Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council of 24 November 2010 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities

REGULATION (EU, EURATOM) No 1080/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 336 thereof,

Having regard to the proposal from the European Commission, submitted following consultations with the Staff Regulations Committee,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Justice[(1)],

Having regard to the opinion of the Court of Auditors[(2)],

Acting in accordance with the ordinary legislative procedure[(3)],

Whereas:

(1) According to Article 27 of the Treaty on European Union, the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) is to be assisted by a European External Action Service (EEAS). This service is to work in cooperation with the diplomatic services of the Member States and is to comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. It is to form part of the Union's open, efficient and independent European administration, as provided for in Article 298 of the Treaty on the Functioning of the European Union (TFEU).

(2) In view of its specific tasks, the EEAS should be granted autonomy within the framework of the Staff Regulations. Therefore, for the purposes of the Staff Regulations and the Conditions of Employment of Other Servants[(4)] (hereinafter referred to as the 'Staff Regulations', and the 'Conditions of Employment of Other Servants', respectively), the EEAS should be treated as an institution of the Union.

(3) The High Representative should act as Appointing Authority and Authority to Conclude Contracts for the staff of the EEAS, with the possibility of delegating powers in that capacity to the EEAS. As the Heads of Delegations will have to carry out tasks for

the Commission as part of their normal duties, provision should be made for the participation of the Commission in certain decisions concerning those staff members.

(4) Officials of the Union and temporary agents coming from the diplomatic services of the Member States should have the same rights and obligations and be treated equally, in particular as concerns their eligibility to assume all positions under equivalent conditions. No distinction should be made between temporary agents coming from national diplomatic services and officials of the Union as regards the assignment of duties to perform in all areas of activities and policies implemented by the EEAS.

(5) It is appropriate to clarify that staff of the EEAS who carry out tasks for the Commission as part of their duties should, in accordance with Article 221(2) of the TFEU, follow instructions given by the Commission. Likewise, Commission officials working in Union delegations should follow instructions from the Head of Delegation.

(6) For the avoidance of doubt, it should be confirmed that officials and temporary staff occupying a post in an organisational entity which is transferred from the General Secretariat of the Council or the Commission to the EEAS pursuant to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service[(5)] are deemed to be transferred with the post. This should apply *mutatis mutandis* to contract and local staff assigned to such an organisational entity. The staff concerned by such transfer will be informed in advance.

(7) Officials from institutions other than the EEAS who have taken up duties in the EEAS should be able to apply for vacant posts within their institution of origin on an equal footing with internal candidates of that institution.

(8) Until 30 June 2013, in order to take account of specific situations in a flexible manner (for example a need for future transfers of technical support tasks from the General Secretariat of the Council or from the Commission to the EEAS), a transfer of officials in the interest of the service with their post, that is without prior publication of a vacant post, from the Council or the Commission to the EEAS should also be possible in duly justified exceptional cases.

(9) Until 30 June 2014, with regard to those officials from the General Secretariat of the Council or from the Commission who have been transferred to the EEAS during the start-up phase, it should be possible to transfer such EEAS officials without their post, in the interest of the service, from the EEAS to the Council or the Commission.

(10) In order to give effect to Article 27(3) of the Treaty on European Union, which identifies three sources of staff for the EEAS, it should be provided that until 30 June 2013, the EEAS will recruit exclusively officials originating from the General Secretariat of the Council and the Commission as well as staff from the diplomatic services of the Member States. During this period, it is necessary to ensure that staff from national diplomatic services and candidates from the General Secretariat of the Council and the Commission, as well as internal candidates, can apply for posts in the EEAS on an equal footing. During the same period, it should however be possible, in exceptional cases and after having exhausted the possibilities of recruiting from the three exclusive sources, to recruit from outside those sources technical support staff at Administrator

(AD) level necessary for the good functioning of the EEAS, such as specialists in the areas of crisis management, security and IT. From 1 July 2013, access to posts in the EEAS should also be opened to officials from other institutions.

(11) In addition, with a view to attaining the objective that staff from national diplomatic services should represent at least one third of all EEAS staff at AD level, it is necessary to provide for a temporary derogation until 30 June 2013 from Article 98(1) of the Staff Regulations enabling the High Representative to give priority for certain posts in function group AD in the EEAS to candidates from such national diplomatic services in the case of equivalent qualifications.

(12) In order to ensure a proper balance amongst the different staff components of the EEAS and in accordance with Decision 2010/427/EU, when the EEAS has reached its full capacity, personnel from the diplomatic services of the Member States appointed as temporary agents should represent at least one third of all EEAS staff at AD level and Union officials should represent at least 60 % of all EEAS staff at AD level. This should include staff coming from the diplomatic services of the Member States who have become permanent officials of the Union in accordance with the provisions of the Staff Regulations.

(13) Selected candidates who are seconded by the national diplomatic services of the Member States should be employed as temporary agents and thus be put on an equal footing with officials. They should be recruited on the basis of an objective and transparent procedure and the implementing provisions to be adopted by the EEAS should guarantee equivalent career prospects within the EEAS for temporary agents and officials.

(14) In accordance with Article 27 of the Staff Regulations and the first subparagraph of Article 12(1) and Article 82 of the Conditions of Employment of Other Servants, recruitment or engagement should be directed to securing for the EEAS the services of officials and temporary staff of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. This will apply to the EEAS as a whole and to its various staff components, including temporary staff as referred to in point(e) of Article 2 of the Conditions of Employment of Other Servants. In addition, the staff of the EEAS should comprise an appropriate and meaningful presence of nationals from all the Member States.

(15) The High Representative will take appropriate measures, as provided for in Article 1d(2) and (3) of the Staff Regulations, to promote equal opportunities for the under-represented gender in certain function groups, more particularly in the AD function group.

(16) In order to avoid unnecessary restrictions on the employment in the EEAS of staff from national diplomatic services, specific rules on the length of contracts should be adopted, together with a guarantee of reinstatement at the end of their period of service, in accordance with relevant provisions. For this particular category of temporary staff, the rules on secondment and maximum retirement age should be aligned with those applicable to officials.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU, Euratom) No 1080/2010 of the European Parliament and of the Council. (See end of Document for details)*

(17) Those specific rules should also be made applicable, with the agreement of the High Representative and of the national diplomatic service concerned, to temporary agents from national diplomatic services of the Member States who were engaged by the relevant departments of the General Secretariat of the Council or of the Commission, or whose contract was amended, before the establishment of the EEAS but after the entry into force of the Lisbon Treaty.

(18) The EEAS may, in specific cases, have recourse to a limited number of specialised seconded national experts (SNEs), seconded with a view to their performing specific tasks, in particular tasks relating to crisis management or military functions, over whom the High Representative should have authority. Their secondment should not be counted in the one third of all EEAS staff at AD level which staff from Member States should represent when the EEAS reaches its full capacity.

(19) In order to ease the administrative burden of the EEAS, the Disciplinary Board established in the Commission should also serve as the Disciplinary Board for the EEAS, until the High Representative decides to establish a Disciplinary Board for the EEAS. The High Representative's decision should be taken by 31 December 2011 at the latest.

(20) Until a Staff Committee is set up within the EEAS in accordance with the first indent of Article 9(1)(a) of the Staff Regulations, which should be by 31 December 2011 at the latest, it should be provided that the Staff Committee of the Commission also represents EEAS staff, who will be entitled to vote and stand as candidates in its elections.

(21) As the specific provisions laid down in Annex X to the Staff Regulations for officials serving in a third country are not applicable during parental or family leave, it proves difficult in practice for officials working in delegations to take such leave. This runs counter to the general objective of better reconciling private and professional life and, in particular, constitutes an obstacle for women who might otherwise be interested in taking up a post in a Union delegation. It is therefore appropriate that the provisions of that Annex should continue to apply, to a limited extent, during parental and family leave.

(22) In the light of the experience gathered since 2004, there seems to be no justification for maintaining the existing limitation with regard to the application of Annex X to the Staff Regulations to contract staff. This means in particular that contract staff should take part fully in the mobility procedure under Articles 2 and 3 of that Annex. To this end, it is necessary to provide that contract staff engaged in delegations, to whom Article 3a of the Conditions of Employment of Other Servants applies, may be temporarily assigned to the seat of the institution.

(23) As regards social security for local staff, Article 121 of the Conditions of Employment of Other Servants refers to the social security contributions under current regulations in the place where the servant is to perform his duties. As social security systems are non-existent or insufficient in certain countries, a statutory basis should be created for the setting-up of an autonomous or complementary system of social security.

(24) To facilitate matters for staff travelling outside the European Union in the performance of their duties, it should be possible to issue *laissez-passer* when the interest of the service so requires, and special advisers should be covered by this possibility.

(25) The terms used in the Staff Regulations and the Conditions of Employment of Other Servants need to be adapted to the Treaty on European Union and the Treaty on the Functioning of the European Union.

(26) This Regulation should enter into force at the earliest possible date, since the amendments to the Staff Regulations and Conditions of Employment of Other Servants constitute a necessary condition for the proper functioning of the EEAS,

HAVE ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of Officials of the European Communities shall be amended as follows:

1. the title shall be replaced by ‘Staff Regulations of Officials of the European Union’;

2. except in Article 66a(1), the words ‘European Communities’ shall be replaced by ‘European Union’.

   With the exception of the references to the European Coal and Steel Community, the European Economic Community or the European Atomic Energy Community in Articles 68 and 83, the words ‘Community’ and ‘Communities’ shall be replaced by ‘Union’ and any necessary grammatical changes shall be made.

   The words ‘the three European Communities’ and ‘one of the three European Communities’ shall be replaced by ‘the European Union’;

3. in Article 64, second paragraph, and in Article 65(3), the words ‘in the first indent of the second subparagraph of Articles 148(2) of the Treaty establishing the European Economic Community and 118(2) of the Treaty establishing the European Atomic Energy Community’ shall be replaced by ‘in Article 16(4) and (5) of the Treaty on European Union’. In Article 13, first paragraph, second sentence, of Annex X, the words ‘in the first eventuality set out in the second subparagraph of Article 148(2) of the Treaty establishing the European Economic Community and of Article 118 of the Treaty establishing the European Atomic Energy Community’ shall be replaced by ‘in Article 16(4) and (5) of the Treaty on European Union’.

   In Article 83a(5), Article 14(2) of Annex XII and Article 22(3) of Annex XIII, the words ‘in the first indent of Article 205(2) of the EC Treaty’ shall be replaced by ‘in Article 16(4) and (5) of the Treaty on European Union’. In Article 13(3) of Annex VII, the words ‘in the first indent of the second subparagraph of Article 205(2) of the EC Treaty’ shall be replaced by ‘in Article 16(4) and (5) of the Treaty on European Union’.

   In Article 45(2) the words ‘Article 314 of the EC Treaty’ shall be replaced by ‘Article 55 of the Treaty on European Union’;

4. in Article 7(1) of Annex III the words ‘European Communities Personnel Selection Office’ shall be replaced by ‘European Personnel Selection Office’.