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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the rules adopted by the appointing authority of each institution to give effect to the
Staff Regulations**

THE OBJECTIVES OF THE PRESENT REPORT

Institutions enjoy autonomy as regards the application of the Staff Regulations and the Conditions of Employment of Other Servants to their staff.

As part of the **2014 Reform of the Staff Regulations**, the co-legislators have introduced new mechanisms to increase **compliance** with the legislative framework and to strengthen effective **governance**.

The present report is part of these new mechanisms. Together with the new register on implementing rules held by the Court of Justice, the report is a tool that allows for **transparency** and promotes a **consistent application of the Staff Regulations**¹.

The report addresses the following issues:

→ ***Consistent application of the Staff Regulations:***

Title 1 examines the basic legal framework. It evaluates to what extent the system of the Staff Regulations allows for a harmonised and equal implementation of their provisions.

→ ***Transparency:***

Title 2 provides an exhaustive inventory of all the implementing rules adopted by appointing authorities, thereby giving a clear and transparent account of the current situation across all institutions.

→ ***Compliance:***

Title 3 assesses to what extent institutions have complied with the legal framework as foreseen under the Staff Regulations and the Conditions of Employment of Other Servants.

→ ***Governance:***

Title 4 evaluates the current mechanisms put in place to ensure effective governance between institutions and with regard to agencies.

→ ***Conclusions:***

Title 5 summarizes the findings on the current situation regarding implementing rules and suggests further steps for improving a consistent application of the Staff Regulations.

¹ See recital 32 of Regulation N° 1023/2013 of 22 October 2013.

EXPLANATORY MEMORANDUM

1. LEGAL BASE

The Staff Regulations² require the Commission to present a report every three years on the rules adopted by the appointing authority of each institution to give effect to the Staff Regulations.

The establishment of such a report is part of a wider framework introduced by the 2014 Reform of the Staff Regulations. This framework aims to ensure transparency and render such rules accessible to citizens of the European Union. It also comprises a register held by the Court of Justice of the European Union to which institutions and agencies supply their own rules.

The present report constitutes the first presentation of these rules since the introduction of the reporting obligation.

2. COLLECTION OF INFORMATION FOR THE REPORT

In order to establish the report, the Commission consulted the register administered by the Court of Justice of the European Union.

The Commission subsequently verified the rules retrieved from the register in order to ensure that the report covers all decisions of the institutions and agencies to implement the Staff Regulations. To this end, the Commission compared these rules with the rules as transmitted directly to the Commission by other institutions and agencies.

This collection exercise was completed on 30 April 2017.

3. KEY CHARACTERISTICS OF THE REPORT

Description of implementing rules

The report gives an overview of the different types of rules which can be adopted either by an appointing authority to give effect to the Staff Regulations or by an authority authorised to conclude contracts of engagement to give effect to the Conditions of Employment of Others Servants and explains the procedure for adopting such rules.

Quantitative assessment

In agreement with the institutions concerned, the Commission has drawn up tables that detail the situation in each of the ten institutions during the period from 1 January 2014 to 31 December 2016. On the basis of these tables, the Commission has established a general table that gives an overview of the situation across the institutions.

² Article 110(6) of the Staff Regulations as amended by Regulation N° 1023/2013 of 22 October 2013.

Another general table gives an aggregated overview of the rules applicable in the agencies on 31 December 2016.

The tables identify the subjects on which the respective appointing authorities or authorities authorised to conclude contracts of engagement have adopted rules and the extent to which individual authorities have made use of their rule making power.

Qualitative assessment / Compliance

The report discusses how appointing authorities or authorities authorised to conclude contracts of engagement have complied with the framework set by the Staff Regulations and the Conditions of Employment of Other Servants, giving particular attention to subjects where authorities have not (yet) made use of their power to adopt rules.

It gives an overview of the presentation of implementing rules in the register held by the Court of Justice of the European Union.

Governance

While the Staff Regulations and the Conditions of Employment of Other Servants allow for individual rules to reflect different administrative realities, various mechanisms are in place to harmonise rules and practices, both on an inter-institutional level and with regard to agencies.

The report presents these different mechanisms of governance for a more uniform application of the Staff Regulations and the Conditions of Employment of Other Servants.

4. OUTLOOK

The Commission will be required to submit the next report on the basis of Article 110(6) of the Staff Regulations in three years' time. The next report will cover implementing rules in force during the period from 1 January 2017 and 31 December 2019.

| |
|---|
| <p>The Commission completed the present report on the basis of data as made available by institutions and agencies. The responsibility for completeness and accurateness of this data lies with the respective institution or agency.</p> |
|---|

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TITLE 1. PRESENTATION OF IMPLEMENTING RULES

CONSISTENT APPLICATION OF THE STAFF REGULATIONS

→ **What is the system foreseen by the Staff Regulations regarding their implementation?**

→ **How do the Staff Regulations achieve a consistent application of their provisions?**

The report presents the rules that have been adopted by the appointing authority to give effect to the Staff Regulations as well as the rules that have been adopted by the authority authorised to conclude contracts of engagement to give effect to the Conditions of Employment of Other Servants.

A general feature of all these rules is that they do not concern the general public. As a consequence, they are not the subject of publication in the Official Journal of the European Union. However, in order to be enforceable towards staff concerned, the rules have to be brought to the attention of staff according to Article 110(4) of the Staff Regulations.

The following rules fall within the scope of the report:³

a) Rules adopted by agreement between the institutions of the Union ("Règles arrêtées d'un commun accord")

The Staff Regulations and the Conditions of Employment of Other Servants foresee, for the application of certain provisions, the adoption of rules by agreement between the institutions of the Union.

This concerns the following subject matters:

Staff Regulations

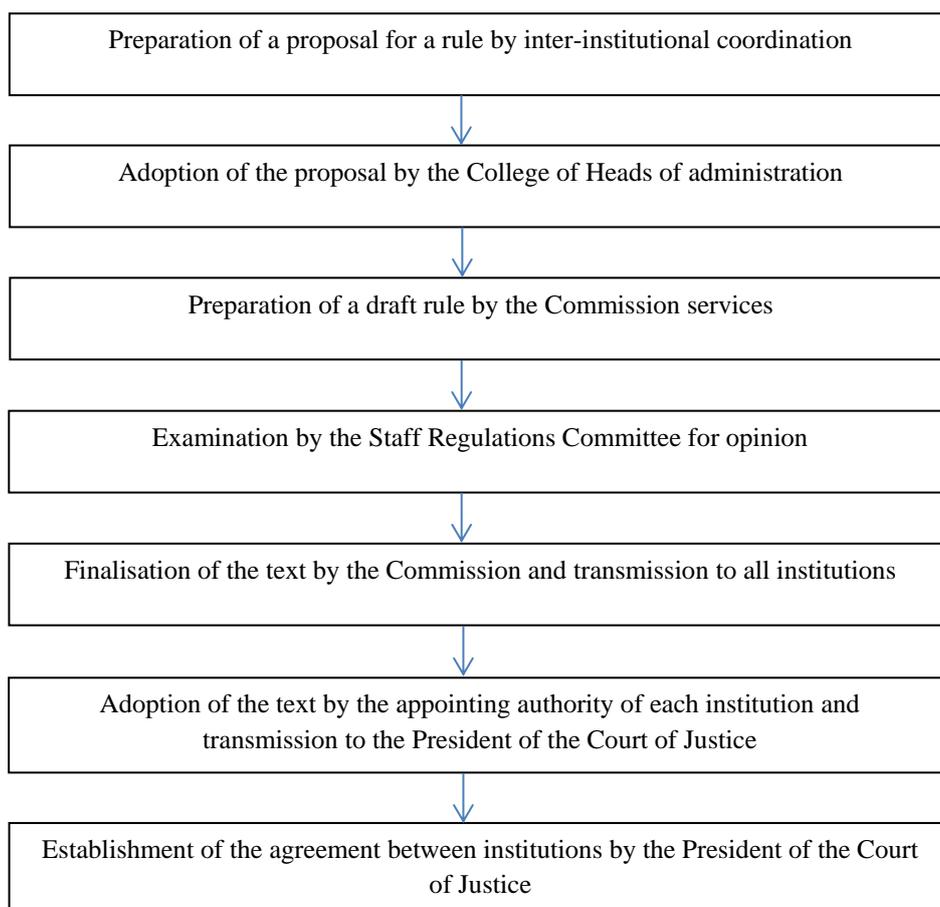
| | |
|----------------------------------|--|
| Article 10 | Procedure for appointing members of the Staff Regulations Committee |
| Article 27 + Annex II, Article 2 | Procedure for instituting the common Joint Committee (COPARCO) |
| Article 37 | Establishment of a list of organisations devoted to furthering the Union's interests |
| Article 45 | Ability to work in a third language before the first promotion |

³ The report does not include delegated acts adopted on the basis of Articles 111 and 112 of the Staff Regulations. These acts result from the exercise by the Commission (or, before the 2014 reform of the Staff Regulations, by the Council) of its specific power to enact rules having a general effect on all EU staff members. Implementing rules within the meaning of Article 110 of the Staff Regulations, on the other hand, are adopted by an institution on the basis of its appointing authority power and are limited to the staff members of the institution itself.

| | |
|--|---|
| Article 57 | Annual leave |
| Article 61 | List of public holidays |
| Article 72 | Sickness insurance |
| Article 73 | Insurance against risk of occupational disease or accidents |
| Article 76a | Financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled |
| Annex VII, Article 17 | Special regular transfer of part of the remuneration |
| <i>Conditions of Employment of Other Servants</i> | |
| Article 28a | Application of the provision on granting an unemployment allowance to temporary agents |

The Staff Regulations do not define the process for the adoption of a rule by agreement between the institutions of the Union. Inter-institutional practice has over time developed the following adoption process:

PROCESS FOR THE ADOPTION OF RULES BY AGREEMENT BETWEEN THE INSTITUTIONS⁴



⁴ See the Vademecum of the Heads of administration of the European Union, version 2012, Annex II.



RULE ADOPTED BY AGREEMENT BETWEEN THE INSTITUTIONS

b) General implementing provisions ("Dispositions générales d'exécution")

The Staff Regulations and the Conditions of Employment of Other Servants grant specific empowerments to the appointing authority and the authority authorised to conclude contracts of engagement, respectively, to adopt general implementing provisions.

This concerns the following subject matters:⁵

| <i>Staff Regulations</i> | |
|---|---|
| Article 27 | Appropriate measures following the observation of a significant imbalance between nationalities among officials |
| Article 32 | Classification in step upon recruitment |
| Article 42a | Parental leave, single parents |
| Article 43 | Annual report on ability, efficiency and conduct in the service |
| Article 45a(5) | Appointment of an AST official to an AD post |
| Article 72(1) | Reimbursement of medical expenses |
| Annex VII, Article 3(1) | Education allowance |
| Annex VII, Article 9(1) | Removal expenses |
| Annex VII, Article 13a | Mission expenses |
| Annex VIII, Article 11(2) | Transfer IN of pension |
| Annex IX, Article 2(3) | Administrative enquiries |
| Annex X, Article 1 | Officials serving in a third country |
| Annex X, Article 3 | Exceptional application of Annex X to officials temporarily reassigned to Headquarters |
| <i>Conditions of Employment of Other Servants</i> | |
| Article 12(1) | Appropriate measures following the observation of a significant imbalance between nationalities among temporary staff |
| Article 12(5) | Procedures for recruitment of temporary staff |
| Article 54 | Reclassification of temporary staff referred to in Article 2(f) |

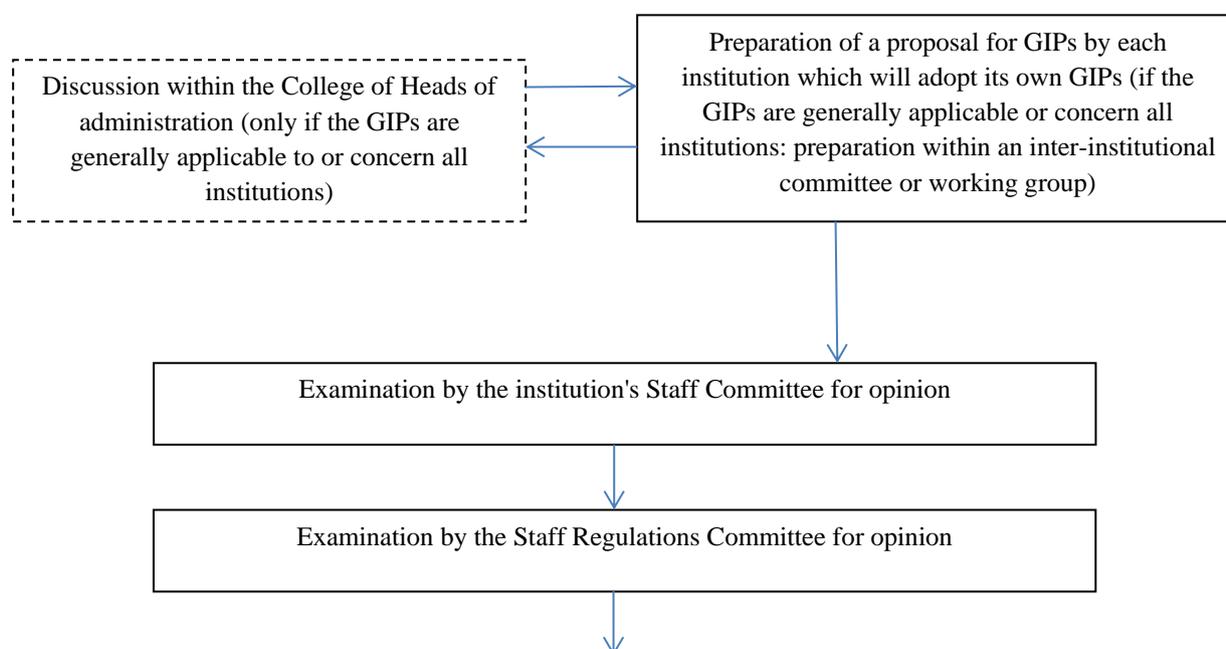
⁵ The report does not cover the empowerment foreseen in Article 2(3) of the Annex "Transitional provisions applicable to the staff covered by the Conditions of Employment of Other Servants". This provision does not relate to the period covered by the report.

| | |
|---------------|---|
| Article 56 | Engagement and use of temporary staff referred to in Article 2(f) |
| Article 79 | Use of contract staff |
| Article 82(6) | Engagement of contract staff |
| Article 86 | Grading of contract staff |

Unlike in the case of rules adopted by agreement between the institutions, the content of general implementing provisions is determined by each institution according to the principle of autonomy of each institution as an employer as recognised by Article 13(2) of the Treaty on European Union and Article 298 of the Treaty of the Functioning of the European Union.⁶ In the field of reimbursement of medical expenses in the framework of the Joint Sickness Insurance Scheme, however, the Commission has adopted, on the basis of the Joint Rules on sickness insurance for officials of the European Union, general implementing provisions with effect to staff members in all institutions and agencies.

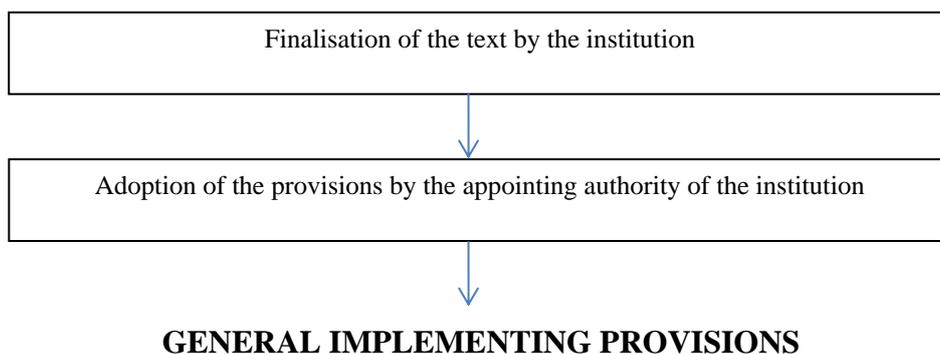
According to Article 110(1) of the Staff Regulations and Article 141, first subparagraph, of the Conditions of Employment of Other Servants, general implementing provisions are adopted by the competent authority of each institution after consulting the Staff Committee and the Staff Regulations Committee.

PROCESS FOR THE ADOPTION OF
GENERAL IMPLEMENTING PROVISIONS (GIPs)⁷



⁶ This principle of autonomy of each institution as an employer has been confirmed by the jurisprudence, see judgments of 5 July 2011, V/ European Parliament, F-46/09, point 135 and of 28 April 2017, Azoulay et.al. / European Parliament, T-580/16, point 57 and the jurisprudence cited.

⁷ See the Vademecum of the Heads of administration of the European Union, version 2012, Annex II.



According to Article 142 of the Conditions of Employment of Other Servants, general implementing provisions referred to in Article 110 of the Staff Regulations shall apply to servants covered by these Conditions where by virtue of these Conditions the provisions of the Staff Regulations apply to those servants.

c) Other implementing rules

The Staff Regulations and the Conditions of Employment of Other Servants also foresee empowerments for the appointing authority of each institution and the authority authorised to conclude contracts of engagement of each institution, respectively, to adopt other implementing rules, without further specifying the procedure for adoption.

On one occasion (with regard to Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission as part of their duties), Article 96 of the Staff Regulations foresees a joint empowerment to the Commission and the EEAS.

Other implementing rules are foreseen for the following subject matters:

| <i>Staff Regulations</i> | |
|--------------------------|--|
| Article 2 | Determination of powers of appointing authority |
| Article 5 | Definition of types of posts |
| Article 9 | Composition and procedures of bodies (committees) |
| Article 22c | Whistleblowing |
| Article 51 | Procedure for dealing with incompetence |
| Article 55(3) | Standby duty |
| Article 55(4) | Flexible working time arrangements |
| Article 55b | Job sharing |
| Article 56 | Overtime |
| Article 96 | Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission as part of their duties |
| Annex IVa, Article 5 | Part time work |

TITLE 2. QUANTITATIVE ASSESSMENT

TRANSPARENCY

→ *Which rules have been adopted, and for which subject matters?*

→ *What is the situation across institutions?*

→ *What is the situation across agencies?*

a) Implementing rules in institutions

In accordance with Article 13 of the Treaty of the European Union and Articles 1, 1a and 1b of the Staff Regulations, the following ten institutions are concerned by this report:⁹

- The European Parliament (EP),
- The Council (C),
- The European Commission (COM),
- The Court of Justice of the European Union (CoJ),
- The Court of Auditors (CoA),
- The European External Action Service (EEAS),
- The European Economic and Social Committee (EESC),
- The Committee of the Regions (CoR),
- The European Ombudsman (EO), and
- The European Data Protection Supervisor (EDPS).

For the purpose of establishing the present report, the nine other institutions have transmitted their implementing rules to the Commission. In parallel, the Commission has consulted the register administered by the Court of Justice of the European Union.

Based on this input and in agreement with the institutions concerned, the Commission has drawn up tables that detail the situation in each of the ten institutions as follows:

- A list of the rules adopted by agreement between the institutions (**Annex I**);
- Ten tables listing the general implementing provisions and other implementing rules adopted by each institution's appointing authority or the authority empowered to conclude contracts of engagement, respectively (**Annex II.1-II.10**);
- A general table that gives a comparative summary across all institutions with regard to rules implementing the Staff Regulations and the Conditions of Employment of Other Servants (**Annex III**).

⁹ According to Article 36.1 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, staff members of the European Central Bank are subject to the condition of employment of the staff of the ECB.

The tables use a common methodology:

- They list implementing rules that have been in force, at least partially, during the period covered by the report (from 1 January 2014 to 31 December 2016).
- They group implementing rules alongside different subject matters, following the structure of the Staff Regulations and the Conditions of Employment of Other Servants.
- They identify implementing rules by reference number, date of entry into force and, if applicable, date of expiry.

The following method of counting was applied:

- Implementing rules were counted on the base of the lists for each institution (Annexes I and II.1-II.10);
- An implementing rule was counted once, even if it covered more than one subject matter;¹⁰
- A rule amending an already existing rule was not counted separately;
- If an implementing rule was replaced during the period covered by the report, only one implementing rule was counted.¹¹

NUMBER OF IMPLEMENTING RULES ADOPTED BY INSTITUTIONS

| | Rules adopted by agreement | General implementing provisions | Other implementing rules | Total decisions |
|--------------|-----------------------------------|--|---------------------------------|------------------------|
| EP | 10 | 17 | 28 | 55 |
| C | 10 | 15 | 23 | 48 |
| COM | 10 | 22 | 57 | 89 |
| CoJ | 10 | 11 | 15 | 36 |
| CoA | 10 | 10 | 23 | 43 |
| EEAS | 10 | 23 | 38 | 71 |
| EESC | 10 | 8 | 23 | 41 |
| CoR | 10 | 14 | 25 | 49 |
| EO | 10 | 15 | 9 | 34 |
| EDPS | 10 | 16 | 11 | 37 |
| Total | 100 | 151 | 252 | 503 |

The above figures show a difference in the density of regulation among institutions. For this phenomenon, one can cite different reasons:

Since the EU treaties provide for autonomy of each institution in carrying out their respective missions (see Article 13 of the Treaty on European Union and Article 298 of the Treaty on the Functioning of the European Union), different traditions have evolved within each institution as concerns the adoption of implementing rules.

¹⁰ An exception was made in the case of "omnibus decisions" adopted by the EEAS, i.e. general decisions that adopt, *en bloc* and by way of analogy, several special decisions of other institutions. In such a case, the respective number of special decisions was counted.

¹¹ However, when a general implementing rule was replaced by a different type of implementing rule (or vice versa), two implementing rules were counted (one for each category of rules).

Certain subject matters, while of less relevance for some institutions, have given rise to the adoption of implementing rules in other institutions. One can cite as example here the empowerment of Article 1, third subparagraph of Annex X to the Staff Regulations to adopt general implementing provisions regarding officials serving in a third country (which has been used by the European Commission and the European External Action Service, but not by the other institutions).

Similarly, the Staff Regulations and the Conditions of Employment of Other Servants foresee selective empowerments that apply only to one institution. This is the case of Article 72(1), third subparagraph, of the Staff Regulations, which provides that the appointing authorities of the institutions may confer on one of their number the power to lay down the rules governing the reimbursement of medical expenses (a power which has ultimately been conferred to the Commission) and of Article 125(1) of the Conditions of Employment of Other Servants, which empowers the European Parliament to adopt implementing measures by internal decision for the purposes of the application of the provisions on parliamentary assistants.

Sometimes, different legislative techniques lead to different quantitative outcomes. For example, one institution may regulate several related subject matters in a single implementing rule, whereas another institution may adopted several rules for those subject matters¹².

In the same vein, there are differences in the legal nomenclature among institutions. As regards implementing rules on parental leave, for example, seven institutions have adopted general implementing provisions, whereas three have chosen to adopt other implementing rules for the same subject matter.

b) Implementing rules in agencies

The present report also informs about implementing rules adopted by agencies which were in force on 31 December 2016.

This concerns the following 48 agencies in the sense of Article 1a(2) of the Staff Regulations:

- 6 executive agencies,
- 34 decentralised agencies and
- 8 joint undertakings.

(1) The situation before the 2014 reform of the Staff Regulations

Article 110(1) of the Staff Regulations in its version prior to the entry into force of the 2014 reform stipulated that agencies shall adopt the appropriate implementing rules for giving effect to the Staff Regulations, after consultation of the relevant Staff Committee and in agreement with the Commission.

¹² To illustrate this point, see the European Parliament's General Implementing Provisions governing competitions and selection procedures, recruitment and the grading of officials and other servants of the European Parliament of 17 October 2014. The European Commission has treated these issues in separate legal texts.

(2) The situation after the 2014 reform of the Staff Regulations

The 2014 reform of the Staff Regulations set up a new framework for the adoption of rules implementing the Staff Regulations by the agencies.

The general principle introduced by Article 110(2) of the Staff Regulations is that implementing rules adopted by the Commission apply by analogy to the agencies. To that end, the Commission informs the agencies of any such implementing rule without delay after adoption.

The Commission has not informed agencies of its rules which had entered into force prior to the 2014 reform of the Staff Regulations. The principle of analogy applies only with regard to Commission implementing rules of which the Commission informed the agencies.

By way of exception to the principle of analogy, an agency may decide, after having consulted its Staff Committee and after having received the Commission's agreement, to adopt individual decisions by:

- Not applying certain Commission rules (opt-out);
- Adopting rules which are different from those of the Commission;
- Adopting rules on subjects other than those covered by the rules adopted by the Commission.

The Commission also developed a mechanism whereby it can inform agencies of its horizontal agreement to such individual decisions without the agencies having to submit a formal request (ex-ante agreement).¹³

On the basis of input from the agencies, the Commission has drawn up a general table that provides a summary of the number and types of implementing rules that were applicable in agencies on 31 December 2016.

This general table is reproduced in *Annex IV* to the present report.

It uses the following methodology:

- It concerns agencies' implementing rules that were in force on 31 December 2016;
- It follows the structure of the Staff Regulations and the Conditions of Employment of Other Servants in order to help identify the different subject matters where agencies have adopted implementing rules;
- With regard to each subject matter, the table distinguishes different scenarios under which agencies have adopted their rules.

¹³ For further reference, see the Communication C(2014) 6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and the Commission Decision C(2014) 7229 final of 8 October 2014 on the exercise of certain powers in respect of the agreement to be given by the Commission to the agencies before the adoption of implementing rules giving effect to the Staff Regulations in accordance with Article 110(2) thereof.

In particular, this table allows showing how the mechanisms introduced since 2014 have worked in practice.

EFFECTS OF MECHANISMS INTRODUCED SINCE 2014

| | | |
|--|--|--|
| <i>Commission implementing rules adopted after the reform of 2014 and notified to agencies</i> | <i>Implementing rules in agencies which apply by analogy after the reform of 2014 (Article 110 (2) SR)</i> | <i>Derogations after 2014 (own rules or opt out, including requests pending)</i> |
| 23 | 593 | 201 |

| | |
|---|--|
| <i>Commission horizontal ex-ante agreements</i> | <i>Implementing rules adopted by agencies on the basis of an ex-ante agreement</i> |
| 14 | 284 |

| |
|--|
| TRANSPARENCY |
| <p>→ <i>The report provides an exhaustive inventory of the situation across institutions.</i></p> <p>→ <i>The report presents all implementing rules by using a common methodology. This allows for a comparative approach across institutions, thereby enhancing transparency.</i></p> <p>→ <i>The report measures the effects of the harmonisation mechanisms introduced since 2014 with regard to agencies.</i></p> |

TITLE 3. QUALITATIVE ASSESSMENT / COMPLIANCE

COMPLIANCE

→ *Have institutions complied with the framework of the Staff Regulations and the Conditions of Employment of Other Servants?*

→ *What is the state of play regarding the register held by the Court of Justice?*

a) Compliance with the Staff Regulations and the Conditions of Employment of Other Servants

In the following, the report examines to what extent the specific empowerments granted in the Staff Regulations and the Conditions of Employment of Other Servants to the appointing authority and the authority authorised to conclude contracts of engagement of each institution, respectively, to adopt implementing rules have been used (shown below within a perforated frame).

In addition, the report lists the matters where institutions adopted implementing rules not expressly provided for by the Staff Regulations and the Conditions of Employment of Other Servants.

Staff Regulations

Title I – General Provisions

Article 2 – Exercise of appointing authority power

Most institutions have used the empowerments to adopt implementing rules regarding the exercise of appointing authority power. Some institutions have made use of the possibility to entrust this power to another institution or inter-institutional body.

Article 5(4) – Definition of the duties and powers attaching to each type of post

Most institutions have made use of the possibility given by the Staff Regulations to define in more detail the duties and powers attaching to each type of post.

Article 5(4), Annex XIII, Article 30(3) - Assignment of officials holding special responsibilities to "Head of unit or equivalent" or "Adviser or equivalent" before 31 December 2015

The majority of institutions have laid down provisions on derogating from Article 30(2) of Annex XIII to the Staff Regulations regarding the assignment of officials in grades AD 9 to AD 14 holding special responsibilities to the type of post "Head of unit or equivalent" or "Adviser or equivalent" before 31 December 2015.

Article 9(2) – Composition and procedures of bodies (committees)

Some institutions have used the empowerment to determine the composition and procedure of the bodies mentioned in Article 9(1) of the Staff Regulations.

Article 10 – Procedure for appointing members of the Staff Regulations Committee

All institutions have adopted a rule by agreement on the procedure for appointing members of the Staff Regulations Committee as foreseen in Article 10 of the Staff Regulations.

Some institutions have also adopted implementing rules on the following matters that are dealt with in Title I of the Staff Regulations: disability, measures of a social nature, health and safety standards and transfer.

Title II – Rights and obligations of officials

Article 22c – Internal rules on whistleblowing

All institutions have adopted internal rules on whistleblowing as foreseen by Article 22c of the Staff Regulations.

Some institutions have also adopted implementing rules on the following matters that are dealt with in Title II of the Staff Regulations: ethics and integrity, harassment, outside activities, financial responsibility and training.

Title III – Career of officials

Article 27 – Appropriate measures following the observation of a significant imbalance between nationalities among officials

Article 27 allows each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among officials which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the appointing authority shall adopt general implementing provisions. At the time of finalisation of the present report, no institution had yet adopted such implementing provisions.

Article 27, Annex II, Article 2 – Procedure for instituting the common Joint Committee (COPARCO)

All institutions have adopted a rule by agreement on the procedures for instituting the common Joint Committee as foreseen in Article 2 of Annex II to the Staff Regulations.

Article 32 - Classification in step upon recruitment

All institutions have adopted general implementing provisions to allow additional seniority up to a maximum of 24 months to take account of an official's professional experience as foreseen in Article 32 of the Staff Regulations.

Article 37 - Establishment on a list of organisations devoted to furthering the Union's interests

All institutions have drawn up a list by agreement on organisations devoted to furthering the Union's interests as foreseen in Article 37(b) second indent of the Staff Regulations.

Article 42a - Parental leave, single parents

All institutions have adopted implementing provisions on parental leave, including the question of recognition of single parents for the purpose of doubling the duration of parental leave as foreseen in Article 42(a) first subparagraph of the Staff Regulations.

Article 43 - Annual report on ability, efficiency and conduct in the service

All institutions have adopted implementing provisions on annual reports regarding the ability, efficiency and conduct in the service as foreseen in Article 43 first subparagraph of the Staff Regulations.

Article 45 - Ability to work in a third language before the first promotion

All institutions have adopted rules by agreement between them for implementing the requirement for officials to demonstrate before their first promotion the ability to work in a third language as foreseen in Article 45(2) of the Staff Regulations.

Article 45a - Appointment of an AST official to an AD post

Nine institutions have adopted general provisions for giving effect to the possibility to appoint an official in function group AST to a post in function group AD as foreseen in Article 45a(5) of the Staff Regulations.

Article 51 - Procedure for dealing with incompetence

Five institutions have adopted internal provisions to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion as foreseen in Article 51(1) of the Staff Regulations.

Some institutions have also adopted implementing rules on the following matters that are dealt with in Title III of the Staff Regulations: appointment of senior officials, middle management, secondment, leave on personal grounds, family leave, promotion, retirement and honorary rank.

Title IV – Working conditions of officials¹⁴

Article 55(3) – Standby duty

The institutions have not laid down detailed rules for the application of the provisions on standby duty as foreseen in Article 55(3) of the Staff Regulations.

Article 55(4) – Working hours / flexible working time arrangements

Eight institutions have introduced flexible working-time arrangements as foreseen in Article 55(4) of the Staff Regulations.

Article 55a, Annex IVa, Article 5 - Part time work

Eight institutions have laid down detailed rules for the application of the provisions on part-time work as foreseen in Article 5 of Annex IVa to the Staff Regulations.

Article 55b - Job sharing

One institution has laid down detailed rules for the application of the article on job sharing as foreseen in Article 55b, third subparagraph, of the Staff Regulations.

Article 56 – Overtime

¹⁴ Title IV also contains specific empowerments to the Commission (before the 2014 Staff Reform of the Staff Regulations: to the Council) to determine by means of delegated acts categories of officials entitled to specific allowances (shift work, standby duty, particularly arduous working conditions). These delegated acts are not the subject of the present report, see footnote 4.

Nine institutions have laid down the procedure regarding the authorisation of overtime as foreseen in Article 56 of the Staff Regulations

Article 57 - Annual leave

The institutions have not laid down rules by agreement between institutions on annual leave as foreseen in Article 57 of the Staff Regulations. Nine institutions have adopted their own rules on this matter.

Article 61 - List of public holidays

All institutions have drawn up a list of public holidays by agreement as foreseen in Article 61 of the Staff Regulations.

Some institutions have also adopted implementing rules on the following matters that concern Title IV of the Staff Regulations: telework, maternity leave, sick leave, and unjustified absence.

Title V – Emoluments and social security for officials

Article 62, Annex VII, Article 17 – Transfer of part of the remuneration

All institutions have laid down rules by agreement on special regular transfer of part of an official's remuneration as foreseen in Article 17(1) of Annex VII to the Staff Regulations.

Article 67(1)(c), Annex VII, Article 3 - Education allowance

All institutions have laid down general implementing provisions on education allowance as foreseen in Article 3(1) of Annex VII to the Staff Regulations.

Article 71, Annex VII, Article 9 – Removal expenses

All institutions have adopted general implementing provisions or other implementing rules on removal expenses as foreseen in Article 9(1), third subparagraph, of Annex VII to the Staff Regulations.

Article 71, Annex VII, Article 13(2)(b) – Scale for missions in third countries

One institution has fixed and adjusted the scale for missions in countries outside the European Union expenses as foreseen in Article 13(2)(b) of Annex VII to the Staff Regulations.

Article 71, Annex VII, Article 13a - Mission expenses

Eight institutions have adopted general implementing provisions on mission expenses as foreseen in Article 13a of Annex VII to the Staff Regulations.

Article 72 - Sickness insurance

All institutions have drawn up rules by agreement on sickness insurance as foreseen in Article 72(1), first subparagraph, of the Staff Regulations.

Article 72 - Reimbursement of medical expenses

Following an empowerment by all institutions as foreseen in Article 72(1), third subparagraph, of the Staff Regulations, the Commission has adopted rules governing the reimbursement of expenses which are applicable in all institutions.

Article 73 - Insurance against risk of occupational disease or accidents

All institutions have drawn up rules by agreement on insurance against the risk of occupational disease or accidents as foreseen in Article 73(1) of the Staff Regulations.

Article 76a - Financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled

All institutions have fixed by agreement rules implementing on financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled as foreseen in Article 76a of the Staff Regulations.

Article 77, Annex VIII, Article 11 - Transfer IN of pension

Eight institutions have adopted general implementing provisions to determine the number of years of pensionable service with which an official who enters the service of the Union after leaving the service of a government administration or of a national or international organisation or pursuing an activity in an unemployed or self-employed capacity shall be credited under the Union pension scheme in respect of the former period of service as foreseen in Article 11(2), second subparagraph, of Annex VIII to the Staff Regulations.

A number of institutions have also adopted implementing rules on the following matters that are dealt with in Title V of the Staff Regulations: family allowances, household allowance by special decision, persons treated as if he were a dependent child, annual travel expenses, place of origin, loans and advances, calculation of pension rights and invalidity allowance.

Title VI – Disciplinary measures

Article 86, Annex IX, Articles 2(3) and 30 – Administrative enquiries and disciplinary proceedings

Six institutions have adopted implementing arrangements on administrative enquiries and disciplinary proceedings as foreseen in Articles 2(3) and 30 of Annex IX to the Staff Regulations.

Title VII – Appeals

One institution has adopted implementing rules on appeals in the sense of Articles 90 and 91 of the Staff Regulations.

Title VIIIa – Special provisions applicable to the EEAS

Article 96 - Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission

The Commission and the EEAS have agreed on the detailed arrangements on the taking of instructions by a Commission official working in a Union delegation from the Head of Delegation and by an EEAS official who has to carry out tasks for the Commission from the Commission as foreseen in Article 96 of the Staff Regulations.

Title VIIIb – Special and exceptional provisions applicable to officials serving in a third country

Article 101a, Annex X, Article 1 - Officials serving in a third country

The Commission and the EEAS have adopted general implementing provisions applicable to officials of the European Union serving in a third country as foreseen in Article 1, third subparagraph, of Annex X to the Staff Regulations.

Article 101a, Annex X, Article 2 - Transfer of officials serving in third countries

Institutions have not laid down detailed implementing rules on transfers by a specific procedure referred to as the 'mobility procedure' as foreseen in Article 2, second subparagraph, of Annex X to the Staff Regulations.

Article 101a, Annex X, Article 3 – Exceptional application of Annex X to officials who are temporarily reassigned to Headquarters

Institutions have not adopted general implementing provisions on the exceptional application of Annex X to the Staff Regulations to officials who are temporarily reassigned to Headquarters as envisaged by Article 3 of Annex X to the Staff Regulations.

Article 101a, Annex X, Article 5 - Accommodation for officials serving in third countries

The Commission and the EEAS have laid down detailed rules on providing an official with accommodation as foreseen in Article 5, second subparagraph, of Annex X to the Staff Regulations.

Article 101a, Annex X, Article 10 – Allowance for living conditions

The Commission and the EEAS have adopted detailed provisions on the allowance for living conditions as foreseen in Article 10, third paragraph, of Annex X to the Staff Regulations.

Article 101a, Annex X, Article 23 - Reimbursement of rent for officials serving in third countries

The Commission and the EEAS have laid down detailed rules on an accommodation allowance or reimbursement of rent as foreseen in Article 23, fourth subparagraph, of Annex X to the Staff Regulations.

The Commission and the EEAS have also adopted implementing rules on the following matters that are dealt with in Title VIIIb of the Staff Regulations and its Annex X: rest leave, currency and weighting, reimbursement to officials assigned in non-member countries, temporary accommodation allowance and the cost of transport, sickness insurance and accident insurance.

Conditions of Employment of Other Servants

Title II – Temporary staff

Article 12(1), third subparagraph – Appropriate measures following the observation of a significant imbalance between nationalities among temporary staff

Article 12(1), third subparagraph, allows each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among temporary staff which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the authority authorised to conclude contracts of engagement shall adopt general implementing provisions. At the time of finalisation of the present report, no institution had yet adopted such implementing provisions.

Article 12(5) – Procedures for the recruitment of temporary staff

Five institutions have adopted implementing provisions on the procedures for recruitment of temporary staff as foreseen in Article 12(5) of the Conditions of Employment of Other Servants.

Article 28a(10) - Application of the provision on granting an unemployment allowance to temporary agents

All institutions have laid down by mutual agreement detailed arrangements for the provisions on granting an unemployment allowance to temporary agents as foreseen in Article 28a(10) of the Conditions of Employment of Other Servants.

Article 54 – Reclassification of temporary staff - Article 2(f) CEOS

Most agencies have, on the basis of a Commission ex-ante agreement, adopted general provisions for the implementation of the provisions on classification of temporary staff (Article 2(f) CEOS) in the next higher grade as foreseen in Article 54, second subparagraph, of the Conditions of Employment of Other Servants.

Article 56 – Engagement and use of temporary staff - Article 2(f) CEOS

Most agencies have, on the basis of a Commission ex-ante agreement, adopted general provisions for the implementation of the procedures governing the engagement and use of temporary staff (Article 2(f) CEOS) as foreseen in Article 56 of the Conditions of Employment of Other Servants.

Some institutions have also adopted implementing rules on the following matters that concern Title II of the Conditions of Employment of Other Servants: general policy for the engagement and use of temporary agents, reclassification of temporary staff and maternity pay.

Title IV – Contract staff

Article 79(2) - Use of contract staff

All institutions have adopted general implementing provisions governing the use of contract staff as foreseen in Article 79(2) of the Conditions of Employment of Other Servants.

Article 82(6) - Engagement of contract staff

All institutions have adopted general implementing provisions on the procedures for engagement of contract staff as foreseen in Article 82(6) of the Conditions of Employment of Other Servants.

Article 86(1) - Grading of contract staff

All institutions have adopted general implementing provisions on the grading of contract staff as foreseen in Article 86(1) of the Conditions of Employment of Other Servants.

The Commission has also adopted implementing rules on contract staff in delegations.

Title V – Local staff

The Commission and the EEAS have adopted implementing rules on local agents in Delegations.

Title VI – Special advisers

The Commission has adopted implementing rules on special advisers.

Title VII – Parliamentary assistants

Article 125 - Parliamentary assistants

The European Parliament has adopted implementing measures by internal decision for the purposes of the application of the provisions on parliamentary assistants as foreseen in Article 125(1) of the Conditions of Employment of Other Servants.

b) The register administered by the Court of Justice

Since February 2014, the register of the rules adopted by the appointing authority of each institution and agency is publicly available via the internet application "Communication and Information Resource Centre for Administrations, Businesses and Citizens (Circabc)" which can be accessed through a dedicated European Commission Authentication Service (ECAS) account.

The register has set up the following document structure:

| Title | Description |
|---|---|
| 1. Staff Regulations and the CEOS | <i>"These are the Regulations applicable to officials of the European Union and the Conditions of employment applicable to other servants of the Union."</i> |
| 2. Rules of a general nature | <i>"These are rules adopted by the Council of the European Union or delegated acts adopted by the European Commission for the application of the Staff Regulations and applicable to the staff of the institutions and agencies of the Union."</i> |
| 3. Rules fixed by common accord | <i>"Certain articles of the Staff Regulations refer expressly, for their application, to rules fixed by common accord between the institutions. Those rules are adopted in exactly the same manner by each institution, and the President of the Court of Justice ultimately establishes the common accord of the institutions."</i> |
| 4. General implementing provisions | <i>"Where the Staff Regulations expressly provide, each institution adopts its own general provisions for the implementation of the articles of the Staff Regulations, after consulting the Staff Committee and obtaining the opinion of the Staff Regulations Committee. Certain texts are also adopted by the institutions in the form of 'general implementing provisions' either where the articles of the Staff Regulations provide for 'implementing provisions' or where the statutory provisions are not sufficiently explicit to be applied directly."</i> |
| 5. Other internal provisions | <i>"These are texts adopted by each institution to implement the Staff Regulations and are neither rules fixed by common accord nor general implementing provisions."</i> |

The present report concerns the rules as listed under title 3-5 in the register.

Regarding these rules, a consultation of the register shows that institutions have largely complied with their obligation of submitting their implementing rules to the register.

Regarding title 4 and 5 of the register, one should note that the content of the register is not identical with the content of the present report.

This divergence is mainly due to the absence of a common methodology regarding the submission of implementing rules to the register, which can lead to an approach different from the one followed by the present report. For example, some institutions have submitted certain rules to the register under the heading of "*general implementing provisions*", whereas the present report has identified these rules as "*other implementing rules*". Also, some

institutions have submitted rules amending a pre-existing rule to the register separately, whereas the present report does not identify amending rules as separate rules.

The register also contains implementing rules which were no longer applicable during the period covered by the report and which therefore have not been listed therein.

Another reason for the divergence is the fact that some rules (mostly falling under the heading of "*other implementing rules*") have not (yet) been submitted to the register.

As regards agencies, the structure of the register was in the process of being redefined at the time of finalisation of the present report in order to cater for their specific situation. Works were under way that aim to streamline the presentation of implementing rules across agencies, especially with a view to implementing rules that were adopted following a Commission ex-ante agreement (see below point 4b), as well as the individual decisions giving effect to the Staff Regulations.¹⁵

COMPLIANCE

→ *Institutions have by and large complied with the framework of the Staff Regulations and the Conditions of Employment of Other Servants.*

→ *The present report does not indicate any systemic or otherwise alarming issues. In particular, institutions are in compliance with the changes brought by the 2014 reform of the Staff Regulations regarding implementing rules.*

→ *The report allows identifying those - altogether limited - areas where institutions have lagged behind the statutory framework.*

→ *The register held by the Court of Justice is up and running.*

¹⁵ On 7 June 2017, the College of Heads of administration (*Collège des Chefs d'administration - CCA*) decided to modify the structure of the register in order to allow the Commission to register the ex-ante agreements and the agencies to register implementing rules based on the model decisions to which the Commission gave an ex-ante agreement and individual implementing rules.

TITLE 4. GOVERNANCE

GOVERNANCE

→ *What mechanisms are in place to ensure that institutions harmonise their practices wherever possible in order to avoid unequal treatment of EU staff?*

→ *What governance mechanisms are in place for agencies?*

a) Harmonisation of rules and practices across institutions

(1) The role of the College of Heads of administration

The European institutions have, since their creation, cooperated on an inter-institutional level. Originally, the presidents of the institutions met in the composition of the Commission of the Presidents (*Commission des presidents*).¹⁶

Since 1958, the Heads of administration have met in the composition of the College of Heads of administration (*Collège des Chefs d'administration - CCA*).

The College of Heads of administration has as its legal base Article 110(5) of the Staff Regulations, according to which "[t]he administrative departments of the institutions and the agencies shall consult each other regularly concerning the application of these Staff Regulations. Agencies shall be jointly represented in those consultations in accordance with the rules to be fixed by agreement between them."

The College is composed of the Heads of administration of the institutions of the European Union (Directors general and Directors responsible for administration and/or human resources) and a representative for the agencies designated by them.¹⁷ An adviser from the Legal service of the European Commission participates to all meetings. Following a long standing practice and agreement between the Heads of administration, the College is chaired by the Registrar of the Court of Justice of the European Union.

Each Head of administration can request to put on the agenda a matter for decision, for discussion or for information. If, following the discussions, the Heads of administration agree to apply administrative practices in the same manner, each Head of administration will adopt internal directives or recommend the adoption of decisions to the competent administrative authority.

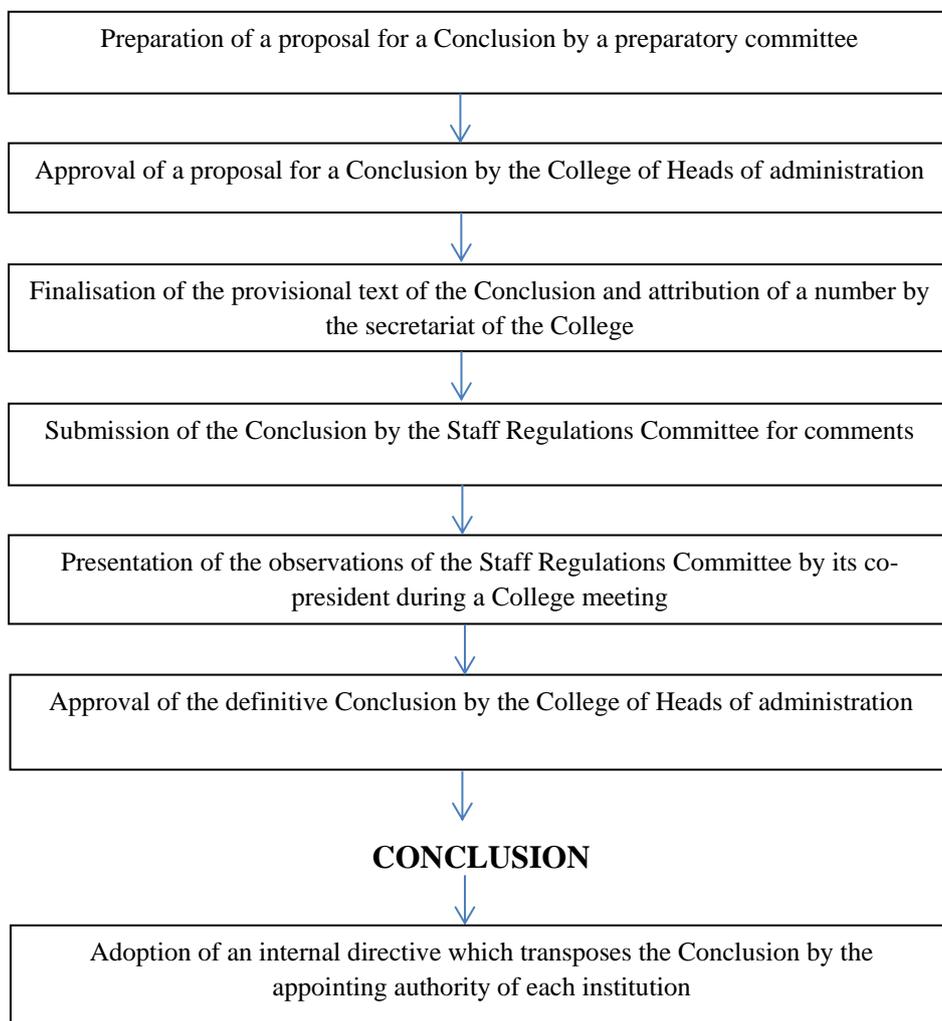
¹⁶ The first meeting of the Commission of the Presidents was held on 19 December 1952.

¹⁷ The European Central Bank and the European Investment Bank participate in the College of Heads of administration as observers.

If a matter concerns a harmonised interpretation of certain provisions of the Staff Regulations or the Conditions of Employment of Other Servants, the decisions taken by the College are transposed into Conclusions of the Heads of administration (*Conclusions des Chefs d'administration*). Each institution will then adopt internal directives to apply these conclusions.

Several preparatory committees assist the College in its work. They can also propose to put matters on the agenda. As regards matters relating to application of the Staff Regulations, preparatory work is assured by the Preparatory committee for statutory questions (*Comité de préparation pour les questions statutaires - CPQS*).

PROCESS FOR THE ADOPTION OF CONCLUSIONS OF THE HEADS OF ADMINISTRATION¹⁸



According to a long standing practice, the decision-making process within the College of Heads of administration is based on consensus. This means that in order to arrive at a Conclusion, all Heads of administration aim to find a common position. Based on their duty of collaboration as laid down in Article 110(5) of the Staff Regulations and following a long

¹⁸ See the Vademecum of the Heads of administration of the European Union, version 2012, Annex II.

standing practice, the Heads of administration strive in their discussions to arrive at harmonised rules and practices across the institutions.

(2) The role of the Staff Regulations Committee

According to Article 10, first subparagraph, of the Staff Regulations, the Staff Regulations Committee (*Comité du statut*) consists of representatives of the institutions of the Union and an equal number of representatives of their Staff Committees. The agencies are jointly represented.

According to Article 1 of the rules adopted by agreement between the appointing authorities of the institutions of the European Union on the composition of the Staff Regulations Committee, it consists of 22 members: one member designated by each of the ten institutions, 1 member designated by the agencies, one member designated by the staff committee of each of the ten institutions and 1 members designated by the staff committee of the agencies.

The Staff Regulations Committee is consulted prior to the adoption of the rules adopted by agreement between the institutions, general implementing provisions and Conclusions of Heads of administration. It may also be consulted by an institution prior to the adoption of other implementing rules.

The decision making process within the Staff Regulations Committee is based on a system of qualified majority as detailed in Article 2 of the rules adopted by agreement between the appointing authorities of the institutions of the European Union on the composition of the Staff Regulations Committee.

b) Harmonisation of rules and practices across agencies

Regarding implementing rules in agencies, the main driver for a harmonised approach is the principle set up by Article 110(2) of the Staff Regulations according to which implementing rules adopted by the Commission shall apply by analogy to the agencies.

If agencies intend to adopt an individual decision outside this framework, they are required to request the Commission's agreement on this.

For the sake of simplification, administrative efficiency and harmonisation of rules and practices across agencies, the Commission has developed a mechanism to grant an ex-ante agreement subject to the condition that the agency concerned follows a uniform model proposed by the Commission.¹⁹

As shown in Annex IV, ex-ante agreements have been used in the following areas: establishment of a staff committee, harassment, leave on personal grounds, annual report/appraisal, promotion, working time, engagement and reclassification of temporary staff referred to Article 2(f) of the Conditions of Employment of Other Servants, maximum duration for the recourse to non-permanent staff, appraisal and reclassification of contract staff.

¹⁹ For further reference, see the Commission's Guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, C(2014)6543 final, especially under Point 2.B.

GOVERNANCE

→ Governance across institutions functions according to long-standing administrative tradition.

→ Governance of agencies is ensured, since the Reform of 2014, by the Commission. The most important driver is application of Commission rules by analogy in agencies.

→ Another important driver is the practice developed by the Commission to make the agreement on derogations conditional on the use by agencies of harmonised model decisions. These "ex-ante agreements" avoid the proliferation of individual derogations across agencies.

TITLE 5. SUMMARY CONCLUSION

The present report gives an overview of the rules adopted to give effect to the Staff Regulations and the Conditions of Employment of Other Servants in institutions which were in force during the period between 2014 and 2016.

This overview presents the following main features:

1. Institutions have widely used their power to adopt rules to give effect to the Staff Regulations and the Conditions of Employment of Other Servants.
2. The appointing authorities of the individual institutions have exercised this power to varying degrees. This variety can be seen as a reflection of different administrative realities and the principle of autonomy of each institution as an employer as recognized by EU law.
3. When adopting implementing rules, the appointing authorities of the institutions have respected the legal framework foreseen by the Staff Regulations and the Conditions of Employment of Other Servants.
4. The Court of Justice of the European Union has set up the register of implementing rules as foreseen in Article 110(6) of the Staff Regulations as from February 2014. This register is publicly available and updated by institutions on a continuous basis.
5. A number of mechanisms are in place to ensure a uniform application of the Staff Regulations and the Conditions of Employment of Other Servants across institutions and agencies, such as:

- The use of rules adopted by agreement between the institutions of the Union;
- The possibility for the institutions to empower one institution to adopt general implementing provisions applicable to all of them;
- The mandatory consultation of the Staff Regulations Committee prior to the adoption of general implementing provisions;
- Regular consultations between the administrative departments of the institutions and the agencies on the basis of Article 110(5) of the Staff Regulations and;
- Specific mechanisms applicable to agencies (application of Commission rules by analogy; horizontal ex-ante agreements).

CONCLUSION

→ Consistent application of the Staff Regulations:

Institutions enjoy autonomy as regards the application of the Staff Regulations and the Conditions of Employment of Other Servants to their staff. This autonomy is exercised within the legal framework as provided for by the Staff Regulations. The Staff Regulations foresee specific mechanisms to achieve a common inter-institutional approach whenever the subject matter calls for such harmonisation.

→ Transparency:

The report provides an exhaustive inventory of the situation across institutions. It presents all implementing rules by using a common methodology. This allows for a comparative approach across institutions, thereby enhancing transparency. Regarding agencies, the report provides an aggregated overview and analyses the effects of the harmonisation mechanisms introduced since 2014.

→ Compliance:

Institutions have by and large complied with the framework of the Staff Regulations and the Conditions of Employment of Other Servants. The present report does not indicate any systemic or otherwise alarming issues. In particular, institutions are in compliance with the changes brought by the 2014 reform of the Staff Regulations regarding implementing rules. The report allows identifying those - altogether limited - areas where institutions have lagged behind the statutory framework. The register held by the Court of Justice is up and running.

→ Governance:

Governance across institutions functions according to long-standing administrative tradition. With regard to implementing measures adopted in accordance with the Staff Regulations, governance of the agencies by the Commission has been reinforced by the Reform of 2014.

The most important driver is application of Commission rules by analogy in agencies. Another important driver is the practice developed by the Commission to make the agreement on derogations conditional on the use by agencies of harmonised model decisions. These "ex-ante agreements" avoid the proliferation of individual derogations across agencies.

OUTLOOK

As regards individual issues of non-compliance, institutions can already address their respective area of non-compliance as identified by the present report.

It should be explored how a reinforced cooperation among institutions could further strengthen the equal treatment of EU staff in conformity with the Staff Regulations.

ANNEXES

| | |
|---------------------------|--|
| Annex I | Rules adopted by agreement between institutions |
| Annexes II.1-II.10 | Implementing rules in institutions |
| Annexes III | Consolidated table |
| Annex IV | Implementing rules in agencies |