

Decision No MB/2022/05

of the Management Board of the Agency for Support for BEREC on the probationary period, management trial period and appraisal of the Director and repealing Decision MC (10) 26 concerning the appraisal for the administrative manager

The Management Board,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the Body of European Regulators for Electronic Communications (BEREC) and the Agency for Support for BEREC (BEREC Office), amending Regulation (EU) 2015/2120 and repealing Regulation (EC) No 1211/2009¹, and in particular Article 16(1) (j), 30 and 32 (1) thereof,

Having regard to Regulation No 31 (EEC), 11 (EAEC)², laying down the Staff Regulations of Officials (hereinafter 'Staff Regulations') and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (hereinafter 'CEOS'), as amended, and in particular Articles 43³, 44 and 46 of the Staff Regulations and Articles 14, 15(2) and 20(4) of the CEOS, thereof,

Having regard to Decision MC (10) 26 by the BEREC Office MC concerning the appraisal for the administrative manager of the BEREC Office⁴,

Having regard to Annex 1 to the Rules of Procedure of the Management Board of the BEREC Office⁵, containing the Rules of Procedure of the BEREC Office Advisory Group, and in particular in accordance with Article 5.7.2, the Management Board may appoint the Chair of

¹ OJ L 321, 17.12.2018, p. 1–35 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, HR, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV), <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1579765557644&uri=CELEX:32018R1971>

²OJ P 045 14.6.1962, p. 1385. Consolidated version: <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1579765878666&uri=CELEX:01962R0031-20160101>

³ Concerning reports

⁴https://berec.europa.eu/eng/document_register/subject_matter/berec_office/decisions_of_the_management_board/319-decision-by-the-berec-office-mc-concerning-the-appraisal-for-the-administrative-manager-of-the-berec-office

⁵[MB \(19\) 95rev.1, https://berec.europa.eu/en/document-categories/berec-office/rules-of-procedure/rules-of-procedure-of-the-management-board-of-the-berec-office-0](https://berec.europa.eu/en/document-categories/berec-office/rules-of-procedure/rules-of-procedure-of-the-management-board-of-the-berec-office-0)

the BEREC Office Advisory Group as reporting officer for the Director in the annual appraisal exercise without prejudice to the applicable implementing rules of the Staff Regulation;

Having regard to the Joint Statement of the European Parliament, the Council and the European Commission of 12 July 2012 on decentralised agencies and the Common Approach annexed to it and in particular point 15 of the Common Approach;

Having regard to the agreement of the European Commission pursuant to Article 110 (2) of the Staff Regulations presented in Commission Decision C(2022)8222 of 10 November 2022 on giving ex ante agreement on the adoption by the BEREC Office of its implementing rules regarding the probationary period, management trial period and annual appraisal of the Director;

After consulting its Staff Committee;

Whereas,

- (1) Pursuant to Article 30 of Regulation (EU) 2018/1971, the Staff Regulations and the CEOS are applicable to the staff of the BEREC Office;
- (2) Pursuant to Article 16(1)(j) of Regulation (EU) 2018/1971, 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 Director of the BEREC Office should be engaged as a temporary agent of the BEREC Office in accordance with point (a) of Article 2 of the CEOS, pursuant to Article 32(1) of Regulation (EU) 2018/1971;
- (4) Consequently, the Director of the BEREC Office should be subject to an annual appraisal, to a probationary period and to a management trial period with a view to assess the ability of the Director to perform his/her duties, his/her efficiency and conduct in the service;
- (5) In 2010 the BEREC Office Management Committee adopted Decision concerning the appraisal for the administrative manager of the BEREC Office in line with the provision of Regulation (EC) No 1211/2009;
- (6) In 2012 the European Parliament, the Council and the European Commission recalled in the Common Approach for decentralised agencies that the Agencies' Directors are, first and foremost, accountable to their Management Board;
- (7) The reform of the Staff Regulation and the CEOS of 2014 introduced new principles to managing the probationary period and the annual appraisal;
- (8) Regulation (EU) 2018/1971 of the European Parliament and of the Council of 11 December 2018 establishing the BEREC and the BEREC Office introduced new assignments, additional responsibilities and new organization structure for the BEREC Office, and repealed Regulation (EC) No 1211/2009;
- (9) In 2019 the BEREC Office Management Board established the BEREC Office Advisory Group, set up its Rules of Procedure as annexed to the Management Board Rules of Procedure and envisaged the possibility to appoint the Chair of the

BEREC Office Advisory Group as reporting officer for the Director in the annual appraisal exercise;

- (10) As soon as the Chair of the BEREC Office Advisory Group is appointed by the Management Board that person should assume the role of reporting officer for the Director;
- (11) To ensure high objectivity of the process and to be able better to reflect on the execution of the BEREC Office task in support to BEREC, in addition to the Chair of the BEREC Office Advisory Group, the Management Board should appoint at least one more person to act as reporting officer for the jobholder from amongst its members;
- (12) Based on the changes listed above and in order to ensure that there is a proper procedure in place for the probationary period, management trial period and annual appraisal of the Director and to determine the role of each actor and identify the various stages to be achieved in order to ensure the transparency of these procedures, Decision MC (10) 26 by the BEREC Office MC concerning the appraisal for the administrative manager of the BEREC Office should be replaced with up-to-date implementing rules.

HAS DECIDED AS FOLLOWS:

Title I - General Provisions

Article 1

Objective and Scope

1. The objective of this Decision is to define the general implementing provisions for the probationary period, management probationary period and annual appraisal of Director of the BEREC Office who is engaged as a temporary agent of the BEREC Office in accordance with point (a) of Article 2 of the CEOS.
2. The temporary staff as defined above shall be hereinafter referred to as the 'jobholder', unless otherwise specified.
3. This Decision shall apply to the jobholder and all actors mentioned below.

Article 2

Roles and Responsibilities

1. The appraisers, hereinafter referred to as the 'reporting officers' for the probationary and management trial period and for the annual appraisal of the jobholder shall be the Chair of the BEREC Office Advisory Group appointed by the Management Board in line with the provisions of point 4(3) of the Rules of Procedure of BEREC Office Advisory Group and at least one member of the Management Board appointed by the

Management Board from amongst its members. The reporting officers shall jointly be responsible also for setting up the annual objectives for the jobholder.

The European Commission representative at the Management Board shall be one of the reporting officers in view of his/her knowledge of budgetary and human resources aspects. In order to respect BEREC's independence, the European Commission representative shall not assess regulatory aspects.

The reporting officers cannot be designated to any other functions within the probationary, management trial or appraisal procedure of the jobholder.

2. The appeal assessor for the purpose of this Decision shall be the Chairperson of the Management Board.
3. The Management Board shall have the following roles and responsibility in relation to this Decision:
 - a) To set up the annual objective for the BEREC Office in the BEREC Office annual work programme;
 - b) To provide assessment of the achievements of the BEREC Office annual work programme in the Consolidated Annual Activity Report;
 - c) To acts in a consultative capacity for the appeal assessor in the event of appeal;
 - d) To appoint at least one more member of the Management Board (incl. the European Commission representative) in addition to the Chair of the BEREC Office Advisory Group to act as reporting officer for the jobholder;
 - e) To determine and, where needed, to amend the form and content of the annual appraisal report and the probationary and management trial report;
 - f) To act as Authority Empowered to Conclude a Contract of Employment (AACC) for the Director for the probationary period, management probationary and annual appraisal when and if decision of the AACC may be needed.

Title II - Annual appraisal

Article 3

Scope and objective of the annual appraisal

1. The objective of the annual appraisal is to assess the efficiency, ability and conduct in the service of the jobholder⁶, whether the performance level of the jobholder has been satisfactory.

⁶ Pursuant to Article 43 of the Staff Regulations applicable to temporary agents by virtue of Article 15(3) of the CEOS

2. The reference period for the annual appraisal shall be 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 reference period.
3. To this end, an annual appraisal report covering the reference period shall be drawn up for the jobholder by the reporting officers after the dialogue held in accordance with Article 5(5).
4. For the first appraisal exercise after appointment, the annual report shall concern the period which is not covered by the probationary period report drawn up under the provisions of Article 14 of the CEOS.

Article 4

Contents and form of the appraisal report

1. The appraisal report shall assess the efficiency, ability and conduct in the service of the jobholder in the contexts of the function of the Director set up by Regulation (EU) 2018/1971.
2. The report shall include an individual qualitative appraisal of the Director's efficiency, ability and conduct in the service. The report shall cover all professional activities of the jobholder.
3. The report shall also include a conclusion on whether or not the Director's performance has been satisfactory. The conclusion that the Director's performance has been unsatisfactory shall be based on factual elements.
4. The template for the appraisal report shall be adopted by the Management Board.
5. The content and the form of the appraisal report may, if necessary, be amended by a decision of the Management Board on a proposal from the reporting officers.

Article 5

Appraisal procedure

1. The annual appraisal shall preferably take place during the first semester of the year following the reference period.
2. The appraisal exercise shall be launched by the reporting officers with the assistance of the Agency entity in charge of human resources. It shall be launched by electronic means.
3. Once the exercise has been launched, a request of a self-assessment shall be sent to the jobholder.
4. Within eight working days of receiving this request, the jobholder shall submit a self-assessment, which will be entered in the appropriate section of the report. The purpose of this self-assessment is to prepare for the dialogue provided for in paragraph 5.
5. At the latest twenty working days after the self-assessment is communicated by the

jobholder, the reporting officers and the jobholder shall hold a formal dialogue. If the jobholder refuses to finalise his/her self-assessment within the required time, the reporting officers can decide to hold the dialogue when the deadline referred to in paragraph 4 has expired.

6. The dialogue shall cover the following elements:
 - a) the reporting officers 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 9, 10 and 11, and the implementation of the BEREC Office work programme, adopted each year by the BEREC Office Management Board, the abilities shown and the conduct in the service of the jobholder, for the reference period, having particular regard to the 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 officers shall set the objectives for the following reference period and, if necessary, a training plan which takes into account the objectives in relation to the BEREC Office annual work programme and the personal development goals.
7. At the latest ten working days after the formal dialogue, the reporting officers shall draw up an appraisal report. It shall comprise a general appraisal which takes into account the appraisals given on efficiency, abilities and conduct in the service of the jobholder, in accordance with the criteria defined in the template for the appraisal report.
8. The appraisal report shall be notified in writing to the jobholder.
9. The jobholder shall have five working days to accept the report without making any comments, accept it after adding comments in the appropriate section of the report, or refuse the report by justifying the revision request in the appropriate section. If the report is accepted by the jobholder, the appraisal report is closed. A report is deemed to be accepted in case of absence of reaction of the jobholder within the time foreseen.
10. The finalised report shall be transmitted to the Chairperson of the Management Board for information.
11. The deadlines referred to in this Article which concern the jobholder shall be calculated only from when the decision has been notified to him/her or, at least, when the latter acting as a diligent temporary agent may be expected to be aware of the content of this decision and the underlying reasons.

Article 6

Appeal procedure

1. The reasoned refusal of the jobholder to accept the report 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. The appeal assessor shall give his opinion within ten working days as of 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 must justify his/her decision. The reporting officers shall be excluded from these consultations.
4. The report shall then be closed and communicated to the jobholder and to the Management Board.

Article 7

Carryover

1. A carryover shall consist of drawing up a report whose content is identical to the preceding annual report. The carryover must be agreed between the jobholder and the reporting officers. In that case the procedure set out in Article 5 shall not apply, except for the dialogue specified in paragraph 6(b) thereof.
2. The carryover is authorised if there has been no significant change in the efficiency, abilities and/or conduct in the service of the jobholder.
3. An annual report cannot be carried over more than once.

Title III - Probationary period

Article 8

Scope and objectives of the probationary period

1. The newly appointed BEREC Office Director shall be subject to a probationary period, in accordance with Article 14 of the CEOS.
2. The probationary report aims to assess simultaneously the efficiency, abilities and the conduct in the service of the Director within the period defined in Article 14 of the CEOS.
3. The assessment will particularly take into account the efficiency based on the fulfilment of objectives and the implementation of the BEREC Office work programme, abilities shown and conduct in the service.
4. In accordance with Articles 10, 11 and 12 it should also include the assessment of the senior management skills unless the management trial period has already been successfully passed as indicated in Article 12(1).

Article 9

Procedure for the probationary period

1. During the month which follows the first day of entry into service of the Director, the reporting officers shall meet the jobholder in order to inform him/her about his/her job description and objectives and to agree, in writing, on how the objectives and the performance level expected from the jobholder will be assessed during his/her probationary period.
2. The duration and the procedure for the probationary period shall be as stipulated in Article 14 of the CEOS. The probationer and the reporting officers hold a formal dialogue on the report.

At the latest one month before the expiry of the probationary period, a report shall be drawn up by the reporting officers, with the content set out in Article 12. The probationer and the reporting officers hold a formal dialogue on the report.

3. At the latest ten working days after the formal dialogue, the reporting officers 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.
4. 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.

Title IV - Management trial period

Article 10

Scope of the management trial period

1. The BEREC Office Director performing for the first time senior management functions shall serve a management trial period in accordance with Articles 44 and 46 of the Staff Regulations applicable by analogy to the temporary staff.
2. A newly engaged Director having already successfully passed such a trial period in a previous function in any other European institution or body is exempted from a management trial period at BEREC Office.
3. The management trial period begins the first day of entry into service of the jobholder and finishes simultaneously with the probationary period.

Article 11

Procedure for the management trial period

1. The report for the management trial period shall be included in the report on the probationary period with the content and form envisaged in Article 12(1).
2. If the probationary period is extended, the management trial period shall be extended to cover the same period as the extended probationary period.
3. The procedure for the closure of the management probationary report shall follow the procedure for the establishment of the probationary report.

Title V – Reports, appeal, final decision and management allowance

Article 12

Content and form of the probationary report and of the management trial period

1. The probationary and, where applicable, management trial period report shall appreciate, according to the criteria defined therein, the ability, efficiency and the conduct in the service of the Director 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 10(2).
2. The assessment shall particularly take into account the efficiency based on fulfilment of objectives and carrying out of the implementation of the BEREK Office 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.
3. Subject to paragraph 1, the content and form of the probationary report can, if necessary, be amended by the Management Board on a proposal from the reporting officers.

Article 13

Appeal procedure

Article 6 of the present decision shall apply *mutatis mutandis*.

Article 14

Final decision

1. At the end of the appeal procedure or possible extension of the probationary period, the Management Board shall decide on the action to be taken, namely the extension of the probationary period pursuant to Article 14(1) second paragraph of the CEOS, or dismissal of the probationer. In the case of extension of the probationary period or dismissal, the Management Board shall decide after hearing the probationer.
2. The reporting officers and, if applicable, the appeal assessor, shall be excluded from the decision referred to in paragraph 1.

Article 15

Management allowance

1. The management allowance is paid after written confirmation of the jobholder's capacity to fulfil his/her management functions satisfactorily in the report referred to in Article 11(1) once the latter is drafted.
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 jobholder.

Title VI - Transitional and final provisions

Article 16

Transitional provisions

Probationary period, management trial period and annual appraisal launched on the basis of Decision MC (10) 26 by the BEREC Office MC concerning the appraisal for the administrative manager of the BEREC Office shall be concluded in accordance with the rules and provisions of Decision MC (10) 26.

Article 17

Final provision

1. Decision MC (10) 26 by the BEREC Office MC concerning the appraisal for the administrative manager of the BEREC Office is repealed as of the date of entry into force of the current decision.
2. This decision shall take effect the day following that of its adoption.

Done at Prague, on 9 December 2022

For the Management Board

(e-signed)

Annemarie Sipkes

Chairperson