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COMMISSION DECISION

of 16.10.2017

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 Commission under the terms of Articles 3a and 3b thereof

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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 ('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, Title IV of the CEOS,

After consulting the Central Staff Committee,

After consulting the Staff Regulations Committee,

Whereas:

- (1) The number of contract staff employed by the Commission has considerably increased since this category of staff was created in 2004. Contract staff accounted for around 20 % of Commission staff in 2015 and they fulfil an essential role in many of the Commission's activities and processes.
- (2) This high number of contract staff requires that they be better integrated within the Commission by providing them with more prospects for development as part of the talent management policy. 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 and within departments. The possibilities for recruitment through internal competitions created by the Staff Regulations in 2014 must also become tools for extending the careers of the most deserving members of the contract staff.
- (3) The provisions governing the conditions of employment of contract staff have been adapted several times since 2004 and are currently governed by Commission Decision C(2011) 1264 of 2 March 2011, as amended. It is necessary to revise these provisions in order to adapt them to the new needs and recent developments, particularly in the selection procedure and statutory framework, following the changes resulting from the revision of the Staff Regulations and the CEOS that have been in force since 1 January 2014.

¹ OJ L 56, 4.3.1968, p. 1, as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ L 287/15 of 29.10.2013).

- (4) Revision of the provisions governing the conditions of employment of contract staff is entirely consistent with the Commission's talent management policy. The objective of this revision 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 under Article 3a. 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 internal competitions or an exercise enabling contract staff under Article 3a to move into the next function group.
- (5) In order to make mobility easier, it is important to strengthen the link between contract staff employed by the Commission and those employed by executive agencies by using common guidelines for the selection and management of contract staff.
- (6) For the same reason, it is also important to align the employment conditions of contract staff under Article 3a and Article 3b of the CEOS more closely, in particular for grading upon entry and the annual appraisal.
- (7) Given the special position and key role of Article 3a contract staff employed in EU delegations, allowing such staff to fill certain posts within the delegations that involve leading and managing a team of contract and local staff could offer them additional prospects for advancement.
- (8) More generally, the rules and provisions applicable to contract staff should be simplified and should provide greater 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.
- (9) For reasons of clarity and legal certainty, Commission Decision C(2011) 1264 of 2 March 2011 should be replaced by this Decision.

HAS ADOPTED THESE GENERAL IMPLEMENTING PROVISIONS:

TITLE I — General provisions

Article 1 – Scope and terminology

This Decision shall apply to the conditions of employment of contract staff covered by Article 3a of the CEOS ('CA 3a') and contract staff covered by Article 3b of the CEOS ('CA 3b') engaged by the European Commission:

- in its departments, in particular administrative offices, representations and EU delegations;
- in the European Personnel Selection Office (EPSO);
- in the Publications Office of the European Union (OP);
- in the European Anti-Fraud Office (OLAF).

For the purposes of this Decision, the European Anti-Fraud Office (OLAF), the Publications Office of the European Union (OP) and the European Personnel Selection Office (EPSO) shall be treated in the same way as the Commission departments.

The terms 'CA 3a' and 'CA 3b' are used to refer exclusively to these categories, while the term 'contract staff' refers to both types of contract staff.

TITLE II – Conditions of engagement

Article 2 – Selection

- (1) Engagement as a ‘CA 3a’ or ‘CA 3b’ 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 Empowered to Conclude Contracts of Employment (‘AECE’) may recruit as a CA 3a or CA 3b a candidate who has passed a recruitment competition for officials considered to be appropriate to the duties to be performed. The AECE shall inform the Joint Committee annually of the use made of this provision.
- (3) By way of derogation from paragraph 1, the Director-General of the Directorate-General for Human Resources (‘DG HR’) may authorise the engagement as a CA 3a or CA 3b of an official who has been granted leave on personal grounds under Article 40(2)(ii) of the Staff Regulations.

Article 3 – Function groups

The AECE 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.

The recruiting department 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 AECE reserves the right to request proof of such equivalence.

Article 5 – Classification in the function group

- (1) In accordance with Article 86(1) and Article 89(1) of the CEOS, the AECE 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 AECE shall establish a reference date from which experience shall be taken into account.

- (2) Without prejudice to Articles 9, 10 and 11, contract staff engaged in Function Group I shall be classified in grade 1.
- (3) Without prejudice to Articles 9, 10 and 11, 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 AECE may, at the request of a department, 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). CA 3a grading shall be carried out within the range set in Article 86 of the CEOS. The department shall justify its request to the AECE 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 9, 10 and 11, 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.

For CA 3a staff, 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.

For CA 3b staff classified in the first grade of their function group at the time of recruitment, grading shall be reviewed upon renewal of their contract once they have been employed for at least three years. To this end, paragraphs 1, 3 and 5 shall apply *mutatis mutandis* to the period up to the contract renewal.

Article 6 – Classification in the grade

- (1) In accordance with Article 86(1), second subparagraph, and Article 89(1) of the CEOS, and without prejudice to Articles 9 and 10, 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 AECE shall grant 24 months' additional seniority in the step to a CA 3a 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 CA 3a contracts

- (1) In application of Article 85 of the CEOS, subject to passing the selection procedure set out in Article 2 and without prejudice to Article 2(3):
 - CA 3a staff shall be engaged for an initial period of at least one year and at most two years or, in the case of the Commission's delegations and representations, for an initial duration of at least two years and at most three years;
 - if the contract is renewed, the duration of the contract shall be not less than one year;
 - if the contract is renewed again, the contract shall be concluded for an indefinite period.
- (2) By way of derogation from paragraph 1, first and second indents, the recruiting department may ask the AECE for other contract durations, in particular a minimum duration of six months to cover maternity or sick leave.
- (3) In the event of interruption, the contract may not be renewed.

Article 8 – Duration of CA 3b contracts

- (1) In application of Article 88 of the CEOS, subject to passing the selection procedure in Article 2 and without prejudice to Commission decisions on the maximum duration for the recourse to non-permanent staff in its services, and to Article 2(3):
 - the standard duration of an initial CA 3b contract shall be between at least one year and at most three years;
 - if the contract is renewed, the standard duration of the renewal shall be at least one year according to the needs of the service.
- (2) By way of derogation from paragraph 1, the recruiting department may ask the AECE for other contract durations, although the initial contract may not exceed three years, in particular a minimum duration of six months to cover maternity or sick leave.
- (3) In the event of interruption, the contract may not be renewed.
- (4) In any case, the total duration of engagement of a CA 3b may not exceed six years, including all tasks rendered in all function groups as a CA 3b.

Article 9 – *Change of assignment*

- (1) If a CA 3a changes assignment in the Commission, the AECE shall amend the ongoing contract.
- (2) If a CA 3b changes assignment in the Commission, the AECE shall amend the ongoing contract.

Article 10 – *Successive contracts*

- (1) The engagement by the Commission of a CA 3a or CA 3b immediately after a CA 3a or CA 3b contract with the Commission or another 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 11 – *Probationary period*

- (1) Without prejudice to Articles 9 and 10, contract staff shall serve a probationary period in accordance with Article 84 of the CEOS.

Where an initial six-month contract is being renewed, the first six months 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 and appeal assessor, shall apply *mutatis mutandis* to the designation of the reporting officer and the countersigning officer for the probation report. These competences shall be exercised by the persons in the corresponding posts 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 five 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 and send it to the countersigning officer. 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 countersigning officer shall have five working days in which to comment and to countersign the report, which is sent to the staff member.

- (e) 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.
- (f) 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 AECE by the staff member's direct superior.

Except for CA 3b staff, the AECE shall obtain the opinion of the Joint Reports Committee provided for in Article 34 of the Staff Regulations before deciding on the action to be taken with regard to the probationary period.

- (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 AECE shall endeavour to identify vacant posts within the institution corresponding to the previous function group. If such vacant posts are identified, the AECE 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 12 – Annual appraisal and reclassification in the next grade

- (1) In application of Article 87(1) of the CEOS, the ability, efficiency and conduct in the service of each CA 3a engaged for a period of a year or more shall be subject to an annual appraisal report covering all the professional activities of the CA 3a for the period from 1 January to 31 December of the previous year.

The procedure for this annual appraisal exercise is set out in the Commission Decision on general provisions for implementing Article 87(1) of the CEOS.

- (2) In accordance with Article 87(3) of the CEOS, the Commission shall organise every year a reclassification exercise for CA 3a in accordance with the procedure set out in the Commission Decision on general provisions for implementing Article 87(3) of the CEOS.
- (3) Starting from the third year of engagement as a CA 3b, including after contract renewal, paragraph 1 shall apply *mutatis mutandis* to CA 3b staff for the reference period from 1 January to 31 December of the previous year.

Article 13 – 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 AECE may also, by way of exception, organise an exercise enabling the CA 3a to advance to the next function group by taking part in a general selection procedure organised by the AECE 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 AECE shall take into account in particular the existing staff at the Commission for each of the function groups, the commitment forecasts and the available funds.
- (4) When it decides to organise such an exercise, the AECE shall set the specific eligibility criteria for the exercise by means of an administrative notice. When setting the criteria, the AECE shall exclude from participation in the exercise CA 3a staff who:
- have served as CA 3a staff at the Commission for less than three years;
 - have not been reclassified in the next grade in the same function group, in accordance with Article 87(3) of the CEOS.
- Furthermore, CA 3a 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 CA 3a is engaged in the next function group at the close of the exercise provided for in this Article, the AECE shall conclude a new contract and shall apply the provisions of Article 5(2), (3) and (4)(a) of Annex III.

Article 14 – Mobility within the Commission and between the Commission and the executive agencies

- (1) In order to facilitate the mobility of contract staff within the Commission departments and between these departments and the executive agencies and make the best possible use of the skills available, departments may organise a selection procedure similar to the general selection procedure provided for in Article 2(6) of Annex I reserved for CA 3a already employed by the Commission and the executive agencies.
- To this end, vacant CA 3a posts may be published internally at the Commission and the executive agencies. Where they have the qualifications, skills and experience required to perform the tasks set out in the vacancy notice, CA 3a staff in Commission departments and executive agencies 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 CA 3a staff within the Commission or an executive agency may apply directly to the departments concerned. The post shall also be open to CA 3a staff who belong to the function group below the one published in the vacancy notice who have passed a general selection procedure under the exercise referred to in Article 13.
- (2) The same procedure for publication and selection as the one provided for in paragraph 1 may be followed for certain posts open to Function Groups III and IV in EU delegations, which involve, in particular, leading and managing a team of contract or local staff. Candidates must have served as CA 3a staff for at least four years within the Commission and fit the profile required to fill the vacant post.

- (3) If the department deems it advisable, the published post referred to in paragraph 1 may be opened to CA 3b staff. 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 Commission 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 1 is unsuccessful, applications from CA 3b staff may be examined by the department concerned before resorting to the selection procedure referred to in Article 2(2) of Annex I.
- (4) For the engagement of CA 3a staff selected in accordance with the procedure in paragraphs 1 and 2, the AECE shall amend the contract, except in the case of (i) a change of institution, in which case the AECE shall conclude a new contract and apply the provisions in Article 1 of Annex III, and (ii) engagement in the next function group under the exercise referred to in Article 13, in which case Article 13(5) shall apply.
- (5) For the engagement of CA 3b staff selected in accordance with the procedure in paragraph 3, the AECE shall conclude a CA 3a contract and apply Article 3 of Annex III.
- (6) This Article shall apply without prejudice to the mobility of CA 3a staff organised pursuant to Articles 2 and 3 of Annex X to the Staff Regulations.

Article 15 – Participating in an internal competition for officials

Contract staff who meet the conditions set out in Article 82(7) of the CEOS may take part in the internal competitions organised by the Appointing Authority within the limits set in that Article.

TITLE IV – End of contract

Article 16 – Notice of end of contract

- (1) The period of notice shall be set in accordance with Article 47 of the CEOS.
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 AECE 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 department's human resources unit beforehand.
- (3) If the member of the contract staff, the department to which he or she is assigned and the AECE 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 11.

TITLE V - Transitional and final provisions

Article 17 – Private-law contracts

- (1) The Commission shall not conclude any new contracts of employment or extensions of contracts governed by the national law of a Member State of the European Union. Traineeships within the meaning of Commission Decision of 2 March 2005 ‘Rules governing the official traineeships scheme of the European Commission’ and the Decision of the Director-General of the JRC of 16 March 2007 ‘Rules governing the traineeship scheme of the Joint Research Centre’ shall not be considered to be an employment contract within the meaning of this Article.
- (2) By way of derogation from the previous paragraph:
 - (a) the Directorate-General for Humanitarian Aid (ECHO) may continue, for the management of Commission humanitarian aid in non-member countries, to have recourse to individual experts employed under the labour laws of an EU Member State. These individual experts shall be employed in a non-member country without prejudice to their own training needs or administrative obligations, which should be fulfilled at the central office, or to missions to be carried out as part of humanitarian aid management in other non-member countries. They may, by way of exception and depending on circumstances related to the management of emergency assistance affecting one or more EU Member States, be deployed within the European Union for a period which may not in any case exceed one month (calculated over a six-month period).
 - (b) as regards staff of the Joint Research Centre Directorate-General, specific provisions, including appropriate selection procedures, shall be introduced in order to organise, within the limits of the available budget, the gradual conversion into contracts under the CEOS of contracts which may be concluded under the labour laws of a Member State of the European Union, in order to meet the needs of the JRC with the aim of fulfilling obligations in the field of cooperation, training and scientific education.

Article 18 – Transitional provisions

- (1) Persons who applied as part of the call for expressions of interest published pursuant to Commission Decisions C(2013) 4459 of 25 July 2013 and SEC(2014) 543 of 15 October 2014 may be recruited as CA 3b staff on the basis of this Decision and in accordance with Article 2(6) of Annex I as long as no selection procedure has been organised pursuant to Article 2(2)(c) of Annex I. The exception referred to in the first paragraph of Article 3 of Annex I concerning the composition of the selection board shall also apply.
- (2) A selection procedure shall be deemed to have been organised when selection tests, as provided for in Article 2(2)(c) of Annex I have been put in place, which will allow for a reasonable delay between requesting the tests and issuing the results. The date on which the selection tests are deemed to have been organised within the meaning of this paragraph shall be appropriately communicated by DG HR.
- (3) CA 3b staff recruited pursuant to Commission Decisions C(2013) 4459 of 25 July 2013 and PV(2014) 2101 of 30 October 2014 must pass the selection tests provided for in Article 2(2)(c) of Annex I prior to their contract being renewed beyond four years of engagement. They shall be given the opportunity to take these

tests at the latest three months before the end of the three-year period. CA 3b staff who have already served 2 years and 9 months on the date of entry into force of these general implementing provisions shall be given the opportunity to take the tests as soon as possible.

- (4) The first sentence of Article 18(3), first paragraph, shall apply as soon as this Decision enters into force to CA 3b staff who are beyond their third year of engagement on the date of entry into force.

Article 19 – Monitoring and evaluation

- (1) DG HR shall be responsible for monitoring the implementation and actual application of this Decision within the Commission, without prejudice to the subsequent creation of a joint committee under the terms of Article 4 of the Commission Decision of 15 July 2005 on improving social dialogue in the Commission through Joint Committees or any amendment thereof.
- (2) DG HR shall draw up a Guide for the Human Resources departments in the Directorates-General and services indicating procedures and good practices to achieve the objectives of this Decision.

Article 20 – Final provisions and entry into force

- (1) These general implementing provisions shall enter into force on 1 November 2017.
- (2) Commission Decisions C(2011) 1264 of 2 March 2011, C(2013) 4459 of 25 July 2013, C(2013) 8967 of 16 December 2013 and PV(2014) 2101 of 30 October 2014 are hereby repealed.
- (3) These general implementing provisions shall also apply to contract staff selected on the basis of Commission Decision C(2011) 1264 of 2 March 2011 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) of Annex I if they have passed equivalent selection tests as part of their selection under Commission Decision C(2011) 1264 of 2 March 2011.

Done at Brussels, 16.10.2017

For the Commission
Günther OETTINGER
Member of the Commission