



Decision of the ETF Governing Board 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 ETF GOVERNING BOARD,

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 the Council Regulation (EC) n° 1339/2008 of 16 December 2008 establishing a European Training Foundation (recast)², and in particular Article 21 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 the Commission's Decision C(2015) 1513 of 4 March 2015,

Having regard to the Commission Decision C(2016) 7270 of 17 November 2016, amending its Decision C(2013) 8985, thus introducing a specific reference to the appraisal of managerial performance and considering it applies by analogy to the ETF at the latest after nine months,

Having regard to *the appraisal of managerial performance* which is introduced in ETF corresponding rules as adopted through Governing Board Decision ref. GB/15/DEC/008 of 22 June 2015, *under article 2, paragraph 4*,

After consulting the Staff Committee,

Whereas:

- 1) On 17 December 2013, the Commission informed the ETF 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) *On 17 November 2016, the Commission introduces a specific provision for appraising managerial performance in its amending decision C(2016) 7270 which applies by analogy to the ETF after nine months at the latest. In the interest of clarity and legal certainty this provision should be embedded in ETF's rule on appraisal for temporary staff.*

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.

² OJ L 354 of 31/12/2008, p. 82.

- 3) Article 110(2) of the Staff Regulations states that implementing rules referred to in Recital 1 shall apply by analogy to the ETF. 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.
- 4) Commission Decision C(2013)8985 is suitable to apply to the ETF provided it is made clear that its scope covers temporary staff under 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.
- 5) The appraisal system applicable to the ETF staff is intended to provide regular and structured feedback in order to improve performance and contribute to future career development.
- 6) 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.
- 7) 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.

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.

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.
4. *For a jobholder occupying a function of Head of Unit/Department, the report shall, in addition, include a conclusion on whether the jobholder's managerial performance has been satisfactory. The conclusion that the jobholder's managerial 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 unit on 1 December of the reporting period.

The Director shall assume the role of reporting officer for jobholders of whom they are 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 Governing 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 Governing 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 units comprising more than 20 temporary staff, the head of unit may, subject to the agreement of his Director and after notifying the jobholders concerned, delegate the role of reporting officer to AD 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 unit may at any time withdraw the delegation of the role of reporting officer and perform that role himself.

Heads of unit may, without relinquishing their role as reporting officer, delegate the preparatory work for the appraisal of jobholders in their unit to a temporary agent assigned to the unit whom they consider, in the light of the duties he performs within the unit 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 unit/department or equivalent 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 Governing 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 electronic³ system.
2. For each jobholder, the appraisal report is launched electronically⁴. 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 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

³ 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.

⁴ See footnote 3.

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 electronic⁵ system. 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.

⁵ See footnote 3.

2. These time limits shall be suspended, however, if and for as long as the jobholder is unable to use the electronic⁶ system.

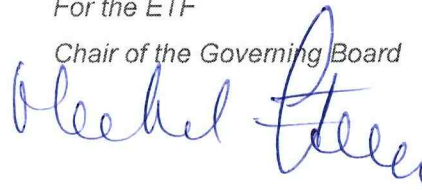
Article 9 – Final provisions

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 ETF.
4. This *amending* Decision shall take effect on the day following that of its adoption and shall apply to reports established as of the 2017 appraisal exercise.

Done at *Bromley* *9/11/2018*

For the ETF

Chair of the Governing Board



⁶ See footnote 3.