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Proposal for a

COUNCIL REGULATION

adjusting, from 1 July 2011, 1 July 2012 and 1 July 2013, the rate of contribution to the pension scheme of officials and other servants of the European Union

{ SWD(2014) 237 final }

{ SWD(2014) 238 final }

{ SWD(2014) 239 final }

{ SWD(2014) 240 final }

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Grounds for and objectives of the proposal

Following the entry into force of Regulation 1023/2013 amending the Staff Regulations with effect from 1st January 2014, this proposal aims to settle the outstanding issues as regards the adjustment of the rate of contribution to the pension scheme for the years 2011, 2012 and 2013, with a view to putting an end to a pending case before the Court of Justice (C-453/12) and avoiding further litigation on this matter.

General context

Under Article 83a(3) of the Staff Regulations¹, on the occasion of the five-yearly actuarial assessment in accordance with Annex XII and in order to ensure the balance of the scheme, the Council shall decide on the rate of contribution and any change to the pensionable age.

Under Article 83a(4) of the Staff Regulations, each year the Commission shall present to the Council an updated version of the actuarial assessment, in accordance with Article 1(2) of Annex XII. Where it is shown that there is a gap of at least 0,25 points between the rate of contribution currently applied and the rate required to maintain actuarial balance, the Council shall consider whether the rate should be adapted, in accordance with the arrangements laid down in Annex XII.

Under Article 13 of Annex XII to the Staff Regulations, Eurostat has submitted the reports required under the above provisions, which determine the rates of contribution required to maintain actuarial balance of the pension scheme for 2011, 2012 and 2013.

Pursuant to Article 19 of Annex XIII to the Staff Regulations, as last amended by Regulation No 1023/2013 of the European Parliament and of the Council, Article 83a and Annex XII thereto, as in force before 1 November 2013, shall continue to be in force exclusively for the purpose of any adjustment required to comply with the judgment of the Court of Justice of the European Union under Article 266 of the TFEU on the application of those provisions.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Consultation of interested parties

Methods of consultation used, main sectors covered and general profile of respondents

The elements of the proposal have been discussed with the staff representatives in accordance with the appropriate procedures.

Summary of replies received and the way in which they have been taken into account

The proposal takes account of the opinions of the parties consulted.

Collection and use of expertise

The calculation of the pension contribution rate has been validated by an actuarial expert (external consultant).

Impact assessment

The purpose of the proposal is to adjust the rate of contribution to the pension scheme of officials and

¹ As in force before Regulation 1023/2013 of 22 October 2013 entered into force.

other servants of the European Union for the years 2011, 2012 (yearly adjustments) and 2013 (five-yearly adjustment) in order to maintain the actuarial balance of the scheme. The legislation as it was in force until the end of 2013 permitted no alternative.

3. LEGAL ELEMENTS OF THE PROPOSAL

In order to comply with the judgment of the Court of Justice in Case C-63/12, the European Parliament and the Council have adopted Regulations No 422/2014 and No 423/2014 of 16 April 2014, respectively adjusting with effect from 1 July 2011 and from 1 July 2012 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto. This was a part of a global approach to settle the disputes regarding the 2011 and 2012 adjustments of remuneration and pensions and the 2011 adjustment of the pension contribution, which resulted in an adjustment of 0 % for 2011 and 0,8 % for 2012.

These adjustments of the salaries and pensions of the EU staff require the respective retroactive adjustment of the rate of contribution to the pension scheme for the year 2013. Moreover, the purpose of Article 19 of Annex XIII to the Staff Regulations, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council, is to enable the institutions to take the necessary measures to settle their disputes concerning the 2011 and 2012 adjustments of remuneration and pensions and the 2011 adjustment of the pension contribution in compliance with a judgment of the Court of Justice, taking due account of the legitimate expectation of staff that the institutions are to decide each year on the adjustment of their remuneration and pensions and the rate of contribution to the pension scheme.

In accordance with Article 13 of Annex XII to the Staff Regulations, Eurostat submitted reports on the 2011, 2012 and 2013 actuarial assessments of the pension scheme updating the parameters referred to in that Annex. According to these assessments, the rate of contribution required to maintain actuarial balance of the pension scheme is 11,0 % of the basic salary for 2011², 9,9 % of the basic salary for 2012³ and 10,6 % of the basic salary for 2013⁴. In the interests of actuarial balance of the pension scheme of officials and other servants of the European Union, the rate of contribution should therefore be adjusted to:

- 11,0 % with effect from 1 July 2011;
- 10,0 % with effect from 1 July 2012⁵; and
- 10,6 % with effect from 1 July 2013.

² Eurostat Report on the 2011 update of the 2010 actuarial assessment of the Pension Scheme for European Officials (PSEO), 1 September 2011, p 6;

³ Report on the 2012 update of the 2011 actuarial assessment of the Pension Scheme for European Officials (PSEO), p.6;

⁴ Addendum to the 1st September 2013 Eurostat report due to the salary adjustment in accordance with Regulation (EU) N° 423/2014 of the European Parliament and of the Council of 16 April 2014, 15 May 2014, p 3;

⁵ Under Article 83a(4), where it is shown that there is a gap of at least 0.25 points between the rate of contribution currently applied (11.0 %) and the rate required to maintain actuarial balance (9.9 %), the Council is to adjust the rate, in accordance with the arrangements laid down in Annex XII. Under Article 2(1) of Annex XII, the adjustment cannot lead to a contribution that is more than one percentage point above or below the valid rate of the previous year. The Commission is therefore proposing that the rate of contribution be adjusted to 10.0 % with effect from 1 July 2012.

Furthermore, under Article 83a(3) of the Staff Regulations, on the occasion of the five-yearly actuarial assessment in accordance with Annex XII and in order to ensure the balance of the scheme, the Council shall decide on the rate of contribution.

The 2013 actuarial assessment of the pension scheme constitutes such a five-yearly assessment, which requires the Commission to carry out a full assessment of the scheme for this reference period in order to ensure that the applied pension contribution rate maintains the pension scheme in actuarial balance. Such a five-yearly assessment necessarily presupposes the fixing of the pension contribution rate for 2011, which has not yet been definitely decided by the Council, and the re-adjustment of the 2012 pension contribution rate as indicated in Recital (4) of Council Regulation No. 1331/2013 of 10 December 2013.

The yearly adjustment of the rate of contribution to the pension scheme for 2011 under Article 83a(4) SR is subject to an action pending before the European Court of Justice (C-453/12). Nevertheless, upon a request from the Commission the Court has suspended this case in order to leave a room for the parties to reach a global legislative solution of all issues related to the pension contribution rate, following its judgment in case C-63/12 on the 2011 annual adjustment of remuneration and pensions, as foreseen in Article 19 of Annex XIII to the Staff Regulations. The current Commission proposal has the objective of paving the way for a settlement in case C-453/12 and of avoiding further litigation relating to the 'old' Staff Regulations.

Therefore, in order to ensure that the applied pension contribution rate maintains the pension scheme in actuarial balance for the reference 5-yearly period and to enable the institutions, as a part of the global approach to settle the disputes, to take the necessary measures as regards the adjustment of the pension contribution rate in compliance with the principles of sincere cooperation among institutions, and taking due account of the legitimate expectation of staff, the Commission submits a proposal for a Council Regulation, adjusting from 1 July 2011, 1 July 2012 and 1 July 2013, the rate of contribution to the pension scheme of officials and other servants.

4. BUDGETARY IMPLICATION

The impact on revenue of the adjustment to the rate of contribution to the pension scheme is detailed in the financial statement annexed hereto.

Proposal for a

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adjusting, from 1 July 2011, 1 July 2012 and 1 July 2013, the rate of contribution to the pension scheme of officials and other servants of the European Union

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other servants of the European Union laid down by Regulation (EEC, Euratom, ECSC) No 259/68⁶, and in particular Article 83a thereof and Annex XII thereto,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The purpose of Article 19 of Annex XIII to the Staff Regulations, as last amended by Regulation No 1023/2013 of the European Parliament and of the Council, is to enable the institutions to take the necessary measures to settle their disputes concerning the 2011 and 2012 adjustments of remuneration and pensions and the 2011 adjustment of the rate of contribution to the pension scheme in compliance with a judgment of the Court of Justice, taking due account of the legitimate expectation of staff that the Council is to decide each year on the adjustment of the rate of contribution to the pension scheme.
- (2) As a part of a global approach to settle the disputes and in order to comply with the judgment of the Court of Justice in Case C-63/12, the European Parliament and of the Council have adopted Regulations No 422/2014 and No 423/2014 of 16 April 2014 adjusting with effect from 1 July 2011 and from 1 July 2012 the remuneration and pensions of officials and other servants of the European Union. These adjustments require the respective retroactive adjustment of the rate of contribution to the pension scheme for the years 2011, 2012 and 2013.
- (3) In accordance with Article 13 of Annex XII to the Staff Regulations, Eurostat submitted reports on the 2011, 2012 and 2013 actuarial assessments of the pension scheme updating the parameters referred to in that Annex. According to this assessment, the rate of contribution required to maintain actuarial balance of the pension scheme is 11.0 % from 1 July 2011, 10.0 % from 1 July 2012 and 10.6 % from 1 July 2013.
- (4) In the interests of actuarial balance of the pension scheme of officials and other servants of the European Union, the rate of contribution should therefore be retroactively adjusted to 11.0 % of the basic salary from 1 July 2011, 10.0 % of the basic salary from 1 July 2012 and 10.6 % of the basic salary from 1 July 2013.

⁶ OJ L 56, 4.3.1968, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

With effect from:

- 1 July 2011, the rate of the contribution referred to in Article 83(2) of the Staff Regulations shall be 11.0 %.
- 1 July 2012, the rate of the contribution referred to in Article 83(2) of the Staff Regulations shall be 10.0 %.
- 1 July 2013, the rate of the contribution referred to in Article 83(2) of the Staff Regulations shall be 10.6 %.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

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

Done at Brussels,

*For the Council
The President*

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

1. NAME OF THE PROPOSAL:

Proposal for a Council Regulation adjusting, from 1 July 2011, 1 July 2012 and July 2013, the rate of contribution to the pension scheme of officials and other servants of the European Union

2. BUDGET LINES:

Chapter and Article:

400 Tax on salaries of officials and other servants

Total established entitlements for 2011: EUR 538.2 million

Total established entitlements for 2012: EUR 548.9 million

Total established entitlements for 2013: EUR 569.1 million

Budget line 2014: EUR 590.5 million

404 Solidarity levy:

Total established entitlements for 2011: EUR 63.1 million

Total established entitlements for 2012: EUR 64.3 million

Budget line 2014: EUR 68.3 million

410 Staff contributions to the pension scheme

Total established entitlements for 2011: EUR 456.4 million

Total established entitlements for 2012: EUR 449.3 million

Total established entitlements for 2013: EUR 445.6 million

Budget line 2014: EUR 435.6 million

3. FINANCIAL IMPACT

- Proposal has no financial implications
- Proposal has no financial impact on expenditure but has a financial impact on revenue – the effect is as follows:

(€million to one decimal place)

Budget line	Revenue	Six-month period starting 01/07/2011	Six-month period starting 01/01/2012	Six-month period starting 01/07/2012	Six-month period starting 01/01/2013	Six-month period starting 01/07/2013	2014
Article 400	<i>Impact on own resources</i>	2.5	2.4	2.7	2.6	-1.4	-2.7
Article 404	<i>Impact on own resources</i>	0.6	0.6	0.7			-0.8
Article 410	<i>Impact on own resources</i>	-11.8	-11.6	-12.7	-12.6	6.5	12.7

Situation following action					
	2015	2016	2017	2018	2019
Article 400	-2.7	-2.7	-2.7	-2.7	-2.7
Article 404	-0.8	-0.8	-0.8	-0.8	-0.8

Article 410	12.7	12.7	12.7	12.7	12.7
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4. OTHER REMARKS

Method of calculation:

Pension contribution = new contribution – budgeted amount for current year

New contribution = budgeted amount x new rate/rate in force

Impact on tax increase = 21% of the variation in the pension contribution.

Impact on the special/solidarity levy = 5.5% of the variation in the pension contribution in 2011 and 2012; 6% of the variation in the pension contribution in 2014. The special levy (5.5%) expired at 31 December 2012; therefore the corresponding budget line is not affected in 2013. The solidarity levy (6%) was applied as from 1st January 2014.