

**DECISION AB n° 07/2012**

**ON TEMPORARY OCCUPATION OF MANAGEMENT POSTS**

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing the Agency for the Cooperation of Energy Regulators (hereafter referred to as "ACER Regulation" and "ACER"), in particular Article 28(2), thereof;

HAVING REGARD to the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities (hereafter "CEOS"), as laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 and the amendments thereto, and in particular Article 7(2) of the Staff Regulations and Article 10 of the CEOS;

After the consultation of the Staff Committee of the Agency and in agreement with the European Commission pursuant to Article 28(2) of Regulation (EC) No 713/2009 and Article 110 of the Staff Regulations;

Whereas,

- (1) Rules should be laid down for the application of Article 7(2) of the Staff Regulations, which provides that the Appointing Authority may call upon temporary agent to occupy a post in their function group in a grade which is higher than their own grade, such temporary posting being limited to one year except where it is to replace a temporary agent who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave
- (2) Exceptionally and upon due justification, the Appointing Authority may decide to extend the temporary posting beyond one year, also in other cases than the ones explicitly provided for in the Staff Regulations, when it is considered that this is required in view of the interest of the service and necessary for guaranteeing fair treatment of the staff member concerned.

- (3) It is necessary to adopt rules on temporary postings on the basis of Article 7(2) of the Staff Regulations which should take into account in a more appropriate manner the need to recognise the efforts made by temporary agent to temporarily ensure the continuity of the service and the principle of equitable treatment.
- (4) Article 7(2) should apply only where the temporary agent is called upon to assume temporarily duties which entail responsibilities substantially greater than those involved in his/her own post. Only the difference in the level of responsibilities between non-management and management (not advisory)<sup>1</sup> posts and between management posts of different levels can be considered as substantial for the purpose of applying Article 7(2) of the Staff Regulations.
- (5) The rationale of Article 7(2) is to grant to the temporary agent who takes up duties which entail responsibilities substantially greater than those involved in his/her own post for a substantial period a remuneration which corresponds to those greater responsibilities<sup>2</sup>.
- (6) It is necessary to ensure that Article 7(2) is applied in an appropriate manner in view of the career system, in which there is a high degree of separation of grade and duties, as confirmed by the Court of First Instance<sup>3</sup>.
- (7) Deputising arrangements are to be distinguished from temporary postings and are not covered by this Decision.

HAS DECIDED AS FOLLOWS:

### *Article 1*

#### *Posts to which temporary postings may be made*

The main middle and senior management posts which a temporary agent may be called upon to occupy on a temporary basis shall be:

- Director post in grade AD 14 and equivalent;
- Head of Department posts in grades AD 9 to AD 12 and equivalent.

### *Article 2*

#### *Conditions for temporary postings*

Temporary postings may be made:

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<sup>1</sup> Middle and senior management functions as defined in the Decision AB No. 24/2011 On Middle Management Staff.

<sup>2</sup> COJ, C 5/70, Prelle/Commission.

<sup>3</sup> CFI, T-56/07P, Commission/Economidis.

- (1) where a new or vacant management post cannot be filled in the short term;
- (2) to replace a temporary agent who is seconded to another post in the interests of the service, is called up for military service or is absent on protracted sick leave or for other reasons preventing him/her from exercising his function.

The above-mentioned situations shall, as a rule, involve periods lasting longer than three months. Only a full-time and uninterrupted absence of the job holder can give rise to a temporary posting.

Only established temporary agents who are not serving their probationary period can be called upon to temporarily occupy a post within the meaning of Article 7(2) of the Staff Regulations.

### *Article 3*

#### *Reference grade*

For the purpose of calculating the differential allowance, the "reference grade" for a temporary posting will be fixed as follows:

- (1) As regards Director post and equivalent as defined in Article 1, the reference grade shall be grade AD 14.
- (2) As regards Head of Department posts and equivalent as defined in Article 1, the reference grade shall be as a rule<sup>4</sup>:
  - (a) where the post is published, the lowest grade in the range for which the post is published, grade AD 9 for the range AD 9 - AD 12;
  - (b) where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD 9 or as set by the Appointing Authority after consultation of the Head of the Department concerned or in case of unavailability the Head of the Administration Department.

### *Article 4*

#### *Differential allowance*

From the beginning of the fourth month of a temporary posting, the temporary agent concerned may receive a differential allowance equal to the difference in current remuneration of the temporary agent and the remuneration according to the level of the temporary posting, as follows:

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<sup>4</sup> Where the level of a post is fixed at a single grade, this grade is the reference grade for the purpose of calculating the differential allowance.

- (1) If the temporary agent is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of the temporary agent throughout the relevant period and the remuneration he/she would receive if he/she was promoted to the reference grade<sup>5</sup>.
- (2) In duly justified circumstances where the temporary agent is in one of the grades below the grade immediately below the reference grade, as the differential allowance cannot be calculated by analogy to a promotion, it shall be equal to the difference between the remuneration of the temporary agent throughout the relevant period and the remuneration he/she would receive if he/she was newly recruited in the reference grade. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
- (3) If the temporary agent is in a grade equal to or above the reference grade, except where the temporary agent already receives the benefit on the basis of his/her post of assignment, the remuneration of the temporary agent is increased according to Articles 44 and 46 of the Staff Regulations.

The increase in remuneration according to Articles 44 and 46 of the Staff Regulations will be calculated either on the basis of the grade of the temporary agent concerned, or on the basis of the reference grade of the post that the temporary agent temporarily occupies, depending on which option is the most favourable for the temporary agent concerned<sup>6</sup>.

#### *Article 5*

##### *Management experience*

Management experience acquired through a temporary posting shall be taken into account for eligibility purposes in the context of applications for management positions.

#### *Article 6*

##### *Successive periods of temporary posting*

Where the same temporary agent is the subject of two or more temporary postings in respect of the same functions and those postings are consecutive, the second temporary posting shall be considered as a continuation of the first and the differential allowance shall not be discontinued during the first three months of the second temporary posting.

For the purposes of this provision, a subsequent posting shall be considered to be consecutive if it begins no longer than three months after the end of the previous posting.

<sup>5</sup> Taking account of the provision regarding non-cumulation, as provided in Conclusion 240/05 of the Heads of Administration (see Administrative Notice N° 48-2005), this remuneration will be increased according to Articles 44 and 46 of the Staff Regulations.

<sup>6</sup> The amount of the benefit shall be calculated in accordance with the method laid down in Conclusion 240/05 of the Heads of Administration (see Administrative Notice n° 48-2005).

## **Article 7**

### *Procedure for temporary postings*

- (1) Where the conditions in Article 2 are met, the Head of the Department concerned or in case of unavailability the Head of the Administration Department may submit a proposal for a temporary posting, stating the reasons and providing all relevant information. The temporary posting is proposed to the Appointing Authority after the Human Resources section has examined the application.
- (2) The effective date of a temporary posting is fixed by the Appointing Authority in the temporary posting decision pursuant to Article 7(2), taking account of the proposal submitted by the Head of the Department concerned or the Head of the Administration Department.
- (3) Abolition of the post on which a temporary posting has been made as a result of an amendment to the organisation chart automatically entails termination of the temporary posting.

## **Article 8**

### *Entry into Force*

This Decision shall take effect on the day following that of its adoption.

Done in Ljubljana on 13 March 2012

For the Administrative Board:



Piotr Woźniak

Chairman of the ACER Administrative Board

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