

**DECISION OF THE ADMINISTRATIVE BOARD
OF THE EUROPEAN MARITIME SAFETY AGENCY
OF 19 March 2013**

**LAYING DOWN IMPLEMENTING RULES AS REGARDS TEMPORARY
OCCUPATION OF MANAGEMENT POSTS**

THE ADMINISTRATIVE BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY (EMSA),

Having regard to Regulation (CE) N° 1406/2002 of the European Parliament and of the Council establishing a European Maritime Safety Agency, amended by Regulations (CE) N° 1644/2003 and 724/2004, in particular Article 6,

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 259/68¹, and in particular Article 7(2) of the Staff Regulations and Article 10 of the Conditions of Employment,

After the consultation of the Staff Committee of EMSA and in agreement with the Commission pursuant to article 110 of the Staff Regulations,

Whereas:

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 officials 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 an official who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave².

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

¹ OJ L 56, 4.3.1968.

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 official concerned (see CFI, T-162/96, Forcheri/Commission).

recognise the efforts made by officials to temporarily ensure the continuity of the service and the principle of equitable treatment.

Article 7(2) should apply only where the official 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)³ 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.

The rationale of Article 7(2) is to grant to the official 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 responsibilities⁴.

It is necessary to ensure that Article 7(2) is applied in an appropriate manner in view of the new career system which came into effect on 1 May 2004, in which there is a high degree of separation of grade and duties, as confirmed by the Court of First Instance⁵.

Deputising arrangements as governed by the Commission's Rules of Procedure⁶ 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 an official may be called upon to occupy on a temporary basis shall be:

- Executive Director post;
- Head of Department posts;
- Head of Unit posts.

Article 2

Conditions for temporary posting

Temporary postings may be made:

- where a new or vacant management post cannot be filled in the short term;

³ Middle and senior management functions as defined in the relevant EMSA Decisions

⁴ COJ, C 5/70, Prelle/Commission.

⁵ CFI, T-56/07P, Commission/Economidis.

⁶ 2005/960/EC, Euratom of 15 November 2005, Article 27.

- to replace an official or 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 officials and 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. Any references to "officials" in this Decision shall apply also to temporary agents.

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 the Executive Director post as defined in Article 1, the reference grade shall be grade AD 14.
- (2) As regards Head of Department posts as defined in Article 1, the reference grade shall be the grade in which the post is published from AD12 to AD13. Where the post is filled by transfer in the interest of the service or the post is not vacant, grade AD12 or AD13 as set by the Appointing Authority.
- (3) As regards Head of Unit posts as defined in Article 1, the reference grade shall be as a rule^{7 8}:

where the post is published, the grade in which the post is published, from AD9 to AD12.

Where the post is filled by transfer in the interest of the service or where the post is not vacant, grade AD9, AD10, AD11 or AD12 as set by the Appointing Authority after consultation of the relevant Head of Department.

Article 4

Differential allowance

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

⁷ 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.

⁸ However, as regards middle management posts, the reference grades for temporary postings either starting in the period between 14 December 2006 (judgement of the Civil Service Tribunal in case F 122/05) and 9 September 2008 (Commission Decision C(2008)5028 of 10 September 2008 fixes the levels of middle management posts at AD 9 / AD 14 or AD 13 / AD 14) or where the post on which the temporary posting was made was published in that same period, will be grades AD9, AD11 or AD13.

- (1) If the official is in the grade immediately below the reference grade, the differential allowance shall be equal to the difference between the remuneration of the official throughout the relevant period and the remuneration he/she would receive if he/she was promoted to the reference grade⁹.
- (2) In duly justified circumstances where the official 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 official throughout the relevant period and the remuneration he/she would receive if he/she was newly recruited in the reference grade⁹. The second step shall be awarded under the conditions laid down in the rules on step classification at recruitment.
- (3) If the official is in a grade equal to or above the reference grade, except where the official already receives the benefit on the basis of his/her post of assignment, the remuneration of the official 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 official concerned, or on the basis of the reference grade of the post that the official temporarily occupies, depending on which option is the most favourable for the official concerned¹⁰.

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 official 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.

⁹ 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.

¹⁰ 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 Unit responsible concerned 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 Unit 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 Unit responsible concerned.
- (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
Date of application

This Decision shall apply from the date following that of its adoption.

Done at Lisbon on 19 March 2013.

For the Agency:

Frans Van Rompuy

Chairman of the Administrative Board

