

Report to the Budgetary Authority (follow-up to APB 4/2004)

Introduction

In the joint declaration annexed to amending budget 4/2004, the European Parliament and the Council invited the institutions to report to the Budgetary Authority on the implementation of the revised staff grade structure and the effect on their establishment plans. This request was reiterated in a joint letter signed by Chairman Wynn and Minister Nicolai on 16 July 2004, in conjunction with which the European Parliament also requested to be informed as regards vacant posts per grade on June 30 2004 and the implementation of the provisions of the new Staff Regulations regarding heads of unit. Initial replies were forwarded shortly afterwards in response to amending budget 4/2004 regarding both the new grade structure the current state of play as regards the conversion of the EP's middle management structure to the new head of unit system.

The new grade structure and the conversion of the EP's establishment plan

The EP's establishment plan as adopted by amending budget 4/2004 was based on principles agreed interinstitutionally: the conversion of non-enlargement posts in accordance with Article 2 of Annex XIII of the new Staff Regulations (horizontal conversion to the equivalent grades in the new scale) and the conversion of all enlargement posts to the new base grades. The previous establishment plan, together with the results of the conversion described above, are shown in the table in Annex I.

It is clear that recruitment at the new base grades is a fundamental element of the new Staff Regulations and the Budgetary Authority, in the joint declaration referred to earlier, insisted on the importance of this principle being respected. While, however, most new appointments will indeed be made at these grades, it has rapidly become clear that the blanket conversion of enlargement posts to the base grades will introduce an undue rigidity into the system and, in some cases (appointments following LA3 competitions for the new language units), prevent the institutions from meeting its legal obligations under Annex XIII. For this reason, a small number of changes are currently being proposed in the context of the procedure for the first reading of the 2005 budget. These are:

- head of unit posts for the new language units (10 A*5 posts upgraded to A*12);
- head of unit posts for the new external offices (10 A*5 posts upgraded to A*12);
- the provision of a limited number of middle management posts for staff from the new member states (10 A*5 posts upgraded to A*9 and a further 10 to A*12);
- the upgrading of 15 A*5 posts to A*7 to enable a limited number of more experienced administrators to be recruited from the new members states.

It is also probable that the lack of available grades will in due course lead to difficulties in regard to interinstitutional transfers at the lower end of the scale. It is, however, too early for precise remedial steps to be proposed in this area. The absence of a reserve of grades at the lower end of the scale will also lead to an increase in the number of upgradings required for promotions when the new entrants reach their first and second promotions.

Vacant posts

A table is attached (Annex II) showing the posts vacant on 30 June 2004. It should be noted that these figures are significantly distorted by the large number of enlargement posts (987) which are technically vacant but, in a large number of cases, currently covered by auxiliaries. A similar phenomenon applies to the political groups where, in the pre-electoral period, posts falling vacant are covered by auxiliaries rather than by temporary staff.

As regards enlargement posts for the secretariat-general, 436 of the 522 posts available in the context of the 2003 budgets have been covered by auxiliaries (83%). Of the 355 posts voted in the context of the 2004 budget, relatively few have been filled. Most will be filled in the final quarter of 2004 and early 2005 as EPSO reserve lists become available.

The new middle management structure (units)

The new Staff Regulations replace the notion of divisions by that of units. In its response to this change, the administration has opted for rather more than a simple change of nomenclature, instead taking the opportunity to redefine its core middle management structure. This exercise has been based on the definition of units on the basis of the following criteria:

- direct reporting to a director or director-general;
- no overlapping of responsibilities with other levels of the management chain;
- size (a minimum of 9 staff);
- the exercise of substantial management and/or financial responsibilities.

This exercise has led to the creation of 162 units as against the 114 divisions which existed previously (an increase of 20%). It should be borne in mind, however, that much of this increase stems from the inevitable creation of new linguistic or language-related units in the context of enlargement. The opportunity has nonetheless been taken to rectify a small number of obvious anomalies (major units previously managed by non-A3 staff and to split certain divisions which had clearly become unwieldy (for example, in the personnel, publishing and infrastructural services).

Henceforth, heads of unit can be appointed at any level between A*9 and A*14 and the Staff Regulations provide for a specific financial recompense for heads of unit, directors and directors-general. The relevant provisions are set out in Articles 44 and 46 of the Staff Regulations, with specific provisions relating to heads of unit, directors and directors-general recruited before 1 May 2004 being set out in Article 7 of Annex XIII.

There is some disagreement, however, as to what these texts actually mean. This disagreement centres fundamentally on two issues:

- 'reversibility' (i.e. whether the financial reward can or should be withdrawn from people who cease to discharge the functions for which it was originally awarded);
- 'accumulation' (i.e. whether Article 46, which provides for placement at the second step after promotion, also applies to staff who have already received the benefit in question under Article 7 of Annex XIII).

As regards revocability, the legal services of both the Commission and the Council have stated that the recompense in question is a financial advantage linked to the exercise of certain

functions and can thus be withdrawn when those functions are surrendered by the beneficiary. While that position seems eminently reasonable, it is argued from broad legal principles rather than from the texts themselves, which seem if anything to contradict it. In both Article 44 and Article 7 of Annexe XIII the benefit is defined in terms of an increase in basic salary and there are considerable difficulties in trying to turn such an increase into a kind of de facto allowance. Moreover, this view seems to ignore the nature of the mechanisms involved: because it is a part of basic salary, it is subject to the operation of the multiplication factor which itself affects the time spent in a given step. It thus becomes extremely difficult, or indeed impossible, to deconstruct this process in order to determine what, after a few years, the benefit to be withdrawn really amounts to, particularly since in reality its value declines fairly rapidly (in many cases to zero). The 'bonus' therefore is neither a simple advance in step nor a straightforward allowance of 4.2% and the question of its withdrawal raises substantial, and probably insuperable, difficulties. It should also be borne in mind that, in practice, head of unit responsibilities, once assumed, are not so easily abandoned and that the issue is therefore likely to arise in only a small minority of cases.

A similar difficulty arises in relation to so-called accumulation, which is based on the belief that the application of Article 46 to beneficiaries under Article 7 of Annex XIII would entail paying the same benefit twice. For this reason, the Commission has argued that Article 46 applies only to staff recruited after 1 May 2004. This position does not appear to be based on any kind of formal legal opinion and seems to fly in the face of a fundamental legal principle: that transitional provisions only derogate from the provisions of the main text where they explicitly say so (no such explicit derogation from Article 46 is to be found in Article 7 of the annex). Once gain, moreover, it seems to be founded on a lack of awareness of the mechanisms involved. In the case, say, of an official at grade A*12 who is promoted to grade A*13, the effect of being placed on the second step would be nugatory or nil, since the effect of Article 7(5) of Annex XIII, together with the operation of the multiplication factor, would in any case bring his salary to, or extremely close to, the reference salary for the second step of the new grade. The effect of a second promotion to A*14, without the application of Article 46, would be to reduce the head of unit 'bonus' to zero. In other words, the 'accumulation' principle (the application of Article 46) merely restores the benefit to its original level of 4.2% (albeit temporarily, since the progressive reduction of value applies again in the new grade).

One thing at least is clear from all this: the drafting of the relevant provisions in the Staff Regulations is less than luminously clear and the mechanisms involved are relatively complex. It is also clear that the interpretation of these texts needs to be clarified interinstitutionally. With this end in view, the matter is currently in the hands of the Heads of Administration.

PROJET D'EFFECTIFS AUTORISES POUR 2004 (BR)

Catégorie et Grade	30 avril 2004				Catégorie et Grade	1 mai 2004			
	Emplois permanents		Emplois temporaires			Emplois permanents		Emplois temporaires	
			Autres	Groupes Politiques				Autres	Groupes Politiques
HC	1	0	0	0	HC	1	0	0	0
A1	9	0	1	0	A*16	9	0	1	0
A2	28	0	1	10	A*15	28	0	1	10
A3	92	1	6	23	A*14	137	1	6	23
A4	160	2	8	68	A*13				
A5	53	4	3	40	A*12	555	2	8	68
A6	77	3	8	56	A*11	141	4	3	40
A7	130	4	26	71	A*10	211	3	8	56
A8	6	0	0	0	A*9				
					A*8	209	4	25	22
					A*7	51	0	0	0
					A*6				
					A*5	492		1	49
Total	555	14	53	268	Total	1833 (1)	14	53	268
L3	45	0	0	0		0	0	0	0
L4	395	0	0	0		0	0	0	0
L5	88	0	0	0		0	0	0	0
L6	134	0	0	0		0	0	0	0
L7	571	0	0	0		0	0	0	0
L8	45	0	0	0		0	0	0	0
Total	1278 (1)	0	0	0		0	0	0	0
B1	192	4	17	50	B*11				
B2	75	2	1	25	B*10	192	4	17	50
B3	129	3	7	40	B*9				
B4	82	3	3	13	B*8	75	2	1	25
B5	279	2	2	50	B*7	129	3	7	40
					B*6	82	3	3	13
					B*5	175	2	2	29
					B*4				
					B*3	104			21
Total	757	14	30	178	Total	757	14	30	178
C1	758	20	2	92	C*7				
C2	193	3	5	51	C*6	758	20	2	92
C3	190	15	11	28	C*5	193	3	5	51
C4	205	7	0	15	C*4	190	15	11	28
C5	395	2	8	50	C*3	205	7	0	15
					C*2	193	2	7	50
					C*1	202		1	
Total	1741	47	26	236	Total	1741	47	26	236
D1	142	3	9	7	D*5				
D2	24	1	0	1	D*4	142	3	9	7
D3	14	0	0	0	D*3	24	1	0	1
D4	0	0	0	0	D*2	14	0	0	0
						0	0	0	0
Total	180	4	9	8	Total	180	4	9	8
TOTAL	4512 (2)	79 (3)	118 (4)	690	TOTAL	4512 (2)	79 (3)	118 (4)	690
TOTAL GENERAL : 5320 (5)						5320 (5)			

(1) dont 887 pour la Traduction et 391 pour l'Interprétation - (2) dont 22 promotions "ad Personam" (2 A*14 en A*15, 6 C*6 en B*7, 14 D*4 en C*4) octroyées dans des cas exceptionnels à des fonctionnaires méritants arrivés en fin de carrière (âgés d'au moins 60 ans et arrivés au dernier échelon du grade supérieur depuis au moins 2 ans) et après de longues années de service (au moins 25 ans) - (3) Réserve virtuelle pour les fonctionnaires détachés dans l'intérêt du service non comprise dans le total général - (4) dont: 22 pour le Cabinet du Président, 14 pour le Secrétariat des Vice-Présidents, 5 C*4 pour le Secrétariat des Questeurs, 11 pour la DG-Présidence, 12 pour la DG-Politiques Int. (dont 7 A*8 jusqu'au 31/12/2008), 11 pour la DG-Politiques Ext.(dont 1 A*8 jusqu'au 31/12/2008), 8 pour la DG-Information, 9 pour la DG-Personnel, 15 pour la DG-Infrastructures et Interp., 2 pour la DG-Finances, 3 pour le Comité du Pers., 1 pour le SG, 1 pour le Service rel. avec les Groupes Pol. (coord. des NI), 4 pour le Service Juridique (jusqu'au 31/12/2004) - (5) Les crédits pour la création de 3 A*14, 9 A*8, 3 B*5 et 9 C*2 pour les DG Politiques Int. et Ext. ainsi que les 3 A*8 pour le Service Juridique, sont inscrits à la réserve du chapitre 100.

POSTS VACANT AS OF 30 JUNE 2004

Category	Permanent	Temp.	Groups	Total
A*15	2			2
A*	600	18	66	684
B*	168	3	51	222
C*	320	4	79	403
D*	22	2	3	27
Total	1112	27	199	1338

NB: a large number of these posts are earmarked for enlargement and have been covered by auxiliaries