

Decision of the Executive Director on the Duration of Contracts of Employment for Temporary Agents under Article 2(f) of the Conditions of Employment of Other Servants of the European Union at Europol

THE EXECUTIVE DIRECTOR OF EUROPOL,

Having regard to Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA and 2009/968/JHA (hereafter the "Europol Regulation")¹, and in particular to Article 53 thereof;

Having regard to the Decision of the Management Board of Europol of 1 May 2017 delegating the powers conferred by the Staff Regulations of Officials of the European Union (hereafter "Staff regulations") on the appointing authority and by the Conditions of Employment of Other Servants of the European Union (hereafter "CEOS") on the authority empowered to conclude contracts of employment to the Executive Director², and in particular to Article 2 thereof;

Having regard to the Staff Regulations of Officials of the European Union (hereafter the "Staff Regulations") and the CEOS, as laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68³, and in particular to Articles 2(f), 8, and 12 of the CEOS;

Having regard to the Decision of the Management Board of Europol of 28 February 2019 laying down general implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union⁴ (hereafter the "MB Decision on TA2(f)");

Having regard to the Decision of the Management Board of Europol of 13 December 2017 defining the posts that can be filled only by staff engaged from the competent authorities of the Member States⁵,

Whereas:

- (1) According to Article 53 of the Europol Regulation, the staff of Europol shall consist of temporary staff and/or contract staff to which the Staff Regulations and the CEOS shall apply;

¹ O.J., L 135, 24.5.2016, p.53.

² EDOC #847212 v16.

³ O.J., L 56, 4.3.1968, as last amended by Regulation (EU, Euratom) n° 1023/2013 of the European Parliament and of the Council of 22 October 2013, O.J., L 287, 29.10.2013, p.15.

⁴ EDOC #979259v4.

⁵ EDOC #887871.

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- (2) Article 8 of the CEOS establishes that temporary staff engaged for a fixed period may be renewed not more than once for a fixed period and that any further renewal shall be for an indefinite period. The actual duration of the employment contract offered to temporary staff and of its renewal, together with the criteria used to decide whether it is in the interest of the service to grant a contract of indefinite duration are, however, left to the discretion of the Authority Authorised to Conclude Contracts ("AACC");
- (3) Conversely, Article 53(2) of the Europol Regulation foresees that staff recruited to occupy the posts that can be filled only by staff from the competent authorities of the Member State ("restricted posts") shall be temporary agents and may be awarded only fixed-term contracts, renewable once for a fixed period. The actual duration of the fixed-term contract offered to staff recruited to these posts and its renewal are, however, left to the discretion of the AACC;
- (4) Pursuant to Articles 16 and 26 of the MB Decision on TA2(f), the Executive Director shall establish the policy that the agency will apply to the duration of contracts, within the limits provided for in the CEOS and in the Europol Regulation. It is the intention of the Executive Director to do so by means of this Decision;
- (5) While setting the maximum duration of the contracts of TA2(f) staff recruited to occupy restricted posts, it is necessary to take into consideration Article 6 of Annex 1 to the CEOS whereby with effect from 1 January 2014, contract of temporary staff to whom Article 2 (a) of the CEOS applies and who are in service on 31 December 2013 in an agency shall be transformed into contracts under point (f) of Article 2 of the CEOS;
- (6) Recital 59 of the Europol Regulation establishes that the period of service of staff recruited to occupy restricted posts should be limited in order to maintain the principle of rotation, as the subsequent reintegration of such staff members into the service of their competent authority facilitates close cooperation between Europol and the competent authorities of the Member States;
- (7) In order to effectively implement the principles of rotation and the provisions of Article 8, first paragraph, of the CEOS while retaining efficiency in the recruitment and deployment of human resources, Europol is not prevented from considering a former TA2(f) staff member as eligible to apply to a new TA2(f) post following a period of absence from Europol which needs to be established in light of the experience gained in the implementation of the MB Decision of 30 July 2010 laying down general implementing provisions on the procedure governing the engagement and the use of temporary agents at Europol.

After consulting the Staff Committee,

HAS ADOPTED THIS DECISION:

**CHAPTER I
PROVISIONS GOVERNING EMPLOYMENT CONTRACTS OF TA2(f) STAFF**

Article 1

Duration of the initial contract and of its first renewal - Principles

1. TA2(f) staff recruited to occupy a non-restricted⁶ post are in principle engaged under their initial contract for a fixed period of four years.

This contract may be renewed not more than once for a fixed period. Such renewal will in principle be for a fixed period of two years. Any further renewal shall be for an indefinite period.

2. TA2(f) staff recruited to occupy a restricted post⁷ may be awarded only fixed-term contracts. They are in principle engaged under their initial contract for a fixed period of five years.

This contract may be renewed only once for a fixed period. Such renewal will in principle be for a fixed period of four years.

3. By derogation to paragraph 1, when a TA2(f) staff member of another agency is successful in an interagency selection procedure, the duration of their first contract with Europol shall be set in accordance with the provisions of Article 10 and Article 17 of the MB Decision on TA2(f), which ensure continuity of their employment and career in the category TA2(f).

The same rule applies *mutatis mutandis* when a TA2(f) staff member of another agency is successful in an external selection procedure and accepts, pursuant to Article 12(2) of the MB Decision on TA2(f), the offer to be assigned to the post by means of mobility to ensure continuity of contracts.

4. By derogation to paragraph 1, when an existing Europol TA2(f) staff member recruited to occupy a restricted post is successful in an external selection procedure for a non-restricted post and accepts, pursuant to Article 12(2) of the MB Decision on TA2(f), the offer to be assigned to this post by means of mobility under the provisions of Article 6(2) of the same MB Decision to ensure continuity of contracts, the duration of the ongoing contract (which could be either an initial contract or its renewal for a fixed period) is not changed. As a result of this assignment from a restricted to a non-restricted post which reflects a change of category of posts, this staff member becomes subject to the provisions of Article 3.

5. By derogation to paragraph 2 and pursuant to Article 22 (2) and (3) of the MB Decision on TA2(f), when an existing Europol TA2(f) staff member recruited to occupy a restricted post is successful in an external selection procedure for another restricted post, the following rules apply:

- a. The contract offered to this staff member is always considered as the initial contract;
- b. Without prejudice to the provisions of Article 5 (3), the duration of the contract offered to this staff member and any possible renewal thereof shall respect the overall maximum limit of nine years on restricted posts, taking into account the duration of all previous Europol TA2(f) and TA2(a) contract(s) for restricted posts of the staff member concerned;
- c. The actual duration of the contract offered to this staff member or, alternatively, of its possible renewal for a fixed period will, in principle, be

⁶ As defined in Article 1 of MB Decision on TA2(f).

⁷ See footnote 6.

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the one foreseen in paragraph 2, from which the duration which exceeds the maximum of nine years will be deducted.

Article 2

Duration of the initial contract and of its first renewal - Exceptions

1. Where justified in the interest of the service, including in order to cover temporary and specific needs, contracts of a shorter duration than those set out in Article 1 but of not less than 1 year, may be concluded.
2. Any contract of a shorter duration than those set out in Article 1, together with the justification underlying this decision, shall be recorded in the register of alternative contract durations maintained by the Human Resources Unit.

Article 3

Renewal for a fixed period

1. The first renewal of the initial contract of TA2(f) staff members will be for a fixed period.
2. In order to be considered as a renewal of the initial contract, the TA2(f) contracts must follow each other uninterrupted. A gap of 1 day or more between two contracts shall be regarded as an interruption leading to the application of Article 5 (1).
3. The renewal of the initial contract for a fixed period shall be subject to the following cumulative criteria:
 - a. The continued need of the post/function, including in light of future foreseeable developments;
 - b. The staff member's skills and competencies and their relevance for the occupied post/function;
 - c. The staff member's satisfactory performance.

The Executive Director shall give due consideration to the Programming Document and the available financial resources when taking a decision on the renewal of the initial contract for a fixed period.

Article 4

Renewal for an indefinite duration

1. Any second renewal of the initial contract of TA2(f) staff members recruited to occupy a non-restricted post shall be for an indefinite duration.
2. In order to be taken into consideration for the award of a contract of indefinite duration, the TA2(f) contracts concerned must follow each other uninterrupted. A gap of 1 day or more between two contracts shall be regarded as an interruption leading to the application of Article 5 (1).
3. The renewal of the contract for an indefinite duration shall be subject to the following cumulative criteria:
 - a. The continued need of the post/function, including in light of future foreseeable developments;
 - b. The staff member's skills and competencies and their relevance for the occupied post/function;
 - c. The staff member's consistently high performance.

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The Executive Director shall give due consideration to the Programming Document and the available financial resources when taking a decision on the renewal of the contract for an indefinite duration.

Article 5 Absence period

1. A former Europol TA2(f) staff member may not be appointed to a TA2(f) vacant post unless a period of at least 36 months of absence has lapsed between the end date of the last Europol TA2(f) contract and the entry into force of the new Europol TA2(f) contract.
2. Any secondment to Europol as national expert, in accordance with the applicable Management Board Decision laying down rules on the secondment of national experts to Europol, shall not be considered as a period of absence within the meaning of paragraph 1.
3. Any new TA2(f) contract for a restricted post entered into by Europol with a former Europol TA2(f) staff member after a 36 month-period of absence has lapsed in accordance with paragraph 1 shall be deemed to constitute an initial contract of employment for the purpose of applying Article 53 (2) of the Europol Regulation.
4. Any new TA2(f) contract for a non-restricted post entered into by Europol with a former Europol TA2(f) staff member after a 36 month-period of absence has lapsed in accordance with paragraph 1 shall be deemed to constitute an initial contract of employment for the purpose of applying Article 8 of the CEOS only in the following cases:
 - a. At the time of recruitment, the former Europol TA2(f) staff member is a TA2(f) staff member in the relevant function group in another agency who refused the offer to be assigned to the post by means of mobility under the provisions of Article 10 of the MB Decision on TA2(f);
 - b. At the time of recruitment, the former Europol TA2(f) staff member is not a TA2(f) staff member or is a TA2(f) staff member in another function group.

CHAPTER II TRANSITIONAL AND FINAL PROVISIONS

Article 6 Transitional provisions

1. Notwithstanding the contract durations foreseen in Article 1(1), the duration of the contracts of Europol TA2(f) staff member recruited to occupy non-restricted posts, ongoing at the time of the entry into force of the present Decision, remains unchanged.
2. By derogation to Article 1(1), first sub-paragraph, TA2(f) staff recruited to occupy a non-restricted post, who were placed on reserve lists established before the entry into force of the present Decision, shall be offered an initial contract for a fixed period of five years when the vacancy notices on the basis of which these reserve lists were established only mentioned that the successful candidate will be offered a contract for a fixed period of five years.
3. By derogation to Article 1(1), second sub-paragraph, and without prejudice to Article 2(1), Europol TA2(f) staff member already recruited to occupy a non-

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restricted post at the time of the entry into force of the present Decision, whose initial contract of employment expires after 30 September 2019 and for whom the decision to renew their contract for another fixed-term period will be taken, shall in principle be offered the possibility to choose between a contract renewal of 2 or 4 years.

4. By derogation to Article 1(5)(b), the overall maximum limit of nine years on restricted posts shall be set at eleven years for Europol TA2(f) staff members already recruited to occupy a restricted post at the time of the entry into force of the present Decision who, at the end of their on-going contract, will have been occupying uninterruptedly restricted post(s) for eleven years, by application of Article 10 of the General Implementing Provisions on the procedure governing the internal selection to be carried out under Article 57 of the Europol Decision⁸.
5. By derogation to Article 1(5)(b) and in order to ensure respect for the principle of non-retroactivity, TA2(f) staff members already recruited to occupy a restricted post at the time of entry into force of the present Decision and who were recruited in compliance with the period of absence foreseen in Article 9 of the Management Board Decision laying down general implementing provisions on the procedures governing the engagement and the use of temporary agents at Europol of 30 July 2010⁹, shall not have their Europol TA2(f) or TA2(a) contracts, entered into prior to their period of absence, counted for the purpose of the application of the maximum limit of nine years on restricted posts.
6. Article 4 of this Decision shall become applicable to Europol TA2(f) staff members already recruited to occupy a non-restricted post at the time of the entry into force of the present Decision whose renewal of the initial contract of employment expires after 30 September 2019.

Europol TA2(f) staff members recruited to occupy a non-restricted post whose renewal of the initial contract of employment expires before 01 October 2019 remains governed by the provisions of the Management Board document on the criteria and procedure to be followed for granting contracts of indefinite duration of 29 September 2011¹⁰.

Article 7 Entry into force

This Decision shall enter into force on the day after its publication in the Europol *Vademecum*.

Done at The Hague on 28 March 2019

Signed by

Catherine De Bolle
Executive Director

⁸ EDOC #366259.

⁹ EDOC #388397.

¹⁰ EDOC #561819.