



DECISION OF THE GOVERNING BOARD

on the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union, governing the conditions of employment of contract staff employed under the terms of Article 3a thereof

N° 07/2019

THE GOVERNING BOARD OF THE SHIFT2RAIL JOINT UNDERTAKING (hereinafter "S2R JU"),

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

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants of the European Union ('CEOS') laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68¹, and in particular Article 110(2) of the Staff Regulations and Title IV of the CEOS,

Having regard to Council Regulation (EU) No 642/2014 of 16 June 2014 establishing the S2R JU², and in particular Article 6 (3) thereof,

Having regard to Communication C(2014) 6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations C(2019)3016 final of 2 May 2019,

After consulting the Staff Committee,

Whereas:

- (1) On 20 October 2017, the Commission informed S2R JU that it adopted Decision C(2017)6760 of 16 October 2017 on the general provisions for implementing Article 79(2) of the CEOS, governing the conditions of employment of contract staff employed by the Commission under the terms of Articles 3a and 3b thereof.
- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to the S2R JU. 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.

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 177, 17.06.2014, p.9.

- (3) Commission Decision C(2017)6760 is suitable to apply to S2R JU if it is adapted to the peculiarities of the S2R JU. Those peculiarities concern in particular selection procedures, policy on duration of contracts, mobility and non-application of the provisions related to contract staff covered by Article 3b of the CEOS.
- (4) The number of contract staff employed by the Agency has considerably increased since this category of staff was created in 2004. Contract staff accounted for around 75% of Agency staff in 2018 and they fulfil an essential role in many of the Agency's activities and processes.
- (5) Contract staff should be appropriately integrated within the S2R JU by providing them with prospects for development. This has implications for the whole process of managing this category of staff: from their selection to their appraisal, but also for their career, advancement and reclassification. These developments include the possibility of changing their grade and function group, while making mobility easier between agencies.
- (6) The objective of this Decision is, in particular, to optimise the recruitment process through, for example, permanent calls for expression of interest and the internal publication of vacant posts for contract staff. It also aims to make it possible for the most deserving members of the contract staff to benefit from mobility and provide them with additional career opportunities, for example by organising an exercise enabling contract staff to move into the next function group.
- (7) In order to make mobility easier, it is important to make the link between contract staff employed by the S2R JU and those employed by other agencies by using common/similar guidelines for the selection and management of contract staff.
- (8) More generally, the rules and provisions applicable to contract staff should provide flexibility in the employment conditions of this staff category, be it in the selection procedure, classification in the function group and grade or the duration and renewal of contracts.

HAS ADOPTED THESE GENERAL IMPLEMENTING PROVISIONS:

TITLE I — General provisions

Article 1 — Scope and terminology

- (1) This Decision shall apply to the conditions of employment of contract staff covered by Article 3a of the CEOS ('CA 3a') engaged by the S2R JU, ('contract staff').
- (2) The terms 'CA 3a' and staff covered by Article 3b of the CEOS ('CA 3b') are used to refer exclusively to these types of staff.

TITLE II — Conditions of engagement

Article 2 — Selection

- (1) Engagement as contract staff shall be conditional upon passing the selection procedure set out in Annex I.
- (2) By way of derogation from paragraph 1, in exceptional cases, where justified in the interests of the service, the authority authorised to conclude contracts of employment ('AACC') may recruit as contract staff a candidate who has passed a recruitment competition for officials, or who is a successful candidate in a selection of temporary staff under Article 2(f) of the CEOS, if such competition, or selection is considered to be appropriate to the duties to be performed.
- (3) By way of derogation from paragraph 1, the AACC may engage as a contract staff an official or a temporary staff under Article 2(f) of the CEOS who has been granted leave on personal grounds or unpaid leave respectively.

Article 3 — Function groups

- (1) The AACC shall determine the function group in which the member of the contract staff is engaged on the basis of Article 80(2) of the CEOS.
- (2) The Agency entity in charge of human resources shall draw up a job description to this end.

Article 4 — Minimum conditions and qualifications for engagement

- (1) Engagement as a member of the contract staff shall be conditional upon fulfilling the minimum conditions and qualifications set out in Article 82(2) and (3) of the CEOS.
- (2) Under Article 82(2) of the CEOS, only diplomas that have been awarded in EU Member States or that are the subject of equivalence certificates issued by the authorities in the said Member States shall be taken into consideration. In the latter case, the AACC reserves the right to request proof of such equivalence.

Article 5 — Classification in the function group

- (1) In accordance with Article 86(1) of the CEOS, the AACC shall classify contract staff in their function group taking into consideration their qualifications and professional experience at the time of entry into service.

For the purposes of this classification, the qualifications and professional experience taken into account shall be those acquired between the date on which contract staff met the minimum requirements for recruitment, as set out in Article 82(2) of the CEOS, and their entry into service. In the case of qualifications equivalent to those giving access to the function group, the AACC shall establish a reference date from which experience shall be taken into account.

- (2) Without prejudice to Articles 8 and 9, contract staff engaged in Function Group I shall be classified in grade 1.
- (3) Without prejudice to Articles 8 and 9, contract staff engaged in Function Groups II, III and IV shall be graded within their function group according to the following rules:

(a) in function group II:

Qualifications and professional experience	Grade
less than 5 years	4
5 years or more	5

(b) in function group III:

Qualifications and professional experience	Grade
less than 5 years	8
between 5 years and 15 years	9
15 years or more	10

(c) in function group IV:

Qualifications and professional experience	Grade
less than 5 years	13
between 5 years and 17 years	14
17 years or more	16

- (4) By way of derogation from paragraph 3, the AACC may, at the request of the Agency entity in charge of human resources, classify a member of the contract staff recruited in function groups II, III or IV in a grade within the function group that is higher than those in the tables in paragraph 3(a), (b) and (c). The grading shall be carried out within the range set out in Article 86 of the CEOS. The Agency entity in charge of human resources shall justify its request to the AACC on the basis, in particular, of the professional experience and qualifications required, the tasks and level of responsibility involved or labour market conditions for the profile in question.
- (5) Without prejudice to Articles 8 and 9, for the implementation of paragraph 3, the qualifications and professional experience to be taken into account for the purposes of grading contract staff in their function groups are set out in Annex II.
- (6) Grading shall be determined on the date of entry into service.

Without prejudice to Article 87(3) of the CEOS, the grading shall not be revised in the course of the contract, including any renewals thereof.

Article 6 — Classification in the grade

- (1) In accordance with Article 86(1), second subparagraph, of the CEOS, and without prejudice to Article 8, contract staff shall be classified in the first step of their grade.

- (2) However, in accordance with Article 86(1), second subparagraph, of the CEOS, the AACC shall grant 24 months' additional seniority in the step to a contract staff recruited at grade 1 in function group I to take account of professional experience of three years or more.

Professional experience shall be taken into account in line with the rules in Article 5(1) and (5).

Article 7 — Duration of contracts

- (1) In application of Article 85 of the CEOS, the head of the S2R JU as referred to in the act(s) establishing the S2R JU ('Executive Director') of the S2R JU shall establish the policy that the S2R JU will apply on the duration of contracts, within the limits provided for in the CEOS. This policy shall be communicated to staff.
- (2) Where justified in the interest of the service, the AACC may decide to conclude contracts of a different duration to those set out in the policy referred to in paragraph 1. Those exceptions shall be recorded in a central record by the AACC.
- (3) The policy referred to in paragraph 1 may contain provisions on temporary and specific needs. In particular, in duly justified cases, the AACC may decide to conclude contracts with a limited perspective in time. Such contracts are justified in particular for project of limited duration, for cases where the Agency needs to avail itself of up-to-date knowledge in specific area (and accordingly, to renew staff) or for replacement of absences. Such contracts may be concluded for a fixed period or, only in duly justified cases, for a limited period. In the latter case, the contract is concluded for the duration of the particular task and shall be recorded in the central record referred to in Article 7(2). In both cases of such contracts, the AACC shall clearly inform the candidate, in the offer letter, in the contract, or in any renewal of contract and, where relevant, in the selection notice, that the contractual relationship is linked to duties of limited duration in time that may lead to the termination of the contract or its non-renewal.

Where a successful candidate to contracts referred to in this paragraph is a contract staff under indefinite duration, he or she shall be engaged for an indefinite period in accordance with Annex III. The same applies where, in accordance with Article 85 of the CEOS and Annex III, the new contract of a contract staff would result in indefinite duration contract.

In such cases, the AACC shall clearly inform the candidate in the selection notice, in the offer letter, in the contract or in any renewal of contract, that the contractual relationship is linked to duties of limited duration in time that may lead to a reduction in the activities of the Agency or a reorganisation of the services, that could constitute a valid ground for termination of the contract.

- (4) In the event of interruption, the contract may not be renewed.

Article 8 — Successive contracts

- (1) The engagement by the S2R JU of a contract staff immediately after a CA 3a or CA 3b contract with another Agency or institution within the meaning of Article 1a of the Staff Regulations shall require a new contract.

- (2) The rules applicable to the different situations referred to in paragraph 1 are set out in Annex III.

Article 9 — Probationary period

- (1) Without prejudice to Article 8, contract staff shall serve a probationary period in accordance with Article 84 of the CEOS.

Where an initial contract is shorter than the probationary period and the contract is renewed, the period worked during the initial contract shall be included in the total probationary period.

- (2) The general implementing provisions of Article 87(1) of the CEOS, as regards determining the reporting officer, shall apply *mutatis mutandis* to the designation of the reporting officer for the probation report. This competence shall be exercised by the person in the corresponding post at the time the probation report is drawn up.

- (3) The procedure for the probationary period is as follows:

(a) No less than two months before the end of the probationary period, the reporting officer shall ask the member of the contract staff to draw up a self-assessment. The staff member shall have eight working days in which to do so. If the staff member does not finalise his or her self-assessment within the above time limit, the reporting officer may decide to hold the dialogue referred to at (b) in the absence of a self-assessment.

(b) At the latest ten working days after the self-assessment, the reporting officer and the member of the contract staff shall engage in a formal dialogue. The dialogue shall cover the ability of the member of the contract staff to perform his or her duties and his or her efficiency and conduct in the service.

(c) No later than ten working days after the formal dialogue, the reporting officer shall draw up the probation report. The report shall indicate whether the work of the staff member has proved adequate to justify retention in his or her post, whether it is recommended that he or she be dismissed, or whether, by way of exception, it is recommended that the probationary period be extended in accordance with Article 84(1) of the CEOS.

(d) The member of the contract staff then has eight working days in which to make known any comments. Once this period has elapsed, the probation report shall be closed.

(e) Where the probation report recommends dismissal or, by way of exception, extension of the probationary period in accordance with Article 84(1) of the CEOS, the report and the comments shall immediately be transmitted to the AACC by the staff member's direct superior.

- (4) If the outcome of the probationary period in a new function group immediately following a previous contract in a lower function group is unsatisfactory, the AACC shall endeavour to identify vacant posts within the Agency corresponding to the previous function group and to the contract staff member's profile. If such vacant posts are identified, the AACC may re-employ the staff member in his or her

previous function group. The new contract shall be concluded in the grade, step and seniority that the staff member previously had in that function group.

TITLE III — Conditions of employment and career development

Article 10 — Changing function group

- (1) In application of Article 87(4) of the CEOS, a CA 3a shall advance to a higher function group by taking part in a general selection procedure.
- (2) The AACC may also, by way of exception, organise an exercise enabling the contract staff to advance to the next function group by taking part in a general selection procedure organised by the AACC in accordance with the procedure that it shall set out in advance, within the framework set by this Article.
- (3) When deciding whether to organise such an exercise and determining the function groups covered by the exercise, the AACC shall take into account in particular the existing staff at the S2R JU for each of the function groups, the commitment forecasts and the available funds.
- (4) When it decides to organise such an exercise, the AACC shall set the specific eligibility criteria for the exercise by means of an administrative notice. When setting the criteria, the AACC shall exclude from participation in the exercise contract staff who:
 - have served as contract staff at the S2R JU or in Union agencies, or institutions without interruption between the contracts for less than 2 years;
 - have not been reclassified in the next grade in the same function group, in accordance with Article 87(3) of the CEOS.

Furthermore, contract staff should have the qualifications required for advancing to the function group for which they are applying as part of the exercise.

- (5) Where a contract staff is engaged in the next function group at the close of the exercise provided for in this Article, the AACC shall conclude a new contract and shall apply the provisions of Article 3(2), (3) and (4)(a) of Annex III.

Article 11 — Mobility within S2R JU and between S2R JU and other Union agencies and institutions

- (1) Mobility of contract staff within S2R JU may imply publication of the vacancy.

The AACC may issue an internal notice describing the process applicable to internal selection procedures.

Following internal mobility, the contract staff concerned is assigned to new tasks without impact on the current contract of employment³ with S2R JU.

- (2) In order to facilitate the mobility of contract staff between S2R JU and the Union agencies and institutions and make the best possible use of the skills available, S2R JU may organise a selection procedure similar to the general selection procedure provided for in Article 3 of Annex I reserved for contract staff already employed by S2R JU and the Union agencies and institutions.

To this end, vacant contract staff posts may be published at S2R JU, if not already internally published, and be accessible to other Union agencies and institutions. Where they have the qualifications, skills and experience required to perform the tasks set out in the vacancy notice, CA 3a in S2R JU and Union agencies and institutions who belong to the same function group as the one published in the vacancy notice and who have served for at least three years as contract staff within S2R JU or an Union agency or institution may apply directly to S2R JU. The post shall also be open to CA 3a who belong to the function group below the one published in the vacancy notice who have passed at S2R JU a general selection procedure under the exercise referred to in Article 10.

- (3) If the S2R JU deems it advisable, the published post referred to in paragraph 2 may be opened to CA 3b from the Union institutions. In order to be able to apply, CA 3b staff must belong to the same function group as the one published in the vacancy notice, have served as CA 3b staff for at least three years within the institution and have the qualifications, skills and experience required to carry out the tasks set out in the vacancy notice. If the selection procedure for CA 3a staff as referred to in paragraph 2 is unsuccessful, applications from CA 3b staff may be examined by S2R JU before resorting to the selection procedure referred to in Article 2(2) or Article 3 of Annex I.
- (4) For the engagement of CA 3a selected in accordance with the procedure in paragraph 2, except the mobility within the same Agency in the same function group, the AACC shall conclude a new contract and apply the following provisions:
- i. in Article 1 of Annex III, in the case of a change of agency, or institution; or
 - ii. in Article 10(5), in the case of engagement in the next function group under the exercise referred to in Article 10.
- (5) For the engagement of CA 3b from a Union institution, selected in accordance with the procedure in paragraph 3, the AACC shall conclude a CA 3a contract and apply Article 2 of Annex III.

TITLE IV — End of contract

Article 12 — Notice of end of contract

- (1) The period of notice shall be set in accordance with Article 47 of the CEOS.

³ Except in case of an amendment of contract to change the internal assignment.

Fixed-term contracts that are not renewed shall end on their termination date without notice being served.

- (2) Contract staff wishing to resign must formalise their request by writing to the AACC at the latest on the day before the first day of the notice period, clearly stating that they wish to leave the service. Contract staff shall inform their line manager and their Agency entity in charge of human resources beforehand.
- (3) If the member of the contract staff, the unit to which he or she is assigned and the AACC are in agreement, the period of notice may be shorter than that provided for in paragraph 1.
- (4) Paragraphs 1 to 3 shall apply by analogy to the probationary period provided for in Article 84 of the CEOS in accordance with the procedure set out in Article 9.

TITLE V —final provisions

Article 13– Guidance

The Agency entity in charge of human resources may draw up a Guide for the Agency's entities indicating procedures and good practices to achieve the objectives of this Decision.

Article 14 — Final provisions and entry into force

- (1) The Commission's Decision C(2017)6760 of 16 October 2017 on the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union, governing the conditions of employment of contract staff employed by the Agency under the terms of Articles 3a and 3b thereof does not apply by analogy at the S2R JU.
- (2) This Decision shall take effect on the day following that of its adoption.
- (3) These general implementing provisions shall also apply to contract staff selected on the basis of S2R selection procedures for contract staff and still on an open reserve list who receive an offer of employment on or after the day after the entry into force of this Decision.

Contract staff shall not have to retake the selection tests referred to in Article 2(2)(c) or 3(6) of Annex I if they have passed equivalent selection tests as part of their selection under S2R selection procedures for contract staff.

Done at Brussels, on 19 July 2019

For the Governing Board,

Henrik HOLOLEI
The Chairperson

Annex I - Contract staff selection procedure

Annex II - Taking account of qualifications and professional experience for purposes of grading contract staff in their function group

Annex III - Rules applicable to changes in engagement following a contract with S2R JU or with another Union Agency or Institution