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NOTE

From : Presidency

No. Cion prop.: 8456/02 STAT 18 FIN 158

Subject : Proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities (Revision of the Staff Regulations)

– Observations made by delegations at Working Party level.

Delegations will find attached the observations made at Working Party level.

Observations of delegates of the Working Group "Staff Regulations"

Remarks by the German delegation

As was announced at the meeting of the Council Working Party on the Staff Regulations on June 13 2003, the German delegation upholds the following reservations against the three-columns-document which have been already raised on previous occasions:

1. On article 10b (trade unions and staff associations);
2. On article 72 paragraphs 1a, 1b, 2a and 2c (sickness insurance scheme);
3. On article 86 paragraph 2 (disciplinary measures);
4. On annex V article 7 (travelling time).

The German delegation does not hold the view that the reservation under item 1 (error of transcription) and the reservations under items 2 - 4 have become obsolete due to the Council Decision dated May 19 2003 (doc. 9522/03), as was indicated in a contribution by the Commission at the meeting of the Council Working Party on the Staff Regulations on June 13.

Neither during the preparatory work in COREPER II nor at the GAERC itself did the delegations of the Member States pursue the idea of having all pending issues in connection with the reform of the staff regulations apart from "Careers", "Remuneration" and "Pensions" covered under the item "Other provisions" in the Presidency's proposal. This is quite clearly reflected in the communications of the UK, F, A, D and NL delegations, in which they uphold their reservations.

Remarks by the French delegation

1. Articles 1 to 10b (9743/03)

- Article 4: the reservation expressed, with the support of the Council Legal Service, in favour of avoiding "and/or" is upheld. As stated in 5746/03, it would be preferable to insert "if necessary";
- Article 9: reservation on the last indent of (a) upheld. In view of the importance of reports in the new career structure it would be preferable to enlarge on this provision and state: "- a Reports Committee if the number of officials at the place of employment exceeds 50;". The Commission had in any case undertaken to examine this proposal.

The French delegation would also draw attention to the relevance of the CLS's comments on Articles 1c and 1d.

2. Articles 11 to 26 (9744/03)

- Articles 22a to 22c (whistleblowing): the text adopted is in fact the original Commission proposal, to which the French request that the information be given in writing would be added. It does not incorporate the text proposed to take account of the reservations of several delegations (5747/03), which the French delegation is very much in favour of and which formed the basis of its acceptance of these provisions at the Working Party on the Staff Regulations meeting on 6 and 7 May;
- Article 25: for the last paragraph the text should mention the compromise reached in the Working Party on 23 May when the EP amendments were examined.

3. Articles 27 to 54 (9745/03)

- Article 27: stand by our request that parity between men and women should be encouraged in applications for vacant posts, by adding to the first paragraph: "the institution shall seek to ensure that both men and women apply for vacant posts";

- Article 29: same remark as for Article 4;
- Article 39(f): the French delegation can withdraw its reservation, but recalls the importance it attaches to experience gained during the secondment being taken into account in the official's report and the Commission's undertaking to include this request in the implementing provisions;
- Article 41: uphold reservation on paragraph 3 and proposal to replace "five years" by "two years".

4. Articles 62 to 85a (9757/03)

- Article 72: uphold request that the following be added to the text: "and who provides evidence that he cannot be covered by any other public scheme of sickness insurance" (see 12542/1/02).

5. Articles 86 to 91a (9758/03)

The French delegation wishes to reiterate the importance it attaches, for reasons of clarity and transparency vis-à-vis staff, to several of the articles moved to Annex IX being retained within the Staff Regulations and its wish that the Commission should take account of this when presenting its amended proposal.

6. Annex V (9832/03)

- Article 7: uphold substantive reservation on the granting of additional days of leave for travelling time without further justification or means of checking.

7. Annex VII (9834/03)

- Article 8: uphold substantive reservation on reimbursement of annual travel expenses in the absence of additional justification or means of checking, particularly as a flat-rate payment with annual adjustment. The expatriation allowance should normally cover this type of expenditure;

- Article 10: reservation on annual adjustment of daily subsistence allowance.

8. Annex VIII (9835/03)

- Article 11: uphold substantive reservation on the provisions concerning the transfer of pension rights, in particular the updating of those rights;
- Article 12: uphold substantive reservation on amendment of the current provisions in the absence of further justification.

9. Annex X (9837/03)

- Article 10: uphold substantive reservation on the additional allowance of 5%;
- Article 18: same remark as for Article 10 of Annex VII.

10. Annex XI (9857/03)

- Article 1: the French delegation regrets that the two proposed amendments by the Commission for paragraph 4(a), on the dates to be taken into account for calculating the specific indicator and determining the sample (last sentence), have not been incorporated;
- Article 3: the French delegation reiterates the importance of improving the wording of paragraph 3 in order to make this provision clearer and more readable and urges that this request be taken into account in the amended proposal to be submitted by the Commission;
- Article 10: the French delegation reiterates its view that the budgetary situation, and not only the economic and social situation, should be mentioned in this exception clause.

11. Article XII (9858/03)

The French delegation points out that the discussion on the parameters for calculating and the conditions for implementing the actuarial method proposed in this Annex remains completely open pending receipt of a Commission proposal.

12. Annex XIII (9859/03)

- Articles 6, 9 and 10: the French delegation takes the view that the same arrangements and budgetary guarantees as those laid down in the political agreement adopted by the General Affairs Council for guaranteed minimum rates of promotion should apply during the transition period;
- Article 9(3): uphold reservation on the attestation procedure, which should be defined in the Staff Regulations. The same principles as those adopted in Article 45a for the certification procedure should apply;
- Section 4: the transitional measures adopted by the Council for pensions should be incorporated and the wording thereof should be carefully examined when the amended proposal is submitted.

13. CEOS (9860/03)

The new document confines itself to stating the terms of the compromise reached in the Working Party on the Staff Regulations on 6 and 7 May. The French delegation will look carefully at the transposition of this agreement into the amended proposal to be submitted by the Commission and will be unable to withdraw its package of reservations until it has examined the new version of these provisions.

Remarks of the Irish delegation

A scrutiny reservation on all articles to be redrafted as part of the agreement reached at the Council meeting on 19 March 2003.

In relation to Article 5, the Irish delegation would like column 3 to record that the UK/IRL/S compromise on 3 year degrees has been accepted.

In relation to Article 10b, as indicated at the last meeting of Groupe Statut, Ireland, like Germany, has no record of our reservation being lifted.

In relation to Articles 12b and 13, Ireland maintains its reservations.

In relation to Articles 22a, 22b, and 22c, the text proposed in Doc. 5747/1/03 is not included.

In relation to Article 86, a revised text was approved to take account of the Irish position.

In relation to Annex XI Article 1, the IRL/L proposal, which Cion was to examine, is not included.

Remarks of the Dutch delegation

The Netherlands have the following reservations concerning the 3-columns-documents:

- 1) Article 1d: As already pointed out in the Working Party, the Council agreed on this article. No reservations should be mentioned on this article. Therefore, the Netherlands suggest to remark: See doc. 9522/03.
- 2) On all the articles concerning the actuarial balance: the Council decision states that the Commission will submit a proposal to be approved by the Council. As long as the Commission does not have submitted a proposal which has not been approved by the Council, the Dutch delegation would like to restate the following reservations:
 - article 83 par. 2 and par. 4
 - article 83a
 - article 39 of Annex VIII
 - articles 1, 2, 3, 5 and 8 of Annex XII.
- 3) article 8, 10 and 17 of Annex VII.
- 4) article 11 and 12 of Annex X.
- 5) article 1 and 3 of Annex XI.

Remarks of the Austrian delegation

A general Austrian reservation mentioned above wherever reference is made to the doc.

9522/03 (political package) concerning pension provisions, in particular Art. 52, 77, 82 par. 2 (parallel adjustment of pensions), Annex VIII Art. 2, 5 and 9, Annex XI Art. 3 par. 1 (parallel adjustment of pensions).

2. As long as the Commission does not have submitted a proposal concerning the actuarial balance and this proposal has not been approved by the Council, the Austrian delegate asks to reinstate the following reservations (which also have to be seen in connection with the general reservation on the political package):
Art. 83 par. 2 (contribution)
Art. 83 par. 4 (actuarial assessment carried out at the request of the Council)
Annex VIII Art. 39
Annex XII
3. The Austrian delegate would also ask to reinstate the following reservations, since these questions of reimbursement of costs are not part of the political package:
Annex VII Art. 8 par. 2 last sentence (adjustment of certain travel expenses),
Annex VII Art. 10 par. 1 last sentence
4. Finally the Austrian delegate asks to reinstate the text proposed by the Commission concerning the sample for the specific indicator in the third column of Annex XI Art. 1 par. 4 lit. a last sentence.
5. The Austrian delegate also wants to point out again that we stick to the reservation on Art. 10 and 10b.

Reservation of the Swedish delegation

Sweden like all other delegations maintains a horizontal scrutiny reserve on all articles to be redrafted as part of the political agreement reached between Council and Commission May 19.

Specific comments:

Concerning art. 10 Sweden keeps its reserve. We are in favour of keeping the old text since the legal and practical implications of the proposal remains unclear.

Sweden has a reservation on art. 19 (see footnote 1 doc. 5747/1/03 REV 1). We have been promised an examination from the Legal Service. Our problem is that the Ombudsman is not on equal footing with the Court of Justice or the Disciplinary Board when it comes to the right of access to information. We can see no reasons for this. Hence the text should include a reference also to the European Ombudsman.

The Swedish delegate still has a reservation on art. 27 (see footnote 2 doc. 5749/03). In our view the employer should not only secure equal treatment of officials as stated elsewhere in the Staff Regulations. The employer shall actively seek to ensure that both men and women apply for vacant posts.

Sweden also would like to be ensured that article 5 includes a statement that the UK/IRL/S compromise on 3 year degrees has been accepted, and to reinsert the text in article 39 footnote 2 from doc 5749/03 (that Commission will include details in the Implementing Regulations).

Finally the Swedish delegate can find no references in the new three-column document to what has been agreed to in the compromise of May 19 concerning the following articles:

art. 82 doc. 9757 – weightings

Annex VIII art. 9 doc. 9834 – early retirement

Annex VIII art. 11 doc. 9834 – transfers of pension rights. Note: the agreement from May 19 must be explained further on this point!

Remarks by the UK delegation

The UK, as with all delegations, maintains a horizontal scrutiny reserve on all articles to be redrafted as part of the political agreement reached between Council and Commission (including articles 6, 47a, 77, 83 and all related articles and annexes e.g. VIII, XII and XIII).

The UK delegate would also like to restate the reserves on:

- 1) Article 41 - the UK/F proposal to replace "five years" with "two years".
- 2) Annex V
 - a) article 7 - no satisfactory justification has been given to maintain extra leave for travelling time.
- 3) Annex VII
 - a) article 1 - lift our reserve but please place a scrutiny reserve on "any competent authority". The delegate would like clarity from the Commission on what this includes.
 - b) article 17 - this article refers to the now abolished correction coefficients. This needs redrafting so we need to enter a scrutiny reserve.
- 4) Annex X
 - a) articles 11 and 12 - reserve on application of weighting provisions.

The UK delegate asks to ensure that article 5 includes a statement that the UK/IRL/S compromise on 3 year degrees has been accepted, and in article 39 reinsert the text from doc 5749/03 footnote 2 (that Commission will include details in the Implementing Regulations).

Remarks by the Spanish delegation

Regarding Article 5, it is very important to know what wording the United Kingdom delegation will be proposing so that we can give our agreement to the 3-column document.

The Spanish version of Article 1(d) of Annex III, which reads:

"La convocatoria deberá especificar: d) los títulos y otros diplomas o el grado de experiencia exigido para los puestos de trabajo que deban proveerse"

should read:

"Las especialidades exigidas, sancionadas con los títulos y diplomas especificados en el artículo 5 del Estatuto, así como la experiencia requerida para los puestos de trabajo que deban proveerse".

(English: "the specialities required, as attested by the diplomas and other evidence of formal qualifications specified in Article 5 of the Staff Regulations, as well as the experience required for the posts to be filled".)

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