

DECISION No MB/2022/02

OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR CYBERSECURITY (ENISA) CONCERNING THE PROBATIONARY PERIOD, THE MANAGEMENT TRIAL PERIOD AND THE ANNUAL APPRAISAL OF THE EXECUTIVE DIRECTOR OF THE EUROPEAN UNION AGENCY FOR CYBERSECURITY

THE MANAGEMENT BOARD OF ENISA;

Having regard to Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) ¹ (hereinafter referred to as the 'ENISA Regulation'), and in particular Article 15(1), points (m) and (n), and Article 36(1) thereof,

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants ('CEOS') of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68², and in particular Articles 43, 44 and 46 of the Staff Regulations and Articles 14, 15 and 20 of the CEOS,

Having regard to the Commission's Decision³ giving its agreement pursuant to Article 110(2) of the Staff Regulations,

After consulting the Staff Committee,

Whereas:

- 1) Pursuant to Article 34 of the ENISA Regulation, the Staff Regulations and the CEOS are applicable to the staff of ENISA.
- 2) Pursuant to Article 15(1), point (m) of the ENISA Regulation, rules implementing the Staff Regulations and the CEOS are adopted by the Management Board in accordance with Article 110 of the Staff Regulations.
- 3) The Executive Director of ENISA is a temporary agent engaged under Article 2(a) of the CEOS, pursuant to Article 36 of the ENISA Regulation.
- 4) The Executive Director of ENISA shall be subject to a probationary period, to a management trial period and to an annual appraisal. These various procedures aim to assess the Executive Director with regard to his/her ability, efficiency and conduct in the service.
- 5) It is necessary to lay down specific rules which govern the various appraisals, to which the Executive Director shall be subject, in order to determine the role of each actor and identify the various stages to be achieved in order to ensure the transparency of these procedures.

¹ OJ L 151, 7.6.2019, p.15.

² OJ L 56, 4.3.1968, p. 1

³ C(2021) 8697 of 25.11.2021.

HAS DECIDED AS FOLLOWS:

TITLE I
Probationary period and management trial period

Article 1 – Scope of the probationary period and the management trial period

1. A newly engaged Executive Director of ENISA (hereinafter ‘the probationer’) shall be subject to a probationary period, as specified in Article 14(1) of the CEOS.
2. The extension of the probationary period as referred to in Article 14(1) of the CEOS may be proposed by the Reporting Panel to the authority authorised to conclude contracts of employment (hereinafter ‘AACC’)⁴.
3. In parallel to the probationary period, a newly engaged Executive Director shall serve a management trial period of nine months, unless he/she has already successfully passed such a trial period in a previous function in any other European institution or body.

Article 2 – Tasks and designation of the various actors

To assess the probationary period and the management trial period, Articles 9 and 10 shall apply *mutatis mutandis*.

Article 3 – Content and form of the probationary report

1. The probationary report shall appreciate, according to the criteria defined therein, the ability, efficiency and the conduct in the service of the probationer within the probationary period. It shall also include the assessment of the management skills, unless the management trial period has already been successfully passed as indicated in Article 1(3).
2. Subject to paragraph 1, the content and form of the probationary report can, if necessary, be amended by decision of the Management Board on a proposal from the Reporting Panel.

Article 4 – Procedure for the probationary period and the management trial period

1. During the month which follows the first day of entry into service, the Reporting Panel shall meet the probationer in order to discuss his/her job description, set the objectives and agree, in writing, on how these objectives and the performance level expected from the probationer will be assessed during his/her probationary period, taking into account the assessment criteria defined in paragraph 3.
2. In case of an obvious inaptitude, a report may be drawn up at any time of the probationary period. The AACC shall proceed in accordance with Article 14(2) of the CEOS.

⁴ In that case, ENISA Management Board represented by its Chair

3. At the latest one month before the expiry of the probationary period, a report shall be drawn up by the Reporting Panel on the efficiency of the probationer, on his/her abilities to perform the duties pertaining to his/her post, including the probationer's management skills as determined by Article 1(3), and on his/her conduct in the service. The assessment shall particularly take into account the efficiency based on fulfilment of objectives and carrying out of the implementation of ENISA's work plan, demonstrated abilities and conduct in the service, in particular with regard to rights and obligations determined in Title II of the Staff Regulations, applicable to temporary agents by virtue of Article 11 of the CEOS. The probationer and the Reporting Panel shall hold a formal dialogue on the report.

4. At the latest ten working days after the formal dialogue, the Reporting Panel shall make a single proposal to the AACC in the final report, as to the establishment, extension of the probationary period pursuant to Article 1(2), or dismissal of the probationer, which shall be based on the probationer's ability, including management skills, efficiency and conduct in the service.

5. After having been notified of the report in writing, the probationer shall have eight working days to accept the report, accept it after adding comments in the appropriate section of the report, or refuse the report justifying the reason for the refusal in its appropriate section. If the report is accepted by the probationer, the appraisal report is closed. A report is deemed to be accepted in case of absence of reaction of the probationer within the set deadline.

Article 5 – Appeal procedure

Article 14 shall apply *mutatis mutandis*.

Article 6 – Final decision

1. After the acceptance of the report by the probationer, or, if applicable, at the end of the appeal procedure or possible extension of the probationary period, the AACC shall decide on the action to be taken, namely the establishment, extension of the probationary period pursuant to Article 1(2), or dismissal of the probationer. In the case of extension of the probationary period or dismissal, the AACC shall decide after hearing the probationer.

2. Should dismissal be recommended, the report shall be transmitted immediately by ENISA's Management Board to the Commission. The probationer may be dismissed only upon a decision of the Management Board acting on a proposal from the Commission associating the members other than the Union as appropriate, in accordance with Articles 15(1)(n) and 36 of the ENISA Regulation.

The Reporting Panel and, if applicable, the appeal assessor, shall be excluded from the decision referred to in paragraph 1.

Article 7 – Management allowance

1. The management allowance is paid after the probationer's capacity to fulfil his/her management functions satisfactorily has been confirmed in the report referred to in Article 3.

2. The management allowance is paid when the report referred to in Article 3 has been closed. It is paid retroactively as from the date of appointment of the probationer.

TITLE II Annual Appraisal

Article 8 – Scope

1. The Executive Director of ENISA is hereinafter referred to as ‘the jobholder’.

Every year an appraisal report shall be drawn up regarding the jobholder by the actors defined in Article 9. The appraisal report shall cover the reference period from 1 January to 31 December of the preceding year, provided that the jobholder was in active employment for a continuous period of at least one month during the reference period.

2. The objective of the annual appraisal is to assess the ability, efficiency, and the conduct in the service of the jobholder⁵ and whether the performance level of the jobholder has been satisfactory.

3. For the first appraisal exercise after engagement, the annual appraisal report concerns the period which is not covered by the probationary period report referred to under Article 14 of the CEOS.

Article 9 – Tasks of the various actors

1. The Reporting Panel shall carry out an appraisal of the jobholder. After the dialogue held in accordance with Article 12(3), the Reporting Panel shall draw up a report and sign it.

2. In case of an appeal, the appeal assessor makes the final decision on the report of the jobholder after consultation of the Management Board.

Article 10 – Designation of the reporting officers and the appeal assessor

1. The Reporting Panel shall be composed of three members of the Management Board and shall include one representative of the European Commission. The members of the Reporting Panel cannot be designated to any other functions within the appraisal procedure of the Executive Director of ENISA.

2. The appeal assessor shall be the Chair of the Management Board.

Article 11 – Content and form of the annual appraisal report

1. The annual appraisal report shall appreciate, according to the criteria defined therein, the ability, efficiency, and conduct in the service of the jobholder. That report shall state whether or not the performance level of the jobholder has been satisfactory.

2. Without prejudice to paragraph 1, the content and the form of the annual appraisal report can, if necessary, be amended by decision of the Management Board on a proposal from the Reporting Panel.

⁵ Pursuant to Article 43 of the SR applicable by virtue of Article 15(3) of the CEOS

Article 12 – Annual appraisal procedure

1. The annual appraisal takes place, to the extent possible, in the beginning of the year following the reference period.
2. The jobholder establishes, within ten working days after the Reporting Panel's request, a self-assessment which is incorporated into the annual appraisal report.
3. At the latest ten working days after the self-assessment is communicated by the jobholder, the Reporting Panel and the jobholder hold a formal dialogue. If the jobholder fails to establish or finalise his/her self-assessment within the required time, the Reporting Panel can decide to hold the dialogue when the deadline referred to in paragraph 2 has expired.

The dialogue shall include the following elements:

- a) the Reporting Panel shall examine the jobholder's efficiency based on the fulfilment of the objectives as set out in accordance with point b), and for the first time, with Article 4, and the carrying out of the implementation of ENISA's work plan, the abilities demonstrated and the conduct in the service of the jobholder for the reference period, having particular regard to rights and obligations determined in Title II of the Staff Regulations, applicable to temporary agents by virtue of Article 11 of the CEOS.
 - b) the jobholder and the Reporting Panel shall set the objectives for the following reference period and, if necessary, a training plan which takes into account the objectives linked to ENISA's work plan and the personal development goals.
4. At the latest ten working days after the formal dialogue, the Reporting Panel shall draw up an annual appraisal report as defined in Article 11.
 5. The appraisal report shall be notified in writing to the jobholder.
 6. The jobholder shall have five working days from the day the appraisal report has been notified to him/her, to accept the report without making any comments, accept it after adding comments in its appropriate section, or refuse the report by justifying the reason for the refusal in the appropriate section. If the report is accepted by the jobholder, the report is closed. A report is deemed to be accepted in case of absence of reaction of the jobholder within the set deadline.
 7. The closed report shall be transmitted to the chairperson of ENISA's Management Board for information.

Article 13 – Carryover

1. A carryover shall consist of drawing up an appraisal report the content of which is identical to the preceding annual appraisal report. A carryover must be agreed between the jobholder and the Reporting Panel. In that case, the procedure set out in Article 12 shall not apply, except for the dialogue specified in paragraph 3 thereof, which shall apply *mutatis mutandis*.
2. The carryover shall be authorised if there has been no significant change in the abilities, efficiency and conduct in the service of the jobholder. An annual appraisal report may not be carried over more than once.

Article 14 – Appeal procedure

1. The jobholder's reasoned refusal to accept the report in accordance with Article 12(6) shall automatically entail referral of the matter to the appeal assessor. The jobholder may withdraw his/her reasoned refusal to accept the report at any time before it is closed.
- 2. Upon request by the jobholder expressed in his/her reasoned refusal to accept the report, which is transmitted to the appeal assessor, the latter shall give his/her opinion to the jobholder within five working days as from the date of the reasoned refusal.
- 3. After consultation with the Management Board, the appeal assessor shall confirm or amend the report. When the appeal assessor departs from the opinion of the Management Board, he/she shall justify his/her decision. The Reporting Panel shall be excluded from these consultations.
4. The report is then closed and communicated to the jobholder and to the Management Board.

Article 15 – Time limits

1. The time limits referred to in Article 12 which concern the jobholder shall be calculated only from the time when the relevant decision has been notified to him/her or, at the latest, when the latter, acting as a diligent agent, may be expected to be aware of the content of that decision and the reasons for it.
- 2. These time limits shall be suspended, however, if and for as long as the jobholder is unable to access the decision concerned.

Article 16 – Final provisions

ENISA's Management Board Decision MB/2013/1 concerning the appraisal for the Executive Director is repealed.

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

Done by written procedure on 17 February 2022.

On behalf of the Management Board

[signed]

*The Chairperson
Jean Baptiste Demaison*