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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 723/2004

of 22 March 2004

amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 283 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Communities, and in particular Article 13 thereof,

Having regard to the proposal from the Commission, submitted following consultations with the Staff Regulations Committee, ([1])

Having regard to the Opinion of the European Parliament, ([2])

Having regard to the Opinion of the Court of Justice, ([3])

Having regard to the Opinion of the Court of Auditors, ([4])

Whereas:

(1) Since the initial adoption of the Staff Regulations and Conditions of Employment in 1962, substantial advances and innovations in society have occurred. Those advances and innovations should be reflected in the regulatory framework applicable to the European civil service in order to meet the changing needs of the institutions and their staff, whilst respecting a Community administrative culture and tradition based on the principle of service to the citizen.

(2) The Community should thus be equipped with a high-quality European public administration, so as to enable it to perform its tasks to the highest possible standard in accordance with the Treaties and to meet the challenges, both internal and external, that it will face in the future.

(3) Consequently, it is necessary to provide a framework for the recruitment by the Community of high calibre staff in terms of productivity and integrity, drawn on the widest possible geographical basis from among citizens of the Member States, and enable such staff to carry out their duties under conditions which ensure that the service functions as smoothly as possible.

(4) A broader aim should be to ensure that human resources are managed as effectively as possible in a European civil service characterised by competence, independence, loyalty, impartiality and permanence, as well as by cultural and linguistic diversity.

(5) It is appropriate to ensure that there is a single European civil service and to apply common rules to all institutions and agencies working on behalf of the Community. The availability of a single set of Staff Regulations should provide a useful tool for enhancing cooperation between the institutions and agencies on staff policy, in the interests of the smooth running of the Community and the efficient use of human resources.

(6) Agencies should be included within the scope of the rules relating to staff, in order to safeguard the harmonious application of the rules and in particular to ensure staff mobility.

(7) Compliance should be observed with the principle of non-discrimination as enshrined in the EC Treaty, which thus necessitates the further development of a staff policy ensuring equal opportunities for all, regardless of sex, physical capacity, age, racial or ethnic identity, sexual orientation and marital status.

([1]) OJ C 291 E, 26.11.2002, p. 33.
([2]) OJ C 62 E, 11.3.2004, p. 160.
([3]) Opinion of 18.2.2004 (not yet published in the Official Journal).
([4]) OJ C 75, 24.3.2004, p. 1.

(8) Officials in a non-marital relationship recognised by a Member State as a stable partnership who do not have legal access to marriage should be granted the same range of benefits as married couples.

(9) Express reference should be made to measures of a social nature and to working conditions which meet appropriate health and safety standards; such measures are intended to help reconcile work and private life, to promote equality of opportunity, as well as to protect the health and safety of the individual.

(10) There is a clear need to strengthen the principle of career development based on merit, establishing a closer link between performance and remuneration by providing greater incentives for good performance through structural changes to the careers system, whilst ensuring equivalence of average career profiles between the new and the old structures, in keeping with the establishment plan and budgetary discipline.

(11) Modernising the careers system calls for greater recognition of officials' professional experience and of the principle of life-long learning. Accordingly it is desirable to replace the existing staff categories and to regrade staff in the new administrators' (AD) and assistants' (AST) function groups, and also to facilitate progress from a lower to a higher group by means of a new certification mechanism.

(12) The need has arisen to devise a system of ensuring the equivalence of average career profiles which, when viewed as a whole, will offset fairly and reasonably, first, the increase in the total number of grades and, second, the reduction in the number of steps in each grade.

(13) In order to preserve the multilingual character of the institutions, greater emphasis should, for the purposes of recruitment and promotion, be laid on linguistic proficiency and the ability to work in a third Community language.

(14) Impartiality is a fundamental principle of public service which is recognised by the Charter of Fundamental Rights of the European Union ([1]). It is therefore vital to clarify the obligations of officials in situations where there is an actual or potential conflict of interest, both before and after leaving the service.

([1]) OJ C 364, 18.12.2000, p. 1.

(15) An improved legal framework should be set up to address issues of psychological and sexual harassment, and to that end clear and appropriate definitions should be formulated.

(16) Since the right of freedom of expression is enshrined in the Charter of Fundamental Rights, it is appropriate to provide for this basic right of officials, and to set reasonable limits to its exercise. At the same time, clear rules are required to govern the publication of matters connected with the work of the Community, wherever its legitimate interests may be at risk.

(17) A new legal framework and guarantees should be provided for the legal protection of officials who report possible illegal activity or conduct which constitutes a serious failure to comply with the obligations of Community officials within the service to certain clearly defined persons or bodies.

(18) It is appropriate to rationalise more consistently the way in which disciplinary proceedings are opened and conducted. There should also be greater stability in the membership of Disciplinary Boards and the rules regarding the suspension of officials should be amended.

(19) Procedures for monitoring absence and for the submission of medical certificates should be clarified.

(20) It is necessary to introduce a new legal framework to provide a comprehensive procedure for dealing with cases of professional incompetence which safeguards the right of defence of the officials concerned. Cases of officials who are unable to attain the expected standard of performance within a reasonable time should be dealt with within this new legal framework.

(21) Provision should be made for the introduction of flexible working arrangements covering in particular, and subject to certain conditions, the right to work part time, to take advantage of job sharing arrangements and to obtain extended leave on personal grounds. Similarly, it is appropriate to introduce provisions on family-related leave and, more particularly, the right to more flexible maternity leave, paternity leave, adoption and parental leave as well as leave in case of serious illness of a family member.

(22) In the interest of guaranteeing that the purchasing power of Community officials develops in parallel with that of national civil servants in central government of the Member States, it is essential to preserve the principle of a multi-annual adjustment mechanism for pay, known as 'the Method', by extending its application

until 31 December 2012 with a review after four years for consistency with budgetary discipline.

(23) The advantages for officials of a multi-annual pay adjustment system should be balanced by the introduction of a special levy to reflect the costs of social policy, improved working conditions and the European Schools. Such special levy should increase by annual steps and apply to all officials for the same period as the system itself.

(24) As the costs of the correction coefficients applied to transfers of parts of salary to other Member States have become disproportionate, transfers with correction coefficients should be limited to a lesser proportion of salary and to cases where the transfer is necessary to allow the official to meet expenses resulting from legal obligations to family members in other Member States.

(25) The criterion for former officials to continue to be covered by the Joint Sickness Insurance Scheme has proved uncertain in its application and should therefore be simplified.

(26) The various allowances should be rationalised, through an overhaul of some allowances and the discontinuation of others, in order to make the administrative rules simpler and more transparent. The reimbursement of travel and mission expenses should thus be brought more closely into line with the real cost, and the administration should be simplified. The education allowance should likewise be aligned more closely, in future, on actual expenditure.

(27) The system of family allowances needs to be reformed so as to bring about improvements for families and in particular so as to address the problems of parents with young children.

(28) Since pensions are expressed as a proportion of a final salary, it is appropriate to ensure that in future pay and pensions are adapted in parallel while safeguarding the actuarial basis of the scheme and maintaining the respective shares of contributions borne by the official and the employer and the principle that pensions are a charge on the Community budget. That objective requires the creation of a mechanism for ensuring the short and long-term actuarial balance of the scheme.

(29) Demographic changes and the changing age structure of the population concerned are imposing ever-increasing burdens upon the Community pension scheme and require that the pension age be increased and the annual rate of accrual of pension rights be reduced, subject however to transitional measures for officials already in service.

(30) Deepened integration of the European Union and the free choice of pensioners of their place of residence within the European Union has made the system of correction coefficients for pensions obsolete. This system has also created monitoring problems as regards the place of residence of pensioners which should be overcome. This system should therefore be abolished with an appropriate transition for pensioners and officials recruited before the entry into force of this Regulation.

(31) The conditions underlying the current provisions on invalidity pensions and survivor's pensions have changed since they were first adopted and should therefore be updated and simplified.

(32) The rules of severance grant should be amended to take into account Community rules on portability of pension rights. This should be achieved by correcting a number of inconsistencies and introducing greater flexibility.

(33) The rules on the flexible retirement arrangements should take the interests of both officials and the institutions into account and consider the budgetary consequences. The measures involved should depend on the request of the official and be accompanied by appropriate financial conditions; the use of this facility should be reported to the budgetary authority. This provision should be intended to facilitate personnel management in particular in the smaller institutions. A realistic choice in favour of early retirement before reaching pensionable age is dependant on health insurance and family allowances being maintained. However, those measures should be balanced by raising the minimum age to 55 and introducing the option of working beyond the current retirement age.

(34) The conditions of employment covering overall level of pay and pensions for officials and other servants, remain at a level which attracts and retains the best applicants

from all the Member States in an independent and permanent European civil service.

(35) The provisions applicable to officials in the scientific and technical services and to officials serving in third countries should be adapted, clarified and brought into line with the general provisions.

(36) A new category of non-permanent staff needs to be established, namely that of contract staff. Such staff, whose responsibilities are of a more limited nature, will generally be required to work under the supervision of officials or temporary staff. They will be employed inter alia with a view to eventually replacing auxiliaries and Category D officials in the institutions, Commission Offices and Representations, Delegations and Agencies and also in executive agencies and other bodies created by a specific legal act. The rights and obligations of such contract staff should be defined by analogy with those of temporary servants, particularly as regards social security, allowances and working conditions.

(37) Provision should be made for transitional arrangements to enable the new rules and measures to be applied gradually, whilst respecting the acquired rights of the staff in the framework of the Community system before the entering into force of these amendments to the Staff Regulations and taking account of their legitimate expectations.

(38) The measures, in particular career modernisation measures and financial measures, have been accepted as a whole by the organisations representing staff consulted within the framework of the Consultation Committee established by the Council Decision of 23 June 1981.

(39) The Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities, laid down in Regulation (EEC, Euratom, ECSC) No 259/68 [1], as last amended by Regulation (EC, Euratom) No 2182/2003 [2], should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities are hereby amended as set out in Annex I, as regards the Staff Regulations of officials, and in Annex II, as regards the Conditions of Employment of other servants.

Article 2

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.

Done at Brussels, 22 March 2004.

For the Council
The President
B. COWEN

[1] OJ L 56, 4.3.1968, p. 1.
[2] OJ L 327, 16.12.2003, p. 3.

ANNEX I

AMENDMENTS TO THE STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN COMMUNITIES

The Staff Regulations of officials of the European Communities are amended as follows:

1) Articles 1 and 1a are replaced by the following:

'*Article 1*

These Staff Regulations shall apply to officials of the Communities.'

'*Article 1a*

1. For the purposes of these Staff Regulations, "official of the Communities" means any person who has been appointed, as provided for in these Staff Regulations, to an established post on the staff of one of the institutions of the Communities by an instrument issued by the Appointing Authority of that institution.

2. This definition in paragraph 1 shall also apply to persons appointed by Community bodies to whom these Staff Regulations apply under the Community acts establishing them (hereinafter "agencies"). Any references to "institutions" in these Staff Regulations shall apply to agencies, save as otherwise provided in these Staff Regulations.';

2) the following Articles are inserted:

'*Article 1b*

Save as otherwise provided in these Staff Regulations,

(a) the European Economic and Social Committee,

(b) the Committee of the Regions,

(c) the European Ombudsman, and

(d) the European Data Protection Supervisor

shall, for the purposes of these Staff Regulations, be treated as institutions of the Communities.'

'*Article 1c*

Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.';

3) the former Article 1a becomes Article 1d and is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII are fulfilled.';

(b) in paragraph 2 the following phrase is inserted after 'women in working life':

', which shall be an essential element to be considered in the implementation of all aspects of these Staff Regulations,';