

# Official Journal

## of the European Union

# L 219



English edition

## Legislation

Volume 59

12 August 2016

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# EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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## II

(Non-legislative acts)

## DECISIONS

## COUNCIL DECISION (EU) 2016/1351

of 4 August 2016

**concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency <sup>(1)</sup>, and in particular Article 11(3)(a) thereof,

Whereas:

- (1) The Council, acting by unanimity, should lay down the Staff Regulations of personnel recruited directly by the European Defence Agency (hereinafter referred to as the 'Agency') under fixed-term contracts, selected among nationals of participating Member States.
- (2) The Staff Regulations should be such as to secure for the Agency the services of staff of the highest standard of ability and efficiency, recruited from among candidates from all participating Member States on the broadest possible geographical basis, and from the Union institutions.
- (3) Since the rules established by this Decision should replace those laid down in Council Decision 2004/676/EC <sup>(2)</sup>, that Decision should be repealed,

HAS ADOPTED THIS DECISION:

## TITLE I

## GENERAL PROVISIONS

*Article 1*

1. These Staff Regulations shall apply to staff engaged under contract by the European Defence Agency (hereinafter referred to as 'staff member').

Such staff shall be:

- temporary staff,
- contract staff,
- special advisers.

<sup>(1)</sup> OJ L 266, 13.10.2015, p. 55.

<sup>(2)</sup> Council Decision 2004/676/EC of 24 September 2004 concerning the Staff Regulations of the European Defence Agency (OJ L 310, 7.10.2004, p. 9).

2. For the purposes of these Staff Regulations, the authority authorised to conclude contracts (hereinafter referred to as 'AACC') shall be determined in accordance with the relevant provisions of Decision (CFSP) 2015/1835.
3. Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.

#### *Article 2*

A staff member whose contract is for more than one year shall be entitled to vote in elections and stand for election to the Staff Committee provided for in Article 138.

A staff member whose contract is for less than one year shall also be entitled to vote if he has been employed for at least six months.

### TITLE II

#### **TEMPORARY STAFF**

##### *CHAPTER 1*

##### ***General provisions***

#### *Article 3*

For the purposes of these Staff Regulations, 'temporary staff' means staff engaged to fill temporarily a post within the maximum number of posts authorised in the budget of the Agency.

For the purposes of these Staff Regulations, 'special adviser' means a person who, by reason of his special qualifications and notwithstanding gainful employment in some other capacity, is engaged to assist the Agency either regularly or for a specified period and who is paid from the total appropriations for the purpose under the relevant section of the budget.

#### *Article 4*

With the exception of the Chief Executive and the Deputy Chief Executive of the Agency who are subject to the provisions of Article 10(1) of Decision (CFSP) 2015/1835, temporary staff shall not be engaged for more than four years, but their engagement may be limited to any shorter duration.

Their contracts may only be renewed once for a maximum period of four years. The Steering Board shall adopt general provisions for giving effect to this Article.

#### *Article 5*

Temporary staff shall not be engaged for any purpose other than that of filling, in accordance with these Staff Regulations, the vacant posts within the maximum number of temporary posts authorised in the budget of the Agency.

*Article 6*

1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex IV are fulfilled.

2. With a view to ensuring full equality in practice between men and women in working life, which shall be an essential element to be considered in the implementation of all aspects of these Staff Regulations, the principle of equal treatment shall not prevent the Agency from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

3. The Agency shall determine, after consulting the Staff Committee, measures and actions to promote equal opportunities for men and women in the areas covered by these Staff Regulations, and shall adopt the appropriate provisions notably to redress such de facto inequalities as hamper opportunities for women in these areas.

4. For the purposes of paragraph 1, a person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others. The impairment shall be determined according to the procedure set out in Article 38.

A person with a disability meets the conditions laid down in Article 37(2)(d) if he can perform the essential functions of the job when reasonable accommodation is made.

'Reasonable accommodation', in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

The principle of equal treatment shall not prevent the AACC from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers.

5. Where persons covered by these Staff Regulations, who consider themselves wronged because the principle of equal treatment as set out in this Article has not been applied to them, establish facts from which it may be presumed that there has been direct or indirect discrimination, the onus shall be on the Agency to prove that there has been no breach of the principle of equal treatment. This provision shall not apply in disciplinary proceedings.

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. Such objectives may in particular justify stipulating a mandatory retirement age and a minimum age for drawing a retirement pension.

*Article 7*

1. Members of temporary staff in active employment shall have access to measures of a social nature, including specific measures to reconcile working life with family life, adopted by the Agency and to services provided by the Staff Committee. Former members of temporary staff may have access to limited specific measures of a social nature.

2. Members of temporary staff in active employment shall be accorded working conditions complying with appropriate health and safety standards at least equivalent to the minimum requirements applicable under measures adopted in these areas pursuant to the Treaties.

*Article 8*

1. The posts covered by these Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in an administrators' function group (hereinafter 'AD'), an assistants' function group (hereinafter 'AST') and a secretaries and clerks' function group (hereinafter 'AST/SC').
2. Function group AD shall comprise twelve grades, corresponding to administrative, advisory, linguistic and scientific duties. Function group AST shall comprise eleven grades, corresponding to executive, technical and clerical duties. Function group AST/SC shall comprise six grades, corresponding to clerical and secretarial duties.
3. Appointment shall require at least:
  - (a) in function groups AST and AST/SC:
    - (i) a level of post-secondary education attested by a diploma;
    - (ii) a level of secondary education attested by a diploma giving access to post-secondary education, and appropriate professional experience of at least three years; or
    - (iii) where justified in the interests of the service, professional training or professional experience of an equivalent level;
  - (b) in function group AD for grades 5 and 6:
    - (i) a level of education which corresponds to completed university studies of at least three years attested by a diploma; or
    - (ii) where justified in the interests of the service, professional training of an equivalent level;
  - (c) in function group AD for grades 7 to 16:
    - (i) a level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more;
    - (ii) a level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years; or
    - (iii) where justified in the interests of the service, professional training of an equivalent level.
4. A table showing types of posts is given in Annex VI. By reference to that table, the AACC may define the duties and powers attaching to each type of post after consulting the Staff Committee.

*Article 9*

1. The AACC shall, acting solely in the interests of the service and without regard to nationality, assign each member of temporary staff by appointment or transfer to a post in his function group which corresponds to his grade.

A member of temporary staff may apply for a transfer within the Agency.

2. A member of temporary staff may be called upon to occupy temporarily a post in a grade in his function group which is higher than his substantive grade. From the beginning of the fourth month of such temporary posting, he shall receive a differential allowance equal to the difference between the remuneration carried by his substantive grade and step, and the remuneration he would receive in respect of the step at which he would be classified if he were appointed to the grade of his temporary posting.

The duration of a temporary posting shall not exceed one year, except where, directly or indirectly, the posting is to replace a member of temporary staff who is seconded to another post in the interests of the service, called up for military service or absent on protracted sick leave.

#### *Article 10*

1. The grade and step at which temporary staff are engaged shall be stated in their contract.
2. Assignment of temporary staff to a post carrying a higher grade than that at which they were engaged shall be recorded in an agreement supplementary to their contract of service.

### *CHAPTER 2*

#### ***Rights and obligations***

#### *Article 11*

1. A member of temporary staff shall carry out his duties and conduct himself solely with the interests of the Agency in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside the Agency. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Agency.
2. A member of temporary staff shall not without the permission of the AACC accept from any government or from any other source outside the Agency any honour, decoration, favour, gift or payment of any kind whatsoever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.

Before recruiting a member of temporary staff, the AACC shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate shall inform the AACC, using a specific form, of any actual or potential conflict of interest. In such cases, the AACC shall take this into account in a duly reasoned opinion. If necessary, the AACC shall take the measures referred to in Article 12(2).

This Article shall apply *mutatis mutandis* to members of temporary staff returning from leave on personal grounds.

#### *Article 12*

1. A member of temporary staff shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.
2. Any member of temporary staff to whom it falls, in the performance of his duties, to deal with a matter referred to in paragraph 1 shall immediately inform the AACC. The AACC shall take any appropriate measure, and may in particular relieve the member of temporary staff from responsibility in this matter.
3. A member of temporary staff may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the Agency or which have dealings with the Agency, any interest of such kind or magnitude as might impair his independence in the performance of his duties.

*Article 13*

A member of temporary staff shall refrain from any action or behaviour which might reflect adversely upon his position.

*Article 14*

1. Members of temporary staff shall refrain from any form of psychological or sexual harassment.
2. A member of temporary staff who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the Agency. A member of temporary staff who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the Agency, provided the member of temporary staff has acted honestly.
3. 'Psychological harassment' means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.
4. 'Sexual harassment' means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender.

*Article 15*

1. Subject to Article 17, a member of temporary staff wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Agency, shall first obtain the permission of the AACC. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the member of temporary staff's duties or is incompatible with the interests of the Agency.
2. A member of temporary staff shall notify the AACC of any changes in a permitted outside activity or assignment, which occur after the member of temporary staff has sought the permission of the AACC under paragraph 1. Permission may be withdrawn if the activity or assignment no longer meets the conditions referred to in the last sentence of paragraph 1.

*Article 16*

If the spouse of member of temporary staff is in gainful employment, the member of temporary staff shall inform the AACC. Should the nature of the employment prove to be incompatible with that of the member of temporary staff and if the member of temporary staff is unable to give an undertaking that it will cease within a specified period, the AACC shall, after consulting the Staff Committee, decide whether the member of temporary staff shall continue in his post or be transferred to another post.

*Article 17*

1. A member of temporary staff who intends to stand for public office shall notify the AACC. The AACC shall decide, in the light of the interests of the service, whether the member of temporary staff concerned:
  - (a) should be required to apply for leave on personal grounds; or
  - (b) should be granted annual leave; or



(c) may be authorised to discharge his duties on a part-time basis; or

(d) may continue to discharge his duties as before.

2. A member of temporary staff elected or appointed to public office shall immediately inform the AACC. The AACC shall, having regard to the interests of the service, the importance of the office, the duties it entails and the remuneration and reimbursement of expenses incurred in carrying out those duties, take one of the decisions referred to in paragraph 1. If the member of temporary staff is required to take leave on personal grounds or is authorised to discharge his duties on a part-time basis, the period of such leave or part-time working shall correspond to the member of temporary staff's term of office.

#### *Article 18*

A member of temporary staff shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Members of temporary staff intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform the Agency thereof using a specific form. If that activity is related to the work carried out by the member of temporary staff during the last three years of service and could lead to a conflict with the legitimate interests of the Agency, the AACC may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The AACC shall, after consulting the Staff Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.

In the case of former senior members of temporary staff, the AACC shall, in principle, prohibit them, during the twelve months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of the Agency for their business, clients or employers on matters for which they were responsible during their last three years in the service.

In compliance with Article 31 of Decision (CFSP) 2015/1835, the Agency shall annually publish information on the implementation of the preceding subparagraph, including a list of the cases assessed.

#### *Article 19*

1. A member of temporary staff shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

2. A member of temporary staff shall continue to be bound by this obligation after leaving the service.

#### *Article 20*

1. A member of temporary staff has the right to freedom of expression, with due respect to the principles of loyalty and impartiality.

2. Without prejudice to Articles 13 and 19, a member of temporary staff who intends to publish or cause to be published, whether alone or with others, any matter dealing with the work of the Agency shall inform the AACC in advance.

Where the AACC is able to demonstrate that the matter is liable seriously to prejudice the legitimate interests of the Agency, the AACC shall inform the member of temporary staff of its decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the AACC shall be deemed to have had no objections.

*Article 21*

1. All rights in any writings or other work done by any member of temporary staff in the performance of his duties shall be the property of the Agency to whose activities such writings or work relate. The Agency shall have the right to acquire compulsorily the copyright in such works.
2. Any invention made by a member of temporary staff in the course of or in connection with the performance of his duties shall be the undisputed property of the Agency. The Agency may, at its own expense, apply for and obtain patents therefor in all countries. Any invention relating to the work of the Agency made by a member of temporary staff during the year following the expiration of his term of duty shall, unless proved otherwise, be deemed to have been made in the course of or in connection with the performance of his duties. Where inventions are the subject of patents, the name of the inventor or inventors shall be stated.
3. The Agency may in appropriate cases award a bonus, the amount of which shall be determined by the Agency, to a member of temporary staff who is the author of a patented invention.

*Article 22*

1. A member of temporary staff shall not, without permission from the AACC, disclose on any grounds whatsoever, in any legal proceedings, information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Agency so require and such refusal would not entail criminal consequences as far as the member of temporary staff is concerned. A member of temporary staff shall continue to be bound by this obligation after leaving the service.
2. The provisions of paragraph 1 shall not apply to a member or a former member of temporary staff giving evidence before the Court of Justice of the European Union or before the Disciplinary Board of the Agency on a matter concerning a servant or former servant of the Agency and/or of the European Union.

*Article 23*

A member of temporary staff shall reside either in the place where he is employed or at no greater distance therefrom as is compatible with the proper performance of his duties. The member of temporary staff shall notify the AACC of his address and inform it immediately of any changes of address.

*Article 24*

A member of temporary staff, whatever his rank, shall assist and tender advice to his superiors; he shall be responsible for the performance of the duties assigned to him.

A member of temporary staff in charge of any branch of the service shall be responsible to his superiors in respect of the authority conferred on him and for the carrying out of instructions given by him. The responsibility of his subordinates shall in no way release him from his own responsibility.

*Article 25*

1. A member of temporary staff who receives orders which he considers to be irregular or likely to give rise to serious difficulties shall inform his immediate superior, who shall, if the information is given in writing, reply in writing. Subject to paragraph 2, if the immediate superior confirms the orders and the member of temporary staff believes that such confirmation does not constitute a reasonable response to the grounds of his concern, the member of temporary staff shall refer the question in writing to the hierarchical authority immediately above. If the latter confirms the orders in writing, the member of temporary staff shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards.

2. If the immediate superior considers that the orders must be executed promptly, the member of temporary staff shall carry them out unless they are manifestly illegal or constitute a breach of the relevant safety standards. At the request of the member of temporary staff, the immediate superior shall be obliged to give such orders in writing.
3. A member of temporary staff who informs his superiors of orders which he considered to be irregular or likely to give rise to serious difficulties shall not suffer any prejudice on account of this.

#### *Article 26*

A member of temporary staff may be required to make good, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

A reasoned decision shall be given by the AACC authority in accordance with the procedure laid down in regard to disciplinary matters.

The Court of Justice of the European Union shall have unlimited jurisdiction in disputes arising under this provision.

#### *Article 27*

1. Any member of temporary staff who, in the course of or in connection with the performance of his duties, becomes aware of facts which give rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Agency, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of members of temporary staff of the Agency shall without delay inform his immediate superior, the Chief Executive of the Agency or, if he considers it useful, the Head of the Agency.

Information referred to in the first subparagraph shall be given in writing.

This paragraph shall also apply in the event of serious failure to comply with similar obligation on the part of any other person in the service of or carrying out work for the Agency.

2. A member of temporary staff shall not suffer any prejudicial effects on the part of the Agency as a result of having communicated the information referred to in paragraph 1, provided that he acted reasonably and honestly.
3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the member of temporary staff in the course of, proceedings in legal cases, whether pending or closed.

#### *Article 28*

1. A member of temporary staff who further discloses information as defined in Article 27 to the President of the Council of the European Union or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the Agency provided that both of the following conditions are met:

- (a) the member of temporary staff honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
- (b) the member of temporary staff has previously disclosed the same information to the Agency and has allowed the Agency the period of time set by it, given the complexity of the case, to take appropriate action. The member of temporary staff shall be duly informed of that period of time within 60 days.

2. The period referred to in paragraph 1 shall not apply where the member of temporary staff can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the member of temporary staff in the course of, proceedings in legal cases, whether pending or closed.

4. In accordance with Articles 29 and 168, the Agency shall put in place a procedure for the handling of complaints by members of temporary staff concerning the way in which they were treated after or as a consequence of their fulfilment of their obligations under Article 27 or under this Article. The Agency shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 168.

The AACC shall lay down internal rules, inter alia, on:

- the provision to the members of temporary staff referred to in Article 27(1) or in this Article of information on the handling of the matters reported by them,
- the protection of the legitimate interests of those staff members and of their privacy, and
- the procedure for the handling of complaints referred to in the first subparagraph of this paragraph.

#### *Article 29*

The Agency shall assist any member of temporary staff, in particular in proceedings against any person perpetrating threats, insulting or defamatory acts or utterances, or any attack to person or property to which he or a member of his family is subjected by reason of his position or duties.

It shall compensate the member of temporary staff for damage suffered in such cases, in so far as the member of temporary staff did not either intentionally or through grave negligence cause the damage and has been unable to obtain compensation from the person who did cause it.

#### *Article 30*

The Agency shall facilitate such further training and instruction for member of temporary staffs as is compatible with the proper functioning of the service and is in accordance with its own interests.

Such training and instruction shall be taken into account for purposes of promotion in their careers.

#### *Article 31*

Members of temporary staff shall be entitled to exercise the right of association; they may in particular be members of trade unions or staff associations.

#### *Article 32*

Members of temporary staff may submit requests concerning issues covered by these Staff Regulations to the AACC.

Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the member of temporary staff concerned. Any decision adversely affecting a member of temporary staff shall state the grounds on which it is based.

Specific decisions regarding appointment, establishment, promotion, transfer, determination of administrative status and termination of service of a member of temporary staff shall be published in the Agency. The publication shall be accessible to all staff for an appropriate period of time.

#### *Article 33*

The personal file of a member of temporary staff shall contain:

- (a) all documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;
- (b) any comments by the member of temporary staff on such documents.

Documents shall be registered, numbered and filed in serial order; the documents referred to in subparagraph (a) may not be used or cited by the Agency against a member of temporary staff unless they were communicated to him before they were filed.

The communication of any document to a member of temporary staff shall be evidenced by his signing it or, failing that, shall be effected by registered letter to the last address communicated by the member of temporary staff.

A member of temporary staff's personal file shall contain no reference to his political, trade union, philosophical or religious activities and views, or to his racial or ethnic origin or sexual orientation.

The fourth paragraph shall not however prohibit the insertion in the file of administrative acts and documents known to the member of temporary staff which are necessary for the application of these Staff Regulations.

There shall be only one personal file for each member of temporary staff.

A member of temporary staff shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to take copies of them.

The personal file shall be confidential and may be consulted only in the offices of the administration or on a secure electronic medium. It shall, however, be forwarded to the Appeal Board if an action concerning the member of temporary staff is brought.

#### *Article 34*

Members of temporary staff shall have the right to acquaint themselves with their medical files, in accordance with arrangements to be laid down by the Agency.

#### *Article 35*

Any decision requiring damage suffered by the Agency as a result of serious misconduct to be made good, as provided for in Article 26, shall be taken by the AACC after observing the formalities provided for in cases of dismissal for serious misconduct.

Decisions relating to individual members of the temporary staff shall be published as provided for in Article 32.

*Article 36*

The privileges and immunities enjoyed by members of the temporary staff are accorded solely in the interests of the Agency. Members of the temporary staff shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force.

When privileges and immunities are in dispute, the member of the temporary staff concerned shall immediately inform the Agency.

The laissez-passer provided for in the Protocol on the Privileges and Immunities of the European Union shall be issued to members of the temporary staff for whom it is required in the interests of the service.

*CHAPTER 3****Conditions of engagement****Article 37*

1. The engagement of temporary staff shall be directed to securing for the Agency the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States participating in the Agency.

Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.

No posts shall be reserved for nationals of any Member State. However, in the event of an observation of a significant imbalance between nationalities among temporary staff which is not justified by objective criteria, the principle of equality of Union citizens shall allow the Agency to adopt appropriate measures. Those appropriate measures shall be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted by the AACC, the Steering Board shall adopt general provisions for giving effect to this paragraph.

2. A member of the temporary staff may be engaged only on condition that:

- (a) he is a national of one of the participating Member States and enjoys his full rights as a citizen;
- (b) he has fulfilled any obligations imposed on him by the laws concerning military service;
- (c) he produces the appropriate character references as to his suitability for the performance of his duties;
- (d) he is physically fit to perform his duties; and
- (e) he produces evidence of a thorough knowledge of one of the languages of the participating Member States and of a satisfactory knowledge of another language of the participating Member States to the extent necessary for the performance of his duties.

3. The AACC shall adopt specific provisions on the procedures for recruitment of temporary staff, as necessary, within the framework of Decision (CFSP) 2015/1835.

*Article 38*

Before being engaged, a member of the temporary staff shall be medically examined by a medical officer authorised by the Agency in order that the Agency may be satisfied that he fulfils the requirements of Article 37(2)(d).

Where a negative medical opinion is given as a result of the medical examination provided for in the first subparagraph, the candidate may, within 20 days of being notified of this opinion by the Agency, request that his case be submitted for the opinion of a medical committee composed of three doctors chosen by the AACC from among the Agency's medical officers. The medical officer responsible for the initial negative opinion shall be heard by the medical committee. The candidate may refer the opinion of a doctor of his choice to the medical committee. Where the opinion of the medical committee confirms the conclusions of the medical examination provided for in the first paragraph, the candidate shall pay 50 % of the fees and of the incidental costs.

#### *Article 39*

1. A member of the temporary staff may be required to serve a probationary period not exceeding nine months.

Where, during his probationary period, a member of the temporary staff is prevented, by sickness, maternity leave under Article 52, or accident, from performing his duties for at least one month, the AACC may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on a probationary member of temporary staff may be made at any time during the probationary period if his work is proving obviously inadequate.

The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within 8 working days. The report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the AACC. On the basis of the report, the AACC may decide to dismiss that member of the temporary staff before the end of the probationary period, giving him one month's notice, or in exceptional circumstances, extend the probationary period for a maximum of six months and possibly assign that member of the temporary staff to another department for the remaining time of the probationary period.

3. Not less than one month before the expiry of the probationary period, a report shall be made on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his conduct and efficiency in the service. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within 8 working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period, the report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the AACC.

A member of the temporary staff whose work has not proved adequate to justify retention in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph, as well as on the basis of elements available to the AACC relating to the conduct of the member of the temporary staff with regard to Chapter 2 of Title II.

#### *Article 40*

1. A member of temporary staff shall be recruited at the first step in his grade.

The AACC may allow additional seniority up to a maximum of 24 months to take account of his professional experience. General implementing provisions shall be adopted to give effect to this Article.

2. A member of temporary staff who has been at one step in his grade for two years shall automatically advance to the next step in that grade, unless his performance has been evaluated as unsatisfactory pursuant to the annual report referred to in Article 41. A member of temporary staff shall advance to the next step in his grade within four years at the latest.

If a member of temporary staff is appointed head of unit, director or director-general, and provided that he has performed his new duties satisfactorily during the first nine months, he shall retroactively benefit from advancement by one step in his grade at the time the appointment comes into effect. This advancement shall lead to an increase in his basic monthly salary corresponding to the percentage between the first and the second step in each grade.

3. Where a member of the temporary staff is assigned to a post corresponding to a higher grade, as provided for in Article 10(2), he shall be placed in the initial step in that grade. However, members of the temporary staff in grades AD 9 to AD 13 carrying out the duties of head of unit who are appointed to a higher grade shall be placed in the second step of the new grade. The same arrangement shall apply to any member of the temporary staff who upon promotion is appointed director or above.

#### Article 41

The ability, efficiency and conduct in the service of each member of temporary staff shall be the subject of an annual report. That report shall state whether the performance level of the staff member has been satisfactory. The AACC shall lay down provisions conferring the right to lodge an appeal within the reporting procedure, which shall be exercised before lodging a complaint as referred to in Article 168(2).

The report shall be communicated to the member of temporary staff. He shall be entitled to make any comments thereon which he considers relevant.

### CHAPTER 4

#### **Working conditions**

#### Section A

#### **Parental or family leave**

#### Article 42

A member of temporary staff shall be entitled to up to six months of parental leave without basic salary for every child, to be taken during the first twelve years after the birth or adoption of the child. The duration of the leave may be doubled for single parents recognised under general implementing provisions adopted by the AACC and for parents of dependent children with a disability or a severe illness recognised by the medical officer. The minimum leave taken at any one time shall not be less than one month.

During parental leave, the member of temporary staff's membership of the social security scheme shall continue; the acquisition of pension rights, dependent child allowance and education allowance shall be maintained. The member of temporary staff shall retain his post, and continue to be entitled to advancement to a higher step or promotion in grade. The leave may be taken as full-time or half-time leave. Where parental leave is taken in the form of half-time leave, the maximum period provided for in the first paragraph shall be doubled. During parental leave, members of temporary staff shall be entitled to an allowance of EUR 919,02 per month, or 50 % of such sum if on half-time leave but may not engage in any other gainful employment. The full contribution to the social security scheme provided for in Articles 68 and 69 shall be borne by the Agency and calculated on the basis of the basic salary of the member of temporary staff.

However, in the case of half-time leave this provision shall apply only to the difference between the full basic salary and the proportionally reduced basic salary. For the part of the basic salary actually received, the member of temporary staff's contribution shall be calculated by using the same percentages as if he were in full-time employment.



The allowance shall be EUR 1 225,36 per month, or 50 % of such sum if the member of temporary staff is on half-time leave, for the single parents and parents of dependent children with a disability or a severe illness recognised by the medical officer as referred to in the first paragraph and during the first three months of parental leave where such leave is taken by the father during maternity leave or by either parent immediately after maternity leave or during or immediately after adoption leave.

The parental leave may be extended for a further six months with an allowance limited to 50 % of the amount referred to in the second paragraph. For single parents as referred to in the first paragraph, the parental leave may be extended for a further twelve months with an allowance limited to 50 % of the amount referred to in the fourth paragraph.

The amounts mentioned in this Article shall be updated in line with remuneration.

#### *Article 43*

In the case of medically certified serious illness or disability of a member of temporary staff's spouse, relative in the ascending line, relative in the descending line, brother or sister, the member of temporary staff shall be entitled to a period of family leave without basic salary. The total period of such leave shall not exceed nine months over the member of temporary staff's entire career.

The second paragraph of Article 42 shall apply.

### Section B

#### **Hours of work**

#### *Article 44*

1. Members of temporary staff in active employment shall at all times be at the disposal of Agency.
2. The normal working week shall range from 40 to 42 hours, the hours of the working day to be determined by the AACC. Within the same limits, the AACC may, after consulting the Staff Committee, determine the hours to be worked by certain groups of members of temporary staff engaged on particular duties.
3. A member of temporary staff may, moreover, be required because of the exigencies of the service or safety rules to remain on standby duty at his place of work or at home outside normal working hours. The AACC shall lay down detailed rules for the application of this paragraph after consulting the Staff Committee.
4. The AACC may introduce flexible working-time arrangements. Under those arrangements, entire working days shall not be granted for members of temporary staff in grade AD/AST 9 or higher. Those arrangements shall not be applicable to members of temporary staff to whom the provisions of Article 40(2) apply. Those members of temporary staff shall manage their working time in agreement with their superiors.

#### *Article 45*

1. A member of temporary staff may request authorisation to work part-time. The AACC may grant such authorisation if this is compatible with the interests of the service.
2. The member of temporary staff shall be entitled to authorisation in the following cases:
  - (a) to care for a dependent child under 9 years of age;

- (b) to care for a dependent child aged between 9 and 12, if the reduction in working time is no more than 20 % of normal working time;
- (c) to care for a dependent child until he reaches the age of 14 when the member of temporary staff is a single parent;
- (d) in cases of serious hardship, to care for a dependent child until he reaches the age of 14 if the reduction in working time is no more than 5 % of normal working time. In that case, the first two paragraphs of Article 3 of Annex I shall not apply. If both parents are employed in the service of the Union, only one shall be entitled to such reduction;
- (e) to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister;
- (f) to take part in further training; or
- (g) during the last three years before he reaches pensionable age, but not before the age of 58.

Where part-time work is requested in order to take part in further training, or during the last three years before reaching pensionable age, but not before the age of 58, the AACC may refuse authorisation or postpone its date of taking effect only in exceptional circumstances and for overriding service-related reasons.

Where such entitlement to authorisation is exercised to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister, or to take part in further training, the total of all such periods shall not exceed five years over the member of temporary staff's career.

3. The AACC shall reply to the member of temporary staff's request within 60 days.
4. The rules governing part-time work and the procedure for granting authorisation are laid down in Annex I.

#### *Article 46*

A member of temporary staff may request authorisation to work half-time in the form of job-sharing in a post identified by the AACC as appropriate for that purpose. The authorisation to work half-time by job-sharing shall not be limited in time. It may, however, be withdrawn by the AACC in the interests of the service giving the member of temporary staff six months' notice. Likewise, the AACC may, on application of the member of temporary staff concerned and giving at least six months' notice, withdraw the authorisation. In this case, the member of temporary staff may be transferred to a different post.

Article 54 and, except for the third sentence of the second paragraph, Article 3 of Annex I shall apply.

The AACC may lay down detailed rules for the application of this Article.

#### *Article 47*

A member of temporary staff may not be required to work overtime except in cases of urgency or exceptional pressure of work; night work and all work on Sundays or public holidays may be authorised only in accordance with the procedure laid down by the AACC. The total overtime which a member of temporary staff may be asked to work shall not exceed 150 hours in any six months.

Overtime worked by members of temporary staff in function group AD, and in function group AST 5 to 11 shall carry no right to compensation or remuneration.

As provided for in Annex III, overtime worked by members of temporary staff in grade AST 1 to AST 4 shall entitle them either to compensatory leave or to remuneration where the requirements of the service do not allow compensatory leave during the month following that in which the overtime was worked.

*Article 48*

A member of temporary staff who is expected to work regularly at night, on Saturdays, Sundays or public holidays shall be entitled to special allowances when doing shiftwork which is required by the Agency because of the exigencies of the service or safety rules and which is regarded by it as a regular and permanent feature.

The AACC shall determine the categories of members of temporary staff entitled to such allowances, and the rates and conditions thereof.

The normal working hours of a member of temporary staff on shiftwork must not exceed the annual total of normal working hours.

*Article 49*

A member of temporary staff shall be entitled to special allowances when required in accordance with a decision taken by the AACC because of the exigencies of the service or safety rules to remain on standby duty at his place of work or at home outside normal working hours.

The AACC shall determine the categories of members of temporary staff entitled to such allowances, the conditions for granting the allowances and also the rates thereof.

*Article 50*

Special allowances may be granted to certain members of temporary staff to compensate for particularly arduous working conditions.

The Agency shall determine the categories of beneficiaries, and the rates and conditions of such special allowances.

**Section C****Leave***Article 51*

Members of temporary staff shall be entitled to annual leave of not less than 24 working days nor more than 30 working days per calendar year, in accordance with the same rules as those laid down by common accord of the Union institutions.

Apart from this annual leave a member of temporary staff, may, exceptionally on application, be granted special leave. The rules relating to such leave are laid down in Annex II.

*Article 52*

Pregnant women shall, in addition to the leave provided for in Article 51, be entitled on production of a medical certificate to twenty weeks of leave. The leave shall start not earlier than six weeks before the expected date of confinement shown in the certificate and end not earlier than 14 weeks after the date of confinement. In the case of multiple or premature birth or the birth of a handicapped child, the duration shall be of 24 weeks. Premature birth for the purposes of this provision is a birth taking place before the end of the 34th week of pregnancy.

*Article 53*

1. A member of temporary staff who provides evidence of being unable to carry out his duties by reason of illness or accident shall be entitled to sick leave.

The member of temporary staff concerned shall notify the Agency of his incapacity as soon as possible and at the same time state his current address. He shall produce a medical certificate if he is absent for more than three days. This certificate must be sent on the fifth day of absence at the latest, as evidenced by the date as postmarked. Failing this, and unless failure to send the certificate is due to reasons beyond his control, the member of temporary staff's absence shall be considered as unauthorised.

The member of temporary staff may at any time be required to undergo a medical examination arranged by the Agency. If the examination cannot take place for reasons attributable to the member of temporary staff, his absence shall be considered as unauthorised as from the date that the examination is due to take place.

If the finding made in the examination is that the member of temporary staff is able to carry out his duties, his absence shall, subject to the fifth subparagraph, be regarded as unjustified from the date of the examination.

If the member of temporary staff considers the conclusions of the medical examination arranged by the AACC to be unjustified on medical grounds, he or a doctor acting on his behalf may within two days submit to the Agency a request that the matter be referred to an independent doctor for an opinion.

The Agency shall immediately transmit the request to another doctor agreed upon by the member of temporary staff's doctor and the Agency's medical officer. Failing such agreement within five days of the request, the Agency shall select a person from a list of independent doctors to be established for this purpose each year by common consent of the AACC and the Staff Committee. The member of temporary staff may within two working days object to the Agency's choice, whereupon the Agency shall choose another person from the list, which choice shall be final.

The independent doctor's opinion given after consultation of the member of temporary staff's doctor and the Agency's medical officer shall be binding. Where the independent doctor's opinion confirms the conclusion of the examination arranged by the Agency, the absence shall be treated as unjustified from the date of that examination. Where the independent doctor's opinion does not confirm the conclusion of that examination, the absence shall be treated for all purposes as having been justified.

2. If, over a period of 12 months, a member of temporary staff is absent for up to three days because of sickness for a total of more than 12 days, he shall produce a medical certificate for any further absence because of sickness. His absence shall be considered to be unjustified as from the thirteenth day of absence on account of sickness without a medical certificate.

3. Without prejudice to the application of the rules on disciplinary proceedings, where appropriate, any absence considered to be unjustified under paragraphs 1 and 2 shall be deducted from the annual leave of the member of temporary staff concerned. In the event that the member of temporary staff has no outstanding leave entitlement, he shall lose the benefit of his remuneration for the corresponding period.

4. The AACC may refer to the Invalidity Committee the case of any member of temporary staff whose sick leave totals more than 12 months in any period of three years.

5. A member of temporary staff may be required to take leave after examination by the Agency's medical officer if his state of health so requires or if a member of his household is suffering from a contagious disease.

In cases of dispute, the procedure laid down in the fifth to seventh subparagraph of paragraph 1 shall apply.

6. Members of temporary staff shall undergo a medical check-up every year either by the Agency's medical officer or by a medical practitioner chosen by them.

In the latter case, the practitioner's fees shall be payable by the Agency up to a maximum amount fixed for a period of no more than three years by the AACC.

#### *Article 54*

The annual leave of a member of temporary staff who is authorised to work part-time shall, for as long as he is so authorised, be reduced proportionally.

#### *Article 55*

Except in case of sickness or accident, a member of temporary staff may not be absent without prior permission from his immediate superior. Without prejudice to any disciplinary measures that may apply, any unauthorised absence which is duly established shall be deducted from the annual leave of the member of temporary staff concerned. If he has used up his annual leave, he shall forfeit his remuneration for an equivalent period.

If a member of temporary staff wishes to spend sick leave elsewhere than at the place where he is employed he shall obtain prior permission from the AACC.

Special leave and parental and family leave shall not extend beyond the term of the contract.

The paid sick leave provided for in Article 53 shall not, however, exceed three months or the length of time worked by the member of the temporary staff, where the latter is longer. The leave shall not extend beyond the term of his contract.

On expiry of these time limits, a member of the temporary staff whose contract is not terminated, notwithstanding that he is unable to resume his duties, shall be placed on unpaid leave.

However, where a member of the temporary staff contracts an occupational disease or sustains an accident in the performance of his duties, he shall continue to receive his full remuneration throughout the period during which he is incapable of working until such time as he is awarded an invalidity allowance under Article 77.

### Section D

#### **Public holidays**

#### *Article 56*

A list of public holidays shall be drawn up by the Agency.

#### *Article 57*

In exceptional circumstances a member of the temporary staff may at his own request be granted unpaid leave on compelling personal grounds. Article 15 shall continue to apply during the period of unpaid leave on personal grounds.

The permission under Article 15 shall not be granted to a member of the temporary staff for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis the Agency and which could lead to the existence or possibility of a conflict with the legitimate interests of the Agency.

The AACC shall determine the length of such leave, which shall not exceed one quarter of the length of time already worked by the member of temporary staff or:

- three months if the member of temporary staff's seniority is less than four years,
- twelve months in all other cases.

Any period of leave granted in accordance with the third paragraph shall not count for the purposes of the first paragraph of Article 40(2).

While a member of the temporary staff is on unpaid leave his membership of the social security scheme provided for in Article 68 shall be suspended.

However, a member of the temporary staff who is not gainfully employed may, not later than one month following that in which unpaid leave begins, apply to continue to be covered against the risks referred to in Article 68, provided that he bears half the cost of the contributions provided for in that Article for the duration of his leave; the contribution shall be calculated by reference to his last basic salary.

Moreover, a member of the temporary staff who proves that he cannot acquire pension rights under another pension scheme may apply to continue to acquire further pension rights throughout the period of unpaid leave, provided that he bears the cost of a contribution equal to three times the rate laid down in Article 90; the contributions shall be calculated by reference to the basic salary for his grade and step.

Women whose maternity leave begins before the end of their contract shall be entitled to maternity leave and maternity pay.

#### *Article 58*

A member of the temporary staff who is called up for military service, alternative services or reserve training or who is recalled to serve in the armed forces shall be assigned leave for national service; such leave may in no circumstances exceed the duration of the contract.

A member of the temporary staff who is called up for military service or alternative service shall cease to receive his remuneration but shall retain his right under these Staff Regulations to advancement to a higher step. He shall also retain his right to severance grant if, after completing his military service or alternative service, he pays up his pension contributions retroactively.

A member of the temporary staff who is called up for reserve training or who is recalled to service in the armed forces shall, during the period of training or recall, continue to receive his remuneration subject to deduction of an amount equal to his service pay.

### CHAPTER 5

#### **Remuneration and expenses**

#### *Article 59*

The remuneration of temporary staff shall comprise basic salary, family allowances and other allowances.

*Article 60*

1. The remuneration of members of the temporary staff shall be expressed in euro. The weightings, the deductions, the annual review and the adjustments shall be determined according to the rules set out in Articles 63, 64, 65, 65a and 66a of the Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 <sup>(1)</sup> (hereinafter referred to as 'the EU Staff Regulations'). The deductions set out in the EU Staff Regulations shall be for the benefit of the budget of the Agency except for the contributions on sickness, accident and unemployment insurance schemes.
2. The basic salaries shall be determined according to the rules set out in Article 66 of the EU Staff Regulations.
3. The family allowances shall comprise:
  - (a) household allowance;
  - (b) dependent child allowance;
  - (c) education allowance.
4. Members of temporary staff in receipt of family allowances specified in this Article shall declare allowances of like nature paid from other sources; such latter allowances shall be deducted from those paid under Articles 1, 2 and 3 of Annex IV.
5. The dependent child allowance may be doubled by special reasoned decision of the AACC based on medical documents establishing that the child concerned is suffering from a mental or physical handicap which involves the member of temporary staff in heavy expenditure.
6. Where, by virtue of Articles 1, 2 and 3 of Annex IV, such family allowances are paid to a person other than the member of temporary staff, these allowances shall be paid in the currency of the country in which that person is resident, calculated where applicable on the basis of the exchange rates referred to in the second paragraph of Article 63 of the EU Staff Regulations. They shall be subject to the weighting for the country in question if it is inside the Union or to a weighting equal to 100 if the country of residence is outside the Union.

Paragraphs 4 and 5 shall apply where family allowances are paid to such a person.

7. The expatriation allowance shall be equal to 16 % of the total of the basic salary, household allowance and dependent child allowance to which the member of temporary staff is entitled. The expatriation allowance shall be not less than EUR 509,43 per month.
8. In the event of a member of temporary staff's death, the surviving spouse or dependent children shall receive the deceased's full remuneration until the end of the third month after the month in which the death occurred.

In the event of the death of a person entitled to an invalidity allowance, the above provisions shall apply in respect of the deceased's allowance.

*Article 61*

The payment of family allowances and expatriation allowance shall be determined according to Articles 1, 2, 3 and 4 of Annex IV.

<sup>(1)</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

*Article 62*

Subject to Articles 63 to 66, a member of the temporary staff shall be entitled, in accordance with Articles 5 to 16 of Annex IV, to reimbursement of expenses incurred by him on taking up appointment, transfer or leaving the service, and also to reimbursement of expenses incurred in the course of or in connection with the performance of his duties.

*Article 63*

A member of the temporary staff engaged for a period of not less than 12 months shall, as provided for in Article 9 of Annex IV be entitled to reimbursement of his removal expenses.

*Article 64*

1. A member of the temporary staff engaged for a period of not less than one year shall receive an installation allowance as provided for in Article 5 of Annex IV amounting, for an expected period of service of:

not less than one year but less than two years,	to one third	} of the rate laid down in Article 5 of Annex IV
not less than two years but less than three years,	to two thirds	
three years or more,	to three thirds	

2. The resettlement allowance provided for in Article 6 of Annex IV shall be granted to temporary staff who have completed four years' service. A member of the temporary staff who has completed more than one year's but less than four years' service shall receive a resettlement allowance proportionate to his length of service, incomplete years being disregarded.

3. However, the installation allowance provided for in paragraph 1 and the resettlement allowance provided for in paragraph 2 shall not be less than:

- (a) EUR 1 123,91 for a member of temporary staff who is entitled to the household allowance; and
- (b) EUR 668,27 for a member of temporary staff who is not entitled to the household allowance.

In cases where spouses who are both members of temporary staff of the Agency are both entitled to the installation allowance or resettlement allowance, this shall be payable only to the person whose basic salary is the higher.

In cases where the husband or wife of a member of the temporary staff of the Agency is an official or other servant of the Union who is entitled to the installation or resettlement allowance and is in receipt of a higher basic salary, such an allowance shall not be payable to the member of the temporary staff.

*Article 65*

The daily subsistence allowance shall be as set out in Article 10 of Annex IV. However, a member of the temporary staff who is engaged for a fixed period of less than 12 months and who furnishes evidence that it is impossible for him to continue to live in his place of residence shall be entitled to the daily subsistence allowance for the duration of his contract or for a maximum of one year.



*Article 66*

Article 8 of Annex IV on annual payment of travel expenses from place of employment to place of origin shall apply only to temporary staff who have completed not less than nine months' service.

*Article 67*

Payment of sums due shall be as set out in Articles 17 and 18 of Annex IV.

## CHAPTER 6

**Social security benefits**

## Section A

**Sickness and accident insurance, social security benefits***Article 68*

A member of temporary staff during the period of employment, during sick leave and during the periods of unpaid leave referred to in Articles 17 and 57 in accordance with the conditions laid down therein, or when in receipt of invalidity allowance, his spouse, where such spouse is not eligible for benefits of the same nature and of the same level by virtue of any other legal provision or regulations, his children and other dependants within the meaning of Article 2 of Annex IV, and recipients of a survivor's pension are insured against sickness subject to the same rules as those drawn up by common agreement between the Union institutions pursuant to Article 72 of the EU Staff Regulations.

*Article 69*

A member of temporary staff, during the period of employment, during sick leave and during the periods of unpaid leave referred to in Articles 17 and 57 in accordance with conditions laid down herein is insured, from the date of his entering the service, against the risk of occupational disease and of accident subject to the same rules as those drawn up by common agreement of the Union institutions pursuant to Article 73 of the EU Staff Regulations. He shall contribute to the cost of insuring against non-occupational risks up to 0,1 % of his basic salary.

*Article 70*

1. Contributions of the temporary staff and of the Agency to the sickness and accident insurance scheme shall be entirely paid to the sickness and accident insurance scheme set out in the EU Staff Regulations.
2. If, however, the medical examination provided for in Article 37 shows the member of temporary staff to be suffering from sickness or invalidity, the AACC may decide that expenses arising from such sickness or invalidity are to be excluded from the reimbursement of expenditure provided for in Article 68.

If a member of the temporary staff proves that he cannot obtain cover under any other sickness insurance scheme provided for by law or regulation, he may, on application made at the latest within one month following the expiry of his contract, continue to benefit from the sickness cover provided for in Articles 68 and 69, for a period of not more than six months after the expiry of his contract.

The contributions provided for in Article 68(2) shall be based on his last basic salary and half thereof shall be charged to him.

3. The AACC may, after obtaining the advice of a medical officer authorised by the Agency, decide that the one month time limit within which the application must be made and the six month limit provided for in the paragraph 2 shall not apply where the person concerned is suffering from a serious or protracted illness contracted during his employment, which he has reported to the Agency before the end of the six month period provided for in the paragraph 2, on condition that the person concerned undergoes a medical examination arranged by the Agency.

#### Article 71

1. A former member of the temporary staff who is unemployed when his service with the Agency has been terminated:

- who is not in receipt of an invalidity allowance from the Agency,
- whose service is not terminated by resignation or by cancellation of the contract for disciplinary reasons,
- who has completed a minimum of six months' service,
- and who is resident in a Member State,

shall be eligible for a monthly unemployment allowance under the conditions laid down in this Article.

Where he is entitled to unemployment benefits under a national scheme, he shall be obliged to declare this to the Agency. In such cases, the amount of those benefits will be deducted from the allowance paid under paragraph 3.

2. To be eligible for the unemployment allowance, a former member of the temporary staff shall:

- (a) be registered, at his own request, as seeking employment with the employment authorities of the Member State in which he establishes his residence;
- (b) fulfil the obligations laid down by the law of that Member State for persons in receipt of unemployment benefits under that law;
- (c) forward every month to the Agency a certificate issued by the competent national employment authority stating whether he has fulfilled the obligations and conditions referred to in points (a) and (b).

The allowance may be granted or maintained by the Agency, even where the national obligations referred to under point (b) have not been fulfilled, in cases of illness, accident, maternity, invalidity or a situation recognised as being similar or where the national authority, competent to meet those obligations, has given a dispensation.

The AACC shall lay down such provisions as it deems necessary for applying this Article.

3. The unemployment allowance shall be set by reference to the basic salary attained by the former member of the temporary staff at the time of the termination of his service. The allowance shall be set at:

- (a) 60 % of the basic salary for an initial period of 12 months;
- (b) 45 % of the basic salary for the 13th to the 24th month.

Other than during an initial six-month period, in which the lower limit specified in this subparagraph is applicable but the upper limit is not, the amounts thus calculated may neither be less than EUR 1 347,89 nor exceed EUR 2 695,79. These limits shall be adjusted according to the same rules as those set out in Article 66 of the EU Staff Regulations, in accordance with Article 65 of those Regulations.

4. The period during which the unemployment allowance is payable to a former member of the temporary staff may not be more than 24 months from the date of termination of service and shall in no case exceed the equivalent of one third of the actual length of service completed. However, if, during that period, the former member of the temporary staff ceases to fulfil the conditions laid down in paragraphs 1 and 2, payment of the unemployment allowance shall be suspended. Payment shall resume if, before the expiry of that period, the former member of the temporary staff again fulfils the said conditions and is not entitled to national unemployment benefit.

5. A former member of the temporary staff who is eligible for the unemployment allowance shall be entitled to the family allowances according to the same rules as those provided for in Article 67 of the EU Staff Regulations. The household allowance shall be calculated on the basis of the unemployment allowance under the conditions laid down in Article 1 of Annex IV.

The person concerned shall be obliged to declare any allowances of the same kind paid from other sources to himself or to his spouse; such allowances shall be deducted from those to be paid on the basis of this Article.

A former member of the temporary staff who is eligible for the unemployment allowance shall be entitled, as provided for in Article 68 to insurance cover against sickness without having to make any contribution.

6. The unemployment allowance and family allowances shall be paid from the Special Unemployment Fund in euro. No correction coefficient shall be applicable.

7. Members of the temporary staff shall contribute one third of the financing of the unemployment insurance scheme. That contribution shall be set at 0,81 % of the basic salary of the person concerned after deducting a standard allowance of EUR 1 225,36 and without taking account of the correction coefficients provided for in Article 64 of the EU Staff Regulations.

The contribution shall be deducted each month from the salary of the person concerned and paid, together with the remaining two thirds to be borne by the Agency, into the Special Unemployment Fund set up in accordance with Article 28a of the Conditions of Employment of other Servants of the European Union, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 (hereinafter referred to as 'CEOS of the EU').

8. The unemployment allowances paid to a former member of the temporary staff who is unemployed shall be subject to the same rules as those provided for in Council Regulation (EEC, Euratom, ECSC) No 260/68 <sup>(1)</sup>.

9. The national departments with responsibility for employment and unemployment, acting in accordance with their national legislation, and the Agency shall cooperate with each other in an effective manner in order to ensure that this Article is properly applied.

10. The detailed arrangements for applying this Article shall be subject to the same rules as those laid down by mutual agreement between the Union institutions without prejudice to the provisions of the third subparagraph of paragraph 2.

#### Article 72

1. On the birth of a child to a member of temporary staff, the person who has actual care of the child shall receive a grant of EUR 198,31.

The same grant shall be paid to a member of temporary staff who adopts a child who is less than five years of age and is a dependant within the meaning of Article 2(2) of Annex IV.

<sup>(1)</sup> Regulation (EEC, Euratom, ECSC) No 260/68 of the Council of 29 February 1968 laying down the conditions and procedure for applying the tax for the benefit of the European Communities (OJ L 56, 4.3.1968, p. 8).

2. The grant shall also be payable in the event of termination of pregnancy after not less than seven months.
3. The recipient of a grant on the birth of a child shall declare any grants of the same nature received from other sources for the same child; such grants shall be deducted from the grant provided for in paragraph 1. Where both parents are member of temporary staff of the Agency, the grant shall be paid once only.

#### *Article 73*

In the event of the death of a member of temporary staff, a member of temporary staff's spouse or dependent child, or any other dependent person within the meaning of Article 2 of Annex IV who lived as part of the member of temporary staff's household, the Agency shall reimburse the costs involved in transporting the body from the member of temporary staff's place of employment to his place of origin.

However, in the event of a member of temporary staff's death during a mission, the Agency shall bear the costs involved in transporting the body from the place where death occurs to the member of temporary staff's place of origin.

#### *Article 74*

Gifts, loans or advances may be made to temporary staff during the term of their contract or after expiry of the contract where, as a result of serious protracted illness contracted or a disability, or of an accident sustained, during his employment, the member of temporary staff is incapable of working and proves that such illness or accident is not covered by another social security scheme.

### Section B

#### **Insurance against invalidity and death**

#### *Article 75*

Temporary staff members are insured in accordance with the following provisions against the risk of death and of invalidity occurring during their employment.

The payments and benefits provided for in this Section shall be suspended if the remuneration which a member of the temporary staff receives in respect of his employment is suspended pursuant to these Staff Regulations.

#### *Article 76*

Where the medical examination made before a member of the temporary staff is engaged shows that he is suffering from sickness or invalidity, the AACC may, in so far as risks arising from such sickness or invalidity are concerned, decide to admit him to guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the Agency.

The member of the temporary staff may appeal against that decision to the Invalidity Committee that shall be established by the Agency. Pursuant to an agreement between the Agency and the Council of the European Union, the Agency can make use of the Invalidity Committee of the Council.

*Article 77*

1. A member of the temporary staff who is suffering from total invalidity and who, for that reason, is obliged to suspend employment with the Agency shall be entitled, for as long as the invalidity lasts, to an invalidity allowance, the amount of which shall be determined as follows.

If a member of the temporary staff, recipient of an invalidity allowance, reaches the age of 66, the general rules on the severance grant shall be applied. The amount of the severance grant shall be based on the salary for the grade and step occupied by the member of temporary staff when he became an invalid.

2. The invalidity allowance shall be 70 % of the final basic salary of the member of the temporary staff. However, it shall not be less than the minimum subsistence figure, i.e. the basic salary of a member of temporary staff of the Union at the first step of Grade 1. The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

3. Where the invalidity of the member of the temporary staff arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public-spirited act or from risking life and limb to save another human being, the invalidity allowance shall not be less than 120 % of the minimum subsistence figure. In such cases the pension contributions shall be borne by the budget of the Agency.

4. In the case of invalidity deliberately brought about by the member of the temporary staff, the AACC may decide that he should receive only the grant provided for in Article 86.

5. Persons entitled to an invalidity allowance shall also be entitled to the family allowances determined in accordance with Article 60(3); in accordance with Annex IV, the household allowance shall be determined on the basis of the recipient's allowance.

*Article 78*

1. Invalidity shall be established by the Invalidity Committee referred to in Article 76.

2. The Agency may require periodic examinations of the recipient of an invalidity allowance to establish that he still fulfils the conditions for payment of that allowance. If the Invalidity Committee finds that these conditions are no longer fulfilled, the member of the temporary staff shall resume service with the Agency, providing his contract has not expired.

However, if it proves impossible to employ the person concerned in the service of the Agency, the contract may be terminated subject to payment of an amount corresponding to the remuneration that would have been paid during the period of notice and, where applicable, to the compensation for termination of contract provided for in Article 96. Article 86 shall also apply.

*Article 79*

The persons entitled under a deceased member of the temporary staff, as determined according to the same rules as those laid down in Chapter 3 of Annex V, shall be entitled to the survivor's pension as provided for in Articles 80 to 83.

Where a former member of temporary staff in receipt of an invalidity allowance dies, the persons entitled under the deceased member of temporary staff, as defined in Chapter 3 of Annex V, shall be entitled to the survivor's pension as provided for in that Annex.

Where the whereabouts of a member of the temporary staff, or of a former member of temporary staff in receipt of an invalidity allowance are unknown for more than one year, the provisional pensions to his spouse and to persons recognised as his dependants shall be determined according to the same rules as those set out in Chapters 5 and 6 of Annex VIII to the EU Staff Regulations.

#### *Article 80*

The right to receive payment of pension shall have effect from the first day of the month following that in which death occurred or, where applicable, on the first day of the month following the period during which the deceased's surviving spouse, orphans or dependants receive his emoluments under Article 60(8).

#### *Article 81*

The surviving spouse of a member of the temporary staff shall be entitled to a survivor's pension in accordance with Chapter 3 of Annex V. The pension shall be not less than 35 % of the final basic monthly salary received by the member of the temporary staff, nor less than the basic salary of a Union member of temporary staff at the first step of grade 1.

A person drawing survivor's pension shall be entitled, under the conditions laid down in Annex IV to the family allowances specified in Article 60(3). However, the dependent child allowance shall be equal to twice the amount of the allowance provided for in Article 60(3)(b).

#### *Article 82*

Where a member of temporary staff or person entitled to an invalidity allowance dies leaving no spouse entitled to a survivor's pension, the children dependent on the deceased within the meaning of Article 2 of Annex IV at the time of his death shall be entitled to orphans' pension in accordance with Article 7 of Annex V.

The same pension entitlement shall apply to children who fulfil the above conditions in the event of the death or remarriage of the spouse in receipt of a survivor's pension.

Where a member of temporary staff or person entitled to an invalidity allowance dies but the conditions set out in the first paragraph of this Article are not satisfied, the dependent children within the meaning of Article 2 of Annex IV shall be entitled to an orphans' pension in accordance with Article 10 of Annex V; the pension shall, however, be equal to half the pension calculated in accordance with that Article.

For persons treated as dependent children within the meaning of Article 2(4) of Annex IV, the orphan's pension may not exceed an amount equal to twice the dependent child allowance.

No orphan's pension shall be payable where a natural parent who has been replaced by an adoptive parent dies.

Orphans shall be entitled to an education allowance in accordance with Article 3 of Annex IV.

#### *Article 83*

In the case of divorce or where there is more than one category of survivor who qualifies to claim survivor's pension, such pension shall be apportioned in manner provided for in Annex V.

*Article 84*

1. Notwithstanding any other provisions, notably those concerning the minimum amounts payable to persons entitled to a survivor's pension, the total amount payable by way of survivor's pension plus family allowances less tax and other compulsory deductions to the widow and other entitled persons may not exceed the following:

- (a) in the event of the death of a member of temporary staff being on active employment, leave on personal grounds, leave for military service, parental leave or family leave, the amount of the remuneration which the member of temporary staff would have received in the same grade and step if he had still been in the service, plus any family allowances received by him in that case and less tax and other compulsory deductions;
- (b) for the period following the date on which the member of temporary staff referred to in point (a) above would have reached the age of 66, the amount of the severance grant to which he would have been entitled thereafter, had he been alive, based on the same grade and step at the time of death, plus any family allowances which he would have received, less tax and other compulsory deductions;
- (c) in the event of the death of a former member of temporary staff entitled to an invalidity allowance, the amount of the pension to which he would have been entitled, had he been alive, subject to the allowances and deductions referred to in point (b).

2. For the purposes of paragraph 1, weightings shall be disregarded, which could affect the various amounts in question.

3. The maximum amount as established in points (a) to (c) of paragraph 1 shall be apportioned among the persons entitled to a survivor's pension in proportion to their respective entitlements, paragraph 1 being disregarded for this purpose.

The second and third subparagraphs of Article 85(1) shall apply to the amounts thus apportioned.

*Article 85*

1. The pensions provided for in these Staff Regulations shall be calculated by reference to salary scales in force on the first day of the month in which entitlement commences.

No correction coefficient shall be applicable to pensions.

Pensions expressed in euro shall be paid in one of the currencies referred to in Article 29 of Annex V.

2. Where, in accordance with Article 60, the remunerations are adapted, the same update shall be applied to pensions.

3. The provisions of paragraphs 1 and 2 shall apply by analogy to recipients of an invalidity allowance.

## Section C

**Severance grant***Article 86*

On leaving the service, a member of temporary staff shall be entitled to the payment of the severance grant or the transfer of the actuarial equivalent of his retirement pension rights in accordance with Article 1 of Annex V.

*Article 87*

Where a member of the temporary staff has exercised the option provided for in Article 91, his severance grant shall be reduced proportionately in respect of the period in which the sums were withdrawn.

The first paragraph of this Article shall not apply to a member of the temporary staff who, in the three months following application of these Staff Regulations to him, asks to be allowed to repay such sums plus compound interest at the rate of 3,5 % per year, which may be revised following the procedure laid down in Article 88.

*Article 88*

1. The rate for the calculation of compound interest shall be the effective rate referred to in paragraphs 2 and 3 and shall, if necessary, be revised on the occasion of the five-yearly actuarial assessments.
2. The interest rates to be taken into consideration for the actuarial calculations shall be based on the observed average annual interest rates on the long-term public debt of the Member States as published by the European Commission. An appropriate consumer price index shall be used to calculate the corresponding interest rate net of inflation as needed for the actuarial calculations.
3. The effective annual rate to be taken into consideration for the actuarial calculations shall be the average of the real average interest rates for the 12 years preceding the current year.

## Section D

**Funding of the invalidity and life assurance scheme and of the pension scheme***Article 89*

1. Benefits paid under the social security scheme provided for in Sections B and C shall be charged to the budget of the Agency. Member States participating in the Agency shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.
2. Salaries and invalidity allowances shall in all cases be subject to deductions of the contribution of the social security scheme provided for in Section B.
3. The funding of the social security scheme provided for in Sections B and C shall be as set out in Article 90 and Articles 21 and 22 of Annex V.
4. Contributions of the temporary staff and of the Agency to the social security scheme provided for in Sections B and C shall be entirely paid to the budget of the Agency.

*Article 90*

Members of temporary staff shall contribute one third of the cost of financing the pension scheme. The contribution shall be 10,3 % of the member of temporary staff's basic salary, the weightings provided for in Article 60 not being taken into account. It shall be deducted monthly from the salaries of member of temporary staff. The contribution shall be adjusted in accordance with the same rules as those laid down in Annex XII of the EU Staff Regulations.



*Article 91*

In accordance with conditions to be laid down by the Agency, a member of the temporary staff may request the Agency to effect any payments which he is required to make in order to constitute or maintain pension rights in his country of origin. The Agency may also decide to effect any payments which a member of the temporary staff is required to make in order to constitute or maintain pension rights in his country of origin, even in absence of request from such member of the temporary staff. In such case, the Agency must duly justify its decision.

Such payments shall not exceed twice the rate provided for in Article 90 and shall be charged to the budget of the Agency.

## Section E

**Settlements of claims by temporary staff***Article 92*

The invalidity scheme or the survivor's pension scheme are set out in Articles 19 to 23 of Annex V.

## Section F

**Payment of benefits***Article 93*

1. Payment of benefits shall be made in accordance with Articles 84 and 85 of these Staff Regulations and with Article 28 of Annex V.
2. Any sums due from a member of the temporary staff to the Agency under this insurance scheme at the date when the benefits are payable shall be deducted from the amount of his benefit or from the benefits payable to those entitled under him. The deduction may be spread over a number of months.

## Section G

**Subrogation in favour of the agency***Article 94*

1. Where the death, accidental injury or sickness of a person covered by these Staff Regulations is caused by a third party, the Agency shall, in respect of the obligations incumbent upon it under these Staff Regulations consequent upon the event causing such death, injury or sickness, stand subrogated to the rights, including rights of action, of the victim or of those entitled under him against the third party.
2. The subrogation provided for by paragraph 1 shall extend inter alia to the following:
  - continued payment of remuneration in accordance with Article 53 to the member of temporary staff during the period when he is temporarily unfit to work,
  - payments effected in accordance with Article 60(8) following the death of a member of temporary staff or of a person entitled to an invalidity allowance,

- benefits paid under Articles 68 and 69 and their implementing rules, relating to insurance against sickness and accident,
  - payment of the costs involved in transporting the body, as referred to in Article 73,
  - supplementary family allowances paid in accordance with Article 60(5) and with Article 2(3) and (5) of Annex IV in respect of a dependent child suffering from serious illness, infirmity or handicap,
  - invalidity allowances paid in the event of accident or sickness resulting in permanent invalidity preventing the member of temporary staff from performing his duties,
  - survivor's pensions paid in the event of the death of a member of temporary staff or of a former member of temporary staff or the death of the spouse of a member of temporary staff or of a former member of temporary staff entitled to a pension, where the spouse is not a member of temporary staff,
  - orphan's pension paid regardless of age to the child of a member of temporary staff or former member of temporary staff where that child is prevented by serious illness, infirmity or handicap from earning a livelihood after the death of the person on whom he was dependent.
3. However, the Agency shall not be subrogated to rights of compensation in respect of purely personal damage such as non-material injury, damages for pain and suffering or compensation for disfigurement and loss of amenity over and above the allowance granted for those headings under Article 69.
4. The provisions of paragraphs 1, 2 and 3 may not be a bar to direct action by the Agency.

#### CHAPTER 7

##### **Recovery of overpayments**

###### *Article 95*

Any sum overpaid shall be recovered if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it.

The request for recovery must be made no later than five years from the date on which the sum was paid. Where the AACC is able to establish that the recipient deliberately misled the administration with a view to obtaining the sum concerned, the request for recovery shall not be invalidated even if this period has elapsed.

#### CHAPTER 8

##### **Termination of employment**

###### *Article 96*

Apart from cessation on death, the employment of temporary staff shall cease:

- (a) at the end of the month in which the member of temporary staff reaches the age of 66;
- (b) where the contract is for a fixed period:
  - (i) on the date stated in the contract;

- (ii) at the end of the period of notice specified in the contract giving the member of the temporary staff or the Agency the option to terminate earlier. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months.

For temporary staff whose contracts have been renewed the maximum shall be six months. The period of notice shall not, however, commence to run during pregnancy, if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy, if confirmed by a medical certificate, maternity or sick leave subject to the limits aforesaid. If the Agency terminates the contract, the member of the temporary staff shall be entitled to compensation equal to one-third of his basic salary for the period between the date when his duties end and the date when his contract expires;

- (iii) where the member of temporary staff no longer satisfies the conditions laid down in Article 37(2)(a) subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in subpoint (ii) of point (b) of this Article shall apply.

#### Article 97

Employment may be terminated by the Agency without notice:

- (a) during or at the end of the probationary period in accordance with Article 39;
- (b) if the member of the temporary staff is unable to resume his duties at the end of a period of paid sick leave as provided for in Article 53. In such case, the member of the temporary staff shall receive an allowance equal to this basic salary, plus family allowances at the rate of two days per month of service completed.

#### Article 98

1. After the disciplinary procedure provided for in Title V has been followed, employment may be terminated without notice on disciplinary grounds in serious cases of intentional or negligent failure of temporary staff to comply with their obligations. A reasoned decision shall be taken by the AACC, after the member of temporary staff concerned has been given an opportunity of submitting his defence.

Before his employment is terminated, a member of the temporary staff may be suspended, in accordance with Article 161.

2. Where employment is terminated in accordance with paragraph 1, the AACC may decide:

- (a) to limit the severance grant provided for in Article 86 to repayment of the contribution provided for in Article 89, plus compound interest at the rate of 3,5 % per annum;
- (b) to withhold in whole or in part the resettlement allowance provided for in Article 64(2).

#### Article 99

1. The employment of a member of the temporary staff shall be terminated by the Agency without notice if the AACC finds:

- (a) that at the time of his engagement he deliberately furnished false information concerning his professional qualifications and experience or his ability to fulfil the requirements of Article 37(2); and
- (b) that the false information furnished was a determining factor in his being engaged.

2. In such cases the AACC shall, after hearing the member of temporary staff concerned, and after the disciplinary procedure provided for in Title V has been followed, declare that his employment is terminated.

Before his employment is terminated, a member of temporary staff may be suspended in accordance with Article 161.

The provisions of Article 98(2) shall apply.

#### *Article 100*

Without prejudice to Articles 98 and 99, any intentional or negligent failure by a member of the temporary staff or of a former member of the temporary staff to comply with his obligations under these Staff Regulations shall render him liable to disciplinary action in accordance with Title V.

### TITLE III

## CONTRACT STAFF

### CHAPTER 1

#### **General provisions**

#### *Article 101*

For the purposes of these Staff Regulations, 'contract staff' means staff not assigned to a post included in the list of posts appended to the budget of the Agency and engaged for the performance of full-time or part-time duties.

#### *Article 102*

1. Contract staff shall be paid from the total appropriations for the purpose under the budget of the Agency.
2. The AACC shall adopt specific provisions governing the use of contract staff.
3. The Agency shall provide indicative yearly forecasts for the use of contract staff per function group, in the context of the budget procedure.

#### *Article 103*

1. Contract staff shall be divided into four function groups corresponding to the duties to be performed. Each function group shall be subdivided into grades and steps.
2. The types of duties and corresponding function groups shall be as shown in the following table:

Function group	Grades	Duties
IV	13 to 18	Administrative, advisory, linguistic and equivalent technical tasks, performed under the supervision of temporary staff.
III	8 to 12	Executive tasks, drafting, accountancy and other equivalent technical tasks, performed under the supervision of temporary staff.

Function group	Grades	Duties
II	4 to 7	Clerical and secretarial tasks, office management and other equivalent tasks, performed under the supervision of temporary staff.
I	1 to 3	Manual and administrative support service tasks, performed under the supervision of temporary staff.

3. Based on this table, the Agency shall define the powers attaching to each type of duties.
4. Article 7 shall apply by analogy.

## CHAPTER 2

### **Rights and obligations**

#### *Article 104*

Articles 11 to 35 shall apply by analogy.

## CHAPTER 3

### **Conditions of engagement**

#### *Article 105*

1. Contract staff shall be selected on the broadest possible geographical basis from among nationals of participating Member States and without distinction as to racial or ethnic origin, political, philosophical or religious beliefs, age or disability, gender or sexual orientation and without reference to their marital status or family situation.
2. Recruitment as a member of the contract staff shall require at least:
  - (a) in function group I, successful completion of compulsory education;
  - (b) in function groups II and III:
    - (i) a level of post-secondary education attested by a diploma; or
    - (ii) a level of secondary education attested by a diploma giving access to post-secondary education, and appropriate professional experience of at least three years; or
    - (iii) where justified in the interests of the service, professional training or professional experience of an equivalent level;
  - (c) in function group IV:
    - (i) a level of education which corresponds to completed university studies of at least three years attested by a diploma; or
    - (ii) where justified in the interests of the service, professional training of an equivalent level.

3. A member of the contract staff may be engaged only on condition that he:
  - (a) is a national of one of the Member States participating in the Agency and enjoys his full rights as a citizen;
  - (b) has fulfilled any obligations imposed on him by the laws concerning military service;
  - (c) produces the appropriate character references as to his suitability for the performance of his duties;
  - (d) is physically fit to perform his duties; and
  - (e) produces evidence of a thorough knowledge of one of the official languages of the institutions of the Union and of a satisfactory knowledge of another official language of the institutions of the Union to the extent necessary for the performance of his duties.
4. In the initial contract, the AACC may waive the requirement that the person concerned should produce documentary evidence that he fulfils the conditions in points (a), (b) and (c) of paragraphs 2 and 3 where his engagement is for not more than three months.
5. The AACC shall adopt specific provisions on the procedures for engagement of contract staff, as necessary.

#### *Article 106*

Before being engaged, a member of the contract staff shall be medically examined by a medical officer authorised by the Agency in order that the Agency may be satisfied that he fulfils the requirements of Article 105(3)(d).

Article 38 shall apply by analogy.

#### *Article 107*

1. A member of the contract staff whose contract is concluded for a duration of at least one year shall serve a probationary period for the first six months of his period of employment if he is in function group I and for the first nine months if he is in any other function group.

Where during his probationary period a member of the contract staff is prevented by sickness or accident from performing his duties for one month or more, the AACC may extend his probationary period by the corresponding length of time.

The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the member of the contract staff may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

This report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within a period of eight working days. The report and the comments shall be transmitted immediately by the immediate superior of the member of the contract staff to the AACC. On the basis of the report, the AACC may decide to dismiss the member of the contract staff before the end of the probationary period by giving him one month's notice, or in exceptional circumstances, extend the probationary period for a maximum of six months and possibly assign the member of the contract staff to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the member of the contract staff to perform the duties pertaining to his post and also on his efficiency and conduct in the service. This report shall be communicated to the member of the contract staff, who shall have the right to submit his comments in writing within a period of eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period, the report and the comments shall be transmitted immediately by the immediate superior of the member of the contract staff to the AACC.

A member of the contract staff whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph as well as on the basis of elements available to the AACC relating to the conduct of the member of the contract staff with regard to Chapter 2.

4. A dismissed member of the contract staff shall be entitled to compensation equal to one-third of his basic salary per month of probation completed.

#### *Article 108*

The contracts of contract staff may be concluded for a fixed period of at least three months and not more than four years. They may be renewed not more than once for a fixed period of not more than five years. The initial contract and the first renewal must be of a total duration of not less than six months for function group I and not less than nine months for the other function groups.

#### *Article 109*

1. Contract staff shall only be recruited:
  - (a) in grades 13, 14, or 16 for function group IV;
  - (b) in grades 8, 9 or 10 for function group III;
  - (c) in grades 4 or 5 for function group II;
  - (d) in grade 1 for function group I.

The grading of such contract staff within each function group shall take account of the qualifications and experience of the persons concerned. To address specific needs of the Agency, labour market conditions prevailing in the European Union may also be taken into account. Within their grade, such contract staff shall be recruited in the first step.

2. Where a member of the contract staff moves to a new post within a function group, he shall not be classified in a lower grade or step than in his former post.

Where a member of such contract staff moves to a higher function group, he shall be classified at a grade and step such that his remuneration is at least equal to that to which he was entitled under the preceding contract.

#### *Article 110*

1. The first paragraph of Article 41 shall apply by analogy to contract staff engaged for a period of not less than one year.
2. A member of the contract staff who has been at one step in his grade for two years shall automatically advance to the next step in that grade.

3. In the case of contract staff, classification in the next higher grade in the same function group shall be by decision of the Agency. It shall be effected by classifying such contract staff in the first step of the next higher grade. Such advancement shall be exclusively by selection from among contract staff with a contract of at least three years who have completed a minimum period of two years in their grade, after consideration of the comparative merits of such contract staff eligible for advancement to a higher grade and of the reports on them. When considering comparative merits, the AACC shall in particular take account of the reports on the members of contract staff, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with Article 105(3)(e) and, where appropriate, the level of responsibilities exercised by them.

4. A member of the contract staff may change to a higher function group only through participation in a general selection procedure.

#### CHAPTER 4

##### **Working conditions**

###### *Article 111*

Articles 42 to 58 shall apply by analogy.

Overtime worked by contract staff in function group IV shall carry no right to compensation or remuneration.

Under the conditions laid down in Annex III, overtime worked by contract staff in function groups I, II and III shall entitle them either to compensatory leave or to remuneration where the requirements of the service do not allow compensatory leave during a period of two months following that in which the overtime was worked.

#### CHAPTER 5

##### **Remuneration and expenses**

###### *Article 112*

Articles 59 to 67 shall apply by analogy, subject to the amendments set out in Articles 113 and 114.

###### *Article 113*

The scale of basic salaries shall be determined according to the same scale as the one set out in Article 93 of the CEOS of the EU.

###### *Article 114*

Notwithstanding Article 64(3), the installation allowance provided for in paragraph 1 and the resettlement allowance provided for in paragraph 2 of that Article, shall not be less than:

- EUR 845,37 for a member of the contract staff who is entitled to the household allowance, and
- EUR 501,20 for a member of the contract staff who is not entitled to the household allowance.



## CHAPTER 6

## Section A

**Social security benefits***Article 115*

Articles 68 to 70 shall apply by analogy. However, Article 68(4) and (5) shall not apply to a member of the contract staff who has remained in the service of the Agency until the age of 63, unless he has been employed for more than 3 years as a member of such staff.

*Article 116*

1. A former member of the contract staff who becomes unemployed when his service with the Agency is terminated, and:

- (a) who is not in receipt of an invalidity allowance from the Agency;
- (b) whose service is not terminated by resignation or by cancellation of the contract for disciplinary reasons;
- (c) who has completed a minimum of six months' service;
- (d) who is resident in a Member State;

shall be eligible for a monthly unemployment allowance under the conditions laid down below.

Where he is entitled to unemployment benefits under a national scheme, he shall be obliged to declare this to the Agency. In such cases, the amount of those benefits shall be deducted from the allowance paid under paragraph 3.

2. To be eligible for the unemployment allowance, a former member of the contract staff shall:

- (a) be registered, at his own request, as seeking employment with the employment authorities of the Member State in which he establishes his residence;
- (b) fulfil the obligations laid down by the law of that Member State for persons in receipt of unemployment benefits under that law;
- (c) forward every month to the Agency a certificate issued by the competent national employment authority stating whether or not he has fulfilled the obligations and conditions referred to in points (a) and (b).

The allowance may be granted or maintained by the Agency, even where the national obligations referred to in point (b) have not been fulfilled, in cases of illness, accident, maternity, invalidity or a situation recognised as being similar, or where the national authority competent to meet those obligations has given a dispensation in that regard.

The Steering Board shall lay down such provisions as it deems necessary for applying this Article.

3. The unemployment allowance shall be set by reference to the basic salary attained by the former member of the contract staff at the time of the termination of his service. The allowance shall be set at:

- (a) 60 % of the basic salary for an initial period of 12 months;

- (b) 45 % of the basic salary for the 13th to the 24th month;
- (c) 30 % of the basic salary for the 25th to the 36th month.

Other than during an initial six-month period, in which the lower limit specified below is applicable but the upper limit is not, the amounts thus calculated may neither be less than EUR 1 010,92 nor exceed EUR 2 021,83. These limits shall be adjusted, in the same way as the salary scales set out in Article 66 of the EU Staff Regulations, according to the same rules as those set out in Article 65 of those Regulations.

4. The period during which the unemployment allowance is payable to a former member of the contract staff may not be more than 36 months from the date of termination of service and shall in no case exceed the equivalent of one third of the actual length of service completed. However, if, during that period, the former member of the contract staff ceases to fulfil the conditions laid down in paragraphs 1 and 2, payment of the unemployment allowance shall be suspended. Payment shall be resumed if, before the expiry of that period, the former member of the contract staff again fulfils the said conditions and is not entitled to national unemployment benefit.

5. A former member of the contract staff who is eligible for the unemployment allowance shall be entitled to the family allowances according to the same rules as those provided for in Article 67 of the EU Staff Regulations. The household allowance shall be calculated on the basis of the unemployment allowance under the conditions laid down in Article 1 of Annex IV.

The person concerned shall be obliged to declare any allowances of the same kind paid from other sources to himself or to his spouse; such allowances shall be deducted from those to be paid on the basis of this Article.

A former member of the contract staff who is eligible for the unemployment allowance shall be entitled, as provided for in Article 68, which shall apply by analogy, to insurance cover against sickness without having to make any contribution.

6. The unemployment allowance and family allowances shall be paid from the Special Unemployment Fund in euro. No correction coefficient shall be applicable.

7. Members of the contract staff shall contribute one third of the financing of the unemployment insurance scheme. That contribution shall be set at 0,81 % of the basic salary of the person concerned after deducting a standard allowance of EUR 919,02 and without taking account of any correction coefficients as those provided for in Article 64 of the EU Staff Regulations. The contribution shall be deducted each month from the salary of the person concerned and paid, together with the remaining two thirds to be borne by the Agency, into the Special Unemployment Fund set up in accordance with Article 28a of the CEOS of the EU. The rate of contribution shall be reviewed and adapted as necessary by the Council after a period of six years in the light of the unemployment risk of the contract staff of the Agency.

8. Unemployment allowances paid to former members of the contract staff who are unemployed shall be subject to the same rules as those laid down in Regulation (EEC, Euratom, ECSC) No 260/68.

9. The national departments with responsibility for employment and unemployment, acting in accordance with their national legislation, and the Agency shall cooperate with each other in an effective manner in order to ensure that this Article is properly applied.

10. The detailed arrangements adopted on the basis of Article 71(10) shall be applicable for this Article, without prejudice to the provisions of the third subparagraph of paragraph 2 of this Article.

#### Article 117

Articles 72 and 73 shall apply by analogy.

*Article 118*

Gifts, loans or advances may be made to contract staff during the term of their contract or after expiry of the contract where, as a result of serious protracted illness contracted or a disability, or of an accident sustained, during his employment, the member of contract staff is incapable of working and proves that such illness or accident is not covered by another social security scheme.

## Section B

**Insurance against the risk of invalidity and death***Article 119*

Contract staff shall be insured in accordance with the following provisions against the risk of death or invalidity occurring during their employment.

The payments and benefits provided for in this Section shall be suspended if the remuneration which a member of such staff receives in respect of his employment is suspended under these Staff Regulations.

*Article 120*

Where the medical examination made before a member of the contract staff is engaged shows that he is suffering from sickness or invalidity, the AACC may, in so far as risks arising from such sickness or invalidity are concerned, decide to grant him guaranteed benefits in respect of invalidity or death only after a period of five years from the date of his entering the service of the Agency.

The contract staff member may appeal against this decision to the Invalidity Committee provided for in Article 76.

*Article 121*

1. A member of the contract staff who is suffering from total invalidity and who, for that reason, is obliged to suspend employment with the Agency shall be entitled, for as long as the invalidity lasts, to an invalidity allowance, the amount of which shall be determined as follows.

If a member of the contract staff who is a recipient of an invalidity allowance reaches pensionable age, the general rules on severance grant shall be applied. The amount of the severance grant shall be based on the salary for the grade and step occupied by the member of the contract staff when he became an invalid.

2. The invalidity allowance shall be 70 % of the final basic salary of the member of the contract staff. However, it shall not be less than the basic monthly salary of a member of the contract staff in function group I, grade 1, step 1. The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

3. Where the invalidity of the contract staff member arises from an accident in the course of or in connection with the performance of his duties, from an occupational disease, from a public spirited act or from risking life and limb to save another human being, the invalidity allowance shall not be less than 120 % of the basic monthly salary of a function group I, grade 1, step 1 contract staff member. In such cases the pension contributions shall be borne by the budget of the former employer.

4. In the case of invalidity deliberately brought about by the contract staff member, the AACC may decide that he should receive only the grant provided for in Article 129.

5. Persons entitled to an invalidity allowance shall also be entitled to the family allowances determined in accordance with Article 60(3); in accordance with Annex IV, the household allowance shall be determined on the basis of the recipient's allowance.

#### *Article 122*

1. Invalidity shall be established by the Invalidity Committee provided for in Article 76.
2. Entitlement to an invalidity allowance shall take effect on the day following that on which the contract staff member's employment is terminated under Articles 96 and 97, which are applicable by analogy.
3. The Agency may require periodic examinations of the recipient of an invalidity allowance to establish that he still fulfils the conditions for payment of that allowance. If the Invalidity Committee finds that these conditions are no longer fulfilled, the contract staff member shall resume service with the Agency, providing his contract has not expired.

However, if it proves impossible to employ the person concerned in the service of the Agency, the contract may be terminated subject to payment of an amount corresponding to the remuneration that would have been paid during the period of notice and, where applicable, to the compensation for termination of contract provided for in Article 96. Article 129 shall also apply.

#### *Article 123*

1. The persons entitled under a deceased contract staff member, determined according to the same rules as those laid down in Chapter 3 of Annex V shall be entitled to a survivor's pension as provided for in Articles 124 to 127.
2. In the event of the death of a former contract staff member in receipt of an invalidity allowance, the persons entitled under the deceased former contract staff member, as defined in Chapter 3 of Annex V, shall be entitled to a survivor's pension as provided for in that Annex.
3. Where the whereabouts of a contract staff member or of a former contract staff member in receipt of an invalidity allowance, are unknown for more than one year, the provisional pensions to his spouse and to persons recognised as his dependants shall be determined according to the same rules as those laid down in Chapters 5 and 6 of Annex VIII to the EU Staff Regulations.

#### *Article 124*

The right to receive payment of pension shall have effect from the first day of the month following that in which death occurs or, where applicable, on the first day of the month following the period during which the deceased's surviving spouse, orphans or dependants receive his emoluments under Article 60(8).

#### *Article 125*

The surviving spouse of a contract staff member shall be entitled to a survivor's pension in accordance with Chapter 3 of Annex V. The pension shall not be less than 35 % of the final basic monthly salary received by the contract staff member, nor less than the basic monthly salary of contract staff in function group I, grade 1, step 1.

A person drawing a survivor's pension shall be entitled, on the conditions laid down in Annex IV to the family allowances specified in Article 60(3). However, the dependent child allowance shall be equal to twice the amount of the allowance provided for in Article 60(3)(b).

#### *Article 126*

1. Where a member of contract staff or a former member of contract staff in receipt of an invalidity allowance dies leaving no spouse entitled to a survivor's pension, the children deemed to be dependent on him shall be entitled to an orphan's pension in accordance with Article 82, which shall apply by analogy.
2. The same entitlement shall apply to children who fulfil the foregoing conditions in the event of death or remarriage of a spouse who is entitled to a survivor's pension.
3. Where a member of contract staff or a former member of contract staff in receipt of an invalidity allowance dies but the conditions set out in paragraph 1 of this Article are not satisfied, the provisions of the third paragraph of Article 82 shall apply by analogy.
4. The orphan's pension of a person treated as a dependent child as defined in Article 2(4) of Annex IV, may not exceed twice the dependent child allowance. However, entitlement to the pension shall cease if a third party is liable for maintenance under the national laws applicable.
5. No orphan's pension shall be payable where a natural parent who has been replaced by an adoptive parent dies.
6. Orphans shall be entitled to an education allowance in accordance with Article 3 of Annex IV.

#### *Article 127*

In the case of divorce or where there is more than one category of survivor who qualifies to claim survivor's pension, such pension shall be apportioned in the manner provided for in Chapter 3 of Annex V.

#### *Article 128*

Articles 84 and 85 shall apply by analogy.

#### Section C

### **Severance grant**

#### *Article 129*

On leaving the service, a member of contract staff shall be entitled to the payment of the severance grant or the transfer of the actuarial equivalent of his retirement pension rights in accordance with Article 1 of Annex V.

#### *Article 130*

1. Where a member of the contract staff has exercised the option provided for in Article 132, the contract staff member's severance grant shall be reduced proportionately in respect of the period in which the sums were withdrawn.

2. Paragraph 1 of this Article shall not apply to a contract staff member who, in the three months following application of these Staff Regulations to him, asks to be allowed to repay such sums plus compound interest at the rate of 3,5 % per year, which may be revised following the procedure laid down in Article 88.

#### Section D

### **Funding of the invalidity and life assurance scheme and of the pension scheme**

#### *Article 131*

Articles 89 and 90 shall apply by analogy.

#### *Article 132*

In accordance with conditions to be laid down by the Agency, a member of the contract staff may request the Agency to effect any payments which he is required to make in order to constitute or maintain pension rights, unemployment insurance, invalidity insurance, life insurance and sickness insurance in the country where he has last been covered by such schemes. The Agency may also decide to effect any payments which a member of the contract staff is required to make in order to constitute or maintain pension rights in his country of origin, even in absence of request from such member of the contract staff. In such case, the Agency must duly justify its decision. During the period of these contributions, the contract staff member shall not benefit from the Agency sickness insurance scheme. Moreover, for the period corresponding to these contributions, the contract staff member shall not be covered by the Agency life assurance and invalidity schemes and shall not acquire rights under the Agency unemployment insurance and pension schemes.

The actual period of such payments for any contract staff member shall not exceed six months.

However, the Agency may decide to extend this period to one year. The payments shall be charged to the budget of the Agency. Payments to constitute or maintain pension rights shall not exceed twice the rate provided for in Article 90.

#### Section E

### **Settlements of claims by contract staff**

#### *Article 133*

The invalidity scheme or the survivor's pension scheme are set out in Articles 19 to 23 of Annex V.

#### Section F

### **Payment of benefits**

#### *Article 134*

1. Articles 84 and 85 shall apply by analogy, as well as Article 29 of Annex V.

2. Any sums due from a contract staff member to the Agency under this insurance scheme at the date when the benefits are payable shall be deducted from the amount of his benefit or from the benefits payable to those entitled under him. The deduction may be spread over a number of months.

## Section G

**Subrogation in favour of the agency***Article 135*

The provisions of Article 94 shall apply by analogy in favour of the Agency.

## CHAPTER 7

**Recovery of undue payment***Article 136*

The provisions of Article 95 shall apply by analogy.

## CHAPTER 8

**Termination of employment***Article 137*

Articles 96 to 100 shall apply by analogy to contract staff.

In the event of disciplinary proceedings against a contract staff member, the Disciplinary Board referred to in Article 143 shall meet with two additional members from the same function group and grade as the contract staff member concerned. These two additional members shall be appointed according to an ad hoc procedure agreed upon by the AACC and the Staff Committee.

## TITLE IV

**STAFF REPRESENTATION***Article 138*

1. A Staff Committee shall be formed according to modalities to be determined by the Steering Board.
2. The Staff Committee shall represent the interests of the staff vis-à-vis the Agency and maintain continuous contact between the Agency and the staff. It shall contribute to the smooth running of the service by providing a channel for the expression of opinion of the staff.

It shall bring to the notice of the competent bodies of the Agency any difficulty having general implications concerning the interpretation and application of these Staff Regulations. It may be consulted on any difficulty of this kind.

The Staff Committee shall submit to the competent bodies of the Agency suggestions concerning the organisation and operation of the service and proposals for the improvement of staff working conditions or general living conditions.

The Staff Committee shall participate in the management and supervision of social welfare bodies set up by the Agency in the interests of its staff. It may, with the consent of the Agency, set up such welfare services.

## TITLE V

**DISCIPLINARY PROCEDURE**

## Section A

**General provisions***Article 139*

1. Any failure by a staff member or former staff member to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.
2. Where the AACC becomes aware of evidence of failure within the meaning of paragraph 1, the AACC may launch administrative investigations to verify whether such failure has occurred.

*Article 140*

1. Whenever an internal investigation reveals the possibility of the personal involvement of a staff member, or a former staff member, that person shall rapidly be informed, provided this is not harmful to the investigation. In any event, conclusions referring by name to a staff member may not be drawn once the investigation has been completed without that staff member concerned having been given the opportunity to comment on facts concerning him. The conclusions shall make reference to these comments.
2. In cases that demand absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite the staff member to comment may, in agreement with the AACC, be deferred. In such cases, no disciplinary proceedings may be opened before the staff member has been given a chance to comment.
3. If, following an internal investigation, no case can be made against a staff member about whom allegations have been made, the investigation in question shall be closed, with no further action taken, by decision of the AACC, who shall inform the staff member in writing. The staff member may request that that decision be inserted in his personal file.
4. The AACC shall inform the person concerned when the investigation ends, and shall communicate to him the conclusions of the investigation report and, on request and subject to the protection of the legitimate interests of third parties, all documents directly related to the allegations made against him.

*Article 141*

On the basis of the investigation report, after having notified the staff member concerned of all evidence in the files and after hearing the staff member concerned, the AACC may:

- (a) decide that no case can be made against the staff member, in which case he shall be informed accordingly in writing; or
- (b) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a warning to the staff member; or
- (c) in the case of failure to comply with obligations within the meaning of Article 139:
  - (i) decide to initiate the disciplinary proceedings provided for in Section D of this Title; or
  - (ii) decide to initiate disciplinary proceedings before the Disciplinary Board.



*Article 142*

A staff member who, for objective reasons, cannot be heard under the provisions of this Title may be asked to comment in writing or may be represented by a person of his choice.

## Section B

**Disciplinary board***Article 143*

1. A Disciplinary Board shall be established in the Agency. The Disciplinary Board shall include at least one member, who may be the chairman, chosen from the staff of the Council of the European Union.
2. The Disciplinary Board shall consist of a chairman and four full members, who may be replaced by alternates, of which at least one member shall have the same function group as the member of staff subject to disciplinary proceedings.

*Article 144*

1. The AACC and the Staff Committee referred to in Article 138 shall each appoint two members and two alternates at the same time.
2. The chairman and alternate for the chairman shall be appointed by the AACC.
3. The chairman, the members and the alternates shall be appointed for a period of three years.

However, the Agency may provide for a shorter period for members and alternates, subject to a minimum of one year.

4. The staff member concerned shall be entitled to reject one of the Disciplinary Board members within five days of the Disciplinary Board's establishment. The Agency shall also be entitled to reject one of the Disciplinary Board members.

Within the same time limit, Disciplinary Board members may ask to be excused from duty for legitimate reasons and shall withdraw if a conflict of interests exists.

*Article 145*

The Disciplinary Board shall be assisted by a secretary appointed by the AACC.

*Article 146*

1. The chairman and members of the Disciplinary Board shall be completely independent in the performance of their duties.
2. The deliberations and proceedings of the Disciplinary Board shall be secret.

## Section C

**Disciplinary measures***Article 147*

1. The AACC may impose one of the following penalties:
  - (a) a written warning;
  - (b) a reprimand;
  - (c) deferment of advancement to a higher step for a period of between one and 23 months;
  - (d) relegation in step;
  - (e) temporary downgrading for a period of between 15 days and one year;
  - (f) downgrading in the same function group;
  - (g) classification in a lower function group, with or without downgrading;
  - (h) removal from post and, where appropriate, withholding, for a fixed period, of an amount from an invalidity allowance; the effects of this measure shall not extend to the staff members' dependants. In case of such reduction however, the income of the former staff member may not be less than the minimum subsistence figure corresponding to the basic salary of a member of temporary staff at the first step of grade 1, with the addition of any family allowances payable.
2. Where the member of staff is in receipt of an invalidity allowance, the AACC may decide to withhold an amount from the invalidity allowance for a given period; the effects of this measure shall not extend to the staff members' dependants. The income of the member of staff may not, however, be less than the minimum subsistence figure corresponding to the basic salary of a member of temporary staff at the first step of grade 1, with the addition of any family allowances payable.
3. A single case of misconduct shall not give rise to more than one disciplinary penalty.

*Article 148*

The severity of the disciplinary penalties imposed shall be commensurate with the seriousness of the misconduct. To determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed, account shall be taken in particular of:

- (a) the nature of the misconduct and the circumstances in which it occurred;
- (b) the extent to which the misconduct adversely affects the integrity, reputation or interests of the Agency;
- (c) the extent to which the misconduct involves intentional actions or negligence;
- (d) the motives for the misconduct of the staff member;
- (e) the grade and seniority of the staff member;
- (f) the degree of the personal responsibility of the staff member;
- (g) the level of the duties and responsibilities of the staff member;
- (h) whether the misconduct involves repeated action or behaviour;
- (i) the conduct of the staff member throughout the course of his career.

## Section D

**Disciplinary proceedings not involving the disciplinary board***Article 149*

The AACC may decide on the penalty of a written warning or reprimand without consulting the Disciplinary Board. The staff member concerned shall be heard before such action is taken by the AACC.

## Section E

**Disciplinary proceedings before the disciplinary board***Article 150*

1. The AACC shall submit a report to the Disciplinary Board, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose, including any aggravating or extenuating circumstances.
2. The report shall be communicated to the staff member concerned and to the chairman of the Disciplinary Board, who shall bring it to the attention of the members of the Disciplinary Board.

*Article 151*

1. On receipt of the report, the staff member concerned shall have the right to obtain his complete personal file and take copies of all documents relevant to the proceedings, including exonerating evidence.
2. The staff member concerned shall have not less than 15 days from the date of receipt of the report initiating the disciplinary proceedings to prepare a defence.
3. The staff member concerned may be assisted by a person of his or her choice.

*Article 152*

1. If, in the presence of the Chairman of the Disciplinary Board, the staff member concerned acknowledges misconduct on his part and accepts unreservedly the report referred to in Article 149, the AACC may, in accordance with the principle of proportionality between the nature of the misconduct and the penalty being considered, withdraw the case from the Disciplinary Board. Where a case is withdrawn from the Disciplinary Board, the Chairman shall deliver an opinion on the penalty considered.
2. Under this procedure the AACC may, by derogation from Article 149, impose one of the penalties provided for in Article 147(1)(a) to (d).
3. The staff member concerned shall be informed before acknowledging his misconduct of the possible consequences of such acknowledgement.

*Article 153*

Before the first meeting of the Disciplinary Board, the chairman shall give one of its members the task of preparing a general report on the matter and shall inform the other members of the Disciplinary Board accordingly.

*Article 154*

1. The staff member concerned shall be heard by the Disciplinary Board; at the hearing, he may submit observations in writing or orally, whether in person or through a representative. He may call witnesses.
2. The Agency shall be represented before the Disciplinary Board by a staff member mandated by the AACC to this effect and having rights equivalent to those of the staff member concerned.

*Article 155*

1. If the Disciplinary Board does not consider that it has sufficiently clear information on the facts complained of or the circumstances in which they arose, it shall order an investigation in which each side can submit its case and reply to the case of the other side.
2. The Chairman or a member of the Disciplinary Board shall conduct the investigation on behalf of the Disciplinary Board. For the purposes of the investigation, the Disciplinary Board may call for any documents relating to the matter before it. The Agency shall comply with any such request within the time limit, if any, set by the Disciplinary Board. Where such a request is addressed to the member of staff, note shall be taken of any refusal to comply.

*Article 156*

After consideration of documents submitted and having regard to any statement made orally or in writing and to the results of any investigation undertaken, the Disciplinary Board shall, by majority vote, deliver a reasoned opinion as to whether the facts complained of are established and as to any penalty to which those facts should give rise. This opinion shall be signed by all the members of the Disciplinary Board. Each member may attach to the opinion a divergent view. The Disciplinary Board shall transmit the opinion to the AACC and to the staff member concerned within two months of the date of receipt of the report of the AACC, provided that this time limit is commensurate with the degree of complexity of the case. Where an investigation has been held at the Disciplinary Board's initiative, the time limit shall be four months, provided that this period is commensurate with the degree of complexity of the case.

*Article 157*

1. The Chairman of the Disciplinary Board shall not vote on matters before it, except as regards matters of procedure or where votes are tied.
2. The Chairman shall ensure that the decisions of the Disciplinary Board are implemented and shall bring all information and documents relating to the case to the attention of each of its members.

*Article 158*

The secretary shall draw up minutes of meetings of the Disciplinary Board. Witnesses shall sign the minutes recording their evidence.

*Article 159*

1. Expenses incurred on the initiative of a staff member concerned in the course of disciplinary proceedings, and in particular fees paid to a person chosen to assist the member of staff or for his defence, shall be borne by the staff member where the disciplinary proceedings result in the imposition of one of the penalties provided for in Article 147.
2. However, the AACC may decide otherwise in exceptional cases where the burden on the member of staff concerned would be unfair.

*Article 160*

1. After hearing the member of staff, the AACC shall take its decision as provided for in Articles 147 and 148 within two months of receipt of the opinion of the Disciplinary Board. Reasons must be given for the decision.
2. If the AACC decides to close the case without imposing any disciplinary penalty, it shall so inform the staff member concerned in writing without delay. The staff member concerned may request that this decision be inserted in his personal file.

## Section F

**Suspension***Article 161*

1. If the AACC accuses a staff member of serious misconduct, whether through a failure to honour his professional obligations or through an infringement of the law, it may immediately suspend the person accused of that misconduct for a specified or indefinite period.
2. The AACC shall take this decision after hearing the staff member concerned, save in exceptional circumstances.

*Article 162*

1. The decision suspending a staff member shall state whether the staff member is to continue to receive his full remuneration during the period of suspension or what part thereof is to be withheld. The amount paid to the staff member shall not under any circumstances be less than the minimum subsistence figure corresponding to the basic salary of a member of temporary staff at the first step of grade 1, with the addition of any family allowances payable.
2. The situation of a suspended staff member must be definitively settled within six months of the date on which the suspension takes effect. If no such decision is taken within six months, the staff member concerned shall be entitled to again receive full remuneration, subject to paragraph 3.
3. Remuneration may continue to be withheld in part after the six-month deadline referred to in paragraph 2, if the staff member concerned is the subject of criminal proceedings for the same acts and is in custody as a result of those proceedings. In such cases the staff member shall not receive full remuneration until the competent court has ordered his release.
4. Sums withheld under paragraph 1 of this Article shall be repaid to the staff member if the final decision imposes a disciplinary penalty no more severe than a written warning, reprimand or deferment of advancement to a higher step, or if no disciplinary penalty is imposed; in the latter case, the repayment shall be made with compound interest at the rate defined in Article 88.

## Section G

**Parallel criminal prosecution***Article 163*

Where the member of staff is prosecuted for those same acts, a final decision shall be taken only after a final judgment has been handed down by the court hearing the case.

## Section H

**Final provisions***Article 164*

A staff member against whom a disciplinary penalty other than removal from post has been ordered may, after three years in the case of a written warning or reprimand or after six years in the case of any other penalty, submit a request for the deletion from his personal file of all reference to such measure. The AACC shall decide whether to grant this request.

*Article 165*

Where new facts supported by relevant evidence come to light, disciplinary proceedings may be reopened by the AACC on its own initiative or on application by the member of staff concerned.

*Article 166*

If no case has been made against the staff member pursuant to Article 160(2), the staff member shall be entitled to request that the damage suffered should be made good through suitable publicity for the decision of the AACC.

*Article 167*

The Steering Board shall adopt implementing arrangements for these procedures.

## TITLE VI

**APPEALS***Article 168*

1. Any person to whom these Staff Regulations apply may submit to the AACC a request that it takes a decision relating to him. The AACC shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If, at the end of that period, no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with paragraph 2.

2. Any person to whom these Staff Regulations apply may submit to the AACC a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by these Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

- on the date of publication of the act if it is a measure of a general nature,
- on the date of notification of the decision to the person concerned, but in no case, later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication,
- on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The AACC shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If, at the end of that period, no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 170.

#### *Article 169*

1. The Court of Justice of the European Union shall have jurisdiction in any dispute between the Union and any person to whom these Staff Regulations apply regarding the legality of an act affecting such person adversely within the meaning of Article 168(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. An appeal to the Court of Justice of the European Union shall lie only if:

- the AACC has previously had a complaint submitted to it pursuant to Article 168(2) within the period prescribed therein, and
- the complaint has been rejected by express decision or by implied decision.

3. Appeals under paragraph 2 shall be filed within three months. The period shall begin:

- on the date of notification of the decision taken in response to the complaint,
- on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 168(2); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.

4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the AACC pursuant to Article 168(2), immediately file an appeal with the Court of Justice, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.

5. Appeals under this Article shall be investigated and heard as provided for in the Rules of Procedure of the Court of Justice of the European Union.

## TITLE VII

**SPECIAL ADVISERS***Article 170*

1. The remuneration of special advisers shall be determined by direct agreement between the adviser concerned and the AACC. The contract of a special adviser shall be for a term not exceeding two years, for a maximum number of days in the period. It shall be renewable.
2. Where the Agency intends to recruit a special adviser or renew his contract, it shall submit the proposal to the Steering Board, specifying the remuneration contemplated, the terms of reference, the reasons for the proposal and any other relevant element.

The Agency may conclude the contract unless the Steering Board decides otherwise within one month of receiving the information referred to in the first subparagraph.

3. The AACC shall adopt the specific rules to implement the provisions of this Article.

*Article 171*

Articles 1(2), Articles 6, 11, 12, 13 and 14, the first paragraph of Article 18, Articles 19, 20, Article 21(1), Articles 22, 27 and 28, the second paragraph of Article 32, and Article 36, concerning the rights and obligations of staff members of the Agency, and Articles 168 and 169, concerning appeals, shall apply by analogy.

*Article 172*

1. The provisions of these Staff Regulations concerning the rights and obligations (Articles 11 to 35 and 104), the conditions of recruitment (Article 37, with the exception of point (a) of paragraph 2, Article 38 to 41 and Article 105, with the exception of point (a) of Article 105(3), and Articles 106 to 110), the working conditions (Articles 42 to 58 and Article 111), the termination of employment (Article 96 to 100 and Article 137) and the disciplinary procedure (Articles 139 to 167), may be amended, to the extent necessary, by the Steering Board of the Agency, acting in accordance with Article 9(1)(j) and Article 11(3)(a) of Decision (CFSP) 2015/1835. Any such proposed amendments shall be transmitted to the Council. Those amendments shall be deemed approved, unless the Council, within two months and acting by qualified majority, decides to modify them.
2. Amendments to other provisions of these Staff Regulations, in particular those concerning remuneration, allowances and social security benefits, shall be adopted by the Council, acting by unanimity, upon proposal from the Steering Board.

*Article 173*

Within three years after the entry into force of these Staff Regulations, the Council of the European Union shall evaluate and amend these Staff Regulations or take a decision on their expiration, as appropriate.

*Article 174*

Decision 2004/676/EC is hereby repealed.



*Article 175*

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 4 August 2016.

*For the Council*  
*The President*  
M. LAJČÁK

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## ANNEX I

**PART-TIME WORK***Article 1*

The request for authorisation to work part-time shall be submitted by the staff member through the staff member's immediate superior at least two months before the requested date, except in duly justified urgent cases.

Authorisation may be granted for a minimum of one month and a maximum of three years, without prejudice to the cases referred to in Article 17 and Article 45(2)(e).

The authorisation may be renewed on the same terms. Applications for renewal shall be made by the staff member concerned at least two months before expiry of the period for which the authorisation was granted. Part-time work may not be less than half the normal working time.

A period of part-time work shall start on the first day of a month, except in duly justified cases.

*Article 2*

The AACC may, at the request of the staff member concerned, withdraw the authorisation before expiry of the period for which it is granted. The date of withdrawal may not be more than two months after the date proposed by the staff member or four months after that date if the part-time work was authorised for more than one year.

The AACC may, in exceptional cases and in the interests of the service, withdraw the authorisation before the expiry of a period for which it is granted, giving the staff member two months' notice.

*Article 3*

A staff member shall be entitled, during the period for which part-time work is authorised, to a percentage of his remuneration corresponding to the percentage of the normal time worked. However, the percentage shall not be applied to the dependent child allowance, the basic amount of the household allowance or the education allowance.

Contributions to the sickness insurance scheme shall be calculated by reference to the basic salary payable to a staff member working full time. Contributions to the pension scheme shall be calculated by reference to the basic salary received by a staff member working part-time. The staff member may also request that contributions to the pension scheme be calculated by reference to the basic salary payable to a staff member working full time, in accordance with Article 90. Acquired rights, for the purposes of Article 1 of Annex V, shall be calculated in proportion to the percentage of contributions paid.

During the period of part-time work, the staff member may not work overtime or engage in any gainful activity, other than an activity in accordance with Article 17.

*Article 4*

The AACC may lay down detailed rules for the application of these provisions.

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## ANNEX II

## LEAVE

## SECTION 1

**Annual leave***Article 1*

In the year in which a staff member enters or leaves the service, he shall be entitled to two working days' leave per complete month of service, to two working days for an incomplete month consisting of more than 15 days and to one working day for an incomplete month of 15 days or less.

*Article 2*

Annual leave may be taken all at once or in several periods as desired by the staff member and according to the requirements of the service. It must, however, include at least one period of two consecutive weeks. A staff member entering the service shall be granted annual leave only after completing three months' duty; leave may be approved earlier than this in exceptional cases for reasons duly substantiated.

*Article 3*

If, during annual leave, a staff member contracts an illness which would have prevented him from attending for duty if he had not been on leave, his annual leave shall be extended by the duration of his incapacity, subject to production of a medical certificate.

*Article 4*

Where a staff member, for reasons other than the requirements of the service, has not used up all his annual leave before the end of the current calendar year, the amount of leave which may be carried over to the following year shall not exceed 12 days.

Where a staff member at the time of leaving the service has not used up all his annual leave, he shall be paid compensation equal to one thirtieth of his monthly remuneration at the time of leaving the service for each day's leave due to him.

A sum calculated in the manner provided for in the second subparagraph shall be deducted from payment due to a staff member who at the time of leaving the service has drawn annual leave in excess of his entitlement up to that date.

*Article 5*

Where a staff member is recalled to duty for service reasons while on annual leave or has had his leave cancelled, any costs incurred by him shall be reimbursed, subject to production of appropriate evidence, and travelling time shall be granted afresh.

## SECTION 2

**Special leave***Article 6*

In addition to annual leave, a staff member may, on application, be granted special leave. In particular, in the following cases special leave shall be granted as shown:

- marriage of the staff member: four days,
- change of residence of the staff member: up to two days,
- serious illness of spouse: up to three days,
- death of spouse: four days,
- serious illness of a relative in the ascending line: up to two days,
- death of a relative in the ascending line: two days,
- marriage of a child: two days,
- birth of a child: 10 days, to be taken during the fourteen weeks following birth,
- birth of a disabled or seriously ill child: 20 days, to be taken during the fourteen weeks following the birth,
- death of the wife during maternity leave: a number of days corresponding to the remaining maternity leave; if the deceased wife is not a staff member, the remaining maternity leave is determined by applying the provisions of Article 52, by analogy,
- serious illness of a child: up to two days,
- very serious illness of a child, as certified by a doctor, or hospitalisation of a child aged 12 or under: up to five days,
- death of a child: four days,
- adoption of a child: 20 weeks, rising to 24 weeks in the case of the adoption of a disabled child:

Every adopted child shall confer entitlement to only one period of special leave, which may be shared between the adoptive parents if both are staff members. It shall be granted only if the staff member's spouse engages in a gainful activity at least half-time. If the spouse works outside the institutions of the Union and benefits from comparable leave, a corresponding number of days shall be deducted from the staff member's entitlement.

The AACC may, in case of necessity, grant additional special leave in cases where the national legislation of the country in which the adoption procedure takes place and which is not the country of employment of the adopting staff member requires a stay of one or both adoptive parents.

Special leave of 10 days shall be granted if the staff member does not benefit from the full special leave of 20 or 24 weeks by reason of the first sentence of this indent; this additional special leave shall be granted only once for each adopted child.

The Agency may also grant special leave in the case of further training and instruction, within the limits laid down in the further training and instruction programme drawn up by the Agency pursuant to Article 30.

Special leave may furthermore be granted to staff members on an exceptional basis in case of exceptional work which goes beyond a staff member's normal obligations. Such special leave shall be granted at the latest three months after the AACC has taken a decision on the exceptional character of the work of the staff member.

For the purposes of this Article, the unmarried partner of a staff member shall be treated as the spouse where the first three conditions in Article 1(2)(c) of Annex IV are met.

Where special leave is granted pursuant to this Section, any travelling time shall be fixed by a special decision taking into account particular needs.

### SECTION 3

#### **Travelling time**

##### *Article 7*

Staff members who are entitled to the expatriation or foreign residence allowance shall be entitled to two and a half days of supplementary leave every year, for the purpose of visiting their home country.

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## ANNEX III

**COMPENSATORY LEAVE AND REMUNERATION FOR OVERTIME***Article 1*

Within the limits laid down in Article 48, overtime worked by a staff member in grade AST 1 to AST 4 shall entitle him to compensatory leave or to remuneration as follows:

- (a) For each hour of overtime, he shall be entitled to one hour and a half off as compensatory leave; if the hour of overtime is worked between 22.00 and 7.00 or on a Sunday or on a public holiday, the entitlement to compensatory leave shall be two hours; in the granting of compensatory leave, account shall be taken of the requirements of the service and the preference of the staff member concerned.
- (b) Where the requirements of the service do not permit compensatory leave to be taken during the month following that during which the overtime was worked, the AACC shall authorise remuneration for uncompensated hours of overtime at the rate of 0,56 % of the monthly basic salary for each hour of overtime on the basis set out in (a).
- (c) To qualify for compensatory leave or remuneration for one hour's overtime, the extra time worked must have been more than 30 minutes.

*Article 2*

If a staff member is travelling on mission, the time taken to reach the place of assignment shall not be treated as overtime for the purposes of this Annex. As regards hours worked at the place of assignment in excess of the normal number of working hours, compensatory leave or remuneration, as the case may be, may be allowed by decision of the AACC.

*Article 3*

Notwithstanding Articles 1 and 2, remuneration for overtime worked by certain groups of staff members in grade AST 1 to AST 4 in special conditions may be paid in the form of a fixed allowance the amount and terms of which shall be determined by the AACC after consulting the Staff Committee.

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## ANNEX IV

## REMUNERATION AND REIMBURSEMENT OF EXPENSES

## SECTION 1

**Family allowances***Article 1*

1. The household allowance shall be set at a basic amount of EUR 171,88, plus 2 % of a staff member's basic salary.
2. The household allowance shall be granted to:
  - (a) a married staff member;
  - (b) a staff member who is widowed, divorced, legally separated or unmarried and has one or more dependent children within the meaning of Article 2(2) and (3);
  - (c) a staff member who is registered as a stable non-marital partner, provided that:
    - (i) the couple produces a legal document recognised as such by a Member State, or any competent authority of a Member State, acknowledging their status as non-marital partners;
    - (ii) neither partner is in a marital relationship or in another non-marital partnership;
    - (iii) the partners are not related in any of the following ways: parent, child, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece, son-in-law, daughter-in-law;
    - (iv) the couple has no access to legal marriage in a Member State; a couple shall be considered to have access to legal marriage for the purposes of this point only where the members of the couple meet all the conditions laid down by the legislation of a Member State permitting marriage of such a couple;
  - (d) by special reasoned decision of the AACC based on supporting documents, a staff member who, while not fulfilling the conditions laid down in points (a), (b) and (c), nevertheless actually assumes family responsibilities.
3. If the spouse of a staff member is gainfully employed, with an annual income before deduction of tax, of more than the basic annual salary of a staff member in the second step of grade 3, weighted at the rate for the country where the spouse carries out his or her occupation, the staff member entitled to the household allowance shall not receive this allowance save by special decision of the AACC. The staff member shall, however, be entitled to the allowance where the married couple have one or more dependent children.
4. In cases where, under paragraphs 1, 2 and 3, spouses who are both employed in the service of the Agency are both entitled to the household allowance, this allowance shall be payable only to the person whose basic salary is the higher.
5. If the staff member is entitled to the household allowance only by virtue of paragraph 2(b) and a person other than the staff member has by law or by an order of court or of the competent administrative authority been given custody of all his dependent children within the meaning of Article 2(2) and (3), the household allowance shall be paid to that other person in the name and on behalf of the staff member. This condition shall be deemed to be fulfilled in the case of dependent children who have reached their majority if such children have their normal residence with the other parent.

If, however, the staff member's children are in the care of several different persons, the household allowance shall be divided among them according to the number of children in their care.

If the person eligible by virtue of the foregoing to receive the household allowance paid in the staff member's name is also eligible to receive this allowance by reason of his or her own status as staff member, that person shall receive the higher of the two allowances only.

#### *Article 2*

1. A staff member who has one or more dependent children shall, in accordance with paragraphs 2 and 3, receive an allowance of EUR 375,59 per month for each dependent child.

2. 'Dependent child' means the legitimate, natural or adopted child of a staff member, or of his spouse, who is actually being maintained by the staff member.

The same shall apply to a child for whom an application for adoption has been lodged and the adoption procedure started.

Any child whom the staff member has a responsibility to maintain under a judicial decision based on Member States' legislation on the protection of minors shall be treated as a dependent child.

The amount referred to in paragraph 1 shall be reviewed each time remuneration is revised pursuant to Article 60.

3. The allowance shall be granted:

(a) automatically for children under 18 years of age;

(b) on application, with supporting evidence, by the staff member for children between 18 and 26 who are receiving educational or vocational training.

4. Any person whom the staff member has a legal responsibility to maintain and whose maintenance involves heavy expenditure may, exceptionally, be treated as if he were a dependent child by special reasoned decision of the AACC, based on supporting documents.

5. Payment of the allowance in respect of a child prevented by serious illness or invalidity from earning a livelihood shall continue throughout the period of that illness or invalidity, irrespective of age.

6. Not more than one dependent child allowance shall be paid in respect of any one dependent child within the meaning of this Article.

7. If custody of the dependent child within the meaning of paragraphs 2 and 3 has been entrusted by law or by an order of court or of the competent administrative authority to another person, the dependent child allowance shall be paid to that person in the name and on behalf of the staff member.

#### *Article 3*

1. Subject to the conditions laid down in the general implementing provisions, a staff member shall receive an education allowance equal to the actual education costs incurred by him up to a maximum of EUR 254,83 per month for each dependent child, within the meaning of Article 2(2) of this Annex, who is at least five years old and in regular full-time attendance at a primary or secondary school which charges fees or at an establishment of higher education. The requirement of attendance at a school which charges fees shall not apply to the reimbursement of the cost of school transport.

Entitlement to this allowance shall commence on the first day of the month in which the child begins to attend a primary educational establishment and shall cease at the end of the month in which the child finishes its education or at the end of the month in which the child reaches the age of 26, whichever is the earliest.



The allowance paid shall be subject to a ceiling of twice the maximum prescribed in the first subparagraph for:

- a staff member whose place of employment is at least 50 km from, either:
  - a European school, or
  - an educational establishment working in his language which the child attends for imperative educational reasons duly supported by evidence,
- a staff member whose place of employment is at least 50 km from an establishment of higher education in the country of which he is a national or working in his language, provided that the child actually attends an establishment of higher education at least 50 km from the place of employment and the staff member is entitled to the expatriation allowance; the latter condition shall not apply if there is no such establishment in the country of which the staff member is a national or where the child attends a higher education establishment in a country other than that of the staff member's place of employment,
- in the same condition as in the first and second indents, persons entitled to the allowance who are not in active service, taking account of the place of residence instead of the place of employment.

The requirement of attendance at a school that charges fees shall not apply to payments under the third subparagraph.

If custody of the child in respect of whom the education allowance is paid has been entrusted by law or by an order of court or of the competent administrative authority to another person, the education allowance shall be paid to that person in the name and on behalf of the staff member. In such case, the distance of at least 50 km referred to in the third subparagraph shall be calculated from the place of residence of the person having custody of the child.

2. For each dependent child within the meaning of Article 2(2) of this Annex who is less than five years old or is not yet in regular full-time attendance at a primary or secondary school, the amount of this allowance is fixed at 91,75 per month.

That amount shall be reviewed each time remuneration is revised pursuant to Article 60.

## SECTION 2

### **Expatriation allowance**

#### *Article 4*

1. An expatriation allowance shall be paid, equal to 16 % of the total amount of the basic salary plus household allowance and the dependent child allowance paid to the staff member:

(a) to staff members:

- who are not and have never been nationals of the State in whose territory the place where they are employed is situated, and
- who during the five years ending six months before they entered the service did not habitually reside or carry on their main occupation within the European territory of that State. For the purposes of this provision, circumstances arising from work done for another State or for an international organisation shall not be taken into account;

(b) to staff members who are or have been nationals of the State in whose territory the place where they are employed is situated but who during the 10 years ending at the date of their entering the service habitually resided outside the European territory of that State for reasons other than the performance of duties in the service of a State or of an international organisation.

The expatriation allowance shall not be less than EUR 509,43 per month.

2. A staff member who is not and has never been a national of the State in whose territory he is employed and who does not fulfil the conditions laid down in paragraph 1 shall be entitled to a foreign residence allowance equal to one quarter of the expatriation allowance.

3. For the purposes of paragraphs 1 and 2, a staff member who has, by marriage, automatically acquired, without the possibility of renouncing it, the nationality of the State in whose territory his or her place of employment is situated, shall be treated in the same way as a staff member covered by the first indent of paragraph 1(a).

### SECTION 3

#### **Reimbursement of expenses**

##### A. INSTALLATION ALLOWANCE

#### *Article 5*

1. An installation allowance equal to two months' basic salary in the case of a staff member who is entitled to the household allowance, and equal to one month's basic salary in other cases, shall be paid to an established staff member who furnishes evidence that a change in the place of residence was required in order to satisfy the requirements of Article 23.

In cases where spouses who are both staff members are both entitled to the installation allowance, this shall be payable only to the person whose basic salary is the higher.

The installation allowance shall be weighted at the rate fixed for the place where the staff member is employed.

2. An installation allowance of the same amount shall be paid to any staff member who is transferred to a new place of employment and is thereby obliged to change his place of residence in order to comply with Article 23.

3. The installation allowance shall be calculated by reference to the staff member's marital status and salary either on the effective date of his establishment or on the date of his transfer to a new place of employment.

The installation allowance shall be paid on production of documents establishing the fact that the staff member, together with his family if he is entitled to the household allowance, has settled at the place where he is employed.

4. A staff member who is entitled to the household allowance and does not settle with his family at the place where he is employed shall receive only half the allowance to which he would otherwise be entitled; the second half shall be paid when his family settles at the place where he is employed, provided that it does so within the periods laid down in Article 9(3). Where the staff member is transferred to the place where his family resides before his family has settled at the place where he is employed, he shall not thereby be entitled to an installation advance.

5. An established staff member who has received an installation allowance and who voluntarily leaves the service of the Agency within two years from the date of entering it shall, on leaving the service, refund part of the allowance, in proportion to the unexpired portion of that two-year period.

6. A staff member in receipt of installation allowance shall declare any allowance of like nature which he receives from other sources; such latter allowances shall be deducted from the allowance provided for in this Article.

## B. RESETTLEMENT ALLOWANCE

### *Article 6*

1. An established staff member who provides evidence of a change of residence shall be entitled on termination of service to a resettlement allowance equal to two months' basic salary in the case of a staff member who is entitled to the household allowance or to one month's basic salary in other cases, provided that he has completed four years of the service and does not receive a similar allowance in his new employment. In cases where spouses who are both staff members are both entitled to the resettlement allowance, this allowance shall be payable only to the person whose basic salary is the higher.

For the purpose of calculating his service, account shall be taken of years spent in active employment, leave for military service and parental leave or family leave.

The resettlement allowance shall be weighted at the rate fixed for the place where the staff member was last employed.

2. In the event of the death of an established staff member, the resettlement allowance shall be paid to the surviving spouse or, in the absence of such a person, to the dependants within the meaning of Article 2, even if the requirement as to length of service laid down in paragraph 1 of this Article is not satisfied.

3. The resettlement allowance shall be calculated by reference to the staff member's marital status and salary at the date of termination of service.

4. The resettlement allowance shall be paid against evidence that the staff member and his family, or, where the staff member has died, his family only, have resettled at a place situated not less than 70 km from the place where the staff member was employed.

Resettlement of a staff member or of the family of a deceased staff member shall take place within three years of the date of termination of his service.

This time-limit shall not apply as against persons entitled under him who can prove that they were unaware of the foregoing provisions.

## C. TRAVEL EXPENSES

### *Article 7*

1. A staff member shall be entitled to a flat-rate payment corresponding to the cost of travel for himself, his spouse and his dependants actually living in his household:

- (a) on taking up his appointment, from the place where he was recruited to the place where he is employed;
- (b) on termination of service within the meaning of Article 96, from the place where he is employed to the place of origin as defined in paragraph 3 of this Article;
- (c) on any transfer involving a change in the place where he is employed.

In the event of the death of a staff member, the surviving spouse and the dependants shall be entitled to the flat-rate payment under the same conditions.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the places referred to in paragraph 1.

The kilometric allowance shall be:

- EUR 0 for every km from 0 to 200 km
- EUR 0,1895 for every km from 201 to 1 000 km
- EUR 0,3158 for every km from 1 001 to 2 000 km
- EUR 0,1895 for every km from 2 001 to 3 000 km
- EUR 0,0631 for every km from 3 001 to 4 000 km
- EUR 0,0305 for every km from 4 001 to 10 000 km
- EUR 0 for every km over 10 000 km.

To the above kilometric allowance a flat-rate supplement shall be added, amounting to:

- EUR 94,74 if the geographical distance between the places referred to in paragraph 1 is between 600 km and 1 200 km,
- EUR 189,46 if the geographical distance between the places referred to in paragraph 1 is greater than 1 200 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

A staff member's place of origin shall be determined when he takes up his appointment, account being taken in principle of where he was recruited or, upon an express and motivated request, the centre of his interests. The place of origin as so determined may by special decision of the AACC be changed while the staff member is in service or when he leaves the service. While he is in the service, however, such decision shall be taken only exceptionally and on production by the staff member of appropriate supporting evidence. The effect of such a change shall not, however, be such as to recognise as the centre of the staff member's interests, a place which is outside the territories of the Member States as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association.

#### *Article 8*

1. Staff members entitled to the expatriation or foreign residence allowance shall be entitled, within the limit set out in paragraph 2, in each calendar year to a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin as defined in Article 7 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2.

Where both spouses are staff members of the Agency, each has the right in respect of himself or herself and in respect of dependants to the flat-rate payment of travelling expenses, in accordance with the above provisions; each dependant shall be entitled to one payment only. The payment in respect of dependent children is fixed at the request of the husband or wife, on the basis of the place of origin of one or other of them.

Where a staff member marries during a given year and thereby becomes entitled to the household allowance, the travel expenses payable for the spouse shall be calculated in proportion to the period from the date of the marriage to the end of the year.

Any alteration to the basis of calculation which may arise from changes in family status after the date of payment of the sums in question shall not render the staff member concerned liable to make repayment.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the staff member's place of employment and his place of origin.

Where the place of origin, as defined in Article 7, is outside the territories of the Member States as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association, the flat-rate payment shall be based on an allowance per kilometre of geographical distance between the staff member's place of employment and the capital city of the Member State whose nationality he holds. Staff members whose place of origin is outside the territories of the Member States as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association and who are not nationals of one of the Member States shall not be entitled to the flat-rate payment.

The kilometric allowance shall be:

- EUR 0 for every km from 0 to 200 km
- EUR 0,3820 for every km from 201 to 1 000 km
- EUR 0,6367 for every km from 1 001 to 2 000 km
- EUR 0,3820 for every km from 2 001 to 3 000 km
- EUR 0,1272 for every km from 3 001 to 4 000 km
- EUR 0,0614 for every km from 4 001 to 10 000 km
- EUR 0 for every km over 10 000 km.

To the above kilometric allowance a flat-rate supplement shall be added amounting to:

- EUR 191,00 if the distance by train between the place of employment and the place of origin is between 725 km and 1 450 km,
- EUR 381,96 if the distance by train between the place of employment and the place of origin is greater than 1 450 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

3. A staff member whose service is terminated in the course of a calendar year for any reason other than death or who is on leave on personal grounds during part of the year shall, if he is in active employment in the service of an institution of the European Union for less than nine months of that year, be entitled only to part of the flat-rate payment provided for in paragraphs 1 and 2, calculated in proportion to the time spent in active employment.

4. Paragraphs 1 to 3 shall apply to staff members whose place of employment is within the territories of the Member States. Staff members whose place of employment is outside the territory of the Member States shall be entitled for themselves and, if they are entitled to receive the household allowance, for their spouse and other dependants within the meaning of Article 2, in each calendar year, to a flat-rate payment for travel expenses to their place of origin, or to repayment of travel expenses to another place not exceeding the expense of travel to the place of origin. However, if the spouse and the persons referred to in Article 2(2) do not live with the staff member at the place of employment, they shall be entitled each calendar year to reimbursement of travel expenses from the place of origin to the place of employment or to another place not exceeding the cost of the former journey.

The flat-rate payment shall be based on the cost of air travel in economy class.

## D. REMOVAL EXPENSES

*Article 9*

1. Within the limits of cost ceilings, staff members obliged to change the place of residence in order to comply with Article 23 upon entry into service or on a subsequent change of place of employment while in service and who have not been reimbursed in respect of the same expenses from another source, shall be entitled to the reimbursement of expenses incurred in respect of the removal of furniture and personal effects, including the cost of insurance against ordinary risks (notably breakage, theft, fire).

The ceilings shall take into account the staff member's family situation at the time of the removal, and the average costs of removal and associated insurance.

General implementing provisions shall be adopted by the AACC of each institution to give effect to this paragraph.

2. On termination of service or on death of a staff member, the expenses incurred in respect of removal from the place where he was employed to his place of origin shall be reimbursed within the limits defined in paragraph 1. Where the deceased staff member was unmarried, the expenses shall be reimbursed to those entitled under him.

3. In the case of an established staff member, removal shall be effected within one year of the end of his probationary period. On termination of service, removal shall be effected within three years as provided in the second subparagraph of Article 6(4). Removals effected after the expiry of the time limits set out above shall be reimbursed only in exceptional cases and by special decision of the AACC.

## E. DAILY SUBSISTENCE ALLOWANCE

*Article 10*

1. Where a staff member furnishes evidence that a change in the place of residence is required in order to comply with Article 23, such staff member shall be entitled for a period specified in paragraph 2 of this Article to a subsistence allowance per calendar day as follows:

Staff member entitled to receive household allowance: EUR 39,48.

Staff member not entitled to receive household allowance: EUR 31,83.

The above scale shall be reviewed each time remuneration are revised pursuant to Article 60.

2. The period in respect of which the daily subsistence allowance is granted shall be as follows:

(a) in the case of a staff member who is not entitled to the household allowance: 120 days;

(b) in the case of a staff member who is entitled to the household allowance: 180 days or, if the staff member is a probationer, the period of probation plus one month.

In cases where spouses who are both staff members are both entitled to the basic subsistence allowance, the period in respect of which it is granted as laid down in subparagraph (b) shall apply to the person whose basic salary is the higher. The period laid down in subparagraph (a) shall apply to the other person.

In no case shall the daily subsistence allowance be granted beyond the date on which the staff member removes in order to satisfy the requirements of Article 23.

## F. MISSION EXPENSES

### *Article 11*

1. A staff member travelling on mission and holding an appropriate travel order shall be entitled to reimbursement of travel expenses and to daily subsistence allowance in accordance with the following provisions.
2. The travel order shall state the probable duration of the mission, on the basis of which shall be calculated any advance which the staff member may draw against the daily subsistence allowance. Save where a special decision is taken, no advance shall be payable where the mission is not expected to involve an absence of more than 24 hours and is to be carried out in a country using the same currency as that used in the place where the staff member is employed.
3. Save in special cases, to be determined by special decision and in particular where a staff member is called back from leave, the reimbursement of mission expenses shall be limited to the cost of the most economical journey between the place of employment and the place of mission which does not require the staff member on mission to extend his stay significantly.

### *Article 12*

#### 1. Travel by rail

Travel expenses for missions carried out by rail shall be reimbursed on presentation of supporting documents on the basis of the cost of transport in first class by the shortest route between the place of employment and the place of the mission.

#### 2. Travel by air

Staff members shall be authorised to travel by air if the outward and return journeys by rail would total at least 800 kilometres.

#### 3. Travel by sea

The AACC shall authorise in each case and on the basis of the length and cost of the journey the classes to be used and the cabin supplements which may be reimbursed.

#### 4. Travel by car

Travel costs shall be reimbursed in the form of a lump sum based on the rail cost, in accordance with paragraph 1; no other supplement shall be paid.

In the case of a staff member travelling on mission in special circumstances, however, the AACC may decide to grant that staff member an allowance per kilometre covered instead of the reimbursement of travel costs provided for above, if the use of public transport presents clear disadvantages.

## Article 13

1. The daily subsistence allowance for missions shall comprise a flat-rate sum to cover all expenses incurred by the person on mission: breakfast, two main meals and incidental expenses, including local travel. Accommodation costs, including local taxes, shall be reimbursed up to a maximum fixed for each country, on production of supporting documents.

2. (a) The scale for the Member States is as follows:

Destinations	Daily allowance (in EUR)	Hotel Ceiling (in EUR)
Austria	95	130
Belgium	92	140
Bulgaria	58	169
Croatia	60	120
Czech Republic	55	175
Cyprus	93	145
Denmark	120	150
Estonia	71	110
Finland	104	140
France	95	150
Germany	93	115
Greece	82	140
Spain	87	125
Hungary	72	150
Ireland	104	150
Italy	95	135
Latvia	66	145
Lithuania	68	115
Luxembourg	92	145
Malta	90	115
Netherlands	93	170
Poland	72	145
Portugal	84	120



Destinations	Daily allowance (in EUR)	Hotel Ceiling (in EUR)
Romania	52	170
Slovenia	70	110
Slovakia	80	125
Sweden	97	160
United Kingdom	101	175

Where a staff member on mission is provided with a meal or accommodation free of charge or reimbursed by one of the Union institutions, an administration or outside body, this must be declared. A corresponding deduction will then be made.

- (b) The scale for missions in countries outside the European territory of the Member States shall be fixed and adjusted periodically by the AACC.
3. The rates set out in paragraph 2(a) of this Article shall be reviewed every two years on basis of the review taking place pursuant to Article 13(3) of Annex VII to the EU Staff Regulations.

#### Article 14

Detailed rules for the application of Articles 11, 12 and 13 shall be laid down by the Agency.

#### G. FIXED REIMBURSEMENT OF EXPENSES

#### Article 15

1. Staff members who, by reason of their duties, regularly incur entertainment expenses may be granted a fixed rate allowance by the AACC, which shall determine the amount thereof.

In special cases, the AACC may in addition decide that part of the cost of accommodation for the staff member concerned also be borne by the Agency.

2. In the case of staff members who, as a result of special instructions, occasionally incur entertainment expenses for official purposes, the amount of the entertainment allowance shall be determined in each instance on the basis of supporting documents and on terms to be laid down by the AACC.

#### Article 16

By decision of the AACC, senior management staff (Director-General or their equivalent in grade AD 16 or AD 15 and Directors or their equivalent in grade AD 15 or AD 14) who do not have an official car at their disposal may receive a fixed allowance, not exceeding EUR 892,42 a year to cover normal travel within the boundaries of the town where they are employed.

The allowance may, by reasoned decision of the AACC, be granted to a staff member whose duties constantly require him to make journeys for which he is authorised to use his own car.

#### SECTION 4

### Payment of sums due

#### *Article 17*

1. Payment of remuneration to staff members shall be made on the 15th day of each month for the month then current. The amount of remuneration shall be rounded off to the nearest cent above.
2. Where remuneration is not due in respect of a complete month, the amount shall be divided into thirtieths, and:
  - (a) where the actual number of days payable is 15 or less, the number of thirtieths due shall equal the actual number of days payable;
  - (b) where the actual number of days payable is more than 15, the number of thirtieths due shall equal the difference between the actual number of days not payable and 30.
3. Where entitlement to family allowances and expatriation allowances commences after the date of entering the service, the staff member shall receive these from the first day of the month in which such entitlement commences. On cessation of such entitlement, the staff member shall receive the sum due up to the last day of the month in which entitlement ceases.

#### *Article 18*

1. Payment shall be made to each staff member at the place and in the currency of the country where he carries out his duty or, at the request of the staff member, in euros in a bank within the Union.
2. Under the conditions laid down in rules fixed by the AACC, by common consent after consulting the Staff Committee, staff members may apply for special regular transfer of part of their remuneration.

Under the first sentence of this paragraph the following may be transferred, separately or in combination:

- (a) for children attending an education establishment in another Member State, a maximum amount per dependent child equal to the amount of the education allowance actually received for that child;
- (b) on production of valid supporting documents, regular payments to all other persons residing in the relevant Member State to whom the staff member provides evidence of having an obligation by virtue of a decision of the courts or the competent administrative authority.

The transfers referred to in point (b) may not exceed 5 % of the staff member's basic salary.

3. The transfers provided for in paragraph 2 of this Article shall be made, in the currency of the relevant Member State, at the same exchange rate as those referred to in the second paragraph of Article 63 of the EU Staff Regulations. The amounts transferred shall be multiplied by a coefficient representing the difference between the correction coefficient for the country to which the transfer is made as defined in point (b) of Article 3(5) of Annex XI to the EU Staff Regulations and the correction coefficient applied to the remuneration of the staff member as referred to in point (a) of Article 3(5) of Annex XI to the EU Staff Regulations.

4. Apart from the transfers referred to in paragraphs 1 to 3, a staff member may request a regular transfer to another Member State in local currency at the monthly exchange rate, without application of any coefficient. This transfer may not exceed 25 % of the staff member's basic salary.

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## ANNEX V

**SEVERANCE GRANT AND PENSION**

## CHAPTER 1

**Severance grant***Article 1*

1. A staff member whose service terminates otherwise than by reason of death or invalidity shall be entitled on leaving the service:

(a) where he has completed less than one year's service, to payment of a severance grant equal to three times the amounts withheld from his basic salary in respect of his pension contributions, after deduction of any amounts paid under Articles 91 and 132;

(b) in other cases, he shall be entitled to:

— to have the actuarial equivalent of his retirement pension rights in the Agency, updated to the actual date of transfer, transferred to the pension fund of an administration or organisation or to the pension fund under which he acquires retirement pension rights by virtue of the activity pursued in an employed or self-employed capacity, or

— to the payment of the actuarial equivalent of such benefits to a private insurance company or pension fund of their choice, on condition such company or fund guarantees that:

(i) the capital will not be repaid;

(ii) a monthly income will be paid from age 60 at the earliest, and age 66 at the latest;

(iii) provisions are included for reversion or survivors' pensions;

(iv) transfer to another insurance company or other fund will be authorised only if such fund fulfils the conditions laid down in points (i), (ii) and (iii).

2. By way of derogation from point (b) of paragraph 1, a staff member who, since taking up his duties, has, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of his choice which satisfies the requirements set out in paragraph 1, and whose service terminates for reasons other than death or invalidity, shall be entitled, on leaving the service, to a severance grant equal to the actuarial value of his pension rights acquired during service in the Agency. In such cases the payments made in order to establish or maintain his pension rights under the national pension scheme in accordance with Article 91 or 132 shall be deducted from the severance grant.

3. Where a staff member's service has been terminated by removal from his post, the severance grant to be paid or, as the case may be, the actuarial equivalent to be transferred shall be determined by reference to the decision taken in accordance with Article 147.

## CHAPTER 2

**Invalidity allowance***Article 2*

1. Subject to the provisions of Article 76, a staff member aged less than 65 years who at any time during the period in which he is acquiring pension rights is recognised by the Invalidity Committee to be suffering from total permanent invalidity preventing him from performing the duties corresponding to a post in his career bracket, and who is obliged on these grounds to end his service with the Agency shall be entitled, for so long as such incapacity persists, to invalidity allowance as provided for in Article 77.

2. Persons in receipt of an invalidity allowance may not engage in gainful employment without the prior authorisation of the AACC. Any income from such gainful employment which, in combination with the invalidity allowance, exceeds the final total remuneration received while in active service as determined on the basis of the salary scale in force on the first day of the month in which the allowance is to be paid shall be deducted from the invalidity allowance.

The recipient of the allowance shall be required to provide on request any written proof which may be requested and to notify the Agency of any factor that may affect entitlement to the allowance.

#### *Article 3*

While a former staff member drawing invalidity allowance is aged less than the pensionable age, the Agency may have him medically examined periodically to ascertain that he still satisfies the requirements for payment of the allowance.

### CHAPTER 3

#### **Survivor's pension**

#### *Article 4*

Where a staff member dies being on active employment, leave on personal grounds, leave for military service, parental leave or family leave, the surviving spouse shall be entitled, provided that the couple were married for at least one year at the time of his death and subject to the provisions of Article 76 of these Staff Regulations and Article 11 of this Annex, to the survivor's pension equal to 60 % of the retirement pension rights acquired for the staff member at the time of death.

The duration of the marriage shall not be taken into account if there are one or more children of the marriage or of a previous marriage of the staff member, provided that the surviving spouse maintains or has maintained those children, or if the staff member's death resulted either from physical disability or sickness contracted in the performance of his duties or from accident.

#### *Article 5*

Where a former staff member was in receipt of invalidity allowance the surviving spouse shall be entitled, subject to the provisions of Article 8, provided that the couple were married when the staff member became eligible for the allowance, to a survivor's pension equal to 60 % of the invalidity allowance which the spouse was receiving at the time of death.

The minimum survivor's pension shall be 35 % of the final basic salary; the amount of the survivor's pension shall in no case, however, exceed the amount of the invalidity allowance which the spouse was receiving at the time of death.

#### *Article 6*

For purpose of Articles 4 and 5, the duration of the marriage shall not be taken into account where the marriage, though contracted after termination of the staff member's service, has lasted at least five years.

*Article 7*

1. The orphan's pension provided for in the first, second and third subparagraphs of Article 82 of these Staff Regulations shall for the first orphan be equal to eight tenths of the survivor's pension to which the surviving spouse of a staff member or former staff member in receipt of an invalidity allowance would have been entitled, the reductions set out in Article 10 of this Annex, being disregarded.

It shall not be less than the minimum subsistence figure, subject to the provisions of Article 8 of this Annex.

2. The pension shall be increased, for each dependent child after the first, by an amount equal to twice the dependent child allowance.

Orphans shall be entitled to education allowance in accordance with Article 3 of Annex IV.

3. The total amount of pension and allowance calculated in this way shall be divided equally among the orphans entitled.

*Article 8*

Where a staff member leaves a surviving spouse and also orphans of a previous marriage or other persons entitled under him, the total pension, calculated as if for a surviving spouse having all these persons dependent on him, shall be apportioned among the various persons concerned in proportion to the pensions which would have been payable to each category of them if treated separately.

Where a staff member leaves orphans of different marriages, the total pension, calculated as though all the children were of the same marriage, shall be apportioned among the various persons concerned in proportion to the pensions which would have been payable to each category of them if treated separately.

For the purposes of calculating this apportionment, children of a previous marriage of either spouse, who are recognised as dependants within the meaning of Article 2 of Annex IV shall be included in the category of children of the marriage to the staff member or former staff member in receipt of an invalidity allowance.

In the case envisaged in the second paragraph of this Article, ascendants who are recognised as being dependants as provided for in Article 2 of Annex IV shall be treated in the same way as dependent children and, for the purpose of calculating the apportionment, included in the category of descendants.

*Article 9*

The right to receive payment of survivor's pension shall have effect from the first day of the calendar month following that in which the staff member or former staff member in receipt of an invalidity allowance died. However, where the payment provided for in Article 60(8) is made on the death of the staff member or of the person entitled to a pension, such right shall take effect on the first day of the fourth month following that in which death occurred.

The right to receive payment of survivor's pension shall cease at the end of the calendar month in which the recipient of the pensions dies or ceases to satisfy the requirements for payment of the pension.

Similarly the right to an orphan's pension shall cease if the recipient ceases to be regarded as a dependent child within the meaning of Article 2 of Annex IV.

*Article 10*

Where the difference in age between the deceased staff member or former staff member in receipt of an invalidity allowance and his surviving spouse, less the length of time they have been married, is more than 10 years, the survivor's pension, calculated in accordance with the preceding provisions, shall be subject to a reduction, per full year of difference, amounting to:

- 1 %, for the years between 10 and 20,
- 2 %, for the years 20 up to but not including 25,
- 3 %, for the years 25 up to but not including 30,
- 4 %, for the years 30 up to but not including 35,
- 5 %, for the years from 35 upwards.

*Article 11*

A surviving spouse's entitlement to survivor's pension shall cease on remarriage. He or she shall be entitled to immediate payment of a capital sum equal to twice the annual amount of his survivor's pension, provided that the second paragraph of Article 82 does not apply.

*Article 12*

The divorced spouse of a staff member or a former staff member shall be entitled to a survivor's pension, as defined in this Chapter, provided that, on the death of the former spouse, he/she can justify entitlement on his/her own account to receive maintenance from him by virtue of a court order or as a result of an officially registered settlement in force between himself/herself and his/her former spouse.

The survivor's pension may not, however, exceed the amount of maintenance paid at the time of death of the former spouse, the amount having been adjusted in accordance with the procedure laid down in Article 85.

The divorced spouse's entitlement shall cease if he or she remarries before the former spouse dies. Article 11 of this Annex shall apply in the event of remarriage after the death of the former spouse.

*Article 13*

Where the deceased staff member leaves more than one divorced spouse entitled to survivor's pension or one or more divorced spouses and a surviving spouse entitled to a survivor's pension, that pension shall be divided in proportion to the respective duration of the marriages. The provisions of the second and third paragraphs of Article 12 of this Annex shall apply.

If any of the persons entitled to pension dies or renounces his or her share, that share shall accrue to the shares of the other persons, except where there are orphans' rights under the second paragraph of Article 82.

Reductions in respect of difference in age, as provided for in Article 10 of this Annex, shall be applied separately to pensions divided in accordance with this Article.

*Article 14*

Where under Article 19 of this Annex the divorced spouse ceases to be entitled to a pension, the total pension shall be payable to the surviving spouse, provided the second paragraph of Article 82 of these Staff Regulations does not apply.

## CHAPTER 4

**Provisional pensions***Article 15*

The spouse or persons recognised as dependants of a staff member being on active employment, leave on personal grounds, leave for military service, parental leave or family leave whose whereabouts are unknown for more than one year provisionally receive the survivor's pension to which they would be entitled under this Annex.

*Article 16*

The spouse or persons recognised as dependants of a former staff member in receipt of invalidity allowance whose whereabouts are unknown for more than one year may provisionally receive the survivor's pension to which they would be entitled under this Annex.

*Article 17*

The provisions of Article 16 shall apply to persons recognised as a dependant of a person in receipt of or entitled to a survivor's pension whose whereabouts are unknown for more than one year.

*Article 18*

Provisional pensions under Articles 15, 16 and 17 shall be converted into definitive pensions when the death of the staff member or former staff member has been duly confirmed or he has been legally declared missing, presumed dead.

## CHAPTER 5

**Pension increases in respect of dependent children***Article 19*

The provisions of the second paragraph of Article 81 of these Staff Regulations shall apply to persons in receipt of a provisional pension.

Articles 81 and 82 shall also apply to children born less than 300 days after the death of the staff member or former staff member in receipt of an invalidity allowance.



*Article 20*

The award of a survivor's pension or of an invalidity allowance or of a provisional pension shall not entitle the pensioner to expatriation allowance.

*Article 21*

Salaries and invalidity allowances shall in all cases be subject to deduction of the contribution of the pension scheme provided for in Articles 78 to 88.

*Article 22*

Staff members on leave on personal grounds who are continuing to acquire further pension rights on the conditions laid down in Article 57(3) shall continue to pay the contribution referred to in Article 21 of this Annex on the basis of the salary carried by this step and grade.

All benefits to which any such staff member or those entitled under him may be entitled under this pension scheme shall be calculated on the basis of such salary.

*Article 23*

Contributions properly deducted shall not be refunded. Contributions wrongly deducted shall not confer the right to receive a pension; they shall be reimbursed without interest at the request of the staff member or of those entitled under him.

## CHAPTER 6

**Calculation of pension***Article 24*

The Agency shall be responsible for calculating the amount of survivor's or provisional pension or invalidity allowance. A detailed statement of the calculation shall be communicated to the staff member or to those entitled under him, at the same time as the decision awarding the pension.

An invalidity allowance shall not be paid concurrently with the salary payable from the general budget of the Agency. Similarly, it shall be incompatible with any remuneration derived from a post in one of the Union institutions or agencies.

*Article 25*

The amount of pension may at any time be calculated afresh if there has been error or omission of any kind.

Pensions shall be liable to modification or withdrawal if the award was contrary to the provisions of these Staff Regulations or of this Annex.

*Article 26*

Where a staff member or former staff member in receipt of an invalidity allowance dies and those entitled under him do not apply for their pension or allowance within one year from the date of his death, they shall lose their entitlement, save where force majeure is duly established.

*Article 27*

A former staff member or those entitled under him in favour of whom benefits arise under this pension scheme shall furnish such written proof as may be required and inform the Agency of any facts liable to affect their entitlement.

*Article 28*

Where a staff member has been temporarily deprived, in whole or in part, of his pension rights under Article 147, he shall be entitled to claim reimbursement in proportion to the amount by which his pension has been reduced of the pension contributions he has paid.

## CHAPTER 7

**Payments of benefits***Article 29*

Benefits under this pension scheme shall be paid monthly in arrears.

These benefits shall be provided by the Agency.

For pensioners residing in the European Union, benefits shall be paid in euro into a bank in the Member State of residence.

For pensioners residing outside the Union, pensions shall be paid, in euro into a bank in the country of residence. The pension may by way of exception be paid in euro into a bank in the country where the Agency has its headquarters, or in foreign currency in the country of residence of the pensioner, converted at the most up-to-date exchange rates used for the implementation of the budget of the Agency.

This Article shall apply by analogy to the recipients of an invalidity allowance.

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## ANNEX VI

## TYPES OF POSTS IN EACH FUNCTION GROUP, AS PROVIDED FOR IN ARTICLE 7(3)

1. Function group AD	
Chief Executive	AD 16
Deputy Chief Executive	AD 15
Director	AD 14
Deputy Director or equivalent	AD 13
Head of unit or equivalent	AD 9 — AD 13
Administrator	AD 5 — AD 12
2. Function group AST	
AST Senior assistant Carrying out administrative, technical or training activities requiring a high degree of autonomy and carrying significant responsibilities in terms of staff management, budget implementation or political coordination.	AST 10 — AST 11
Assistant Carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions or as personal assistant of a Member of the Agency, of the Head of a Member's private office or of a (Deputy) Director-General or an equivalent senior manager.	AST 1 — AST 9
3. Function group AST/SC	
Secretary/Clerk Carrying out clerical and secretarial tasks, office management and other equivalent tasks requiring a certain degree of autonomy	SC 1 — SC 6

**COUNCIL DECISION (EU) 2016/1352****of 4 August 2016****concerning the rules applicable to national experts seconded to the European Defence Agency, and  
repealing Decision 2004/677/EC**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Articles 42 and 45 thereof,

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency <sup>(1)</sup>, and in particular Article 11 thereof,

Whereas:

- (1) The secondment of experts should enable the European Defence Agency (hereinafter referred to as 'the Agency') to benefit from the high level of knowledge and professional experience of those experts, in particular in areas where such expertise is not readily available within the Agency.
- (2) The exchange of professional experience and knowledge in the field of defence, as set out in Decision (CFSP) 2015/1835, and related support functions should be supported through the temporary assignment of seconded national experts (hereinafter referred to as 'SNEs') from Member States' public sectors.
- (3) The rights and obligations of SNEs should ensure that they carry out their duties solely in the interests of the Agency.
- (4) The term 'secondment' should be construed in the context of this Decision.
- (5) Since the rules established by this Decision should replace those laid down in Council Decision 2004/677/EC <sup>(2)</sup>, that Decision should be repealed,

HAS ADOPTED THIS DECISION:

*CHAPTER I*

**General provisions**

*Article 1*

**Scope**

The rules established by this Decision apply to SNEs who fulfil the conditions set out in Article 2 seconded to the Agency and who are experts seconded by participating Member States' public administrations, at national or regional level, in particular Ministries of Defence and/or their agencies, bodies, national defence colleges, research institutes, including those in accordance with Article 11(4)(b) of Decision (CFSP) 2015/1835.

<sup>(1)</sup> OJ L 266, 13.10.2015, p. 55.

<sup>(2)</sup> Council Decision 2004/677/EC of 24 September 2004 concerning the Rules applicable to national experts and military staff on secondment to the European Defence Agency (OJ L 310, 7.10.2004, p. 64).

In accordance with Article 11(4)(a) of Decision (CFSP) 2015/1835, experts:

- from a third country with which the Agency has concluded an administrative arrangement, or
- from organisations/entities with an Administrative Arrangement with the Agency, provided that the SNE is a national from a Member State or a third country with whom the agency has concluded an administrative arrangement,

shall be seconded or posted, pursuant to Article 26(1) of that Decision, to the Agency with the agreement of the Steering Board, in accordance with the conditions to be laid down in those arrangements.

## *Article 2*

### **Conditions for secondment**

To qualify for secondment to the Agency, experts shall:

1. have worked for their employer on a permanent or contract basis for at least 12 months before their secondment;
2. remain in the service of their employer throughout the period of secondment and continue to be paid by that employer;
3. have at least three years' full-time experience in defence, administrative, scientific, technical, operational, advisory or supervisory functions relevant to the performance of the duties assigned to them. Before the secondment, the employer shall supply the Agency with a statement of the expert's employment covering the previous 12 months;
4. be nationals of a participating Member State or falling within the provisions of the second paragraph of Article 1;
5. have a thorough knowledge of one official language of one of the participating Member States and a satisfactory knowledge of another of these languages for the performance of their duties.

## *Article 3*

### **Selection procedure**

1. SNEs shall be selected according to an open and transparent procedure decided in accordance with Article 42.
2. Without prejudice to Article 2(4), SNEs shall be seconded to secure for the Agency the services of persons of the highest standards of ability, efficiency, integrity and merit. They shall be seconded on as wide a geographical basis as possible from among nationals of the participating Member States. The participating Member States and the Agency shall cooperate to ensure, as far as possible, a balance between men and women and observe the principle of equal opportunities.
3. A call for the expression of interest shall be sent to the Permanent Representations of the participating Member States, Missions of the third countries, the organisation or entity, as appropriate, and published on the Agency website. The call shall indicate the descriptions of the posts, the selection criteria and the deadline for the submission of applications. Candidates for an SNE post must be sponsored by their national authorities, organisation or entity. Confirmation is required in the form of a letter of sponsorship addressed to the Agency, as far as possible by the closing date for the receipt of applications and in any case not later than the recruitment date.

4. In the case of cost-free SNEs and national experts in professional training (hereinafter referred to as 'NEPTs'), the Agency may decide that an SNE shall be selected without following the selection procedures set out in paragraphs 1 and 2.
5. The secondment of experts shall be subject to the specific requirements and budgetary capacity of the Agency.
6. The Agency shall create an individual file for the SNE. That file shall contain relevant administrative information.

#### *Article 4*

### **Administrative procedure for secondment**

Secondments shall be implemented by an Exchange of Letters between the Chief Executive of the Agency and the Permanent Representation or Mission of the Member State concerned, the organisation or entity, as appropriate. The place of secondment and the function group to which the SNE is to belong, in an administrators' function group (hereinafter 'AD') or an assistants' function group (hereinafter 'AST'), shall be indicated in the Exchange of Letters. The Exchange of Letters shall also mention the Directorate/Unit to which the SNE is seconded and a detailed description of the tasks the SNE is to carry out. A copy of the rules applicable to SNEs on secondment to the Agency shall be attached to the Exchange of Letters.

#### *Article 5*

### **Period of secondment**

1. The period of secondment shall be a minimum of two months and a maximum of three years. It may be renewed successively up to a total period not exceeding four years.

However, in exceptional cases, at the request of the relevant Director and after prior agreement of the employer, the Chief Executive of the Agency may authorise one or more extensions of the secondment beyond the four-year maximum referred to in the first subparagraph, up to an additional two years.

2. The period of secondment shall be fixed at the outset in the Exchange of Letters provided for in Article 4. The same procedure shall apply in the case of any renewal, extension of the period of secondment or change of post.

3. An SNE who has previously been seconded to the Agency may be seconded again, after consultation with the national administration of origin, provided that the SNE continues to meet the conditions for secondment referred to in Article 2 and within the overall ceiling defined in Article 11(5) of Decision (CFSP) 2015/1835.

#### *Article 6*

### **Obligations of the employer**

Throughout the period of secondment, the SNE's employer shall continue to:

- (a) pay the SNE's salary;
- (b) be responsible for all the SNE's social rights, in particular those concerning social security, insurance and pension; and
- (c) subject to point (d) of Article 10(2), maintain the SNE's administrative status as either a permanent official or a contract staff member and inform the Chief Executive of the Agency of any change in the SNE's administrative status either as a permanent official or as a contract staff member.

*Article 7***Duties**

1. SNEs shall assist staff members of the Agency and carry out the tasks and duties assigned to them by the Chief Executive of the Agency.
2. Taking into consideration the composition of the staff of the Agency and, in particular, their role in contributing to the results of the Agency, the Chief Executive may entrust an SNE with management duties if so required in the interests of the service.

In any case, an SNE shall not be able to legally commit the Agency.

3. An SNE may take part in missions and meetings. Nevertheless, the Chief Executive may decide to limit the SNE's participation to missions and meetings only to:
  - (a) accompany an Agency staff member; or
  - (b) if alone, to attend as an observer or solely for information purposes.
4. The Agency shall retain sole responsibility for approving the results of tasks performed by the SNE.
5. The Agency, the SNE's employer and the SNE shall make every effort to avoid any actual or potential conflict of interest in relation to the SNE's duties during secondment. To that end, the Agency shall, in good time, inform the SNE and the employer of the intended duties and shall ask each of them to confirm in writing that they know of no reason why the SNE should not be assigned to those duties.

The SNE shall be asked in particular to declare any potential conflict between the SNE's family circumstances (in particular the professional activities of close or extended family members, or any important financial interests of their own or of family members) and the proposed duties while on secondment.

The employer and the SNE shall undertake to notify the Agency of any change of circumstances during the secondment which could give rise to any conflict of interest.

6. Where the Agency considers that the nature of the tasks entrusted to the SNE requires particular security precautions, security clearance shall be obtained before the SNE is seconded.

*Article 8***Rights and obligations of SNEs**

1. During the period of secondment an SNE shall act with integrity. In particular:
  - (a) the SNE shall perform the duties assigned and otherwise behave solely with the interests of the Agency in mind.

In particular, the SNE shall, in the exercise of their duties, not accept any instructions from, nor undertake any activities for, their employer, any government, any other person, private company or public body;
  - (b) the SNE shall abstain from any action, and in particular any public expression of opinion, which may reflect on their position at the Agency;

- (c) the SNE shall inform their superior where the SNE, in the performance of their duties, is called upon to give a decision on the handling or outcome of a matter in which the SNE has a personal interest that could impair their independence;
- (d) the SNE shall not, whether alone or together with others, publish or cause to be published any text dealing with the work of the Union without obtaining permission in accordance with the conditions and rules in force at the Agency. Permission shall be refused only where the intended publication is liable to prejudice the interests of the Agency or of the Union;
- (e) all rights in any work done by an SNE in the performance of their duties shall be the property of the Agency;
- (f) the SNE shall reside at the place of secondment or at no greater distance from that place than is compatible with the proper performance of the duties assigned;
- (g) the SNE shall assist and tender advice to the superior to whom they are assigned and shall be responsible to their superior for the performance of the duties entrusted to them.

2. Both during and after the period of secondment, the SNE shall exercise the greatest discretion with regard to all facts and information of which the SNE becomes aware in the course of, or in connection with, the performance of their duties. The SNE shall not in any form whatsoever disclose to any unauthorised person any document or information not already lawfully made public, nor shall the SNE use it for personal gain.

3. At the end of the secondment, the SNE shall continue to be bound by the obligations to act with integrity and discretion in the exercise of new duties and in accepting certain posts or advantages.

To that end, in the three years following the period of secondment the SNE shall immediately inform the Agency of any duties or tasks which are likely to give rise to a conflict of interest in relation to the tasks carried out by the SNE during the period of secondment.

4. The SNE shall be subject to the security rules in force at the Agency, including data protection rules and the Agency network protection rules. The SNE shall also be subject to the rules governing the protection of the Agency's financial interests.

5. Failure to comply with the provisions of paragraphs 1, 2 and 4 of this Article during the period of secondment shall entitle the Agency to terminate the secondment of an SNE in accordance with point (c) of Article 10(2).

6. The SNE shall immediately notify the SNE's superior in writing if in the course of the secondment the SNE becomes aware of facts which give rise to a presumption of the existence of:

- (a) possible illegal activity, including fraud or corruption, detrimental to the interests of the Agency; or
- (b) conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of staff members of the Agency or of SNEs.

This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of a staff member or any other person in the service of, or carrying out work for, an institution of the Union.

7. Where the superior receives notification as referred to in paragraph 6 of this Article, the superior shall take the measures provided for in Article 27 of Council Decision (EU) 2016/1351 <sup>(1)</sup> (hereinafter referred to as 'the Staff Regulations of the Agency'). Articles 27, 28 and 29 of the Staff Regulations of the Agency shall apply to the superior under the terms of Article 4 of this Decision. Those provisions shall also apply *mutatis mutandis* to the SNE concerned, to ensure that the SNE's rights are respected.

<sup>(1)</sup> Council Decision (EU) 2016/1351 of 4 August concerning the Staff Regulations of the European Defence Agency (see page 1 of this Official Journal).



*Article 9***Suspension of secondment**

1. At the written request of the SNE or the employer, and with the latter's agreement, the Agency may authorise suspensions of secondment and specify the terms applicable. During a suspension:
  - (a) the allowances referred to in Article 19 shall not be payable;
  - (b) the expenses referred to in Article 20 shall be payable only if the suspension is at the Agency's request.
2. The Agency shall inform the employer and the Permanent Representation or Mission of the State concerned.

*Article 10***Termination of periods of secondment**

1. Subject to paragraph 2, secondment may be terminated at the request of the Agency or of the SNE's employer, provided three months' notice is given. It may also be terminated at the SNE's request provided the same period of notice is given and subject to the employer's and the Agency's agreement.
2. In certain exceptional circumstances the secondment may be terminated without notice:
  - (a) by the SNE's employer, if the employer's essential interests so require;
  - (b) by mutual agreement between the Agency and the employer, at the request of the SNE to both parties, if the SNE's essential personal or professional interests so require;
  - (c) by the Agency in the event of major non-compliance with the obligations set out in this Decision by the SNE. The Agency shall confer with the Permanent Representation or Mission of the State concerned and take into account any comments received in view of its decision;
  - (d) by the Agency in the event of the termination of, or change in, the SNE's administrative status as either a permanent official or a contract staff member of the employer. The SNE shall first be given an opportunity to submit observations.
3. In the event of termination under point (c) of paragraph 2, the Agency shall immediately consult the employer and the Permanent Representation or Mission of the State concerned.

*CHAPTER II***Working conditions***Article 11***Social security**

1. Before the period of secondment begins, the employer shall certify to the Agency that, throughout the period of secondment, the SNE will remain subject to the social security legislation applicable to the national public administration or the organisation or entity, which employs the SNE. To that end, the relevant public administration shall supply the Agency with the attestation referred to in Article 19(2) of Regulation (EC) No 987/2009 of the European Parliament and of the Council <sup>(1)</sup> (hereinafter referred to as the 'Portable document A1'). The organisation or entity shall supply the SNE with a certificate equivalent to the Portable document A1 and it shall prove that the social security legislation applicable provides for the defrayal of healthcare cost incurred abroad.

<sup>(1)</sup> Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

2. From the commencement of their secondment, the SNE shall be covered by the Agency against the risk of accident. The Agency shall provide the SNE with a copy of the terms of this cover on the day on which the SNE reports to the Chief Executive of the Agency to complete the administrative formalities related to the secondment.

3. When, in the context of a mission in which the SNE is participating under the terms of Articles 7(2) and 29 additional or specific insurance is required, the relevant costs shall be borne by the Agency, or by the national administration of origin in case of cost-free SNEs and NEPTs, after having consulted the concerned Member State with regard to the mission.

#### *Article 12*

### **Working hours**

1. The SNE shall be subject to the rules in force at the Agency as regards working hours, depending on the requirements of the post to which the SNE is assigned within the Agency.

2. The SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request from a Director and subject to compatibility with the interests of the Agency, the Agency may authorise an SNE to work part-time, after obtaining the agreement of the employer.

3. Where part-time work is authorised, the SNE shall work at least half of the normal working time.

#### *Article 13*

### **Absence for reasons of sickness or accident**

1. In the event of absence due to sickness or accident, an SNE shall notify the superior as soon as possible, stating the SNE's present address. The SNE shall produce a medical certificate if absent for more than three consecutive days and may be required to undergo a medical examination arranged by the Agency.

2. Where absence due to sickness or accident of not more than three days exceeds a total of 12 days over a period of 12 months, an SNE shall be required to produce a medical certificate for any further absence due to sickness or accident.

3. Where an absence due to sickness or accident exceeds one month or the period of service performed by the SNE, whichever is the longer, the allowances referred to in Article 19(1) and (2) shall be automatically suspended. This paragraph shall not apply in the event of illness linked to pregnancy. Absence due to sickness or accident may not extend beyond the duration of the secondment of the person concerned.

4. However, if the SNE is the victim of a work-related injury which occurs during the period of secondment the SNE shall continue to receive, in full, the allowances provided for in Article 19(1) and (2) throughout the period during which that SNE is unfit for work up to the end of the period of secondment.

#### *Article 14*

### **Annual leave, special leave and holidays**

1. Without prejudice to specific provisions set out in this Decision, the SNE shall be subject to the rules in force at the Agency as regards annual leave, special leave and holidays.

2. Leave is subject to prior authorisation by the unit to which the SNE is assigned.
3. Upon a duly substantiated application by the employer, up to two days of additional special leave in a 12-month period may be granted by the Agency. Requests are examined on a case-by-case basis.
4. Days of annual leave not taken by the end of the period of secondment shall be forfeited.
5. An SNE whose period of secondment is less than six months may be granted special leave, on the basis of a reasoned application and subject to a decision by the Chief Executive of the Agency. That special leave may not exceed three days for the whole period of secondment. Before granting such leave, the Director concerned shall hold a prior consultation with the Human Resources Unit (hereinafter referred to as the 'HR Unit') of the Agency.

#### *Article 15*

### **Special leave for training**

Notwithstanding Article 14(3), SNEs whose period of secondment is six months or more may be granted additional special leave by the Agency for the purpose of training by the employer, subject to a duly reasoned application by the employer with a view to the SNE's reintegration.

#### *Article 16*

### **Maternity and paternity leave**

1. An SNE shall be subject to the rules in force at the Agency as regards maternity and paternity leave.
2. Where the national legislation of the employer grants longer maternity leave, at the SNE's request and after prior agreement of the employer, the secondment shall be suspended for the period exceeding that granted by the Agency. In that case, a period equivalent to the suspension shall be added at the end of the secondment, if the interests of the Agency so warrant.
3. Notwithstanding paragraph 1, the SNE may apply for a suspension of the secondment to cover the whole of the period allowed for maternity, after prior agreement of the employer. In that case, a period equivalent to the suspension shall be added at the end of the secondment, if the interests of the Agency so warrant.
4. Paragraphs 2 and 3 shall also apply in cases of adoption.
5. An SNE who is breastfeeding may on request, on the basis of a medical certificate attesting the fact, be granted special leave for a maximum of four weeks running from the end of her maternity leave, during which period she shall receive the allowances laid down in Article 19.

#### *Article 17*

### **Management and control**

The management and control of working time and absences shall be the task of the HR Unit and the Directorate or unit to which the SNE is assigned, in accordance with the rules and procedures in force in the Agency.

## CHAPTER III

**Allowances and expenses**

## Article 18

**Calculation of allowances and travel expenses**

1. For the purposes of this Decision, the places of recruitment, secondment and return of an SNE shall be determined by the Agency in terms of the geographical position of those places based on their latitude and longitude, as calculated by the HR Unit.
2. For the purposes of this Decision:
  - (a) the place of recruitment shall be the place where the SNE performed their duties for their employer prior to secondment;
  - (b) the place of secondment shall be Brussels;
  - (c) the place of return shall be the place where the SNE will perform their main activity after the secondment is terminated.

The place of recruitment shall be determined in the Exchange of Letters referred to in Article 4.

3. For the purposes of this Article, circumstances arising from work done by SNEs for a state other than that of the place of secondment shall not be taken into account.

## Article 19

**Allowances**

1. The SNE shall be entitled to a daily subsistence allowance throughout the period of secondment according to the same criteria as the expatriation allowance for Temporary Agents referred to in Article 4 of Annex IV to the Staff Regulations of the Agency. If those criteria are met, the daily subsistence allowance shall be EUR 128,67. Otherwise, it shall be EUR 32,18. They shall be equivalent to the allowance paid to a national expert seconded to the General Secretariat of the Council of the European Union.
2. The SNE shall be entitled, throughout the period of secondment, to an additional monthly allowance paid as shown in the table below:

Geographical distance between place of recruitment and place of secondment (in km)	Amount in EUR
0-150	0,00
> 150	82,70
> 300	147,03
> 500	238,95
> 800	385,98

Geographical distance between place of recruitment and place of secondment (in km)	Amount in EUR
> 1 300	606,55
> 2 000	726,04

3. The allowances referred to in paragraphs 1 and 2 of are intended to cover also incurred costs of removal of SNEs and any annual travel expenses incurred during secondment. They shall be payable for periods of mission, annual leave, maternity, paternity or adoption leave, special leave and holidays granted by the Agency, without prejudice to Articles 14, 15 and 16. Where part-time work is authorised, the SNE shall be entitled to reduced allowances on a pro rata basis.

4. When the SNE starts the period of secondment, the SNE shall receive an advance amount equivalent to 75 days of the subsistence allowance, whereupon entitlement to any further such allowances shall cease during the corresponding period. If the secondment to the Agency is ended before the expiry of the period taken into account to calculate the advance, the SNE shall be obliged to return the amount corresponding to the remaining part of that period.

5. At the time of the Exchange of Letters provided for in Article 4, the employer shall inform the Agency of any payment received by the SNE similar to those mentioned in paragraphs 1 and 2 of this Article. Any such amounts shall be deducted from the corresponding allowances paid by the Agency to the SNE.

6. The update to remuneration and allowances adopted by application of Article 60 of the Staff Regulations of the Agency shall apply automatically to the monthly and subsistence allowances in the month following their adoption without retroactive effect. Following adaptation, the new amounts will be published in series C of the *Official Journal of the European Union*.

#### Article 20

##### Travel expenses

1. The SNE shall be entitled to a flat-rate reimbursement for themselves of travel expenses at the beginning of the secondment.

2. The flat-rate reimbursement shall be based on an allowance per kilometre of geographical distance between the place of recruitment and the place of secondment. The kilometric allowance shall be determined in accordance with Article 7 of Annex IV to the Staff Regulations of the Agency.

3. The SNE shall be entitled to reimbursement for themselves of travel expenses to the place of return at the end of the secondment. The reimbursement may not be for a sum higher than that to which the SNE would have been entitled if the SNE had returned to their place of recruitment.

4. The travel expenses for SNEs' family members are not reimbursed.

#### Article 21

##### Missions and mission expenses

1. The SNE may be sent on mission.

2. Mission expenses shall be reimbursed in accordance with the provisions in force at the Agency.

*Article 22***Training**

The SNE shall be entitled to attend training courses organised by the Agency, if the interests of the Agency so warrant. The reasonable interests of the SNE, having regard in particular to their professional career after the secondment, shall be considered when a decision on permission to attend courses is taken.

*Article 23***Administrative provisions**

1. The SNE shall report to the relevant HR Unit on the first day of secondment to complete the requisite administrative formalities. The SNE shall take up their duties on either the first or the 16th of the month.
2. Payments shall be made by the Agency in euro.

*CHAPTER IV***Experts on cost-free secondment***Article 24***Experts on cost-free secondment**

1. An SNE may be seconded to the Agency as a cost-free SNE during the period of secondment.

Such secondment shall not entail the payment of any allowances or expenses for the Agency except, where appropriate, those provided for in Article 25.

2. Articles 18, 19 and 20 shall not apply to cost-free SNEs.

Without prejudice to Article 8, the conduct of a cost-free SNE shall always reflect the fact that the cost-free SNE is seconded to the Agency and shall never reflect adversely on their position at the Agency.

*Article 25***Missions**

1. If a cost-free SNE takes part in missions in a place other than the place of secondment, the cost-free SNE shall be reimbursed in accordance with the rules in force for the reimbursement of missions involving officials, except where another arrangement has been agreed between the Agency and the employer.
2. If, in connection with a mission, special 'high risk' insurance is provided by the Agency for officials, this facility shall also apply to a cost-free SNE who takes part in the same mission.
3. A cost-free SNE who takes part in a mission outside the territory of the Union shall be subject to the security arrangements in force at the Agency for such missions.

*Article 26*

Cost-free SNEs shall not be included in the staff establishment plan. Nevertheless, for transparency and information purposes, their number shall be reported to the Steering Board as part of the Chief Executive's annual reporting.

## CHAPTER V

***SNEs paid from budgets associated with ad hoc projects or programmes****Article 27*

This Decision shall also apply to SNEs whose allowances are paid from budgets associated with ad hoc projects or programmes of the Agency, referred to in Articles 19 and 20 of Decision (CFSP) 2015/1835 (hereinafter referred to as 'ad hoc SNEs').

*Article 28*

Ad hoc SNEs shall be assigned exclusively to the ad hoc projects or programmes whose budget funds their respective allowances and expenses.

The recruitment of ad hoc SNEs shall be subject to the prior approval of the relevant contributing Member States, based on a proposal including the draft vacancy notice associated with each post, by one or more of the relevant contributing Member States or by the Agency.

*Article 29*

Ad hoc SNEs shall not be included in the staff establishment plan. Nevertheless, for transparency and information purposes, their number shall be reported to the Steering Board as part of the Chief Executive's annual reporting.

*Article 30*

Budgets associated with ad hoc projects or programmes which cover the allowances and expenses of ad hoc SNEs may comprise contributions from third countries which take part in such projects and programmes, pursuant to Article 26(5) of Decision (CFSP) 2015/1835.

Notwithstanding the provisions of the second paragraph of Article 1, such contributions shall not entitle nationals of the third countries concerned to be considered as eligible in ad hoc SNE recruitment procedures.

## CHAPTER VI

***National experts in professional training****Article 31***General provisions and definitions**

NEPTs are SNEs who are admitted to the Agency for professional training purposes.

*Article 32***Purpose of the professional training**

1. The purpose of the professional training is to:
  - (a) give NEPTs experience of the Agency's working methods and projects;
  - (b) enable them to gain practical experience and understanding of the day-to-day work of the Agency and to give them the opportunity to work in a multicultural, multilingual environment;
  - (c) enable staff of national administrations, from the Ministry of Defence in particular, to put into practice the knowledge they have acquired in their studies, particularly in their respective areas of responsibility.
2. For its part, the Agency benefits from the input of people who can offer a new point of view and up-to-date knowledge which will enrich the daily work of the institution and build up a network of people with direct experience of its procedures.

*Article 33***Eligibility**

The provisions of Article 2, with the exclusion of paragraph 3, shall apply by analogy to NEPTs.

*Article 34***Duration of the professional training**

1. The professional traineeships shall last between three and 24 months. The duration shall be fixed at the outset and may be extended for duly justified reasons within a maximum period of 24 months.
2. A NEPT may complete only one professional traineeship.

*Article 35***Organisation of professional training**

Throughout their professional traineeship, NEPTs shall be supervised by a training advisor. The training advisor must inform the HR Unit of any significant incidents during the professional traineeship, in particular absences, illness, accidents or interruption, which he knows of or has been informed of by the NEPT.

NEPTs shall obey instructions given by their training advisor, their superiors in the Directorate or service to which they are seconded and the HR Unit.

NEPTs shall be allowed to attend meetings, unless they are restricted or confidential and the NEPT has no security clearance, to receive documentation and to participate in the activities of the department to which they are seconded.



*Article 36***Suspension of the professional traineeship**

At the written request of the NEPT or his employer, and with the latter's prior agreement, the Chief Executive of the Agency may authorise a very brief suspension of the professional traineeship or its early termination. The NEPT may return to complete the remaining period of the professional traineeship, but only up until the end of that period. Under no circumstances may the traineeship be extended.

*Article 37***Working conditions and remuneration**

1. Articles 2(3), 3, 5, 18, 19 and 20 shall not apply to NEPTs.
2. NEPTs shall be regarded as cost-free SNEs within the meaning of Chapter IV. They shall continue to be paid by their employer without any financial compensation being paid by the Agency.

The Agency shall not accept requests for grants or fees or the reimbursement of travel or other expenses other than the reimbursement of mission expenses incurred as part of the professional traineeship.

*Article 38***Reports and certificate of attendance**

NEPTs who have completed the stipulated professional training period shall complete the evaluation reports requested by the HR Unit at the end of their traineeship. Training advisors shall also complete the relevant evaluation report.

Subject to the completion of those reports, NEPTs who have completed their professional traineeships shall receive a certificate showing the dates of the professional training and the department in which it took place.

*Article 39*

NEPTs shall not be included in the staff establishment plan. Nevertheless, for transparency and information purposes, their number shall be reported to the Steering Board as part of the Chief Executive's annual reporting.

## CHAPTER VII

**Complaints***Article 40***Complaints**

Without prejudice to the possibilities for instituting proceedings after taking up a position, under the conditions and time limits laid down in Article 263 of the Treaty on the Functioning of the European Union, any SNE may submit a complaint to the authority authorised to conclude contracts (hereinafter referred to as the 'AACC') of employment under the Staff Regulations of the Agency about an act by the AACC under this Decision which adversely affects the SNE, with the exception of acts which follow directly from decisions taken by the employer.

The complaint must be lodged within two months. The period shall run from the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification. The AACC shall notify the person concerned of a reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period the SNE has not received a reply to the complaint, the complaint shall be deemed to have been implicitly rejected.

#### CHAPTER VIII

#### **Final provisions**

##### *Article 41*

#### **Provision of information**

The Permanent Representations of all Member States shall be kept informed on a yearly basis about the number of SNEs in the Agency. This information shall include also:

- (a) the nationalities of SNEs seconded from an organisation or entity as set out in the second paragraph of Article 1;
- (b) any exceptions to the selection procedure in accordance with Article 3(3);
- (c) the assignment of all SNEs;
- (d) any suspension or early termination of SNEs' secondment in accordance with Articles 9 and 10;
- (e) the annual update of SNEs' allowances in accordance with Article 19.

##### *Article 42*

#### **Delegation of powers**

All powers conferred to the Agency under this Decision shall be exercised by the AACC.

##### *Article 43*

#### **Repeal**

Decision 2004/677/EC is hereby repealed. However, Articles 15 to 19 thereof shall remain applicable to the SNEs requesting so for secondments which are ongoing at the time of entry into force of this Decision, without prejudice to Article 44.

##### *Article 44*

#### **Entry into force and application**

This Decision shall enter into force on the date of its publication in the *Official Journal of the European Union*.

It shall apply from the first day of the month following its entry into force to each new secondment, renewal or extension of secondment.

Done at Brussels, 4 August 2016.

*For the Council*  
*The President*  
M. LAJČÁK

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**COUNCIL DECISION (EU) 2016/1353**  
**of 4 August 2016**  
**concerning the financial rules of the European Defence Agency and repealing Decision**  
**2007/643/CFSP**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency <sup>(1)</sup>, and in particular Article 18 thereof,

Whereas:

- (1) On 18 September 2007, the Council adopted Decision 2007/643/CFSP <sup>(2)</sup> on the financial rules of the European Defence Agency and on the procurement rules and rules on financial contributions from the operational budget of the European Defence Agency.
- (2) Following the adoption of Decision (CFSP) 2015/1835, it is necessary to repeal Decision 2007/643/CFSP and establish new financial rules for the European Defence Agency,

HAS ADOPTED THIS DECISION:

TITLE I

**SUBJECT MATTER AND DEFINITIONS**

*Article 1*

**Subject matter**

This decision lays down the essential financial rules of the European Defence Agency (hereinafter referred to as 'the Agency').

*Article 2*

**Definitions**

For the purposes of this Decision, the following definitions apply:

- (a) 'participating Member State' means a Member State which participates in the Agency;
- (b) 'contributing Member States' means the participating Member States which contribute to a particular project or programme of the Agency;
- (c) 'general budget' means the general budget established in accordance with Article 13 of Decision (CFSP) 2015/1835;
- (d) 'additional revenue' refers to additional revenue, the content of which is established in Article 15 of Decision (CFSP) 2015/1835;
- (e) 'Authorising Officer' is the Agency's Chief Executive who exercises the powers defined in Article 10(5) of Decision (CFSP) 2015/1835;
- (f) 'budget' means the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Agency;

<sup>(1)</sup> OJ L 266, 13.10.2015, p. 55.

<sup>(2)</sup> OJ L 269, 12.10.2007, p. 1.

- (g) 'control' means any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention, detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned. Controls may involve various checks, as well as the implementation of any policies and procedures to achieve the objectives described in the first sentence;
- (h) 'check' means the verification of a specific aspect of a revenue or expenditure operation.

## TITLE II

### AGENCY'S BUDGET

#### Article 3

#### **Agency's budget**

The Agency's budget shall include the general budget, the budgets associated with activities related to ad hoc projects or programmes as provided for in Chapter IV of Decision (CFSP) 2015/1835 and any budgets resulting from additional revenue.

## CHAPTER 1

### **Budgetary principles**

#### Article 4

#### **Respect for budgetary principles**

In accordance with Article 12 of Decision (CFSP) 2015/1835, the Agency's budget shall be established and implemented in accordance with the budgetary principles set out in this Decision.

#### Article 5

#### **Principles of unity and of budgetary accuracy**

1. No revenue shall be collected and no expenditure effected unless booked to a line in the Agency's budget.
2. No expenditure may be committed or authorised in excess of the appropriations authorised by the Agency's budget.
3. An appropriation may be entered in the Agency's budget only if it is for an item of expenditure considered necessary.
4. Interest generated by pre-financing payments made from the Agency's budget shall not be due to the Agency.

#### Article 6

#### **Principle of annuality**

1. The appropriations entered in the Agency's budget shall be authorised for a financial year which shall run from 1 January to 31 December.

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year or by 31 March of the following year for those legal commitments most of the preparatory stages of which have been undertaken by 31 December.
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.
4. Given the needs of the Agency and subject to the approval by the Steering Board in accordance with Article 15, the unused appropriations may be entered in the estimate of revenue and expenditure of the following financial year. Those appropriations must be used first.
5. Paragraphs 1 to 4 shall not prevent budgetary commitments for actions extending over more than one financial year being broken down over several years into annual instalments.

#### *Article 7*

### **Principle of equilibrium**

1. Revenue and payment appropriations shall be in balance.
2. The Agency may not raise loans within the framework of the Agency's budget.
3. Any budgetary surplus arising from the Agency's general budget in a given financial year shall be considered as a credit available for the participating Member States and returned to them as a deduction from the third contribution of the following financial year.

#### *Article 8*

### **Principle of unit of account**

The Agency's budget shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for cash-flow purposes, the accounting officer shall be authorised to carry out operations in other currencies.

#### *Article 9*

### **Principle of universality**

Total revenue shall cover total payment appropriations. All revenue and expenditure shall be entered into the budget in full without any adjustment against each other.

#### *Article 10*

### **Principle of specification**

1. Appropriations shall be earmarked for specific purposes at least by title and chapter.
2. The Authorising Officer may transfer appropriations from one chapter to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.

Beyond the limit referred to in the first subparagraph, the Authorising Officer shall propose to the Steering Board transfers of appropriations from one title to another. The Steering Board shall have three weeks to oppose such transfers. After that time limit they shall be deemed to be adopted.

The Authorising Officer shall inform the Steering Board of all transfers carried out under the first subparagraph. Proposals for transfers and transfers carried out shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.

#### Article 11

### **Principle of sound financial management**

1. Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the Agency in the pursuit of its activities are made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

#### Article 12

### **Internal control of budget implementation**

1. The Agency's budget shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the Agency's budget, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:
  - (a) effectiveness, efficiency and economy of operations;
  - (b) reliability of reporting;
  - (c) safeguarding of assets and information;
  - (d) prevention, detection, correction and follow-up of fraud and irregularities;
  - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions.
3. Effective and efficient internal control shall be based on best international practices and include, in particular, the elements laid down in Article 32(3) and (4) of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council <sup>(1)</sup>, taking into account the structure and size of the Agency, the nature of the tasks entrusted to it and the amounts and financial and operational risks involved.

<sup>(1)</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

*Article 13***Principle of transparency**

1. The Agency's budget shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. Subject to Article 35(3) of Regulation (EU, Euratom) No 966/2012, the Agency's budget, including the staff establishment plan and amending budgets, as adopted, shall be published on the internet site of the Agency within four weeks of their adoption.

## TITLE III

**PROVISIONS APPLICABLE TO THE GENERAL BUDGET**

## CHAPTER 1

**Financial planning***Article 14***The general budget**

1. By 31 March each year, the Head of the Agency shall provide the Steering Board with a preliminary estimate of the draft general budget for the following year.
2. By 30 June each year, the Head of the Agency shall propose a revised preliminary estimate of the draft general budget for the following year, together with the draft three-year Planning Framework to the Steering Board.
3. By 30 September each year, the Head of the Agency shall propose the draft general budget together with the draft three-year Planning Framework to the Steering Board. The draft shall include:
  - (a) the appropriations deemed necessary:
    - (i) to cover the Agency's running, staffing and meeting costs;
    - (ii) for procuring external advice, notably operational analysis, essential for the Agency to discharge its tasks, and for specific activities for the common benefit of all participating Member States;
  - (b) a forecast of the revenue needed to cover expenditure.
4. The Steering Board shall aim to ensure that the appropriations referred to in point (a)(ii) of paragraph 3 represent a significant share of the total appropriations referred to in paragraph 3. Those appropriations shall reflect actual needs and shall allow for an operational role for the Agency.
5. The draft general budget shall be supported by detailed justifications and a staff establishment plan.
6. The Steering Board, acting by unanimity, may decide that the draft general budget shall, furthermore, cover a particular project or programme where this is clearly for the common benefit of all participating Member States.
7. The appropriations shall be classified in titles and chapters grouping expenditure by type or purpose, subdivided as necessary into articles.
8. Each title may include a chapter entitled 'provisional appropriations'. Those appropriations shall be entered where there is uncertainty, based on serious grounds, about the amount of appropriations needed or the scope for implementing the appropriations entered.



9. Revenue shall consist of:
- (a) contributions payable by the participating Member States based on the gross national income (GNI) scale;
  - (b) other revenue, including deductions from Staff remuneration and interest yielded on the Agency's bank accounts.

The draft general budget shall carry lines to accommodate earmarked revenue and, wherever possible, shall indicate the amount foreseen.

10. The Steering Board, acting by unanimity, shall adopt the draft general budget by 31 December of each year. When doing so, the Steering Board shall be chaired by the Head of the Agency, or by a representative appointed by the Head of the Agency, or by a member of the Steering Board invited to do so by the Head of the Agency. The Chief Executive shall declare that the budget has been adopted and notify the participating Member States.

11. If, at the beginning of a financial year, the draft general budget has not been adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget. That arrangement shall not, however, have the effect of placing at the disposal of the Agency appropriations in excess of one twelfth of those provided for in the draft general budget in course of preparation. The Steering Board, acting by a qualified majority on a proposal from the Chief Executive, may authorise expenditure in excess of one twelfth, provided that the overall budget appropriations for that financial year do not exceed those of the previous financial year. The Chief Executive may call for the contributions necessary to cover the appropriations authorised under this provision, which shall be payable within 30 days from dispatch of the call for contributions.

#### *Article 15*

### **Amending budget**

1. In the case of unavoidable, exceptional or unforeseen circumstances, the Chief Executive may propose a draft amending budget to the Steering Board.
2. The draft amending budget shall be drawn up, proposed, and adopted and notification given in accordance with the same procedure as the general budget. The Steering Board shall act with due account to the urgency of those circumstances.

#### *CHAPTER 2*

### ***Financial actors and budget implementation in accordance with the principle of sound financial management***

#### *Article 16*

### **Powers and duties of the Authorising Officer**

1. The Chief Executive shall perform the duties of Authorising Officer. The Authorising Officer shall implement the general budget in accordance with these financial rules and the principle of sound financial management, under his own responsibility and within the limits of the authorised appropriations. The Authorising Officer shall be responsible for ensuring compliance with the requirements of legality and regularity.
2. The Chief Executive may delegate the powers of budget implementation to staff of the Agency, covered by Council Decision (EU) 2016/1351 <sup>(1)</sup> (hereinafter referred to as 'the Staff Regulations of the Agency'), in accordance with the conditions laid down in these financial rules. Those so empowered may act only within the limits of the powers expressly conferred upon them.

<sup>(1)</sup> Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency and repealing Decision 2004/676/EC (see page 1 of this Official Journal).

3. Technical expertise tasks and administrative, preparatory or ancillary tasks not involving the exercise of public authority or the use of discretionary powers of judgement may be entrusted by contract to external entities or bodies.

4. The Chief Executive, having due regard to the risks associated with the management environment and the nature of the action financed, shall propose to the Steering Board and put in place the organisational structure and the internal control systems suited to the performance of his/her duties. The establishment of such structure and systems shall be supported by a risk analysis which takes into account their cost-effectiveness.

The Steering Board shall give its assent to decisions related to the organisational structure of the Agency.

The Chief Executive may establish an expertise and advice function designed to help him or her control the risks involved in his or her activities.

5. The Authorising Officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge to the Agency in respect of implementation of the general budget for the year concerned.

6. Article 31 of Decision (CFSP) 2015/1835 shall apply to the treatment of personal data.

#### Article 17

#### **Ex ante controls**

1. Each operation shall be subject at least to an *ex ante* control based on a desk review of documents and on the available results of controls already carried out relating to the operational and financial aspects of the operation.

*Ex ante* controls shall comprise the initiation and the verification of an operation.

Initiation and verification of an operation shall be separate functions.

2. Initiation of an operation shall be understood as all the operations which are preparatory to the adoption of the acts implementing the Agency's budget.

3. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the Authorising Officer in order to verify the operational and financial aspects. For a given transaction, the verification shall be carried out by staff other than those who initiated the operation.

4. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the Authorising Officer taking into account risk-based and cost-effectiveness considerations. In case of doubt, the Authorising Officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

The purpose of the *ex ante* controls shall be to ascertain that:

- (a) the expenditure and revenue are in order and comply with the applicable provisions;
- (b) the principle of sound financial management set out in Article 11 has been applied.

For the purpose of controls, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the Authorising Officer to constitute a single operation.

#### Article 18

##### **Ex post controls**

1. The Authorising Officer may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.

The *ex post* controls may be carried out on the basis of documents, and where appropriate, on the spot.

2. The *ex post* controls shall be carried out by staff other than that responsible for the *ex ante* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of the staff responsible for the *ex ante* controls.

Staff responsible for controlling the management of financial operations shall have the necessary professional skills.

#### Article 19

##### **Annual reporting**

The Chief Executive shall report annually to the Steering Board on the performance of his or her duties. For this purpose, the Chief Executive shall submit the annual accounts of the Agency respecting the time limits set out in Article 44.

The annual accounts of the Agency shall be composed of different sections, in particular:

- (a) the activity report, which shall describe major aspects of the financial year;
- (b) the financial statements;
- (c) the budget implementation report.

The final accounts shall be accompanied by a note drawn up by the accounting officer in which he or she declares that the annual accounts were prepared in accordance with the applicable accounting principles, rules and methods.

The final accounts shall contain financial and management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, the Chief Executive has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
- (c) the control procedures put in place give the necessary assurance concerning the legality and regularity of the underlying transactions. The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

*Article 20***Financial statement**

1. The financial statements shall be presented in euro and shall comprise:
  - (a) the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding year; they shall be presented in accordance with the accounting rules referred to in Article 39;
  - (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
  - (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the Agency's activities.

*Article 21***Budgetary implementation report**

The budgetary implementation report of the Agency shall include the general budget, and budgets associated with ad hoc activities and additional revenue; and shall be presented in euro. The structure of the budgetary implementation report shall be the same as that of the budget itself.

It shall consist of:

- (a) a report which aggregates all budgetary operations for the year in terms of revenue and expenditure;
- (b) explanatory notes, which shall supplement and comment on the information given in the report.

*Article 22***Protection of the financial interests of the Agency**

1. If a member of staff involved in the financial management and control of transactions considers that a decision he or she is required by his or her hierarchy to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform the Chief Executive in writing who shall also reply in writing. If the Chief Executive fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the Head of the Agency.

2. In the event of any illegal activity, fraud or corruption which may harm the interest of the Agency or of its members, the member of staff shall inform the authorities and bodies designated by the applicable legislation. The College of Auditors as well as any external auditors carrying out financial audits of the Agency shall inform the Authorising Officer of any suspected illegal activity, fraud or corruption which may harm the interest of the Agency or its members.

*Article 23***Accounting officer**

1. The Steering Board shall appoint an accounting officer covered by the Staff Regulations of the Agency, who shall be totally independent in the performance of his or her duties within the Agency and responsible to the Steering Board. The accounting officer shall be responsible in the Agency for:

- (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
- (b) keeping, preparing and presenting the accounts in accordance with Chapter 6 of this Title and with Articles 19, 20 and 21;
- (c) implementing, in accordance with Chapter 6 of this Title, the accounting rules and the chart of accounts;
- (d) validating systems laid down by the Authorising Officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify compliance with validation criteria at any time;
- (e) treasury management.

2. The accounting officer shall obtain from the Authorising Officer all the information necessary for the production of accounts which give a true and fair view of the Agency's financial situation and of budgetary implementation. The Authorising Officer shall guarantee the reliability of that information.

3. Before the adoption of the accounts by the Chief Executive, the accounting officer shall sign them off, thereby certifying that he or she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Agency.

For the purpose of the first subparagraph, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules referred to in Article 39 and that all revenue and expenditure is entered in the accounts.

The authorising officer or his/her delegates shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information forwarded to the accounting officer.

The accounting officer shall be empowered to check the information received as well as to carry out any further checks he or she deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

Subject to paragraph 4, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.

4. The accounting officer may, in the performance of his or her duties, delegate certain tasks to staff members subject to the Staff Regulations of the Agency where this is indispensable for the performance of his or her duties in accordance with the financial rules of the Agency.

5. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his or her duties by the Steering Board. In such a case, the Steering Board shall appoint an interim accounting officer.

*Article 24***Liability of the financial actors**

1. Articles 16 to 26 are without prejudice to any liability under criminal law which the financial actors may incur as provided for in the applicable national law and in the provisions in force concerning the protection of the Agency's financial interests and the fight against corruption involving Union officials or officials of Member States.
2. Each Authorising Officer and accounting officer shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations of the Agency. In the event of illegal activity, fraud or corruption which may harm the interest of the Agency or of its members, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to European Anti-Fraud Office (OLAF).
3. Any member of the staff may be required to compensate, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his or her part in the course of or in connection with the performance of his or her duties. The appointing authority shall take a reasoned decision after completing the formalities laid down by the applicable legislation with regard to disciplinary matters.
4. As regards liability of authorising officers, Article 73(1) and (2) of Regulation (EU, Euratom) No 966/2012 shall apply.

*Article 25***Conflict of interests**

1. Financial actors within the meaning of Chapter 2 of Title III and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Agency.

Where such a risk exists, the person in question shall refrain from such actions and shall refer the matter to the Chief Executive who shall confirm in writing whether a conflict of interest exists. The person in question shall also inform his or her immediate supervisor. If the actor is the Chief Executive, he or she must refer the matter to the Head of the Agency.

Where a conflict of interest is found to exist, the person in question shall cease all activities in the matter. The Chief Executive, or the Head of the Agency in the event that the conflict of interest concerns the Chief Executive, shall take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

*Article 26***Segregation of duties**

The duties of Authorising Officer and accounting officer shall be segregated and mutually exclusive.

## CHAPTER 3

**Internal audit**

## Article 27

**Appointment, powers and duties of the internal auditor**

1. The Agency shall have an internal audit function which shall be performed in compliance with the relevant international standards.
2. The internal auditor may neither be the Authorising Officer nor the accounting officer.
3. The internal auditors shall advise the Agency on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

The internal auditor shall be responsible in particular for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing programmes and actions by reference to the risks associated with them;
  - (b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budget implementation operation.
4. The internal auditor shall perform his or her duties in relation to all activities and departments of the Agency. The internal auditor shall enjoy full and unlimited access to all information required to perform his or her duties. The internal auditor shall take note of the annual report of the Chief Executive and any other pieces of information identified.
  5. The internal auditor shall draw up an annual audit plan and submit it to the Chief Executive.
  6. The internal auditor shall take note of the report of the Authorising Officer under Article 19 and of any other pieces of information identified.
  7. The internal auditor shall report to the Chief Executive on his or her findings and recommendations.

The internal auditor shall also report in any of the following cases:

- critical risks and recommendations have not been addressed,
- there are significant delays in the implementation of the recommendations made in the previous years.

The Chief Executive shall ensure the regular monitoring of the implementation of audit recommendations.

Each year the Chief Executive shall send to the Steering Board a report containing a summary of the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations. The Steering Board shall examine the information and whether the recommendations have been implemented fully and in a timely manner.

8. The Agency shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.

9. The reports and findings of the internal auditor shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.

#### *Article 28*

### **Independence of the internal auditor**

The independence of the internal auditor, the liability of the internal auditor for action taken in the performance of his or her duties and the right for the internal auditor to bring an action before the Court of Justice of the European Union shall be determined in accordance with Article 100 of Regulation (EU, Euratom) No 966/2012.

#### *CHAPTER 4*

### ***Revenue and expenditure operations***

#### *Article 29*

### **Implementation of revenue**

1. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and recovering undue amounts. It shall also include the possibility of waiving established entitlements where appropriate.
2. Amounts wrongly paid shall be recovered.

If actual recovery has not taken place by the due date stipulated in the debit note, the accounting officer shall inform the Authorising Officer and immediately launch the procedure for effecting recovery by any means offered at law, including where appropriate, by offsetting and, if this is not possible, by enforced recovery.

Where the Authorising Officer plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The waiver decision shall state that action has been taken to secure recovery and the points of law and fact on which it is based.

The accounting officer shall keep a list of amounts due to be recovered. The Agency entitlements shall be grouped in the list according to the date of issue of the recovery order. The accounting officer shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the Agency's annual accounts.

3. Any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Article 83 of Commission Delegated Regulation (EU) No 1268/2012 <sup>(1)</sup>.
4. Entitlements of the Agency in respect of third parties and entitlements of third parties in respect of the Agency shall be subject to a limitation period of five years.

<sup>(1)</sup> Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).



*Article 30***Member States' contribution to the Agency's general budget**

1. The determination of contributions where the GNI scale is applicable shall be as follows:
  - (a) where the GNI scale is applicable, the breakdown of contributions between the Member States from which a contribution is due shall be determined in accordance with the gross national product scale as specified in Article 41(2) of the Treaty on European Union and in accordance with Council Decision 2007/436/EC, Euratom <sup>(1)</sup> or any other decision which may replace it;
  - (b) the data for the calculation of each contribution shall be those set out in the 'GNI own resources' column in the 'Summary of financing of the general budget by type of own resource and by Member State' table appended to the latest budget of the Union. The contribution of each Member State from which a contribution is due shall be proportional to the share of that Member State's GNI in the total GNI aggregate of the Member States from which a contribution is due.
2. The schedule for payment of contributions shall be as follows:
  - (a) the contributions intended to finance the Agency's general budget shall be paid by the participating Member States in three equal instalments, by 15 March, 15 June and 15 October of the financial year concerned. The Agency shall send call for contribution letters to the participating Member States at least 60 days in advance of the instalment dates;
  - (b) when an amending budget is adopted, the necessary contributions shall be paid by the participating Member States within 60 days of dispatch of the call for contributions;
  - (c) each Member State shall pay the bank charges relating to the payment of its own contributions;
  - (d) if the annual budget is not approved by 30 November, the Agency may issue, at the request of a Member State, an individual provisional call for contributions for that Member State to be paid within 60 days of dispatch of the call for contribution.

When payment is made within the deadline and received by the Agency no more than 10 days exceeding the deadline, no interest as stipulated in Article 29.3 shall be due to the Agency. When payment is late by more than 10 days, late interests shall be charged for the entire delay.

*Article 31***Implementation of expenditure**

1. To implement expenditure, the Authorising Officer shall make budgetary commitments and legal commitments, validate expenditure and authorise payments and undertake the preliminary steps for the implementation of appropriations.
2. A budgetary commitment is the operation by which the appropriation necessary to cover subsequent payments to honour legal commitments is reserved. A legal commitment is the act whereby the Authorising Officer enters into or establishes an obligation which results in a charge. Budgetary commitments and legal commitments shall be adopted by the same Authorising Officer, except in duly justified cases.

Budgetary commitments shall fall into one of the following categories:

- (a) individual: the budgetary commitment is individual when the beneficiary and the amount of the expenditure are known;

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<sup>(1)</sup> Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17).

- (b) global: the budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known;
- (c) provisional: the budgetary commitment is provisional when it is intended to cover routine administrative expenditure and either the amount or the final payees are not definitively known.

Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides or where they relate to administrative expenditure.

3. Every item of expenditure shall be committed, validated, authorised and paid.

The validation of expenditure is the act whereby the Authorising Officer:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions according to which the payment is due.

Authorisation of expenditure is the act by which the Authorising Officer, having verified that the appropriations are available, instructs the accounting officer to pay the validated expenditure.

4. In respect of any measure which may give rise to expenditure chargeable to the Agency's budget, the Authorising Officer shall make a budgetary commitment before entering into a legal commitment with third parties.

5. Year one of the Agency's three-year Planning Framework shall provide for the authorisation by the Steering Board for the operational expenditure of the Agency on the activities it covers, provided that the elements set out in this paragraph are clearly identified.

The Planning Framework shall comprise detailed objectives and expected results. It shall also contain a description of the action(s) to be financed and an indication of the amount allocated to each action.

Any substantial amendment to year one of the Agency's three-year Planning Framework shall be adopted by the same procedure as the initial Planning Framework.

The Steering Board may delegate the power to make non-substantial amendments to the Planning Framework to the Authorising Officer of the Agency.

#### *Article 32*

#### **Time limits**

The payment of expenditure must be carried out within the time limits specified in and in accordance with Article 92 of Regulation (EU, Euratom) No 966/2012 and Article 111 of Delegated Regulation (EU) No 1268/2012.

#### CHAPTER 5

#### **Implementation of the budget**

#### *Article 33*

#### **Procurement**

1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 2 and 3 of this Article.

2. For contracts with a value between EUR 60 000 and the thresholds laid down in Article 118 of Regulation (EU, Euratom) No 966/2012 the procedure set out in Delegated Regulation (EU) No 1268/2012 for contracts with a low value not exceeding EUR 60 000 may be used.

3. The Agency may conclude a contract, without having recourse to a public procurement procedure, with the European Commission, the interinstitutional offices, the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94 <sup>(1)</sup> and with other Union bodies for the supply of goods, provision of services or performance of work that the latter provide.

#### Article 34

### Joint procurement

1. The Agency may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Union bodies or agencies.

2. In the context of collaborative activities with Member States, such as those referred to in Chapter IV of Decision (CFSP) 2015/1835, the Agency may use joint procurement procedures.

3. In the case of a joint procurement procedure between the Agency and the contracting authority from one or more Member States, the procedural provisions applicable to the Agency shall apply.

Where the share pertaining to or managed by the contracting authority of one or more Member States in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the procedural rules of Directive 2014/24/EU of the European Parliament and of the Council <sup>(2)</sup>, Directive 2009/81/EC of the European Parliament and of the Council <sup>(3)</sup>, or any other legal act of the Union which may be applicable in light of the subject matter in question, shall apply.

4. The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 133 of Delegated Regulation (EU) No 1268/2012 shall apply *mutatis mutandis*.

#### Article 35

### Experts

For the selection of experts, the Agency may apply the provisions of Article 287 of Delegated Regulation (EU) No 1268/2012, subject to any specific procedure laid down in the basic act of the programme the implementation of which is entrusted to the Agency. Such experts shall be paid on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity.

External experts shall be selected on the basis of skills, experience and knowledge appropriate to carry out the tasks assigned to them and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interest.

<sup>(1)</sup> Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union (OJ L 314, 7.12.1994, p. 1).

<sup>(2)</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).

<sup>(3)</sup> Directive 2009/81/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security, and amending Directives 2004/17/EC and 2004/18/EC (OJ L 216, 20.8.2009, p. 76).

*Article 36***Grants**

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument.

*Article 37***Prizes**

1. As regards prizes, Title VII of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraph 2 of this Article.
2. Contests for prizes with a unit value of EUR 10 000 or more may only be published if they are provided for in the Planning Framework of the Agency.

*Article 38***Indication of means of redress**

1. Where a procedural act of an Authorising Officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.
2. In particular, the nature of the redress, the body or bodies before which it can be brought, as well as time limits for their exercise shall be indicated.

## CHAPTER 6

**Accounting***Article 39***Rules governing the accounts**

The Agency shall set up an accounting system providing accurate, complete and reliable information in a timely manner.

The accounting officer of the Agency shall adopt rules based on internationally accepted accounting standards for the public sector. The accounting officer may diverge from those standards if he or she considers this necessary in order to give a true and fair view of the assets and liabilities, charges, income and cash flow. Where an accounting officer diverges materially from those standards, the notes to the financial statements shall disclose this fact and the reason for it.

*Article 40***Accounting principles**

The financial statements shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn in accordance with Article 39.

*Article 41***Accounting system**

1. The accounting system shall consist of general accounts and budgetary accounts. The accounts shall be kept in euro on the basis of the calendar year.
2. The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the Agency.
3. The budgetary accounts shall provide a detailed record of the implementation of the Agency's budget. They shall record all budgetary revenue and expenditure operations.

*Article 42***Inventories**

The Agency shall keep inventories showing the quantity and value of all the tangible, intangible and financial assets constituting its property. The Agency shall check that entries in the inventory correspond to the actual situation.

*CHAPTER 7****External audit and combating fraud****Article 43***External audit**

1. The Steering Board shall appoint a College of Auditors to perform the external audit function of the administrative and operational budgets, financial accounts and financial statements of the Agency. The audit shall be conducted in conformity with accepted international standards on auditing and, subject to approval by the Steering Board, in accordance with additional terms of reference.

At least every three years, the College shall provide independent assurance and advice to the Steering Board that activities of the Agency have been carried out in compliance with the principles of sound financial management. To perform that task, the College may resort to temporary additional staff, in agreement with the Steering Board.

2. The College of Auditors shall be composed of at least three auditors from different participating Member States, supported by staff nominated by the College. That staff member may remain as long as the member of the College of Auditors who nominated him or her remains in office.
3. The members of the College of Auditors shall be appointed for a period of three subsequent audits. A fair rotation amongst the participating Member States wishing to send auditors shall be ensured.
4. The Steering Board shall appoint the College of Auditors from candidates proposed by the participating Member States. The candidates shall preferably be members of the highest national audit institution of the participating Member States and offer adequate guarantees of security and independence. They shall be available to carry out tasks on behalf of the Agency as needed. In carrying out those tasks:
  - (a) the members of the College and their support staff shall continue to be paid by their audit body of origin and shall only receive reimbursement of their mission expenses from the Agency on the same basis as provided for in the rules of the Agency;

- (b) they shall neither request, nor receive instructions other than from the Steering Board; within its audit mandate, the College of Auditors and its members shall be completely independent and solely responsible for the conduct of the external audit;
- (c) they shall report on their task only to the Steering Board;
- (d) they shall check that revenue and expenditure administered by the Agency has been implemented in conformity with the applicable legislation and the principles of sound financial management.

5. Each year, the College of Auditors shall elect its chairman for the forthcoming financial year. It shall adopt the rules applicable to audits carried out by its members in accordance with the highest international standards on auditing. The College of Auditors shall approve the audit reports drawn up by its members before their transmission to the Chief Executive and to the Steering Board.

6. The auditors shall ensure that they respect the confidentiality of the information and protect the data of which they acquire knowledge during their audit task, in accordance with the rules applicable to that information and data.

7. The auditors shall have access, without delay and without giving prior notice, to the documents and to the contents of all data supports relating to that revenue and expenditure and to the premises where those documents and supports are kept. They may make copies. The persons involved in implementing the Agency's revenue and expenditure shall give the Chief Executive and the persons responsible for the audit of that expenditure the necessary assistance in performing their tasks. Expenses related to the audit shall be charged to the general budget.

8. On the proposal by the Chief Executive or by one of the Member States, the Steering Board may decide on case-by-case basis to use other external bodies for special reviews in coordination with the assignment of the College of Auditors.

9. In specific cases, national audit authorities of participating Member States can, at their own cost and with the agreement of the Steering Board, obtain any information and inspect any documents they deem necessary for auditing of the respective national share or reporting to government and parliament, without infringing on the other participating Member States and the responsibilities of the College of Auditors and in compliance with the rules of the Agency, in particular data protection rules.

#### Article 44

### **Annual audit and discharge of the Agency budget**

1. By 31 March following the end of the financial year, the Chief Executive shall submit to the College of Auditors, for examination and their opinion, a draft of the annual accounts of the Agency as referred to in Article 19.

2. By 30 June following the end of the financial year, the College of Auditors shall submit to the Chief Executive its annual audit report containing the opinion and observations of the College on the draft annual accounts referred to in paragraph 1.

3. By 15 July following the end of the financial year, the Chief Executive shall submit to the Steering Board the final audited annual accounts and the audit report accompanied by the Agency's replies.

4. By 30 October following the end of the financial year, the Steering Board shall approve the audited annual accounts and grant the discharge to the Chief Executive and the accounting officer for the financial year.

5. Once approved by the Steering Board, the audited annual accounts shall be notified in the *Official Journal of the European Union*.

6. All the accounts and inventories shall be retained by the Accounting officer for a period of five years from the date on which the corresponding discharge was granted.

#### Article 45

### OLAF

1. OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council <sup>(1)</sup> and Council Regulation (Euratom, EC) No 2185/96 <sup>(2)</sup> with a view to establishing whether there has been fraud, corruption or any other illegal activity affecting the financial interests of the Agency in connection with a grant or contract funded by the Agency.

2. Without prejudice to paragraph 1, contracts, agreements and decisions of the Agency shall contain provisions expressly empowering the College of Auditors and OLAF to conduct audits and investigations, according to their respective competences.

#### TITLE IV

### SPECIFIC PROVISIONS APPLICABLE TO ADDITIONAL REVENUE

#### Article 46

### Additional revenue

1. Within the framework of its mission in accordance with Article 2 of Decision (CFSP) 2015/1835, the Agency may receive Additional Revenue for a specific purpose:

- (a) from the general budget of the Union on a case-by-case basis, in full respect of the rules, procedures and decision-making processes applicable to it;
- (b) from Member States, third countries or other third parties, unless the Steering Board decides otherwise within one month of receiving such information from the Agency.

2. The revenue referred to in paragraph 1 may only be used for the specific purpose to which it is assigned.

3. The additional administrative costs related to the management of the additional revenue shall be covered, where relevant, by the budget associated with the additional revenue itself.

4. The provisions of Chapters 2 to 7 of Title III are applicable to additional revenue unless the relevant agreement(s) provide for different rules, which in any case shall comply with the budgetary principles established in Title II.

5. Any budgetary surplus arising from any Additional Revenue at the end of the implementation period shall be considered as a credit available for the entities having contributed to it and returned to them. They may be also used for other specific purposes as established in the relevant agreement(s) or, unless the Steering Board decides otherwise within one month of receiving such information from the Agency, as proposed by the concerned entity.

<sup>(1)</sup> Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

<sup>(2)</sup> Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ L 292, 15.11.1996, p. 2).

6. The accounting officer shall adopt appropriate measures to ensure that use of the additional revenue and of the corresponding appropriations is monitored separately. Therefore, contributions resulting from additional revenues shall be accounted separately and used in accordance with the specific purpose to which they are assigned. For the sake of transparency, they will also be placed on separate bank accounts. In addition, they will be shown separately within the budgetary implementation report of the Agency as established in Article 21.

#### TITLE V

### **SPECIFIC PROVISIONS APPLICABLE TO THE BUDGETS ASSOCIATED WITH AD HOC ACTIVITIES**

#### *Article 47*

#### **Management by the Agency of budgets associated with ad hoc activities**

1. The Steering Board, following a proposal from the Chief Executive or a Member State, may decide that the Agency may be entrusted by Member States with the administrative and financial management of certain activities within its remit in accordance with Chapter IV of Decision (CFSP) 2015/1835.
2. The Steering Board, in the context of Agency ad hoc projects and programmes, may authorise the Agency, under the conditions set out in the arrangements governing the activities in question, to enter into contracts and grant agreements, and collect the necessary contributions from those Member States in advance, taking into consideration budgetary constraints of the Member States, to honour such contracts and grant agreements.
3. The provisions of Chapters 2 to 7 of Title III of this Decision shall apply to the ad hoc activities established in accordance with Articles 19 or 20 of Decision (CFSP) 2015/1835, unless the basic act(s) of the programme or the project provide for different rules, which in any case shall comply with the budgetary principles established in Title II of this Decision.
4. Any budgetary surplus arising from any ad hoc project or programme shall be considered as a credit available for the participating Member States and any other entity having contributed to it and returned to them at the end of the implementation period or used for the other specific purposes as established in the relevant agreement(s) or decided by the concerned Member State or entity.

#### TITLE VI

### **FINAL PROVISIONS**

#### *Article 48*

#### **Amendments**

Any reference to Regulation (EU, Euratom) No 966/2012 shall also be construed to take into account the amendments thereto.

#### *Article 49*

#### **Repeal of Decision 2007/643/CFSP**

Decision 2007/643/CFSP is repealed.



*Article 50***Entry into force**

This Decision shall enter into force on the date of its adoption.

Done at Brussels, 4 August 2016.

*For the Council*  
*The President*  
M. LAJČÁK

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ISSN 1977-0677 (electronic edition)  
ISSN 1725-2555 (paper edition)



**Publications Office of the European Union**  
2985 Luxembourg  
LUXEMBOURG

**EN**