Human resources policy

1) State of play de jure and in practice

Origin

The reform of the Staff Regulations\(^1\) (SR) in 2004 brought about significant changes in relation to its application to EU (at the time Community) bodies. When foreseen in the founding regulation\(^2\), the provisions of the Staff Regulations and of the Conditions of Employment of other servants of the European Communities (CEOS) apply to them as if they were institutions. Thus, they need to adopt implementing provisions giving effect to these Staff Regulations in order to set up their staff policy. They are also represented in the “Staff Regulations Committee” where they can express their specificities and accordingly propose statutory amendments.

While recommending that each agency establish a staff policy based on its own tasks and requirements, the Commission has favoured a consistent application of the Staff Regulations and the CEOS across all decentralised agencies. Furthermore, this staff policy should incorporate elements that will make it consistent both among agencies themselves and between the agencies and the Commission.

In this respect, the Commission adopted in December 2005 specific Guidelines\(^3\) in order to provide orientations for establishing a coherent staff policy in all European regulatory agencies that apply the Staff Regulations of Officials (SR) and the CEOS. The Guidelines thus provide a horizontal approach ensuring compliance with a minimum core of principles and rules with a view to equal treatment of all agents who are subject to the SR and the CEOS.

Design of the agencies' Human resources Policy

The above-mentioned Guidelines recommend that agencies make use of two instruments enabling to achieve coherence in their staff policy:

a) the multi-annual Staff Policy Plan, which describes in details the agency's staff policy and justifies its establishment plan (for details see Fiche 23);

b) the implementing provisions, which must be adopted by agencies pursuant to Article 110(1) SR\(^4\) in agreement with the Commission.

---

\(^1\) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968

\(^2\) As decided by the legislator at the time of creation of 3 agencies operating in the field of the CFSP: EDA, EUSC and ISS do not apply the Staff Regulations. On the contrary, Europol applies the EU Staff Regulations as from 1 January 2010.


\(^4\) Article 110 (1) of the Staff Regulations, second sentence: "Agencies shall adopt the appropriate implementing rules for giving effect to these Staff Regulations, after consultation of the relevant Staff Committee and in agreement in the Commission."
As regards the implementing rules on working conditions and rights (remuneration, pension, leave etc.), for which equivalent treatment is required in all EU bodies, this agreement is given to implementing rules that are in conformity with the Commission rules.

As regards other implementing provisions, the Commission produced in co-operation with agencies standard models for implementing rules that aim to take into account agencies' specific features. The latter concern, for example, the career of temporary agents and contract staff, who represent the vast majority of agencies staff.

**Implementation of the human resources policy**

Regulatory agencies are independent legal entities and have individual appointing authority taking autonomous decisions. They are fully liable for execution of implementing rules agreed to by the Commission pursuant Article 110 SR. Accordingly the Commission services are not associated to the implementation of the human resources policy, except for the areas where the agencies have decided to delegate their appointing authority power to a Commission service (e.g. to PMO for the remuneration of staff).

2) **Critical analysis of the issue at hand**

Already before the reform of the Staff Regulations in 2004, most of agencies staff was submitted to the Staff Regulations and the Conditions of Employment of Other Servants (CEOS). However, agencies were not considered as Institutions from the point of view of the Staff Regulations.

After the 2004 reform agencies are considered as institutions with regard to the application of the Staff Regulations. This has produced advantages but also disadvantages.

The advantages are those that derive from having the agencies' staff being part of a single European civil service with common rules being applied to all institutions. Such status involves several positive implications:

- Firstly, it allows offering staff an attractive but also transparent and objective package. In this respect, the fact that the same rules are applied in all agencies (as well as the fact that those rules are similar for all institutions) is a guarantee of equal treatment and non-discrimination including in the areas of social standards and working conditions. The Staff Regulations provide agencies with a framework for the recruitment of high calibre staff and allow retaining them by creating the possibility to benefit from indefinite contracts and from reclassification at a higher grade.

- Secondly, such similarity of packages among agencies and institutions is a motivation factor for the staff concerned. Thanks to the single set of rules, agencies' staff has the feeling of belonging ("appartenance") to a unified European Civil Service.

- Thirdly, the single set of rules is also of interest for the agencies themselves. Indeed, applying the same set of rules as any other agency is a valuable source of consistency and accountability and makes exchange of best practices among agencies possible. Even if concrete practices may differ among agencies, for instance as regards recruitment, career prospects or training, a single set of rules is also a guarantee for minimum standards of transparency and accountability towards the budgetary authority.

- Last, standardisation of rules allows for drawing on Commission's central services (HR) for support (see fiche 16).
The disadvantages can be grouped under three headings:

- **Constraints deriving directly from the Staff Regulations and the Conditions of Employment of Other Servants (CEOS):**

  The provisions in the Staff Regulations and CEOS are not fully adapted to the reality of agencies. This is because both were drafted not with a view to serving small entities like some agencies can be, but for larger Institutions where less flexibility may be required and which are better equipped to deal with sometimes burdensome administrative requirements. Certain provisions of the Staff Regulations are not applicable by analogy to temporary agents (who represent the majority of staff in the agencies). For instance, the CEOS do not contain the possibility to assign temporary agents outside their institution. This limitation can curb some fruitful exchanges of staff with national entities in the same domain or with other institutions or agencies. In practice, these statutory problems are solved on an ad hoc basis with the help of the Commission in response to the needs of agencies.

- **Constraints deriving from the fact that Agencies are now considered as Institutions from the point of view of implementing the Staff Regulations and CEOS:**

  The status of Institution involves a series of (sometimes cumbersome) obligations. In this context, the agencies must set up a series of committees that shape the social dialogue (staff committee, joint committee) or that must be referred to before the Appointing Authority can take a decision (professional incompetence, disciplinary board, reports committee). There are problems in imposing disciplinary measures, as in some cases there are not enough staff members with sufficiently high grade to compose the disciplinary committees. This leads to an increase of instances, which require a lot of horizontal work. Another example is the requirement deriving from Article 110 of the Staff Regulation notably that all implementing rules through which the Agencies give effect to the Staff Regulations must obtain prior approval by the Commission (see below).

- **Constraints deriving from the Implementing provisions:**

  As indicated above, agencies are not fully independent in adopting the implementing provisions applicable to them. In fact, by having the prerogative to give its agreement to the implementing rules, the Commission ensures the adoption of certain standard provisions to be followed by all agencies, with a view to obtaining a consistent application of the Staff Regulations in the various EU bodies. In practice, the Commission makes a distinction between, on the one hand, areas where the rules must be similar if not identical (in which case the Commission gives priority to agreeing to implementing rules which conform to the rules in place at the Commission) and, on the other hand, areas where the rules can be adapted to the specificities of agencies (see below under 'Flexibility margins for implementing the Staff Regulations'). In that case, the Commission takes into account particular, clearly defined reasons that are specific to staff policy in the agencies, such as:

  - the characteristics of the agency's establishment plan, for example as regards the number of staff or the internal structure of the Agency. The small size of most Agencies does not always allow application of rules identical to the Commission's, hence the need for a number of limited adjustments;

  - the characteristics of agencies which employ mainly, if not exclusively, temporary agents and contract agents with few or no officials.
Absence of supervision (*tutelle*)

As stated in part 1 of this fiche, each appointing authority independently implements the Staff Regulations and its implementing rules. Such situation could become problematic in certain particular cases which cannot be excluded, such as the adoption of illegal decisions that clearly breach the Staff Regulations. One reason for this is that no such counterweight or safeguard mechanism such as those in force in the institutions (e.g. DG HR for the Commission) exist vis-à-vis the powers of the Director, since Management Boards often lack the technical competence to address such issues in an effective way (see also Fiche 6). In order to avoid this risk, a solution could be to create a mechanism allowing to redress the situation by giving adequate tools to the Commissions services (DG HR), being the guardian of the Treaties. The delegation of supervisory powers to the Commission could be examined (powers to annul, to modify and to substitute) in this context.

Flexibility margins for implementing the Staff Regulation

It is essential to have a balanced approach, favouring a consistent implementation of the Staff Regulations when there is a clear added value to have the same rules applied to all agencies and allowing the needs of the agencies in staff matters to be taken into account. Concerning certain matters, some room for manoeuvre has been left to agencies to attract highly qualified and specialised staff: concretely, the provisions of the implementing rules concerning temporary agents allow selecting candidates by using an appropriate "lighter" selection procedure at higher grades if needed (for example for highly specialised staff, who are more likely to be the ones in demand by agencies than generalists). To that end, directors can use the derogations foreseen in the agency's implementing rules without looking for prior authorisation from the Commission. However, it is not clear how the exercise of these flexibility margins by the Director can be controlled, nor how possible differences in agencies' implementation of the simplified procedures can be prevented.

Ratio between administrative staff and operational staff

Implementation of the Staff and Financial Regulation requires a certain share of staff with administrative functions. On average, the Court of auditors reports administrative staff to represent 30% of agencies' staff. Large agencies certainly have more administrative staff than small ones. However, the proportion of administrative staff compared to total staff is smaller in big agencies than in small ones. Thus, small agencies have to devote relatively more resources to administrative tasks than large agencies, whereas larger agencies benefit from scale effects. This also means that smaller agencies are at a significant disadvantage since the regulations and procedures with which the agencies have to comply are largely the same regardless of the agency’s size. Given that there are clear scale benefits associated with administrative tasks, it seems that in order to operate efficiently, an agency needs to reach a certain critical size (between 50 and 100 total staff).\(^5\) Efficiency may be also improved through the use of common administrative services (see *fiche* 16). The merger of small agencies operating in the same field of activity may also be a means to reach the above mentioned critical size.

Ratio between permanent and temporary posts

The large majority of agencies employ staff under employment contract (temporary and contract agents), rather than permanent staff (officials). The reason for the general reliance on

---

\(^5\) Evaluation 2009, Volume II, point 2.6.6, p. 119
temporary rather than permanent posts is based on the need for flexibility, in particular with a view to required expertise, possible changes in mandate or other major structural changes. OHIM is the only agency in which the majority of staff consists of officials on permanent employment. While at the very outset the agency needed high numbers of staff and offered attractive conditions and permanent posts, now when OHIM attempts to increase productivity, it needs less numerous and different staff but lacks flexibility, since 70 to 80% of the staff are permanent officials and the staff turnover is very low.

Nevertheless, the difficulty encountered by OHIM is clearly understandable for staff employed on the agency's core business (in particular on specialised posts), but it is not necessarily the case for staff employed on administrative tasks, which are permanent tasks requiring more generalists than specialists and could justify permanent posts.

Establishment plan and constraints to agency's autonomy

While agencies enjoy autonomy regarding recruitment of agency staff, they cannot decide independently for themselves the composition of their staffing (in terms of number of staff, grades and types of contracts) - this is subject to approval by the Budgetary Authority. This suggests the need for a structured cooperation within the budgetary process in order to strike the balance between posts needed, budget available and agencies' work programmes.

At the same time, while agencies' demands for new posts have been increasing for the past few years, there are persistently high vacancy rates. This leads to the budgetary authorities considering the proposals in the (Preliminary) Draft Budget not always justified. In this regard, Article 27 of the Framework Financial Regulation places an important task upon the Commission, that is, to propose to the budgetary authority the number of staff it considers that an agency needs. Since 2007, detailed information on various staffing issues, including vacancy rates, is presented in a dedicated agency Working Document accompanying the (Preliminary) Draft Budget.

Finally, contractual agents are not displayed in the establishment plan. This does not mean, however, that their numbers are not controlled by the budgetary authority at all. The above-mentioned agency Working Document includes, per agency, the number of contract agents actually in place as at the end of the preceding year, as well as estimates of contract agents for the current and coming year, on the basis of average costs. Ultimately, the number of contract agents is controlled by the level of appropriations voted by the budgetary authority for this purpose.

---

6 Council discharge 2006, p. 31
7 EP study 2008, Findings for EU agency governance regarding management and control, Autonomy regarding personnel and finance, p. 158-159