

2020-025

13.02.2020

Written procedure

From: Chairperson of the Management Board
To: Management Board
Doc: 2020-023; 2020-024
Subject: Note to complete the written procedure for the Management Board for the approval to request a derogation from the application of Commission Decision C(2019) 4231 of 12 June 2019 and for the adoption of a decision to derogate from the implementing rules to the Staff Regulations

The written procedure is structured as follows:

- I. A request for a derogation from the application of the Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings
 - II. Adoption of eu-LISA decision on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services
- I. A request for a derogation from the application of the Commission Decision C(2019) 4231 of 12 June 2019**

Pursuant to Article 110(2) of the Staff Regulations, the European Commission informed eu-LISA about the adoption¹ of the Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings. This decision should apply by analogy to the EU agencies either from nine months after the date of receiving the information (i.e. from 17 March 2020), or by a decision of the Management Board at an earlier date, or the Agency may request a derogation (an opt-out) from the application of this decision. Any request should be submitted to the Commission within the above-mentioned nine-month period.

On 24 August 2019, the Agency received a message from the representative of the Standing Working Party that the Commission Decision C(2019) 4231 is not suitable to the specific needs of the EU agencies and that, consequently, a model decision addressing the Agencies' peculiarities is under discussion. Therefore, each Agency remains responsible to formally request to the Commission the opt-out before the deadline.

The Agency adopted on 28 January 2015² the eu-LISA specific rules on this subject, which are more suitable than the new Commission rules. Therefore, it would not be in the interest of the Agency and its staff to let the less suitable rules to enter automatically into force and replace the existing rules.

¹ A note from the DG HR to the EU agencies, ref. Ares(2019)3845058 - 17/06/2019.

² Decision of the Management Board of eu-LISA via a Written Procedure on 28.01.2015 following the Commission's approval by COM(2104) 5392 final of 28 July 2014.

In consequence, the Agency asked the Management Board to approve a request to the European Commission to opt out from the Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings.

Should the model decision, which is under discussion, be more suitable than the existing eu-LISA rules, the Agency will submit it for the adoption by the Management Board once it is available.

II. Adoption of eu-LISA decision on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services

The Management Board of eu-LISA adopted decision 2018-178-REV1 via written procedure on 6 December 2017, derogating from the application by analogy of the Commission Decision C(2013)9028 of 16 December 2013 amending Commission Decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services.

On 1 October 2019, the Commission informed eu-LISA about the adoption of an amendment to Commission Decision C(2019)2548 of 5 April 2019 amending Commission Decision C(2004)1597/6 of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services. The Commission shared with the Agency Commission Decision of 25 September 2019 on giving the Commission's ex ante agreement³ to the agencies regarding the non-application of the Commission Decision on the subject, and a model decision on the non-application of the Commission Decision to the Agency.

Following the agreement of the Commission, the Implementing Rule (a model decision) on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services to the Agency was sent to the Management Board for adoption.

III. Decisions

Based on the above mentioned information, a written procedure was launched on 30 January 2020 for the decision of the Management Board for the approval to request a derogation from the application of Commission Decision C(2019) 4231 of 12 June 2019 and for the adoption of a decision to derogate from the implementing rules to the Staff Regulation. By the deadline of the written procedure on 13 February 2020, no objections were received from the members with the right to vote.

Therefore, in accordance with the provisions of Article 8 of the Agency's Rules of Procedure, the Management Board adopted the following decisions by written procedure:

The Management Board decides to adopt the following decisions:

- 1. To approve sending a request to the European Commission to opt-out from the Commission Decision C(2019) 4231 of 12 June 2019 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary proceedings;***

And

³ Reference Ares(2019)6057171.



Protection level **LIMITED BASIC**
Releasable to Management Board

2. *To adopt decision number 2020-024 on the non-application of the Commission Decision on the maximum duration for the recourse to non-permanent staff in the Commission services*

Zsolt Szolnoki
Chairperson of the Management Board