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20 February 2004

REPORT

on the amended proposal for a Council regulation amending the Staff
Regulations of officials and the Conditions of Employment of other servants of
the European Communities
(COM(2003) 721 – C5-0575/2003 – 2002/0100(CNS))

(Renewed consultation)

Committee on Legal Affairs and the Internal Market

Rapporteurs: Malcolm Harbour and Manuel Medina Ortega

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

At the sitting of 19 June 2003 Parliament adopted its position on the proposal for a Council regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities (COM(2002) 213 – 2002/0100(CNS))

By letter of 27 November 2003 the Council consulted Parliament again, under Article 283 of the EC Treaty, on the amended proposal for a Council regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities (presented by the Commission pursuant to Article 250 (2) of the EC Treaty) (COM(2003) 721).

At the sitting of 3 December 2003 the President of Parliament announced that he had referred the amended proposal to the Committee on Legal Affairs and the Internal Market as the committee responsible and to the Committee on Constitutional Affairs, the Committee on Budgets, Committee on Employment and Social Affairs and the Committee on Budgetary Control for their opinions (C5-0575/2003).

The committee considered the Commission's amended proposal and the draft report at its meetings of 21 January, 22 January and 19 February 2004.

At the last meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote : Giuseppe Gargani (chairman), Willi Rothley, Ioannis Koukiadis and Bill Miller (vice-chairmen); Manuel Medina Ortega and Malcolm Harbour (co-rapporteurs), Paolo Bartolozzi, Maria Berger, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, José María Gil-Robles Gil-Delgado, Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Toine Manders, Helmuth Markov (for Alain Krivine pursuant to Rule 153(2)), Angelika Niebler (for Bert Doorn), Anne-Marie Schaffner, Marianne L.P. Thyssen, Ian Twinn (for Rainer Wieland), Joachim Wuermeling and Stefano Zappalà.

The Committee on Budgets decided on 20 June 2002 not to deliver an opinion. The Committee on Budgetary Control decided on 1 December 2003 not to deliver an opinion. The Committee on Employment and Social Affairs decided on 17 December 2003 not to deliver an opinion. The Committee on Constitutional Affairs decided on 19 January 2004 not to deliver an opinion.

The report was tabled on 20 February 2004.

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the amended proposal for a Council regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities

(COM(2003) 721 – C5-0575/2003 – 2002/0100(CNS))

(Consultation procedure - renewed consultation)

The European Parliament,

- having regard to the amended Commission proposal (COM(2003) 721)¹,
- having regard to the Commission proposal to the Council (COM(2002) 213)²,
- having regard to its position of 19 June 2003³,
- having been reconsulted by the Council pursuant to Article 283 of the EC Treaty (C5-0575/2003),
- having regard to Rule 67 and 71(3) of its Rules of Procedure,
- having regard to the report of the Committee on Legal Affairs and the Internal Market (A5-0078/2004),

1. Approves the Commission proposal as amended;
2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
4. Calls for initiation of the conciliation procedure under the Joint Declaration of 4 March 1975 if the Council intends to depart from the text approved by Parliament;
5. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
6. Instructs its President to forward its position to the Council and Commission.

Text proposed by the Commission

Amendments by Parliament

¹ Not yet published in OJ.

² OJ C 291, 26.11.2002, p. 33.

³ P5_TA(2003)0290.

Amendment 1
ARTICLE 2

This Regulation shall enter into force on [...].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

This Regulation shall enter into force on 1 **May 2004**.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Justification

The new Staff Regulations should enter into force on the date of the accession of the new Member States.

Amendment 2
ANNEX I, POINT 7
Article 5, paragraph 6 (Staff Regulations)

6. By way of derogation from paragraphs 1 and 2 and up to an overall maximum of 90 posts, the European Parliament may create a function group for its ushers comprising four grades equivalent to AST 1 to 4. **deleted**

Justification

Parliamentary ushers are covered by the amendment to Table A "Types of posts in each function group" in Annex I to the Staff Regulations

Amendment 3
ANNEX I, POINT 25
Article 22(b) (Staff Regulations)

1. An official who further discloses information as defined in Article 22a to the President of the Commission or of the Court of Auditors or of the Council of Ministers or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met:

- (a) the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
- (b) the official has previously disclosed the same information to the European Anti-

1. An official who further discloses information as defined in Article 22a to the President of the Commission or of the Court of Auditors or of the Council of Ministers or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met:

- (a) the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
- (b) the official has previously disclosed the same information to the European Anti-

Fraud Office or to his own institution and has allowed the Office or that institution the period of time set by the Office or the institution, ***given the complexity of the case, to take appropriate action. The official shall be duly informed of that period of time.***

2. The period referred to in the above paragraph shall not apply where the official can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

Fraud Office or to his own institution and has allowed the Office or that institution the period of time set by the Office or the institution, ***to take the necessary action. This period of time shall be one month for the institution and 60 days for the Office. Should the complexity of the case so require this period of time may be increased. The official shall be duly informed of the period of time in question and of the decision of the institution or the Office regarding action to be taken.***

2. The period referred to in the above paragraph shall not apply where the official can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

Justification

Whistle blowing - based on amendment 5 of the COCOBU opinion of 20.II.2003.

Amendment 4

ANNEX I, POINT 33, POINT (C)

Article 29, paragraphs 3 and 4 (Staff Regulations)

(3) The institutions may organise internal competitions for each function group on the basis of qualifications or tests or both tests and qualifications for the institution concerned which shall be at least at AST 6-level or higher and at AD 9-level or higher.

These competitions will be open to members of the temporary staff of that institution engaged in accordance with Article 2 of the Conditions of Employment of other Servants of the European Communities. The institutions shall require as minimum qualifications for these competitions at least ten years of service as a temporary servant

(3) The institutions may organise internal competitions for each function group on the basis of qualifications or tests or both tests and qualifications for the institution concerned which shall be at least at AST 6-level or higher and at AD 9-level or higher.

These competitions will ***only*** be open to members of the temporary staff of that institution engaged in accordance with Article 2 ***(c)*** of the Conditions of Employment of other Servants of the European Communities. The institutions shall require as minimum qualifications for these competitions at least ten years of

and having been recruited as a temporary servant on the basis of a selection procedure which ensured the application of the same standards as for the selection of officials in conformity with Article 12 (3a) of these Conditions of Employment. By derogation from Article 29 (1) (a), the Appointing Authorities of the institution that engaged the temporary servant shall, before filling a vacant post in that institution, consider transfers of officials in parallel with successful candidates from these internal competitions.

(4) The European Parliament shall organise *at least two* internal *competitions* on the basis of qualifications every five years for each function group which shall be at least at AST 6-level or higher and at AD 9-level or higher, in accordance with the second subparagraph of paragraph 3.

service as a temporary servant and having been recruited as a temporary servant on the basis of a selection procedure which ensured the application of the same standards as for the selection of officials in conformity with Article 12 (3a) of these Conditions of Employment. By derogation from Article 29 (1) (a), the Appointing Authorities of the institution that engaged the temporary servant shall, before filling a vacant post in that institution, consider transfers of officials in parallel with successful candidates from these internal competitions.

(4) The European Parliament shall organise *an* internal *competition* on the basis of qualifications *and tests once* every five years for each function group which shall be at least at AST 6-level or higher and at AD 9-level or higher, in accordance with the second subparagraph of paragraph 3.

Amendment 5

ANNEX I, POINT 85

Annex I, Table A, columns 3 and 4, last three rows (Staff Regulations)

Text proposed by the Commission

AST 3	Assistant working for example as : Junior clerk ; junior documentalist ; junior technician, junior IT operative
AST 2	Assistant working for example as : Filing clerk ; technical attendant ; IT attendant.
AST 1	Assistant working for example as : Filing clerk ; technical attendant ; IT attendant.

Amendment by Parliament

AST 3	<i>(a)</i> Assistant working for example as : Junior clerk ; junior documentalist ; junior technician, junior IT operative. <i>(b) Parliamentary Usher*</i>
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AST 2

(a) Assistant working for example as :
Filing clerk ; technical attendant ; IT attendant.

AST 1

(b) **Parliamentary Usher***

(a) Assistant working for example as :
Filing clerk ; technical attendant ; IT attendant.

(b) **Parliamentary Usher***

*** The number of posts of Parliamentary Usher in the European Parliament shall not exceed 85.**

Amendment 6

ANNEX I, POINT 92, LETTER (G)

Annex VII, Article 7, paragraph 2, first indent (Staff Regulations)

2. The basis for calculating the reimbursement shall be the first-class rail fare on the shortest and most economical habitual route by rail between the place of employment and the place of recruitment or origin.

2. The basis for calculating the reimbursement shall be the first-class rail fare on the shortest and most economical habitual route by rail **or by ship if there is no rail connection or by plane if there is no rail or ship connection** between the place of employment and the place of recruitment or origin.

(This amendment applies to the entire legislative text under review: adoption would involve technical adjustments throughout the text).

Justification

There are regions in the Union where no rail connections exist. This must be taken into account in calculating distances.

Amendment 7

ANNEX I, POINT 93, POINT (H), POINT (III)

Annex VIII, Article 9, second paragraph (Staff Regulations)

"The Appointing Authority may decide, in the interests of the service on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions, not to apply the above reduction to the officials concerned, **up to a maximum of 10% of the officials in**

"The Appointing Authority may decide, in the interests of the service on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions, not to apply the above reduction to the officials concerned. **The total number of officials and**

all institutions who retired the previous year. The annual percentage may vary from 8% to 12%, subject to a total of 20% over two years and the principle of budget neutrality. Before five years have elapsed, the Commission shall submit to the European Parliament and the Council an evaluation report on the implementation of this measure. Where appropriate, the Commission shall submit a proposal to fix after five years the maximum annual percentage rate between 5 and 10 % of all officials in all institutions who retired the previous year, on the basis of Article 283 of the EC Treaty."

temporary servants who retire without any reduction of their pension each year shall not be higher than 10% of the officials in all institutions who retired the previous year. The annual percentage may vary from 8% to 12%, subject to a total of 20% over two years and the principle of budget neutrality. Before five years have elapsed, the Commission shall submit to the European Parliament and the Council an evaluation report on the implementation of this measure. Where appropriate, the Commission shall submit a proposal to fix after five years the maximum annual percentage rate between 5 and 10 % of all officials in all institutions who retired the previous year, on the basis of Article 283 of the EC Treaty."

Amendment 8

ANNEX I, POINT 94

Annex IX, Section 1, Article 2, paragraph 2 (Staff Regulations)

(Does not affect English version)

Amendment 9

ANNEX II, POINT 17

Article 39, paragraph 1, second subparagraph of Annex VII (Conditions of Employment of other servants of the European Communities)

Article 9 (2) of Annex VIII shall apply under the following conditions:

The Appointing Authority may decide, in the interests of the service on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions, not to apply any reduction to the pension of a temporary servant, up to a maximum of **20% of the** temporary servants in all institutions **who retired the previous year**. The annual

Article 9 (2) of Annex VIII shall apply under the following conditions:

The Appointing Authority may decide, in the interests of the service on the basis of objective criteria and transparent procedures introduced by means of general implementing provisions, not to apply any reduction to the pension of a temporary servant, up to a maximum of **eight** temporary servants in all institutions **in any one year**. The annual **number** may vary,

percentage may vary, subject to an average of **20% over five years** and the principle of budget neutrality. Before five years have elapsed, the Commission shall submit to the European Parliament and the Council an evaluation report on the implementation of this measure. Where appropriate, the Commission shall submit a proposal to **fix** after five years the maximum annual **percentage rate between 10 and 20 % of all temporary servants in all institutions who retired the previous year**, on the basis of Article 283 of the EC Treaty.

subject to an average of **ten every two years** and the principle of budget neutrality. Before five years have elapsed, the Commission shall submit to the European Parliament and the Council an evaluation report on the implementation of this measure. Where appropriate, the Commission shall submit a proposal to **change** after five years the maximum annual **number** on the basis of Article 283 of the EC Treaty.

Amendment 10
ANNEX II, POINT 40

Annex I (Conditions of Employment of other servants of the European Communities)

Annex I: Special and exceptional provisions applicable to temporary staff engaged to assist a political group in the European Parliament

deleted

Article 1

Article 50 of the Staff Regulations shall apply by analogy to temporary servants equivalent in grade and function to senior officials as defined in Article 29(2) of the Staff Regulations and engaged in accordance with Article 2(c) of these Conditions of Employment to assist a political group in the European Parliament.

Article 2

The provisions of Article 41(3) of the Staff Regulations, with the exception of the second subparagraph, shall apply by analogy to temporary servants for a maximum of one year who are engaged in accordance with Article 2(c) of these Conditions of Employment to assist a political group in the European Parliament, where the number of posts in the group is reduced.

Justification

This provision is no longer needed as early retirement is covered by Annex II, point 31 as set out in Amendment 24.