EUROPEAN
COMMISSION

Brussels, 28.5.2021
COM(2021) 258 final

REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the rules adopted by the appointing authority of each institution to give effect to the Staff Regulations

EXPLANATORY MEMORANDUM

1. LEGAL BASE AND OBJECTIVES OF THE REPORT

The European Parliament and the Council have laid down, by means of a Regulation, the Staff Regulations and Conditions of Employment of other servants of the Union (hereinafter referred to as the "**CEOS**"), as required by Article 336 of the Treaty on the Functioning of the European Union.

While these legislative acts regulate the legal relations between the institutions, bodies and agencies and their staff in detail, they are not exhaustive, as they expressly empower the former to adopt further implementing rules on a number of issues.

As part of the **2014 Reform of the Staff Regulations**, the co-legislators introduced mechanisms to increase **compliance** with the legislative framework and to strengthen effective **governance**, while allowing the institutions, bodies and agencies to enjoy autonomy as regards the application of the Staff Regulations and the CEOS to their staff.

Since that reform, **Article 110(6) of the Staff Regulations**[1] requires the Commission to present every three years a report on the rules adopted by the appointing authority of each institution to give effect to the Staff Regulations. This obligation concerns the institutions, as defined in accordance with Article 13 of the Treaty of the European Union and Articles 1, 1a and 1b of the Staff Regulations (hereinafter referred altogether as the "**institutions**"), as well as Union bodies and agencies, in the sense of Article 1a(2) of the Staff Regulations (hereinafter referred to as the "**agencies**").[2]

The present report is the second report of its kind, covering the period from **1 January 2017 to 31 December 2019**. The first report was published in 2017.[3]

Together with the register on implementing rules held by the Court of Justice of the European Union[4], the report is a tool that allows for **transparency** and promotes a **consistent application of the Staff Regulations**[5], while rendering the rules **accessible to the citizens** of the European Union.

2. COLLECTION OF INFORMATION FOR THE REPORT

In order to prepare the report, the Commission asked all institutions to update the list of the implementing rules established for the purposes of the 2014-2016 report. First, the institutions

[1] As amended by Regulation N° 1023/2013 of 22 October 2013.
[2] For a full list, see Title II(a) and (b) of this report.
[3] It covered the period from 1 January 2014 to 31 December 2016. Report from the Commission to the European Parliament and the Council on the rules adopted by the appointing authority of each institution to give effect to the Staff Regulations (COM(2017) 632 final) (hereinafter referred to as the "**2014-2016 report**").
[4] Available on the publicly accessible internet application "Communication and Information Resource Centre for Administrations, Businesses and Citizens (Circabc)".
[5] See recital 32 of Regulation N° 1023/2013 of 22 October 2013.

were asked to verify that the information provided for the 2014-2016 report was correct and complete. Second, the institutions were asked to update the list to reflect all decisions of the institutions implementing the Staff Regulations and the CEOS that were in force during the period 1 January 2017 to 31 December 2019.

The Commission subsequently compared the information provided to the rules recorded in the register administered by the Court of Justice of the European Union.

Information on the agencies was assembled based on the information that the agencies submitted to the relevant Commission services for the purposes of 2014-2016 report and, over the period 2017-2019, in the framework of the procedure provided for in Article 110(2) of the Staff Regulations[6]. The information that had been gathered into comprehensive records was subsequently verified by the above-mentioned Commission services and, when needed, also double-checked with the individual agencies concerned.

This collection exercise was completed on 23 June 2020.

3. KEY ELEMENTS OF THE REPORT

Presentation of implementing rules

Title 1 describes the mechanisms for ensuring consistent application of the Staff Regulations, by providing an overview of the different types of rules that can be adopted either by an appointing authority to give effect to the Staff Regulations or by an authority authorised to conclude contracts of engagement to give effect to the CEOS.

Quantitative assessment / Transparency

Title 2 provides an exhaustive inventory of all the implementing rules adopted by appointing authorities, thereby giving a clear and transparent account of the current situation across all institutions and the agencies.

Notably, in agreement with the institutions concerned, the Commission has drawn up tables that detail the situation in each of the ten institutions during the period from 1 January 2017 to 31 December 2019. Based on these tables, the Commission has established a general table that gives an overview of the situation across the institutions.

These tables identify the subjects on which the respective appointing authorities or authorities authorised to conclude contracts of engagement have adopted rules and the extent to which individual authorities have made use of their rule making power.

Another general table gives an aggregated overview of the rules applicable in the agencies on 31 December 2019. It displays the current mechanisms that have an impact on how rules implementing the Staff Regulations are adopted in the agencies, thereby putting HR

[6] For more detail, see Title II(b) of this report.

governance across agencies into its wider context. At the same time, it provides an overview of how the existing landscape of implementing rules has evolved across 51 agencies and the extent to which convergence of rules does exist.

Observations are made on the main changes since the last reporting period concerning the number and type of rules adopted across the institutions and the agencies.

Qualitative assessment / Compliance

The report presents how appointing authorities or authorities authorised to conclude contracts of engagement have complied with the framework set by the Staff Regulations and the CEOS, giving particular attention to subjects where authorities have not (yet) made use of their power to adopt rules.

The report also examines the areas where the institutions and the agencies appear to lag behind the statutory framework provided for in the Staff Regulations and the CEOS, in so far as the observation of the requirement to adopt implementing rules and the choice of the procedure are concerned.

Furthermore, the report looks into the main changes that occurred compared to the previous reporting period, in particular, when it comes to the new subject matters covered by the rules adopted and the extent of convergence between the institutions on the subject matters of such rules.

Finally, the report gives an overview of the presentation of implementing rules in the register held by the Court of Justice of the European Union and its *status quo*.

4. OUTLOOK

The Commission will be required to submit the next report on the basis of Article 110(6) of the Staff Regulations in three years' time. The next report will cover implementing rules in force in the period between 1 January 2020 to 31 December 2022.

The Commission completed the present report on the basis of data as made available by the institutions and the agencies. The responsibility for completeness and accurateness of this data lies with the respective institution or agency.

Contents

TITLE 1. PRESENTATION OF IMPLEMENTING RULES 5

a) Rules adopted by agreement between the institutions of the Union ("Règles arrêtées d'un commun accord") 5

b) General implementing provisions ("Dispositions générales d'exécution") 6

c) Other implementing rules 8

TITLE 2. QUANTITATIVE ASSESSMENT / TRANSPARENCY 11

a) Implementing rules in the institutions 11

b) Implementing rules in the agencies 13

TITLE 3. QUALITATIVE ASSESSMENT / COMPLIANCE 17

a) Compliance with the Staff Regulations and the Conditions of Employment of Other Servants 17

b) The register administered by the Court of Justice of the European Union 26

TITLE 4. SUMMARY 30

TITLE 1. PRESENTATION OF IMPLEMENTING RULES

MECHANISMS FOR ENSURING CONSISTENT APPLICATION OF THE STAFF REGULATIONS

→ What is the system provided for by the Staff Regulations regarding their implementation?

→ How do the Staff Regulations achieve a consistent application of their provisions?

This title presents the different types of rules implementing the Staff Regulations within the meaning of Article 110 of the Staff Regulations.

A general feature of all these rules is that they do not concern the general public. Therefore, they are not the subject of publication in the Official Journal of the European Union. However, in order to be enforceable towards staff concerned, the rules have to be brought to the attention of the staff according to Article 110(4) of the Staff Regulations.

It should be noted from the outset that the legislative framework has remained unchanged since the 2014-2016 report was adopted. As the co-legislators have not introduced new types of implementing rules, the present report will follow the same presentational structure as the previous report. At the same time, the list of rules presented below has been slightly revised compared to the overview provided in the 2014-2016 report, following an additional verification exercise and in order to reflect the recent jurisprudence of the Court of Justice of the European Union. Such revisions are emphasised in the lists below in **bold**.

The following rules fall within the scope of the report:[7]

a) Rules adopted by agreement between the institutions of the Union ("Règles arrêtées d'un commun accord")

The Staff Regulations and the CEOS provide, for the application of certain provisions, for the adoption of rules by agreement between the institutions of the Union.[8] This concerns the following subject matters:

[7] The report does not include delegated acts adopted on the basis of Articles 111 and 112 of the Staff Regulations. These acts result from the exercise by the Commission (or, before the 2014 reform of the Staff Regulations, by the Council) of its specific power to enact rules having a general effect on all EU staff members. Implementing rules within the meaning of Article 110 of the Staff Regulations, on the other hand, are adopted by an institution on the basis of its appointing authority power and are limited to the staff members of the institution itself.

[8] The Staff Regulations do not define the process for the adoption of a rule by agreement between the institutions of the Union. The process that has been developed by inter-institutional practice is described in detail in the 2014-2016 report.

Staff Regulations	
Article 9 + Annex II, Article 2	Procedure for instituting the common Joint Committee (COPARCO)
Article 10(1)	Procedure for appointing members of the Staff Regulations Committee
Article 37(b)	Common rules on establishment of a list of organisations devoted to furthering the Union's interests
Article 45(2)	Ability to work in a third language before the first promotion
Article 57	Annual leave
Article 61	List of public holidays
Article 72(1)	Sickness insurance
Article 73(1)	Insurance against risk of occupational disease or accidents
Article 76a	Financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled
Annex VII, Article 17(2)	Special regular transfer of part of the remuneration
Conditions of Employment of Other Servants	
Article 28a(10)	Detailed arrangements for the provisions on granting an unemployment allowance to temporary staff

b) General implementing provisions ("Dispositions générales d'exécution")

The Staff Regulations and the CEOS grant specific empowerments to the appointing authority and the authority authorised to conclude contracts of engagement, respectively, to adopt general implementing provisions. This concerns the following subject matters:[9]

Staff Regulations	
Article 27(2)	Appropriate measures following the observation of a significant imbalance between nationalities among officials
Article 32(2)	Classification in step upon recruitment
Article 42a	Parental leave, single parents
Article 43	Annual report on ability, efficiency and conduct in the service
Article 45a(5)	Appointment of an AST official to an AD post
Article 72(1)	Reimbursement of medical expenses

[9] The report does not cover the empowerment provided for in Article 2(3) of the Annex "Transitional provisions applicable to the staff covered by the Conditions of Employment of Other Servants". This provision does not relate to the period covered by the report.

Annex VII, Article 3(1)	Education allowance
Annex VII, Article 9(1)	Removal expenses
Annex VII, Article 13a	Mission expenses
Annex VIII, Article 11(2)	Transfer IN of pension
Annex IX, Article 2(3)	Administrative enquiries
Annex X, Article 3[10]	Exceptional application of Annex X to officials temporarily reassigned to Headquarters
	Conditions of Employment of Other Servants
Article 12(1)	Appropriate measures following the observation of a significant imbalance between nationalities among temporary staff
Article 12(5)	Procedures for recruitment of temporary staff
Article 54	Reclassification of temporary staff referred to in Article 2(f)
Article 56	Engagement and use of temporary staff referred to in Article 2(f)
Article 79	Use of contract staff
Article 82(6)	Engagement of contract staff
Article 86(1)	Grading of contract staff

Unlike in the case of rules adopted by agreement between the institutions, the content of general implementing provisions is determined by each institution[11] according to the principle of autonomy of each institution as an employer as recognised by Article 13(2) of the Treaty on European Union and Article 298 of the Treaty of the Functioning of the European Union.[12]

General implementing provisions are adopted by the competent authority of each institution after consulting the Staff Committee and the Staff Regulations Committee, pursuant to Article 110(1) of the Staff Regulations and Article 141, first subparagraph, of the CEOS.[13] Article 142 of the CEOS stipulates that general implementing provisions, referred to in

[10] Note that in its judgment of 26 February 2020 in case C-427/18 P, *EEAS / Alba Aguilera et al.*, the Court of Justice found that Article 1(3) of Annex X to the Staff Regulations does not contain an obligation for the appointing authority to adopt general implementing provisions for the entire Annex X. Instead, the Court found that the provision merely prescribes the procedure to be followed should the appointing authority decide to adopt general implementing provisions for Annex X (see points 77 and 83 of the judgment). As a result, Article 1(3) of Annex X is no longer listed hereby.

[11] However, in the field of reimbursement of medical expenses in the framework of the Joint Sickness Insurance Scheme, the Commission has adopted, on the basis of the Joint Rules on sickness insurance for officials of the European Union, general implementing provisions with effect to staff members in all institutions and agencies.

[12] This principle of autonomy of each institution as an employer has been confirmed by the jurisprudence, see judgments of 5 July 2011, *V/ European Parliament*, F-46/09, point 135 and of 28 April 2017, *Azoulay et.al. / European Parliament*, T-580/16, point 57 and the jurisprudence cited.

[13] Detailed overview of the process for the adoption of general implementing provisions is provided in the 2014-2016 report.

Article 110 of the Staff Regulations, apply to servants covered by the CEOS, where by virtue of the CEOS, the provisions of the Staff Regulations apply to those servants.

According to the jurisprudence of the Court of Justice of the European Union, the expression "general implementing provisions" in Article 110(1) of the Staff Regulations refers, first and foremost, to general implementing provisions expressly provided for by certain special provisions of the Staff Regulations. However, in exceptional circumstances, an obligation to adopt implementing rules subject to the procedural requirements of Article 110(1) of the Staff Regulations may arise also when the Staff Regulations do not expressly stipulate for the adoption of general implementing provisions. According to the Court, this could namely be the case "*where the provisions of the Staff Regulations are so unclear and imprecise that any application of them must be arbitrary.*"[14]

c) Other implementing rules

The Staff Regulations and the CEOS also expressly provide for empowerments for the appointing authority of each institution and the authority authorised to conclude contracts of engagement of each institution, respectively[15], to adopt other implementing rules, without further specifying the procedure for adoption.

Other implementing rules are expressly envisaged for the following subject matters:

Staff Regulations	
Article 2	Determination of powers of appointing authority
Article 5(4)	Definition of types of posts
Article 9(2)	Composition and procedures of bodies (committees)
Article 22c	Whistleblowing
Article 51(1)	Procedure for dealing with incompetence
Article 55(3)	Standby duty
Article 55(4)	Flexible working time arrangements
Article 55a + Annex IVa, Article 5	Part-time work
Article 55b	Job sharing

[14] See judgment of the Court of Justice of 26 February 2020 in case C-427/18 P, *EEAS / Alba Aguilera et al.*, point 57 and the jurisprudence cited.

[15] On one occasion (with regard to Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission as part of their duties), Article 96 of the Staff Regulations provides for a joint empowerment to the Commission and the EEAS.

Article 56 + Annex VI, Article 3	Overtime
Article 96	Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission as part of their duties
Annex VII, Article 13(2)(b)	Scale for missions in third countries
Annex VII, Article 14(2)	**Entertainment allowance**
Annex IX, Article 30	Disciplinary proceedings
Annex X, Article 2	Transfer of officials serving in third countries
Annex X, Article 5(2)	Accommodation for officials serving in third countries
Annex X, Article 10(3)	Allowance for living conditions
Annex X, Article 23	Reimbursement of rent for officials serving in third countries
Annex XIII, Article 30(3)	Assignment of officials holding special responsibilities to "Head of unit or equivalent" or "Adviser or equivalent" before 31 December 2015
Conditions of Employment of Other Servants	
Article 28a(2)	**Provisions on granting unemployment allowance for temporary staff**
Article 42	**Conditions for payments to constitute or maintain pension rights in the country of origin**
Article 96(2)	**Unemployment allowance for contract staff**
Article 112	**Conditions for payments for pension rights, unemployment, invalidity, life and sickness insurances in the country of last coverage**
Article 125(1)	Parliamentary assistants

Furthermore, the institutions have adopted implementing rules also in instances not expressly provided for in the Staff Regulations and the CEOS, when there was a need to implement statutory provisions by means of more specific rules. The adoption process for these other implementing rules depends upon the administrative practice of the institution concerned.

MECHANISMS FOR ENSURING CONSISTENT APPLICATION OF THE STAFF REGULATIONS

→ The institutions enjoy autonomy as regards the application of the Staff Regulations and the CEOS to their staff. This autonomy is exercised within the legal framework as provided for by the Staff Regulations.

→ The Staff Regulations provide for specific mechanisms to achieve a common inter-institutional approach whenever the subject matter calls for such harmonisation.

TITLE 2. QUANTITATIVE ASSESSMENT / TRANSPARENCY

TRANSPARENCY

→ Which rules were in force in the relevant period and for which subject matters in the institutions and the agencies?

→ What were the main changes compared to the previous reporting period in terms of the number and type of newly adopted rules?

a) Implementing rules in the institutions

In accordance with Article 13 of the Treaty of the European Union and Articles 1, 1a and 1b of the Staff Regulations, the following ten institutions are concerned by this report:[16]

- The European Parliament (EP),
- The Council (C),
- The European Commission (COM),
- The Court of Justice of the European Union (CoJ),
- The Court of Auditors (CoA),
- The European External Action Service (EEAS),
- The European Economic and Social Committee (EESC),
- The Committee of the Regions (CoR),
- The European Ombudsman (EO), and
- The European Data Protection Supervisor (EDPS).

For the purposes of establishing the present report, the nine other institutions transmitted information on their implementing rules to the Commission. In parallel, the Commission consulted the register administered by the Court of Justice of the European Union.

Based on this input and in agreement with the institutions concerned, the Commission has drawn up tables that detail the rules in force during the period 1 January 2017 to 31 December 2019 in each of the ten institutions as follows:

- A list of the rules adopted by agreement between the institutions (**Annex I**);
- Tables listing general implementing provisions and other implementing rules adopted by each institution's appointing authority or the authority empowered to conclude contracts of engagement (**Annex II**);

[16] According to Article 36.1 of the Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank, staff members of the European Central Bank are subject to the condition of employment of the staff of the ECB.

– A general table that gives a comparative summary of rules implementing the Staff Regulations and the CEOS across all institutions (**Annex III**).

The tables use a common methodology:

– They list implementing rules that have been in force, at least partially, during the period covered by the report (from 1 January 2017 to 31 December 2019);
– They group implementing rules by different subject matters, following the structure of the Staff Regulations and the CEOS;
– They identify implementing rules by reference number, date of entry into force[17] and, if applicable, date of expiry.

The following method of counting was applied:

– Implementing rules were counted on the basis of the lists for each institution;
– An implementing rule was counted once, even if it covered more than one subject matter;[18]
– A rule amending an already existing rule was not counted separately;
– If an implementing rule was replaced during the period covered by the report, only one implementing rule was counted.[19]

The following two tables give a quantitative overview of the number of implementing rules adopted by the institutions during the first two reporting periods (2014-2016 and 2017-2019).

NUMBER OF IMPLEMENTING RULES ADOPTED BY INSTITUTIONS IN FORCE during the first reporting period 2014-2016[20]

	Rules adopted by agreement	General implementing provisions	Other implementing rules	Total
EP	10	19	38	**67**
C	10	15	36	**61**
COM	10	24	61	**95**
CoJ	10	11	19	**40**
CoA	10	10	38	**58**
EEAS	10	23	39	**72**
EESC	10	12	37	**59**

[17] Note that in instances where the date of entry into force was not easily identifiable, the date of adoption of the rule is presented instead.
[18] An exception was made in the case of "omnibus decisions" adopted by the EEAS, i.e. general decisions that adopt, *en bloc* and by way of analogy, several special decisions of other institutions. In such a case, the respective number of special decisions was counted.
[19] However, when a general implementing rule was replaced by a different type of implementing rule (or vice versa), two implementing rules were counted (one for each category of rules).
[20] This table is derived from the table of the 2014-2016 report. The numbers of the first report have been slightly corrected. This is due to the fact that most institutions identified a number of rules that had been inadvertently excluded from the 2014-2016 report and that were in force in the current reporting period. The current table has been updated to also reflect those corrections.

CoR	10	15	30	**55**
EO	10	15	12	**37**
EDPS	10	16	21	**47**

Total	**100**	**160**	**331**	**591**

NUMBER OF IMPLEMENTING RULES ADOPTED BY INSTITUTIONS IN FORCE during the second reporting period 2017-2019

	Rules adopted by agreement	General implementing provisions	Other implementing rules	Total
EP	10	17	45	**72**
C	10	15	37	**62**
COM	10	24	62	**86**
CoJ	10	11	39	**60**
CoA	10	10	32	**52**
EEAS	10	24	46	**80**
EESC	10	12	44	**66**
CoR	10	16	34	**60**
EO	10	17	14	**41**
EDPS	10	16	25	**51**

Total	**100**	**162**	**378**	**630**

A comparison of both tables shows that there has not been a substantial change between the first and the second reporting period. The overall number of implementing rules has remained relatively stable across the institutions.

b) Implementing rules in the agencies

The present report also encompasses implementing rules adopted by the agencies, which were in force on 31 December 2019. This concerns the following 51 agencies[21] in the sense of Article 1a(2) of the Staff Regulations:

- 6 executive agencies,
- 36 decentralised agencies and Union bodies, and
- 9 joint undertakings.[22]

Article 110(1) of the Staff Regulations in its version prior to the entry into force of the 2014 reform stipulated that the agencies shall adopt the appropriate implementing rules for giving

[21] This includes also the European Public Prosecutor's Office established in October 2017. However, as its College had not yet been established during the reporting period, the Commission notified its implementing rules to the European Public Prosecutor's Office so far only on a provisional basis. The Commission will formally notify its internal rules once the College is established.

[22] A complete list of the executive agencies, joint undertakings, decentralised agencies and Union bodies is provided in Annex IV to the present report.

effect to the Staff Regulations, after consultation of the relevant Staff Committee and in agreement with the Commission.

The 2014 reform of the Staff Regulations set up a new framework for the adoption of rules implementing the Staff Regulations by the agencies.[23] The general principle introduced by Article 110(2) of the Staff Regulations is that implementing rules adopted by the Commission apply by analogy to the agencies. To that end, the Commission informs the agencies of any such implementing rule without delay after adoption. The rule comes into effect in the agency nine months after such notification or nine months after its entry into force at the Commission, whichever is later.

The Commission was not obliged to inform the agencies of its implementing rules, which had entered into force prior to the 2014 reform of the Staff Regulations. The principle of analogy applies only with regard to Commission implementing rules of which the Commission informed the agencies.

By way of derogation to the principle of analogy, an agency may decide, after having consulted its Staff Committee and after having received the Commission's agreement[24], to adopt individual decisions by:

- not applying certain Commission rules (opt-out);
- adopting rules which are different from those of the Commission;
- adopting rules on subjects other than those covered by the rules adopted by the Commission.

In view of the principle of institutional autonomy, the agencies are thus permitted to depart from the Commission's approach to implementing the Staff Regulations and the CEOS, while they remain bound to respect the framework put in place by these acts.

For the sake of simplification, administrative efficiency and harmonisation of rules and practices across agencies, the Commission also developed a mechanism, allowing it to give the agencies a horizontal *ex-ante* agreement to individual decisions without having the agencies submit a formal request. This mechanism applies only on the condition that the agency concerned follows a uniform model decision proposed by the Commission.

On the basis of the information that the relevant Commission services collect from the agencies, the Commission has drawn up a general table that adds the figures from the first reporting period 2014-2016 to the number of rules adopted in the second period 2017-2019,

[23] For further reference, see the Communication C(2014) 6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and the Commission Decision C(2014) 7229 final of 8 October 2014 on the exercise of certain powers in respect of the agreement to be given by the Commission to the agencies before the adoption of implementing rules giving effect to the Staff Regulations in accordance with Article 110(2) thereof.

[24] The Commission's agreement needs to be solicited before the expiry of the nine-month period referred to above.

thereby providing a summary of the number and types of implementing rules that were applicable in the agencies on 31 December 2019.

This general table is presented as **Annex IV** to the present report.

It uses the following methodology:

- It concerns the agencies' implementing rules that were in force on 31 December 2019;
- It follows the structure of the Staff Regulations and the CEOS in order to help identify the different subject matters where the agencies have adopted implementing rules;
- With regard to each subject matter, the table distinguishes different scenarios under which the agencies have adopted their rules.

In particular, this table demonstrates how the mechanisms introduced in 2014 have worked in practice.

EFFECTS OF MECHANISMS INTRODUCED SINCE 2014

	Period 2014-2016	**Total as at 31 December 2019**
Commission implementing rules adopted after the reform of 2014 and notified to the agencies	23	29
Implementing rules in the agencies which apply by analogy after the reform of 2014 (Article 110 (2) SR)	593	749
Derogations after 2014 (own rules different from Commission's *ex-ante* agreement and/or Commission's implementing rules notified to the agencies under Article 110(2) SR)	35	4
Commission's horizontal *ex-ante* agreements	14	21
Implementing rules adopted by the agencies on the basis of a horizontal *ex-ante* agreement	284	689

A comparison of the two columns shows that the mechanisms introduced by the 2014 reform aimed at ensuring consistent application of staff rules across the agencies continue to be widely used and have proven to be very efficient overall. There has been a significant increase in the number of implementing rules adopted by the agencies based on horizontal *ex-ante* agreements of the Commission. The "by analogy" application of the Commission's implementing rules has also increased. By contrast, the number of derogations, i.e. own rules of the agencies that are different from the Commission's horizontal *ex-ante* agreements and/or the Commission's implementing rules notified to the agencies under Article 110(2) of the Staff Regulations, has significantly decreased.

It should be noted, however, that the number of agencies has slightly increased from 48 to 51 between the two reporting periods (whereas the number of the institutions has not changed).

A more detailed assessment on how agencies have applied in practice the implementing rules in individual situations does not fall within the scope of the present report. The recently published special report of the European Court of Auditors (ECA) on "*Future of EU agencies – Potential for more flexibility and cooperation*"[25], while seeing room for improvement regarding the overall governance structure in some agencies, has not specifically addressed this issue of how agencies apply HR rules.

Following the special report of the Court of Auditors, the Council has invited the Commission to study the Court's recommendations and to draw conclusions as regards, *inter alia*, assisting/supporting the Union agencies in harmonising their implementing provisions, without, however, referring specifically to matters falling under the Staff Regulations or the CEOS.

In this regard, the present report clearly illustrates that the mechanisms installed by Article 110 of the Staff Regulations (*i.e.* application of Commission rules by analogy, harmonising derogations by way of model decisions, in-depth assessment of individual derogations) operate as filters to insure consistency of rules prior to their adoption, thereby harmonising implementing provisions across all agencies.

This said, whilst this report concerns the adoption of rules and not the interpretation and actual implementation of those rules by institutions and agencies, which operate in application of the principle of institutional autonomy, the institutions can reflect on how existing mechanisms can be exploited in order to further enhance a coherent implementation of the rules and exchange of best practices, notably by using various cooperation tools put in place by the institutions in general and by the Commission and the EU Agencies Network in particular.

TRANSPARENCY

→ The report provides an exhaustive inventory of the different types of implementing rules across the institutions and the agencies in force during the relevant period. Using common methodology allows for a comparative approach across the institutions, thereby enhancing transparency.

→ The report shows that the overall number of implementing rules has remained relatively stable across the institutions since the last reporting period.

→ The report demonstrates that the mechanisms introduced by the 2014 reform aimed at ensuring consistent application of staff rules across the agencies continue to be widely used, with a notable increase in the rules adopted by the agencies based on the Commission's horizontal ex-ante agreements. This said, the institutions and the agencies

[25] Available at:https://www.eca.europa.eu/Lists/ECADocuments/SR20_22/SR_Future_of_EU_Agencies_EN.pdf (last accessed 9.12.2020).

can reflect on how existing mechanisms can be exploited in order to further enhance a coherent implementation of the rules.

TITLE 3. QUALITATIVE ASSESSMENT / COMPLIANCE

COMPLIANCE

→ Have the institutions complied with the framework of the Staff Regulations and the CEOS?

→ Has there been any further convergence among the institutions on the subject matters covered by the implementing rules adopted by them?

→ What is the state of play of the register held by the Court of Justice?

a) Compliance with the Staff Regulations and the Conditions of Employment of Other Servants

In the following, the report examines to what extent the appointing authorities and the authorities authorised to conclude contacts of engagement of institutions have, to date, used the specific empowerments granted in the Staff Regulations and the CEOS, respectively, to adopt implementing rules (shown below in lists within a frame). Particular attention is accorded to the subject matters, where the authorities have not (yet) made use of their power to adopt rules.

In addition, the report lists the matters where the institutions have adopted implementing rules not expressly provided for by the Staff Regulations and the CEOS (shown below in lists within a perforated frame).

In the above-mentioned lists, the report also examines the areas where the institutions and the agencies appear to lag behind the statutory framework provided for in the Staff Regulations and the CEOS, in so far as the observation of the requirement to adopt implementing rules and the choice of the procedure are concerned. That is the choice between rules by agreement between the institutions, general implementing provisions, and other implementing rules. These remarks have been emphasised in **bold font** in the lists.

Finally, this section of the report looks into where the focus of the regulatory activity was during the reporting period 2017-2019 insofar as the subject matters of implementing rules are concerned.

Staff Regulations

Title I – General Provisions

Article 2 – Exercise of appointing authority power

Nine institutions[26] have used the empowerments to adopt implementing rules regarding the exercise of appointing authority power. Some institutions have made use of the possibility to entrust this power to another institution or inter-institutional body.

Article 5(4) – Definition of the duties and powers attaching to each type of post

All institutions have made use of the possibility given by the Staff Regulations to define in more detail the duties and powers attaching to each type of post.

Article 9 + Annex II, Article 2 – Procedure for instituting the common Joint Committee (COPARCO)

All institutions have adopted a rule by agreement on the procedures for instituting the common Joint Committee.

Article 9(2) – Composition and procedures of bodies (committees)

Seven institutions[27] have used the empowerment to determine the composition and procedure of the bodies.

Article 10 – Procedure for appointing members of the Staff Regulations Committee

All institutions have adopted a rule by agreement on the procedure for appointing members of the Staff Regulations Committee.

Annex XIII, Article 30(3) - Assignment of officials holding special responsibilities to "Head of unit or equivalent" or "Adviser or equivalent" before 31 December 2015

Six institutions[28] have laid down provisions in the form of other implementing rules to derogate from Article 30(2) of Annex XIII to the Staff Regulations regarding the assignment of officials in grades AD 9 to AD 14 holding special responsibilities to the type of post "Head of unit or equivalent" or "Adviser or equivalent" before 31 December 2015.

Although not expressly required by the Staff Regulations, some institutions have also adopted implementing rules on the following matters dealt with in Title I of the Staff Regulations: equal opportunities, disability, measures of a social nature, health and safety standards and transfer.

The subject matters that were added by some institutions in the period 2017-2019 concerned, notably health and safety, types of posts and post titles, the committees, and transfer.

Title II – Rights and obligations of officials

[26] All except the EDPS.
[27] EP, COM, CoA, EEAS, EESC, CoR, EDPS.
[28] Council, COM, CoJ, CoA, EESC, EO.

Article 22c – Internal rules on whistleblowing

All institutions have adopted internal rules on whistleblowing.

Some institutions have also adopted implementing rules on the following matters dealt with in Title II of the Staff Regulations: ethics and integrity, prevention of harassment, outside activities, financial responsibility and training.

The subject matters added by some institutions in the period 2017-2019 concerned, notably ethics and integrity, prevention of harassment, and training.

Title III – Career of officials

Article 27(2) – Appropriate measures following the observation of a significant imbalance between nationalities among officials

Article 27(2) allows each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among officials that is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the appointing authority shall adopt general implementing provisions. At the time of finalisation of the present report, no institution had yet adopted such general implementing provisions.

Article 32(2) - Classification in step upon recruitment

All institutions have adopted general implementing provisions to allow additional seniority up to a maximum of 24 months to take account of an official's professional experience.

Article 37(b) - Establishment on a list of organisations devoted to furthering the Union's interests

All institutions have drawn up a list by agreement on organisations devoted to furthering the Union's interests.

Article 42a - Parental leave, single parents

All institutions have adopted implementing provisions on parental leave, including the question of recognition of single parents for doubling the duration of parental leave. **Two institutions[29] appear to have, however, chosen to adopt these rules as other implementing rules and not in the form of general implementing provisions, as indicated in Article 42a(1) of the Staff Regulations.**

Article 43 - Annual report on ability, efficiency and conduct in the service

All institutions have adopted general implementing provisions on annual reports regarding the ability, efficiency and conduct in the service.

Article 45(2) - Ability to work in a third language before the first promotion

All institutions have adopted rules by agreement between them for implementing the requirement for officials to demonstrate before their first promotion the ability to work in a third language.

Article 45a(5) - Appointment of an AST official to an AD post

[29] EESC and CoR.

All institutions have adopted implementing provisions for giving effect to the possibility to appoint an official in function group AST to a post in function group AD, the so-called certification procedure. **One institution[30] appears to have, however, chosen to adopt these rules as other implementing rules and not in the form of general implementing provisions, as indicated in Article 45a(5) of the Staff Regulations.**

Article 51(1) - Procedure for dealing with incompetence

Seven institutions[31] have adopted internal provisions to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion.

Some institutions have also adopted implementing rules on the following matters dealt with in Title III of the Staff Regulations: probationary period, appointment of senior officials, middle management, secondment, leave on personal grounds, family leave, leave in the interest of the service, advancement in step, confirmation in management posts, promotion, retirement and honorary rank.

In the period 2017-2019, one institution added implementing rules for this Title III, concerning recruitment of senior officials.

Title IV – Working conditions of officials[32]

Article 55(3) – Standby duty

It appears that no institutions have laid down detailed rules for the application of the provisions on standby duty.

Article 55(4) – Working hours / flexible working time arrangements

All institutions have introduced flexible working-time arrangements.

Article 55a + Annex IVa, Article 5 – Part-time work

Nine institutions[33] have laid down detailed rules for the application of the provisions on part-time work.

Article 55b - Job-sharing

One institution[34] has laid down detailed rules for the application of the article on job sharing.

Article 56 – Overtime

Eight institutions[35] have laid down rules on the procedure regarding the authorisation of overtime or the terms for fixed allowance.

[30] CoA.
[31] EP, Council, COM, CoJ, CoA, EESC, EDPS.
[32] Title IV also contains specific empowerments to the Commission (before the 2014 Staff Reform of the Staff Regulations: to the Council) to determine by means of delegated acts categories of officials entitled to specific allowances (shift work, standby duty, particularly arduous working conditions). These delegated acts are not the subject of the present report, see footnote 5.
[33] All except the CoJ.
[34] COM.
[35] All except the EEAS and EDPS.

Article 57 - Annual leave

It appears that the institutions have not laid down rules by agreement between institutions on annual leave. Instead, nine institutions[36] appear to have adopted their own rules on this matter in the form of other implementing rules.

Article 61 - List of public holidays

All institutions have drawn up a list of public holidays by agreement.

Some institutions have also adopted implementing rules on the following matters that concern Title IV of the Staff Regulations: telework, maternity leave, sick leave, invalidity procedure, annual medical visit and absence.

The subject matters added by some institutions in the period 2017-2019 concerned, notably flexible working time, telework, sick leave, and absence.

Title V – Emoluments and social security for officials

Article 72(1) - Sickness insurance

All institutions have drawn up rules by agreement on sickness insurance.

Article 72(1) - Reimbursement of medical expenses

Following an empowerment by all institutions as provided for in Article 72(1), third subparagraph, of the Staff Regulations, the Commission has adopted rules governing the reimbursement of expenses, which are applicable in all institutions.

Article 73(1) - Insurance against risk of occupational disease or accidents

All institutions have drawn up rules by agreement on insurance against the risk of occupational disease or accidents.

Article 76a - Financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled

All institutions have fixed by agreement rules implementing on financial aid increasing the pension of a surviving spouse who has a serious or protracted illness or who is disabled.

Annex VII, Article 3(1) - Education allowance

All institutions have laid down general implementing provisions on education allowance.

Annex VII, Article 9(1) – Removal expenses

All institutions have adopted implementing provisions on removal expenses. **One institution[37] appears to have, however, chosen to adopt these rules as other implementing rules and not in the form of general implementing provisions, as indicated in Article 9(1) of Annex VII to the Staff Regulations.**

Annex VII, Article 13(2)(b) – Scale for missions in third countries

[36] All except the EO.
[37] EEAS.

One institution[38] has fixed and adjusted the scale for expenses in missions in countries outside the European Union.

Annex VII, Article 13a - Mission expenses

All institutions have adopted general implementing provisions on mission expenses.

Annex VII, Article 14(2) – Entertainment allowance

No institution has laid down terms for reimbursement of occasionally incurred entertainment expenses.

Annex VII, Article 17(2) – Transfer of part of the remuneration

All institutions have laid down rules by agreement on special regular transfer of part of an official's remuneration.

Annex VIII, Article 11(2) - Transfer IN of pension

Nine institutions have adopted general implementing provisions to determine the number of years of pensionable service with which an official who enters the service of the Union after leaving the service of a government administration or of a national or international organisation or pursuing an activity in an employed or self-employed capacity shall be credited under the Union pension scheme in respect of the former period of service. **It appears that one institution[39] has yet to adopt general implementing provisions as provided for in Article 11(2) of Annex VIII to the Staff Regulations.**

Almost all institutions have also adopted implementing rules on the following matters dealt with in Title V of the Staff Regulations: family allowances, household allowance by special decision, persons treated as if they were a dependent child, education allowance, annual travel expenses, place of origin, mission and duty travel expenses, transfer of pension rights. In the vast majority of cases, the institutions chose to adopt general implementing provisions on these subject matters.

Some institutions have also adopted implementing rules on loans and advances, calculation of pension rights, early retirement, and invalidity allowance.

The subject matters added by some institutions in the period 2017-2019 concerned, notably household allowance by special decision, persons treated as if they were a dependent child, mission and duty travel expenses, loans and advances, and early retirement.

Title VI – Disciplinary measures

Annex IX, Article 2(3) – Administrative enquiries

Eight institutions have adopted implementing arrangements on administrative enquiries in the form of general implementing provisions. **It appears that two institutions[40] are yet to adopt the relevant general implementing provisions, as provided for in Article 2(3) of Annex IX to the Staff Regulations.**

Annex IX, Article 30 – Disciplinary proceedings

[38] EEAS.
[39] EO.
[40] Council and CoA.

Eight institutions[41] have adopted implementing arrangements on disciplinary proceedings more generally.

Title VII – Appeals

Articles 90 and 91 - Appeals

One institution[42] has adopted implementing rules on complaints appeals in the sense of Articles 90 and 91 of the Staff Regulations. One institution[43] has adopted implementing rules on investigations concerning EPSO selection boards.

Title VIIIa – Special provisions applicable to the EEAS

Article 96 - Commission officials working in a Union delegation and EEAS officials who have to carry out tasks for the Commission

The Commission and the EEAS have agreed on the detailed arrangements on the taking of instructions by a Commission official working in a Union delegation from the Head of Delegation and by an EEAS official who has to carry out tasks for the Commission from the Commission.

Title VIIIb – Special and exceptional provisions applicable to officials serving in a third country

Annex X, Article 1(3) - Officials serving in a third country

The Commission and the EEAS have adopted general implementing provisions applicable to officials of the European Union serving in a third country. The Court of Justice has clarified in its jurisprudence that the Staff Regulations do not oblige the institutions to adopt general implementing provisions for Annex X of the Staff Regulations. However, if an institution chooses to do so, the procedure provided for in Article 110 of the Staff Regulations (i.e. adoption by way of general implementing provisions) needs to be followed.[44]

Annex X, Article 2 - Transfer of officials serving in third countries

Only the Commission has laid down detailed implementing rules on transfers of officials by a specific procedure referred to as the 'mobility procedure'.

Annex X, Article 3 – Exceptional application of Annex X to officials who are temporarily reassigned to Headquarters

The institutions have not adopted general implementing provisions on the exceptional application of Annex X to the Staff Regulations to officials who are temporarily reassigned to Headquarters. However, at the time of preparation of this report, the Commission and the EEAS were in the process of adopting general implementing provisions in this regard.

Annex X, Article 5(2) - Accommodation for officials serving in third countries

The Commission and the EEAS have laid down detailed rules on providing an official with accommodation.

[41] All except Council and CoA.
[42] EDPS.
[43] EP.
[44] See judgment of the Court of Justice of the European Union in case C-427/18 P, *EEAS / Alba Aguilera et al.*, point 77.

Annex X, Article 10(3) – Allowance for living conditions

The Commission and the EEAS have adopted detailed provisions on the allowance for living conditions.

Annex X, Article 23 - Reimbursement of rent for officials serving in third countries

The Commission and the EEAS have laid down detailed rules on an accommodation allowance or reimbursement of rent.

The Commission and the EEAS have also adopted implementing rules on the following matters dealt with in Title VIIIb of the Staff Regulations and its Annex X: rest leave, currency and weighting, reimbursement to officials assigned in non-member countries, mobility of EEAS contract agents, temporary accommodation allowance and the cost of transport, sickness insurance and accident insurance.

There were no new subject matters added by the institutions under this title in the period 2017-2019.

Conditions of Employment of Other Servants

Title II – Temporary staff

Article 12(1), third subparagraph – Appropriate measures following the observation of a significant imbalance between nationalities among temporary staff

Article 12(1), third subparagraph, allows each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among temporary staff that is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the authority authorised to conclude contracts of engagement shall adopt general implementing provisions. At the time of finalisation of the present report, no institution had yet adopted such implementing provisions.

Article 12(5) – Procedures for the recruitment of temporary staff

Five institutions[45] have adopted implementing provisions on the procedures for recruitment of temporary staff. **Two[46] out of five institutions appear to have, however, chosen to adopt these rules as other implementing rules and not in the form of general implementing provisions, as indicated in Article 12(5) of the CEOS.**

Article 28a(2) – Provisions on granting unemployment allowance for temporary staff

No institutions have laid down provisions on granting an unemployment allowance to temporary staff.

Article 28a(10) – Detailed arrangements on granting an unemployment allowance to temporary staff

All institutions have laid down by mutual agreement detailed arrangements for the provisions on granting an unemployment allowance to temporary staff.

Article 42 – Conditions for payments to constitute or maintain pension rights in the country of origin

[45] EP, CoA, EEAS, EESC, CoR.
[46] CoA, EESC.

No institutions have laid down conditions for payments to constitute or maintain pension rights in the country of origin for temporary staff.

Article 54 – Reclassification of temporary staff - Article 2(f) CEOS

It appears that almost all agencies[47] have, on the basis of the Commission's horizontal *ex-ante* agreement, adopted general provisions for the implementation of the provisions on classification of temporary staff (Article 2(f) CEOS) in the next higher grade. **Article 54 of the CEOS requires all agencies to adopt these rules.**

Article 56 – Engagement and use of temporary staff - Article 2(f) CEOS

It appears that almost all agencies[48] have, on the basis of the Commission's horizontal *ex-ante* agreement, adopted general provisions for the implementation of the procedures governing the engagement and use of temporary staff (Article 2(f) CEOS). **Article 56 of the CEOS requires all agencies to adopt these rules.**

Some institutions have also adopted implementing rules on the following matters that concern Title II of the CEOS: general policy for the engagement and use of temporary agents, reclassification of temporary staff, measures of social nature, maternity pay, and early retirement.

In the period 2017-2019, the one institution added rules concerning measures of social nature.

Title IV – Contract staff

Article 79(2) - Use of contract staff

All institutions have adopted general implementing provisions governing the use of contract staff.

Article 82(6) - Engagement of contract staff

All institutions have adopted general implementing provisions on the procedures for engagement of contract staff.

Article 86(1) - Grading of contract staff

All institutions have adopted general implementing provisions on the grading of contract staff.

Article 96(2) – Provisions on granting unemployment allowance for contract staff

No institutions have laid down provisions on granting unemployment allowance to contract staff.

Article 112 – Conditions for payments for pension rights, unemployment, invalidity, life and sickness insurances in the country of last coverage

No institutions have laid down conditions for payments for pension rights, unemployment, invalidity, life and sickness insurances in the country of last coverage.

[47] All except one newly created agency that was in the process of preparing the rules for adoption at the time of the preparation of this report.

[48] All except three agencies two of whom have adopted, given their specific situation, own rules for Article 56 of the CEOS, after the Commission's individual agreement and not based on the Commission's *ex ante* agreement.

Some institutions have also adopted implementing rules on the following matters that concern Title IV of the CEOS: measures of social nature, appraisal, maximum duration of recourse to non-permanent staff, auxiliary conference interpreters, working conditions of interpreters, and mobility of contract staff in delegations.

In the period 2017-2019, one institution added rules concerning measures of social nature.

Title V – Local staff

Articles 120 and 121 – Local staff

The Commission and the EEAS have adopted other implementing rules on conditions of employment and social security for local agents in delegations. The EEAS has also adopted other implementing rules on the salary method.

Title VI – Special advisers

Articles 5, 123 and 124 – Special advisers

The Commission has adopted implementing rules on special advisers.

Title VII – Parliamentary assistants

Article 125 - Parliamentary assistants

The European Parliament has adopted implementing measures by internal decision for the purposes of the application of the provisions on parliamentary assistants.

*****

As regards the convergence on the subject matters of implementing rules, it appears from the foregoing that there was further convergence between the institutions during the reporting period. Such convergence was greater in the subject matters where the majority of institutions had already adopted rules in the previous reporting period or before, with other institutions following suit. This concerned, notably the following subject matters: types of post and post titles, committees, anti-harassment, training, leave on personal grounds, working time, part-time work, telework, household allowance by special decision, mission and duty travel expenses.

Some, more limited, convergence occurred also on the subject matters of health and safety, transfer, ethics and integrity, recruitment of senior officials, annual medical visit, loans and advances, and disciplinary proceedings.

New subject matters introduced during the reporting period were equal opportunities, early retirement, mobility of officials serving in a third country, measures of social nature for temporary and contract staff, and salary method for contract staff serving in a third country.

b) The register administered by the Court of Justice of the European Union

Since February 2014, the register of the rules adopted by the appointing authority of each institution and agency is publicly available via the internet application "Communication and Information Resource Centre for Administrations, Businesses and Citizens (Circabc)" that can be accessed through a dedicated EU-Login account.

The register has set up the following document structure:

Title	Description
1. Staff Regulations and the CEOS	*"These are the Regulations applicable to officials of the European Union and the Conditions of employment applicable to other servants of the Union."*
2. Rules of a general nature	*"These are rules adopted by the Council of the European Union or delegated acts adopted by the European Commission for the application of the Staff Regulations and applicable to the staff of the institutions and agencies of the Union."*
3. Rules fixed by common accord	*"Certain articles of the Staff Regulations refer expressly, for their application, to rules fixed by common accord between the institutions. Those rules are adopted in exactly the same manner by each institution, and the President of the Court of Justice ultimately establishes the common accord of the institutions."*
4. General implementing provisions (GIP)	*"Where the Staff Regulations expressly provide, each institution adopts its own general provisions for the implementation of the articles of the Staff Regulations, after consulting the Staff Committee and obtaining the opinion of the Staff Regulations Committee. Certain texts are also adopted by the institutions in the form of 'general implementing provisions' either where the articles of the Staff Regulations provide for 'implementing provisions' or where the statutory provisions are not sufficiently explicit to be applied directly."*
5. Other implementing rules (IR)	*"These are texts adopted by each institution to implement the Staff Regulations and are neither rules fixed by common accord nor general implementing provisions."*

The rules under each title are organised by institution with a joint folder for the European Union agencies. Some of the institutions have further organised their implementing rules in sub-folders by subject matter.

As regards the agencies, their implementing rules are presented in the register under the titles “General implementing provisions (GIP)” and “Other implementing rules (IR)” in the joint folder “European Union agencies”.

The folder contains sub-folders for:

- “Commission’s agreements ex ante on GIP derogated” and “Commission’s agreements ex ante on IR derogated”, respectively, described as “*Agreements applicable to all agencies. Agreements applicable to executive agencies. Agreements applicable to decentralised agencies and joint undertakings.*” These sub-folders are further sub-divided to folders by subject matter.
- “Joint undertakings”
- “Decentralised agencies”

- "Executive agencies"

The present report concerns the rules as listed under titles 3-5 in the register.

Regarding these rules, a consultation of the register shows that all of the institutions and agencies more generally are aware of the existence of the register and of the requirement to submit their implementing rules to it. The level of compliance with this requirement is, however, very different across the institutions and varies significantly between the type of rules.

The records in the register are complete when it comes to the rules fixed by common accord.

Insofar as general implementing provisions are concerned, the level of compliance appears to be high, as all institutions have submitted rules. That said, for some institutions the register contains most of their general implementing provisions, while for others it remains incomplete.

By contrast, when it comes to other implementing rules, only the agencies more generally[49] and 5 out of 10 institutions have submitted their rules to the register. For some institutions that have, the records are more up to date, whereas for others, a significant number of implementing rules are yet to be submitted.

This can be explained by insufficient clarity of the exact scope of the requirement to submit implementing rules to the register and the lack of an inter-institutional agreement to that effect.

In light of the above, one should note that the content of the register is not identical with the content of the present report, except when it comes to the rules fixed by common accord.

In addition to the differences that arise from the varying level of completeness of the information submitted to the register, some divergence results from the specificities of the methodology used for the present report. Notably, the present report only contains implementing rules that were in force during the period 2017-2019, whereas the register also contains implementing rules that were no longer applicable during this period. Furthermore, some institutions have submitted rules amending a pre-existing rule to the register separately, whereas the present report does not identify amending rules as separate rules.

COMPLIANCE

→ The institutions have largely complied with the framework of the Staff Regulations and the CEOS.

[49] The Commission did not, however, conduct an in-depth examination of whether all of the relevant rules of all the agencies had been submitted.

→ The report examines those - altogether limited - areas where the institutions and the agencies appear to still lag behind the statutory framework.

→ There was further convergence on subject matters of implementing rules between the institutions during the reporting period. Such convergence was greater in the subject matters where the majority of institutions had already adopted rules in the previous reporting period or before, with other institutions following suit. Some, more limited convergence occurred also on other subject matters. A few new subject matters were also introduced.

→ The register held by the Court of Justice of the European Union is functional, but its content is not synchronised with the present report. The exact scope of the requirement to submit implementing rules to the register needs to be clarified and agreed on among the institutions and the agencies.

TITLE 4. SUMMARY

The present report gives an overview of the rules adopted to give effect to the Staff Regulations and the CEOS in the institutions, which were in force during the period between 1 January 2017 and 31 December 2019.

The report demonstrates that the institutions enjoy autonomy as regards the application of the Staff Regulations and the CEOS to their staff. This autonomy is exercised within the legal framework as provided for by the Staff Regulations. Furthermore, the Staff Regulations provide for specific mechanisms to achieve a common inter-institutional approach, whenever the subject matter calls for such harmonisation.

The report shows that the institutions have widely used their power to adopt rules to give effect to the Staff Regulations and the CEOS, even though the appointing authorities of the individual institutions have exercised this power to varying degrees. This variety can be seen as a reflection of different administrative realities and the principle of autonomy of each institution as an employer as recognised by Union law. That said, the report indicates that there was further convergence among the institutions on a significant number of subject matters of implementing rules during the reporting period.

The report provides an exhaustive inventory of the implementing rules adopted across the institutions. It presents all implementing rules by using a common methodology. This allows for a comparative approach across the institutions, thereby enhancing transparency. Regarding the agencies, the report provides an aggregated overview and analyses the effects of the harmonisation mechanisms introduced in 2014.

As regards compliance, the report allows to conclude that the appointing authorities of the institutions and the agencies have, when adopting implementing rules, largely respected the legal framework provided for by the Staff Regulations and the CEOS. The report examines those - altogether limited - areas where the institutions and the agencies appear to still lag behind the statutory framework. This said, whilst this report concerns the adoption of rules and not the interpretation and actual implementation of those rules by institutions and agencies, which operate in application of the principle of institutional autonomy, the institutions and the agencies can reflect on how existing mechanisms can be exploited in order to further enhance a coherent implementation of the rules and exchange of best practices.

The Court of Justice of the European Union has set up the register of implementing rules, as provided for in Article 110(6) of the Staff Regulations as from February 2014. This register is publicly available and updated on a continuous basis. The report concludes that the register is functional, but its content is not synchronised with the present report. It appears that the exact scope of the requirement to submit implementing rules to the register needs to be clarified and agreed on among the institutions and the agencies.

By way of outlook, the Commission services will transmit the present report to the Heads of Administration of all institutions and to the EU Agencies Network, allowing the institutions and the agencies to assess their individual compliance with the statutory framework described in this report and take the actions deemed necessary.

The Commission will be required to submit the next report on the basis of Article 110(6) of the Staff Regulations in three years' time. The next report will cover implementing rules in force in the period 1 January 2020 to 31 December 2022.

ANNEXES

Annex I	**Rules adopted by agreement between the institutions**
Annex II	**Implementing rules in the institutions**
Annex III	**Consolidated table for the institutions**
Annex IV	**Implementing rules in the agencies**