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MB DECISION 334 on working time and hybrid working

European Union Agency for Railways DECISION
of 14 November 2023 on working time and hybrid working

THE MANAGEMENT BOARD,

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 ('CEOS') of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 1e(1) and (2) and Article 55 of the Staff Regulations and Articles 10, 16, 80 and 91 of the CEOS,

Having regard to Regulation (EU) of the European Parliament and the Council on the European Union Agency for Railways (hereinafter referred to as "ERA") and repealing Regulation (EC) No 881/2004, No 2016/796 of 11 May 2016 establishing ERA,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2023)5076 of 25 July 2023,

After consulting the Staff Committee,

Whereas:

- (1) On 24 March 2022, the Commission informed ERA that it had adopted Decision C(2022) 1788 on working time and hybrid working.
- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in recital 1 are to 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 that are different from those adopted by the Commission.
- (3) Commission Decision C(2022) 1788 can be applied by ERA if it is adapted to its peculiarities. Those peculiarities concern in particular ERA's internal structure and operations requiring different working hours.
- (4) Those peculiarities correspond to the criteria set out in point 2.B of Communication C(2014) 6543 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.

¹ OJ L 56, 4.3.1968, p. 1.

- (5) ERA promotes a modern, digital and flexible working environment, to protect staff's health and wellbeing, enhance efficiency and improve work-life balance. For those purposes, it is necessary to adapt the rules on working time and set out a new legal framework facilitating 'hybrid working', that is to say a combination of working at the office and teleworking, where both modalities are considered equivalent.
- (6) Teleworking would also contribute to reducing CO₂ emissions arising from staff commuting and the resulting congestion, particularly for those who drive to work, and would therefore contribute towards supporting the European Union's efforts, under the European Green Deal², to become climate neutral by 2050.
- (7) The shift towards large-scale teleworking, as a result of the outbreak of the COVID-19 pandemic in 2020, as implemented at short notice, proved that ERA is able to function effectively also in such circumstances. Moreover, it demonstrated that teleworking is an essential tool for ensuring business continuity in times of crisis. Drawing on the experience acquired from that shift, it is necessary to adopt a new decision.
- (8) Hybrid working together with more flexible rules on working time will bring along a higher degree of autonomy for staff, as well as a greater sense of responsibility. For line managers, that will imply taking an objectives-based and results-oriented approach and developing an efficient remote management based on a culture of trust. Their methods should be adapted to the management of teams that use teleworking on a regular basis, in order to ensure proper work organisation and integration of team members. In that respect, ERA should provide adequate guidance, training and material resources as well as streamline good practices throughout ERA.
- (9) To protect staff's health and well-being, line managers should ensure that the tasks they assign to staff can be reasonably considered as manageable within their working time schedule, taking into account peak periods.
- (10) A right to disconnect should be provided for, taking into account the European Parliament resolution of 21 January 2021 with recommendations to the Commission on the right to disconnect³.
- (11) Except in cases of force majeure, teleworking should be performed on a voluntary basis.
- (12) The implementation of teleworking arrangements should take into account psycho-social risks such as those linked to digital overload, a blurred line between professional and private lives or social isolation. Accompanying measures should therefore ensure good working conditions and, where relevant, provide targeted training and guidance.
- (13) Hybrid working should be implemented in a way that preserves an adequate welcoming of newcomers, transmission of knowledge and know-how, as well as effective teamworking in a multi-cultural context and informal collaborative exchanges as a source of creativity.
- (14) ERA staff mostly carry out knowledge-based activities, which are in principle compatible with teleworking. However, tasks that require physical presence, are incompatible with

² COM(2019) 640.

³ P9_TA(2021)0021.

telework. The rules on teleworking laid down in this Decision should therefore not apply to staff carrying out tasks which require physical presence.

- (15) All staff should be treated equally, regardless of their working arrangements, and have access to equivalent means of working. Notably, this refers to workload, performance indicators, entitlements to training and career prospects. Respect for the principle of equality should include all diversity aspects, in particular disability, gender and age. Teleworking should, in principle, be carried out at the place of employment, in accordance with Article 20 of the Staff Regulations, which requires that staff reside either in the place where they are employed or at no greater distance therefrom as is compatible with the proper performance of their duties. ERA should monitor the ratio of teleworking and working at the office, with special focus on the use of teleworking per gender. When monitoring that ratio, where relevant, ERA should analyse the options to encourage the equal use of teleworking by men and women.
- (16) ERA should pay special attention to the implementation of teleworking arrangements and their impact on staff with a disability, notably with regard to necessary equipment and reasonable accommodations, in accordance with Article 8 of Commission Decision C(2004) 1318⁴ applicable by analogy at ERA.
- (17) Where relevant, the Staff Committee should be involved in any reflection on the lessons learned and the implementation of this Decision.
- (18) The Joint Committee should assist the Resources and Support unit in monitoring the effective implementation and compliance with this Decision. The joint committee may issue recommendations to the Appointing Authority/Authority Authorised to Conclude Contracts of Employment in case it detects inconsistencies and/or unequal treatment in the implementation of this Decision.
- (19) ERA should evaluate this decision after 18 months at the latest.
- (20) The Management Board Decisions n°130 and 141 should therefore be repealed.
- (21) This Decision takes into account the standards set in Union legislation in the area of health and safety at work, in particular by Directive 2003/88/EC of the European Parliament and of the Council⁵,

⁴ Commission Decision of 7 April 2004 implementing Article 1d(4) of the Staff Regulations C(2004)1318

⁵ Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, 18.11.2003, p. 9).

HAS DECIDED AS FOLLOWS:

CHAPTER I

SCOPE AND IMPLEMENTATION

Article 1

Scope

1. This Decision shall apply to all ERA staff covered by the Staff Regulations or by the CEOS, with the exception of special advisers. It shall also apply to seconded national experts ('SNEs').

Article 2

Implementation

1. The Appointing Authority/Authority Authorised to Conclude Contracts of Employment (the 'Appointing Authority') shall adopt Guidelines indicating criteria, procedures and good practices to achieve the objectives of this Decision and set up monitoring tools. The Staff Committee shall be consulted on the Guidelines before their adoption.
2. Line managers shall decide on individual working arrangements for their staff regarding the working time and hybrid working arrangements in accordance with this Decision and the Guidelines referred to in paragraph 1. Such arrangements shall be in conformity with the interests of the service, taking into account the staff members' specific responsibilities and constraints.

CHAPTER II

WORKING TIME

Article 3

Working time and flexitime arrangements

1. A staff member's normal working time shall be set at 40 hours per week, spread over five working days, from Monday to Friday. A full working day shall be 8 hours, while a half working day shall be 4 hours. Such hours shall apply *pro rata* for staff authorised to work part-time.
2. The default working-time arrangement for ERA staff shall be flexitime, which allows staff to:
 - (a) vary the time at which they start and end their working day;
 - (b) offset or recuperate additional hours worked, in accordance with the conditions laid down in Article 6, where eligible.

3. The Appointing Authority may, after consulting the Resources and Support unit and the Staff Committee, adjust or complement the working-time provisions with respect to an entire Department/Unit/Team with specific service requirements.
4. Due to particular service requirements linked to the nature of their duties and after consulting the Resources and Support unit and the Staff Committee, the Appointing Authority may decide to exclude certain groups of staff from applying flexitime as referred to in paragraph 2, by setting fixed working hours or different working hours than those laid down in Article 5. Any decisions to that effect, already in force before the entry into force of this Decision, may continue to apply.
5. In cases of urgency linked to *force majeure*, decisions concerning the working hours or flexitime referred to in paragraphs 3 and 4 may be adopted before consultation of the Staff Committee.

Article 4

Basic principles

1. Line managers, in consultation with staff members, shall ensure that the overall work assigned to their staff is in principle manageable in a standard 40-hour working week, while having regard to peak periods during the year. This paragraph shall apply *pro rata* to staff working part-time.
2. The number of daily working hours may in principle not exceed a total of 10 hours, including for staff working part-time.
3. Where excess hours are imposed by service needs, staff may offset those extra hours by working less hours the following days, weeks or months or by taking a full or half day of recuperation in accordance with Article 6.
4. An IT tool shall be made available to staff to record their working hours. Registered working hours shall correspond to the time actually spent working.
5. Line managers and staff members shall clarify beforehand their expectations as regards the implementation of Article 5(1) and of Article 6, paragraphs (4) to (6), and shall endeavour to reach an agreement on those expectations.
6. Line managers shall ensure that their staff members respect the applicable rules. While line managers may delegate the execution of administrative tasks related to the implementation of this Decision, they shall remain responsible for verifying that the hours recorded correspond to the time actually spent working.

The evaluation of consistency between hours registered and work performed shall be output based. Where line managers notice discrepancies between the number of hours registered and the tasks assigned and corresponding output, they shall discuss those discrepancies with the staff member concerned before validating the monthly timesheet. They shall reject registered hours not corresponding plausibly to time actually spent working.
7. Line managers and staff members may turn to the Resources and Support unit for guidance on the implementation of the working time and flexitime arrangements set out in this Chapter, in order to ensure the implementation of the rules in a consistent manner.

Article 5

Daily working hours

1. Staff shall work mainly between 07:00 and 21:00.

Within the time frame set out in the first subparagraph, staff should be available for interaction with other colleagues as follows:

- on Monday from ‘14:00’ to ‘16:00’
- on Tuesday from ‘10:00’ to ‘12:00’ and from ‘14:00’ to ‘16:00’,
- on Wednesday from ‘10:00’ to ‘12:00’,
- on Thursday from ‘10:00’ to ‘12:00’ and from ‘14:00’ to ‘16:00’,
- on Friday from ‘10:00’ to ‘12:00’.

By way of derogation, staff may, in agreement with their line manager, decide to set other hours during which they shall be available for interaction with other colleagues, within the time frame set out in the first subparagraph.

For the remainder of the hours, staff shall have the flexibility to choose how to spread their working time daily, in agreement with the line manager, in line with the needs of the service. Staff may choose to work outside the time frame referred to in the first subparagraph of this Article, in agreement with the line manager. In such case, they shall focus on tasks that do not require immediate interaction with other colleagues.

2. The time frame referred to in the first subparagraph of paragraph 1 shall not be considered as stand-by duty. Staff may not be expected to be reachable outside the working time agreed pursuant to paragraph 1, except in duly justified situations as defined under paragraph 6.
3. Staff shall be encouraged to take regular breaks, especially when working in front of a screen. They shall take a minimum of one break of at least 20 minutes per working day⁶.
4. Line managers shall respect the principles of trust-based management, which entail a high level of autonomy for staff and no unnecessary control. However, they may unilaterally determine the working hours of staff members who fail to comply with the responsibilities attached to this level of autonomy.
5. Line managers shall ensure adequate planning of the daily and weekly work, to ensure service continuity, and show flexibility for staff’s personal commitments and breaks.
6. Line managers and other staff may not contact staff or request them to work from 21:00 to 07:00 (‘disconnection period’), except in any of the following cases:
 - (a) emergency;
 - (b) preagreement;
 - (c) where the nature of the work or tasks require availability during such hours.

⁶ Interpretative Communication C(2017) 2601 on Directive 2003/88/EC of the European Parliament and of the Council concerning certain aspects of the organisation of working time (OJ C 165, 24.5.2017, p. 1).

Information and/or emails received by the staff member which do not require their immediate reaction or are not specifically addressed to them shall not be considered to be a contact referred to in the first subparagraph.

The same right to disconnect shall apply at weekends, on public holidays and during the staff's annual leave or other types of leave.

Article 6

Offsetting and recuperating working hours

1. Where staff members have worked more than their normal working time, as referred to in Article 3(1), they shall be credited with the corresponding amount of time ('credit'). Where staff members worked less than the normal working time, they shall be debited with the corresponding amount of time ('debit'). The IT tool referred to in Article 4(4) shall be used to record and display their 'credit' or 'debit' hours.
2. The number of credit hours may in principle not exceed 2 hours for a given working day. However, where the needs of the service so require, in particular during peak periods, more than 2 daily working hours may exceptionally be counted as credit hours.
3. The balance of credit and debit hours shall be calculated at the end of each calendar month.
Any credit balance shall be carried over to the next month.
A debit balance shall not exceed 20 hours. It shall be carried over to the next month.
By way of exception, credit balance exceeding 20 hours or debit balance exceeding 20 hours at the end of the month may be carried over to the next month where, because of service reasons, sick leave or *force majeure*, the staff member concerned was prevented from adjusting the balance appropriately.
4. As a general rule, a monthly credit balance shall be offset by subsequent shorter working time compared to the daily average of 8 hours. A debit balance shall be offset by a longer working time during the following six calendar months at the latest.
5. Where the balance is in credit, staff eligible pursuant to Article 55(4) of the Staff Regulations may request recuperation of the hours in credit. Only half days or full days may be recuperated. No more than two full days or four half days may be taken as recuperation each calendar month.
Staff members to whom the second paragraph of Article 44 of the Staff Regulations applies shall not be eligible for recuperation.
6. Where a staff member requests recuperation, the line manager, having due regard to the principles of trust-based management, shall approve the request where both of the following conditions are met:
 - (a) a credit balance is justified by the staff member's work;
 - (b) the request is compatible with the interests of the service.

Article 7

Specific situations

1. Absences for annual leave, special leave and sick leave shall be accounted for on the basis of a normal working day of 8 hours in the case of a full day and 4 hours in the case of a half day. This paragraph shall apply *pro rata* to staff working part-time.
2. Working hours during a mission shall be accounted in the same manner as normal working hours.

Travelling time for a mission shall be counted and registered as working time, including when taking place on a weekend or on a public holiday.

Where a mission finishes with an overnight travel and a morning return to the place of work, a compensation of half a day of leave shall be granted on the day of return. Where leave cannot be taken immediately upon return, a half day of leave shall be taken in due course following the return from the mission.
3. Any other work-related activity such as training or tasks related to personnel administration in ERA shall be accounted as working time, provided that the line manager agrees and that the activity takes place in the interests of the service or is required by the needs of the service.
4. Statutory representation shall be counted as working time.

CHAPTER III – HYBRID WORKING

Article 8

Definition and basic principles

1. For the purposes of this Decision, ‘hybrid working’ means a combination of teleworking and working at the office.
2. Teleworking means carrying out work remotely with the help of digital tools. Teleworking shall only be allowed for tasks that, by their nature, can be adequately performed remotely.
3. The Appointing Authority shall set up a register of types of tasks incompatible with teleworking.
4. Working at the office and teleworking shall be considered as equivalent ways of working.
5. For the purposes of this Decision, ‘time slot’ means the minimum fraction of telework/work from the office in a given working day, which shall correspond to a ‘half day’.

Article 9

Hybrid working arrangements

1. All staff whose tasks are compatible with teleworking may perform part of their working time remotely, by reaching an arrangement with their line manager on a trust basis, which takes into account the interests of the service and the wellbeing of staff.

The arrangement shall, in principle, be formalised. However, by common agreement between the line manager and the staff member, such arrangement may be informal. All arrangements, regardless of their form, shall be subject to the rules laid down in this Article.
2. Staff members shall in principle be entitled to a stable arrangement as laid down in paragraphs 6 and 7. However, subject to the agreement of their line manager, staff members may exceptionally telework during another time slot or other time slots than the one previously agreed or be granted an *ad hoc* additional time slot of teleworking, provided that, as a result, staff members do not telework more than 60% of their weekly working time.
3. Except in the cases referred to in Article 12, teleworking shall be performed on a voluntary basis and staff shall have the right to come to the office every day without prior authorisation, including when they are authorised to telework.
4. Staff members shall register in advance whether they will be teleworking or working at the office using the dedicated IT tool in accordance with this Decision and with the rules set out by the Appointing Authority. The tool shall cater for flexibility for staff members and for planning.
5. In accordance with the principles of a trust-based working culture, staff shall ensure that the time slots of presence at the office and the time slots of telework conform to what was agreed with their line manager. In cases where such principles are not respected by the staff member, the line manager may increase monitoring.
6. Staff members who wish to telework up to 20% of their weekly working time shall inform their line manager of their intention to telework and the corresponding time slot or time slots. Such teleworking arrangements shall be granted for a renewable period of six months, or for the duration of the contract, whichever is shorter. For duly justified services reasons, line managers may instruct staff to telework on another time slot or other time slots than the one or ones previously agreed.
7. Staff members who wish to telework more than 20% and up to 60% of their weekly working time shall have to agree on a working arrangement to that effect with their line manager. Such teleworking arrangements shall be granted for a renewable period of six months. For duly justified reasons, line managers may refuse totally or partially the request to telework for more than 20% and/or may ask staff to telework on another time slot or other time slots than the one or ones previously agreed.
8. The teleworking arrangements referred to in paragraphs 6 and 7 may be modified at the request of the staff member or of the line manager after hearing the staff member concerned. The modified arrangement shall enter into force after a period of one month. However, if agreed by the staff member and the line manager, such modified arrangements shall enter into force on the date as decided by them.
9. Where the line manager considers that it is necessary in the interests of the service, a staff member may be authorised to telework more than 60% during the week.

10. Staff members with temporary health issues impacting their mobility but who are still able to telework may request to telework for the whole duration of their health issue.
Mobility issues shall be certified by a doctor and notified to the Commission Medical Service, who may proceed with any appropriate verification.
11. Line managers shall ensure that the presence of staff at the office is spread as evenly as possible during the whole working week.
12. Line managers may decide that, on a specific time slots during the working week the whole Department/Unit/Team is required to be present at the office to facilitate team building, internal planning or organisation and brainstorming, as well as informal exchanges between colleagues. In such cases, those time slots shall be communicated to staff in advance, except in case of emergency.
13. Where the proper functioning of the service would otherwise be compromised, line managers may require staff members to work at the office for the entire relevant period, on grounds related to the interests of the service. Such a decision shall not entail nor require the modification of teleworking arrangements.
14. Line managers shall ensure fairness and equal treatment in the implementation of this Article, to ensure that all staff can benefit from teleworking arrangements.
15. The Appointing Authority shall ensure that teleworking arrangements are applied in a fair and equal way across the Agency.

Article 10

Place of telework

1. Without prejudice to Article 11, telework shall be performed at the place of employment or at no greater distance therefrom as is compatible with the proper performance of the duties, in accordance with Article 20 of the Staff Regulations. Staff shall telework from a place allowing them to physically come to the office within a reasonable time without being dependent on the hazard of transportation, in case of an unforeseen service need.
2. Teleworking staff shall ensure they have a reliable broadband connection and an appropriate working environment. Staff shall be expected to ensure compliance with data security and cybersecurity and respect applicable confidentiality standards. Where technical issues linked to connectivity or to their home office environment prevent them from adequately performing their duties, staff shall return to the office at their own expense within a reasonable time.

Article 11

Telework outside the place of employment

1. All staff may telework outside the place of employment referred to in Article 10(1) for up to 10 working days per calendar year, upon their request and subject to the agreement of their line manager.

The Appointing Authority shall supervise the implementation of the first subparagraph and ensure that it is applied consistently. The Resources and Support unit shall provide the Appointing Authority annually with aggregate data on the application of the first subparagraph.

2. In exceptional circumstances, such as duly documented imperative family reasons, an authorisation to telework outside the place of employment referred to in Article 10(1) may be granted by the Appointing Authority for up to one month, after consulting the staff's line manager. The authorisation may be renewed under the same conditions.
3. Where, in accordance with Article 5 of Annex V to the Staff Regulations and Articles 16 and 91 of the CEOS, staff members are recalled to duty for service reasons while on annual leave or have their leave cancelled, their line managers may authorise them to telework outside the place of employment for a number of days in addition to the 10 working days referred to in paragraph 1.
4. Staff teleworking outside the place of employment shall ensure that they have a suitable broadband connection and a home office environment allowing them to adequately perform their duties. Where they cannot perform their duties adequately, staff shall either take annual leave where compatible with the interests of the service, or return to the office or to the place of telework within the meaning of Article 10(1) at their own expense within 48 hours. The time during which staff could not perform their duties due to technical issues shall be debited to the staff's working hours.
5. Staff authorised to telework outside the place of employment shall communicate their temporary address to the administration before the start of such teleworking period.

Article 12

Force majeure and other special cases

1. The Appointing Authority may, after consulting the Staff Committee, for duly justified reasons, authorise telework for an extensive and uninterrupted period of time for all or part of a Department/Unit/Team.
2. In cases of *force majeure*, the Appointing Authority may, after consulting the Resources and Support unit and informing the Staff Committee, require staff members to telework for extensive and uninterrupted periods, until further notice. The timeline for consultation shall be commensurate to the nature and extent of the circumstances constituting *force majeure*.

Article 13

Equipment, technical support and connectivity

1. ERA shall provide all teleworking staff with at least a laptop computer. The laptop computer shall be used both at the office and when teleworking.
2. ERA shall provide staff with adequate IT tools required for both work at the office and telework. These tools shall enable staff to benefit fully from the opportunities of both working modalities, including virtual and hybrid meetings, in order to maintain staff

motivation and efficiency. ERA shall support staff with additional equipment, depending also on their job profile, subject to budgetary availability⁷.

3. Specific needs of staff with disability on telework shall be catered for in accordance with the reasonable accommodation conditions set out by Article 8 of Commission Decision C(2004) 1318⁸.
4. Where appropriate, the Appointing Authority may adopt a decision providing for a financial contribution covering certain costs of teleworking staff, subject to budgetary availability.

Article 14

Health and safety

1. ERA shall provide teleworking staff with information on occupational health and safety, ergonomics, document security, use of IT equipment, precautions to be taken against damage and theft and any other subject relating to telework.
2. Managers shall follow trainings concerning the specificities of managing teleworking staff, including leading a team and building team spirit, monitoring performance and motivation of each team member as well as the possible risks and dangers of digital overload and digital burnout.
3. Staff on telework shall be covered by the insurance against accident and occupational disease provided by Article 73 of the Staff Regulations to the same extent as staff working at the office.
4. Teleworking staff shall take reasonable preventive measures to avoid physical risks in their teleworking space. ERA shall organise regular and adequate prevention campaigns on health and safety when teleworking.

CHAPTER IV

FINAL PROVISIONS

Article 15

Joint Committee

The Joint Committee shall monitor the implementation of the Decision. It shall issue its recommendations to the Appointing Authority in case it detects inconsistencies and/or unequal treatment in the implementation of the Decision. It shall not have the power to hear individual cases.

⁷ This may for example include a keyboard, a mouse, a webcam, a headset/USB phone, a screen and an ergonomic chair.

⁸ Commission Decision of 7 April 2004 implementing Article 1d(4) of the Staff Regulations C(2004) 1318.

Article 16

Monitoring and evaluation

1. The Appointing Authority shall be responsible for monitoring the effective implementation and compliance with this Decision within ERA and shall ensure that it is applied consistently by:
 - (a) regular contacts with the departments/units/teams across the agency;
 - (b) consultation of the Joint Committee;
 - (c) implementing the Guidelines referred to in Article 2(1).
2. The Appointing Authority shall perform an evaluation of the implementation of this Decision within 18 months from the date of the entry into force of this Decision.
3. The Resources and Support unit shall monitor the use of hybrid working, including as regards gender. Where relevant, it shall analyse the options to encourage the equal use of teleworking by men and women.

Article 17

Repeal and consequences of repeal

1. ERA Management Board Decision *130* is repealed.
2. ERA Management Board Decision *141* is repealed.
3. All existing structural teleworking agreements concluded on the basis of ERA Management Board Decision *141* shall end on the date of entry into force of this Decision.

Article 18

Entry into force

This Decision shall enter into force on 1 January 2024.

For the Management Board

Clio LIÉGEOIS
Chairwoman