THE ADMINISTRATIVE BOARD OF THE EUROPEAN RAILWAY 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>, and in particular Articles 12b, 15, 110(2), of the Staff Regulations and Articles 11, 17, 52 and 91 of the CEOS,

Having regard to Regulation (EC) N° 881/2004 of the European Parliament and of the Council) establishing a European Railway Agency<sup>2</sup> (hereinafter referred to as "the Agency") and in particular article 38.4 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 the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations (C(2015)5320) of 28 July 2015,

After consulting the ERA Staff Committee,

Whereas:

- 1) Article 17 of the CEOS concerning unpaid leave on compelling personal grounds have been amended with effect as of 1 January 2014.
- 2) The new Article 52 of the CEOS concerning unpaid leave regarding temporary staff referred to in Article 2(f) of the CEOS has been introduced with effect as of 1 January 2014.
- 3) On 17 December 2013, the Commission informed ERA that it adopted Decision C(2013)9054 of 16 December 2013 on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union.

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU Euratom) N° 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> OJ L 220, 21.6.2004, p. 3

- 4) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 3 shall apply by analogy to ERA. 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.
- 5) Commission Decision C(2013)9054 is not suitable to apply by analogy to temporary and contract staff of ERA because it does not cover temporary staff referred to in Article 2(f) of the CEOS to whom specific rules on unpaid leave apply. In addition, the internal organisation of ERA does not allow putting in place the same mechanism to organise the return to work as the ones provided for in the Commission Decision.
- 6) It is therefore necessary to adopt a decision on unpaid leave for temporary and contract staff within ERA.
- 7) In the interest of clarity and legal certainty, the ERA Decision ERA-ED-DEC-730-2013, Annex I, point 6 should be repealed and replaced by this Decision,

## HAS DECIDED AS FOLLOWS:

### Chapter I

#### Provisions for temporary and contract staff

##### Title I - General provisions

###### Article 1 – Conditions for granting unpaid leave

Unpaid leave may be granted by the authority authorised to conclude contracts ('AACC') at the request of the temporary or contract staff concerned ('staff member'). The AACC shall take a decision on granting unpaid leave after consulting the staff member's immediate superiors, having examined the request in detail and taken into account all relevant factors, in particular the reason for the leave, its duration and the immediate needs of the service. The staff member shall be notified of his precise obligations when the decision is taken to grant or extend unpaid leave.

###### Article 2 – Professional activity

1. A staff member who, during unpaid leave, envisages engaging in a professional activity or changing from the professional activity already authorised, must obtain prior permission from the AACC pursuant to Article 12b of the Staff Regulations<sup>3</sup>, and in accordance with the rules applicable within the Agency on outside activities and assignments.
2. In accordance with these rules, such permission shall not be granted to a staff member for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his Agency and which could lead to the existence or possibility of a conflict with the legitimate interests of the Agency.

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<sup>3</sup> Applicable to temporary and contract staff by virtue of Articles 11 and 81 of the CEOS respectively

3. The Joint Committee shall be informed of the decisions that have been taken by the AACC pursuant to Article 12b of the Staff Regulations<sup>4</sup>.

#### Article 3 – Link with the Agency

1. During unpaid leave, the staff member shall maintain a link with the Resources and Support Unit, in particular the Human Resources Sector, for the purposes of approving a request for extending that leave or for engaging in a professional activity. If, during unpaid leave, reorganisation takes place entailing transfer of the staff member's former tasks to another Agency, the staff member shall come under the new Agency to which the tasks have been assigned in accordance with the legal act(s) governing that transfer of the staff member's former tasks.

2. The staff member shall inform the Agency of his contact details during his unpaid leave and keep this information updated at all times.

#### Article 4 – Career development

During unpaid leave, a staff member shall not be entitled to advancement to a higher step in grade and shall not be entitled to reclassification in grade.

### **Title II - Specific provisions for temporary staff referred to in Article 2(f) of the CEOS with a contract for an indefinite period**

#### Article 5 – Duration

1. In accordance with Article 52 of the CEOS, the duration of unpaid leave requested by a staff member shall be restricted to one year, extendable several times for one year. The total duration of unpaid leave may not exceed twelve years over a staff member's whole career.

2. The duration of unpaid leave shall not be less than one month. However, for major family reasons, unpaid leave may be granted for a period of 15 days if there are no other possibilities of reducing working time (parental leave, family leave or part time working).

3. Other than in exceptional cases (serious illness of a close relative, election to public office, etc.), unpaid leave shall start on the 1st or 16th of the month and end on the 15th or last day of the month.

4. If the temporary staff member requests unpaid leave to serve a term in public office, that leave shall be restricted to the duration of the term of office.

#### Article 6 – Vacancy of posts

A post which is unoccupied following departure on unpaid leave for a period of six months or more shall be considered vacant from the first day of that unpaid leave.

#### Article 7 – Extension

Extension of unpaid leave must be applied for by the staff member two months before expiry of the current period and may be granted by the AACC, provided that the conditions set out in Article 5 are met.

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<sup>4</sup> See footnote 3

#### Article 8 – Return to work

At the latest three months before the end of the unpaid leave, and if the staff member has not already submitted an application to return to work, the Resources and Support Unit, in particular the Human Resources Sector, shall contact the staff member and request a written notification of his wish to extend his unpaid leave or to return to work, in which case he should provide an up to date curriculum vitae which includes details of any professional activity engaged in and new knowledge acquired while on leave.

In order to facilitate the return to work and the identification of the appropriate post, the Resources and Support Unit, in particular the Human Resources Sector, shall take the measures necessary for the staff member, on expiry of period of unpaid leave, to return to work in the Agency in the first vacant post in his function group that corresponds to his abilities. The staff member application shall be examined as a priority before any filling of the posts. The vacant post may only be filled by another person if the staff member returning to work does not possess the abilities required for the post to be filled or if he has a personal interest, in particular a family or a financial interest, or represents any other interests of third parties which would impair his independence in the course of his duties in the specific post, such as to lead to an actual or potential conflict of interest.

In order for the Agency to assess the existence of such a conflict of interest, the staff member shall prior to his reinstatement, inform the AACC, using a specific form, of any personal interest, in particular a family or a financial interest, or representation of any other interests of third parties such as described above, in order to allow the AACC to take any appropriate measure as provided for in Article 11a(2) of the Staff Regulations<sup>5</sup> ; such measure may not, however, prevent the reinstatement of the staff member. The assessment carried out by the AACC shall be made considering the situation of the staff member after his reinstatement.

#### Article 9 – Termination of contract

A staff member who has asked to return to work may refuse the first offer of a post corresponding to his function group; in the event of a second refusal, employment may be terminated by the Agency without notice. The same procedure applies to a staff member who has reached the cumulative total of years of unpaid leave provided for in Article 5(1) or who can no longer claim the exemptions set out in Article 5(4) and who does not apply to return to work.

#### Article 10 – Secondment

A staff member on unpaid leave who is seconded in the interests of the service shall return to work in his Agency. The staff member's rights to advancement in step and eligibility for reclassification shall recommence from the date on which secondment takes effect.

At the end of the secondment period, the staff member shall either:

- › apply to return to work in accordance with Article 8 above;
- › apply for a new period of unpaid leave, provided that the conditions for granting it are met;
- › terminate his contract of employment under conditions referred to in Article 47 of the CEOS.

### Title III - Specific provisions for other temporary staff

#### Article 11 – Duration

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<sup>5</sup> Applicable to temporary staff by virtue of Article 11 of the CEOS

1. In accordance with Article 17 of the CEOS, the duration of unpaid leave requested by a staff member shall not exceed one quarter of the length of time already worked by the servant or three months if the servant's seniority is less than four years or twelve months in other cases; such leave may not exceed twelve months over the whole of his career<sup>6</sup>. The period of unpaid leave may not exceed the duration of the employment contract still to run.
2. Paragraphs 2 and 3 of Article 5 shall apply by analogy.
3. If the staff member requests unpaid leave to serve a term in public office, that leave shall be restricted to the duration of the term of office and shall not exceed the duration of the employment contract still to run.

#### Article 12 – Extension

Extension of unpaid leave must be applied for by the staff member two months before expiry of the current period and may be granted by the AACC, provided that the conditions set out in Article 11 are met.

#### Article 13 – Return to work

1. At the end of unpaid leave, the staff member shall return to work in the post occupied before departure, subject to the examination by the AACC whether the staff member has a personal interest, in particular a family or a financial interest, or represents any other interests of third parties which would impair his independence in the course of his duties in the specific post, such as to lead to an actual or potential conflict of interest.
2. In order for the Agency to assess the existence of such a conflict of interest, the staff member shall, prior to returning to work, inform the AACC, using a specific form, of any personal interest, in particular a family or a financial interest, or representation of any other interests of third parties such as described above, in order to allow the AACC to take any appropriate measure as provided for in Article 11a(2) of the Staff Regulations.

#### Article 14 – Termination of contract

Where a staff member does not take up his duties again at the end of unpaid leave, his absence shall be regarded as unjustified and the AACC shall terminate the contract pursuant to Article 47 of the CEOS.

#### Article 15 – Secondment of temporary staff referred to in Article 2(f) of the CEOS

A staff member on unpaid leave who is seconded in the interests of the service shall return to work in his Agency. The staff member's rights to advancement in step and eligibility for reclassification shall recommence from the date on which secondment takes effect.

At the end of the secondment period, the staff member shall either:

- › apply to return to work in accordance with Article 13 above;
- › apply for a new period of unpaid leave, provided that the conditions for granting it are met;
- › terminate his contract of employment under conditions referred to in Article 47 of the CEOS.

### Title IV - Specific provisions for contract staff

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<sup>6</sup> Without prejudice to Article 5(1)

#### Article 16 – Contract staff

Title III shall apply *mutatis mutandis* to all contract staff, except Article 15.

#### **Title V - Final Provisions**

##### Article 17

1. The ERA Decision ERA-ED- DEC-730-2013, Annex I, point 6 on measures concerning leave on personal grounds for officials and unpaid leave for temporary and contract staff of the European Union is hereby repealed;
2. The Commission's Decision C(2013)9054 of 16 December 2013 does not apply by analogy at the ERA.
3. This Decision shall enter into force on 1 December 2015.

Done at Lille, on 25-11-2015

For the Administrative Board

The Chairman

Mats ANDERSSON