



EUROPEAN  
COMMISSION

Brussels, 16.12.2013  
C(2013) 8985 final

## **COMMISSION DECISION**

**of 16.12.2013**

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

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

THE EUROPEAN COMMISSION,

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

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, and in particular Articles 43 and 110 of the Staff Regulations and Article 15(2) of the Conditions of Employment of Other Servants,

Having regard to the opinion of the Staff Committee,

After consulting the Staff Regulations Committee,

Whereas:

- (1) The appraisal system introduced by the Commission Decision of 14 November 2011 laying down general provisions for implementing Article 43 of the Staff Regulations (C(2011) 8186) needs to be adapted to Article 43 of the Staff Regulations, as amended with effect from 1 January 2014, in particular with regard to the concept of satisfactory performance .
- (2) The appraisal system applicable to Commission staff is intended to provide regular and structured feedback in order to improve performance and contribute to future career development.
- (3) Under the amended Article 43 of the Staff Regulations, 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.
- (4) Under the amended Article 44 of the Staff Regulations, 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,
- (5) For the sake of clarity and legal certainty, the Commission Decision of 14 November 2011 laying down general provisions for implementing Article 43 of the Staff Regulations (C(2011) 8186) should be replaced by this Decision,

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1.

HAS DECIDED AS FOLLOWS:

*Article 1 - Scope*

1. The general implementing provisions laid down by this Decision shall apply to officials within the meaning of Article 1a of the Staff Regulations (with the exception of officials occupying a position as a senior manager<sup>2</sup>).
2. These general provisions shall also apply to temporary staff within the meaning of Article 2 of the Conditions of Employment of Other Servants (with the exception of temporary staff occupying a position as a senior manager<sup>3</sup>).
3. The officials and temporary staff as defined above are referred to hereinafter as 'jobholders'.

*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. Moreover, regarding jobholders who were in grade AST5 or above during the whole reporting period or during part of it, the report shall, at the jobholder's request, contain an opinion as to whether the jobholder, on the basis of his performance, has the potential to carry out an administrator's function.

*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<sup>4</sup>, Principal Adviser, Adviser hors classe, Deputy Director-General or Director-General<sup>5</sup> 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.

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<sup>2</sup> As defined in the Compilation document on Senior Officials Policy (SEC(2004) 1352/2).

<sup>3</sup> As defined in the Compilation document on Senior Officials Policy (SEC(2004) 1352/2).

<sup>4</sup> For the purposes of this Decision, 'Director' shall also cover the position of head of department.

<sup>5</sup> For the purposes of this Decision, 'Director-General' also covers the position of director of an office.

If a Director, Principal Adviser, Adviser hors classe, or Deputy Director-General acts as reporting officer, the Director-General shall act as appeal assessor. The Director-General may delegate this role to the Deputy Director-General for reports where a Director acts as reporting officer. If the Director-General is the reporting officer, the appeal assessor shall be the Director-General of the Directorate-General responsible for human resources. If the Director-General responsible for human resources is the reporting officer, the appeal assessor shall be the Secretary-General.

A jobholder who has provided information under Article 22a(1) and (2) of the Staff Regulations may, at the time of his reasoned refusal to accept the report, as provided for in Article 7(1), request that the Director-General of the Directorate-General responsible for human resources or the Secretary-General 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 or Directorate-General, the Director-General 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 officials, the head of unit may, subject to the agreement of his Director-General and after notifying the jobholders concerned, delegate the role of reporting officer to AD officials 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 an official 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 Commission definitively, the Director-General 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 a Director-General acts as reporting officer.
2. Countersigning officer shall be the person who would be appeal assessor pursuant to the first subparagraph and the first two sentences of the second subparagraph of Article 3(2) or pursuant to the second sentence of the first subparagraph of Article 3(4). Article 3, paragraphs 3, 5 and 6, shall apply *mutatis mutandis*.
3. The appeal assessor shall be the Director-General carrying out this duty at the time of his first intervention in the appraisal procedure. If the Director-General acts as

countersigning officer, the appeal assessor shall be the Director-General responsible for human resources or, for staff assigned to the Directorate-General responsible for human resources, the Secretary-General.

#### *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 Directorate-General responsible for human resources by publication of an administrative notice. It shall be administered by means of a secure electronic system.
2. For each jobholder, the appraisal report is launched electronically. 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. A request pursuant to Article 2(4) has to be submitted with the self-assessment.

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 Directorate-General responsible for human resources before taking his decision; the latter may in turn consult the Reports Committee. In the case of a third consecutive annual report of this type, the appeal assessor shall take his decision in agreement with the Directorate-General responsible for human resources, which shall consult the Joint Advisory Committee for professional incompetence.

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 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 official, 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 electronic 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 of 14 November 2011 laying down general provisions for implementing Article 43 of the Staff Regulations (C(2011) 8186) is repealed.
4. This Decision shall take effect on 1 January 2014 and apply to reports established as of the 2014 appraisal exercise.

Done at Brussels, 16.12.2013

*For the Commission*  
*Maroš ŠEFČOVIČ*  
*Vice-President*



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ANNEXES 1 to 2

**ANNEXES**

**to the**

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## ANNEXES

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### COMMISSION DECISION

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

#### **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 Conditions of Employment of Other Servants, 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. Officials who, at their own request, have been granted unpaid leave on personal grounds in accordance with Article 40 of the Staff Regulations 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 officials 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 Commission or seconded under the terms of Article 37(a) of the Staff Regulations, his direct superior shall draw up a contribution on the jobholder's performance, which will be incorporated in the report;
- (ii) an official or temporary agent leaves a post by virtue of which he would have been called upon to carry out the duties of reporting officer with respect to a jobholder, he shall draw up a contribution on the jobholder's performance, which will be incorporated in the report;

- (iii) a jobholder is transferred to another institution of the Union, a contribution on the jobholder's performance shall be drawn up.

### *3 - Staff on secondment*

- 3.1. Without prejudice to 3.3 below, reports on jobholders who, at the time when the appraisal procedure is launched, are seconded by the appointing authority under Article 37(a) of the Staff Regulations shall be drawn up in accordance with the procedure set out in Article 6 of these general implementing provisions by a reporting officer appointed by the Director-General of the jobholder's original Directorate-General. The Director-General shall appoint the most appropriate person in the Directorate-General 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.
- 3.3. For function group AD jobholders seconded to the service of a Member of the Commission, the Chef de cabinet shall act as reporting officer. Countersigning officer for a report assessing the jobholder's performance as unsatisfactory shall be the Chef de cabinet of the Member of the Commission responsible for human resources or, for jobholders seconded to the service of that Member, a Chef de cabinet designated by the President. The appeal assessor shall be the Member of the Commission to whose service the jobholder has been seconded.

For function group AST or AST/SC jobholders seconded to the service of a Member of the Commission, the Deputy Chef de cabinet shall act as reporting officer. The appeal assessor shall be the Chef de cabinet. The latter shall act as countersigning officer in the case of a report assessing the jobholder's performance as unsatisfactory, in which case the appeal assessor shall be the Member of the Commission to whose service the jobholder has been seconded.

The reporting officer for Chefs de cabinet shall be the Member of the Commission to whom they are seconded. If the Chef de cabinet disagrees with the report sent to him, the matter may be referred to an appeals committee chaired by the Member of the Commission responsible for human resources (or another Member of the Commission designated by the President in the case of an appeal by the Chef de cabinet of the Member of the Commission responsible for human resources) and including the Secretary-General and a Director-General in active employment designated by the President. Article 4 and Article 6(6) of these general implementing provisions shall not apply.

- 3.4. For temporary staff as referred to in Article 2(c) of the Conditions of Employment of Other Servants engaged to assist a Member of the Commission, paragraph 3 shall apply.

### *4 - Staff on secondment in the interest of the service in executive agencies*

- 4.1. The reporting officer of an official seconded in the interest of the service to an executive agency shall be his hierarchical superior at the Commission. This shall equally apply where this hierarchical superior is also seconded in the interest of the service to an executive agency.

Where the official's reporting officers are different at the Commission and at the executive agency, the reporting officer at the Commission shall ask the reporting officer at the executive agency to provide a contribution on the jobholder's performance for inclusion in the appraisal report.

- 4.2. Countersigning officer in the case of a report assessing the jobholder's performance as unsatisfactory shall be the hierarchical superior of the jobholder's hierarchical superior at the Commission. This shall equally apply where this hierarchical superior is also seconded in the interest of the service to an executive agency.

Where the official's countersigning officers are different at the Commission and at the executive agency, the countersigning officer at the Commission shall consult the countersigning officer at the executive agency before taking his decision.

#### *5 – Staff representatives*

- 5.1. Where a jobholder, at the end of the reporting period, is exempted, for all of his or her working time, from performing his duties in a Commission department:

- (i) in order to take up a position as a member of the Central Staff Committee or to act as Chair of a local section of the Staff Committee, the jobholder's reporting officer shall be the official or member of the temporary staff appointed as Chair of the Central Staff Committee;
- (ii) in order to take up a position as a member of a local section of the Staff Committee, the jobholder's reporting officer shall be the Chair of the local section;
- (iii) in order to take up the position of Chair of the Central Staff Committee, the jobholder's reporting officer shall be an official or member of the temporary staff appointed at a Plenary Meeting of the Central Staff Committee by secret ballot and acting on the authority of the Central Staff Committee;
- (iv) in order to take up a position with a representative trade union or professional organisation (hereinafter referred to as 'representative trade union organisation'), the jobholder's reporting officer shall be an official or member of the temporary staff appointed by the governing body of that organisation.

In cases (i) to (iii), when drafting the report, the reporting officer shall take account, where appropriate, of the opinion of the representative trade union organisation to which the jobholder concerned belongs.

In cases (ii) and (iv), the official or member of the temporary staff appointed as Chair of the Central Staff Committee shall act as countersigning officer for unsatisfactory performance.

- 5.2. A jobholder who is exempted only:

- (i) for half of his working time shall receive a report pursuant to 5.1 and a report, pursuant to Article 6 of the general implementing provisions laid down by this Decision, covering the duties performed in the Commission department to which he is assigned. If the jobholder has been elected or designated within the meaning of 5.5, the ad hoc Group for the appraisal and

promotion of staff representatives (hereinafter 'the ad hoc Group'<sup>1</sup>) must be consulted on each of the two reports;

- (ii) for 25% of his working time, the ad hoc Group shall draw up a contribution to the appraisal report.

- 5.3. In all the cases referred to 5.1, the appeal assessor shall be the Chair of the ad hoc Group who shall act under the authority of the group. In cases where the Chair of the ad hoc Group is himself a jobholder who has been exempted, for all of his working time, from performing his duties in a Commission department in order to take up duties as referred to in 5.1, the appeal assessor shall be an official or member of the temporary staff designated at a plenary session of the ad hoc Group by secret ballot and acting under the authority of the ad hoc Group.

The Chair of the ad hoc Group shall equally be appeal assessor with regard to reports established pursuant to 5.1 in conjunction with 5.2(i). The provisions of the preceding paragraph shall apply.

- 5.4. The rules concerning the prevention of conflicts of interests in the work of the Joint Promotion Committees, laid down in the general provisions for implementing Article 45 of the Staff Regulations shall apply *mutatis mutandis* to the bodies, reporting officers and appeal assessors referred to in point 5 of this annex. Any conflict of interest arising in applying these provisions shall be reported without delay by the jobholder or any other person concerned to the Chair of the ad hoc Group, who shall remedy the situation immediately.

- 5.5. The reports relating to jobholders who have been elected or designated shall be drawn up by the reporting officer in the department to which the jobholders were assigned in accordance with the procedure laid down in Article 6 of these general implementing provisions. After receiving the jobholder's self-assessment, the reporting officer concerned shall consult the ad hoc Group. The ad hoc Group's opinion shall constitute a contribution to the appraisal report.

For the purposes of 5.5:

- an elected jobholder is a jobholder who, without having been exempted from performing his duties in a Commission department in order to carry out one of the activities referred to in 5.1, has been elected to represent the staff, on an occasional basis, on the Staff Committee, these tasks being considered to form part of the normal service he is required to provide to the Commission;
- a designated jobholder is a jobholder who, without having been exempted from performing his duties in a Commission department in order to carry out one of the activities referred to in 5.1, has been designated by the Staff Committee as a member representing the staff on a body set up by the Staff Regulations or by the institution, or has been designated by a representative trade union or professional organisation to take part in consultations organised by the administration, these tasks being considered to form part of the normal service he is required to provide to the Commission.

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<sup>1</sup> The ad hoc Group is composed of 16 members, five designated by the Central Staff Committee and 11 designated by the representative trade union organisations. The ad hoc group shall draw up its rules of procedure and a code of conduct for the application of the general provisions for implementing Articles 43 and 45 of the Staff Regulations.

- 5.6. A jobholder who has been elected, designated or exempted from performing his duties in a Commission department for half of his working time or less in order to carry out one of the activities referred to in 5.1, must mention this fact in his self-assessment.
- 5.7. In the cases referred to in 5.2 and 5.5, the assessment of the jobholder's performance has to take into account the amount of time the jobholder had to spend on the activities for which he has been exempted, elected or designated.

#### *6 – Jobholders assigned to a delegation*

- 6.1. Where the operational superior of a jobholder assigned to a delegation is a member of the European External Action Service, the superior shall draw up a contribution on the jobholder's performance for inclusion in the jobholder's appraisal report.
- 6.2. By way of derogation from point 2(ii) of this annex, 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, an official or member of the temporary staff assigned to headquarters leaves a post by virtue of which he would have been required to act as reporting officer for a jobholder assigned to a delegation, he shall not draft a contribution on the performance of the jobholder within the meaning of point 2 of this annex.

## **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 Conditions of Employment of Other Servants, 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 5.2(i) 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, unless, in the case of an official, the appointing authority decides to downgrade him in accordance with Article 51(1)(a) of the Staff Regulations, having considered that the official did not show any progress in his professional competence.