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from: Mr Vítor CALDEIRA, President of the Court of Auditors
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to: Mr Nicolai WAMMEN, President of the General Affairs Council

Subject: Opinion No 5/2012 on the proposal for a regulation of the European Parliament and the Council amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union

Delegations will find attached Opinion No 5/2012 (pursuant to Article 336 TFEU) on the proposal for a regulation of the European Parliament and the Council amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union

Encl.: Opinion No 5/2012

ΕΒΡΟΠΕΪΣΚΑ ΣΜΕΤΗΑ ΠΑΛΑΤΑ
TRIBUNAL DE CUENTAS EUROPEO
EVROPSKÝ ÚČETNÍ DVŮR
DEN EUROPÆISKE REVISIONSRET
EUROPÄISCHER RECHNUNGSHOF
EUROOPA KONTROLLIKODA
ΕΥΡΩΠΑΪΚΟ ΕΛΕΓΚΤΙΚΟ ΣΥΝΕΔΡΙΟ
EUROPEAN COURT OF AUDITORS
COUR DES COMPTES EUROPÉENNE
CÚIRT INIÚCHÓIRÍ NA HEORPA



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EIROPAS REVĪZIJAS PALĀTA
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EUROOPAN TILINTARKASTUSTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

Opinion No 5/2012

(pursuant to Article 336 TFEU)

on the proposal for a regulation of the European Parliament and the Council
amending the Staff Regulations of Officials and the Conditions of Employment
of Other Servants of the European Union

THE COURT OF AUDITORS 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 Commission proposal for a regulation of the European Parliament and of the Council amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants (CEOS) of the European Union¹,

Having regard to the request of the European Parliament for an opinion on the abovementioned proposal, received at the Court on 5 March 2012,

Having regard to the request of the Council for an opinion on the abovementioned proposal, received at the Court on 30 January 2012,

Having regard to its Annual Reports, its Special Reports and its Opinions²,

HAS ADOPTED THE FOLLOWING OPINION

INTRODUCTION

1. The Commission proposes a 5 % reduction of staff in each of the European Union Institutions and agencies between 2013 and 2018. To manage the effect of this reduction and to address other staff related issues, it proposes a number of changes to the Staff Regulations namely:

- an increase in the weekly working time to a minimum of 40 hours,

¹ COM(2011) 890 final of 13 December 2011.

² See the Court's Opinion No 14/2002 on the original proposals for Staff Regulations reform of 2002 (OJ C 21, 28.1.2003, p. 1); No 1/2004 on the Commission's amended proposal for Staff Regulations reform of 2004 (OJ C 75, 24.3.2004, p. 1); No 5/2010 on Staff Regulations reform mainly focused on staff issues related to the establishment of the European External Action Service (OJ C 291, 27.10.2010, p. 1).

- a rise in the normal retirement age from 63 to 65 years and for early retirement age from 55 to 58 years,
- a review of the procedures for the annual adjustment of remuneration and pensions and the annual adjustment of the pension contribution rate,
- a change from the current special levy to a solidarity levy of 6 %,
- a redesign of the career of the assistants' function group adding a new function group for secretaries and clerical staff (AST/SC), and
- a limited number of other modifications which are related to the organisation and management of staff.

2. The Commission's proposal estimates the financial impact for the period 2013-2020. This consists of:

- 1 041 million euro savings under Heading V of the multiannual financial framework (hereafter "the MFF"),
- 258 million euro savings outside of Heading V of the MFF,
- 30 million euro increase in revenue from the special levy,
- 277 million euro decrease in revenue from pension contributions,
- 165 million euro decrease in revenue from tax.

3. In addition, savings with regard to expenditure on pensions are expected to be in the order of 1 000 million euro per annum in the long term³.

³ According to the Commission this would correspond to the 2060's, i.e. when the impact on pension expenditure is the highest (see COM(2011) 890 final, p. 55, footnote 10).

GENERAL OBSERVATIONS

4. The Court points out that the impact of the Commission proposal should be measured not only in terms of achieving the 5 % reduction in staff and the implementation of the changes in the Staff Regulations, but also in terms of achieving the overall financial objective forecasted in the proposal.

5. The proposed reduction of staff numbers by 5 %, although depending on the outcomes of budget allocations within the context of the MFF, is a key element which contributes to the financial savings target. The planned savings in staff and spending will best be secured if each Institution makes a 5 % reduction in its staff.

6. The Institutions need to take account of the planned reductions in manpower when planning the EU activities and managing its staff resources, prioritising appropriately, notably in the decisions to be taken about the EU policies and expenditure for the next MFF period.

7. The proposal does not address issues of human resources management (training, performance appraisal, promotion and grading) as ways to improve the overall productivity of the EU's staff.

OBSERVATIONS ON SPECIFIC ASPECTS OF THE COMMISSION PROPOSAL

Reducing staff by 5 %

8. The Court notes that the proposal would not in itself lead to a reduction in staff numbers and corresponding financial savings. Article 6 of the proposed Staff Regulations makes an explicit reference to the obligations set out in the MFF and the interinstitutional agreement on its implementation⁴. The Court

⁴ The draft inter-institutional agreement proposed by the Commission in June 2011 provides that the European Parliament, the Council and the Commission agree to a progressive reduction of staff by 5 %, applicable to all institutions, bodies and agencies, between 2013 and 2018 (See paragraph 23 of COM(2011) 403 final of

recalls that the size of the EU civil service is to be determined during annual budgetary procedure decisions which need to be aligned with the objectives of this Commission proposal.

9. The Court recommends that the Institutions report annually on the steps taken to meet the planned objectives of reducing staff numbers by 5 % by way of not replacing a certain number of departures, i.e. those who retire and those whose contracts come to an end. Reporting should demonstrate that the objective to reduce costs is not circumvented, for example by using third party service providers, since such staff do not feature in the headcount.

Method for adjusting salaries and pensions

10. The current method for adjusting salaries and pensions of EU officials is based on changes in real terms of salaries of civil servants of eight Member States. The new proposed method is to base adjustments on nominal gross salary changes of civil servants in all Member States, excluding the effect of taxation and other deductions from pay. This change may result in a less complex and a faster method of determining the adjustments. However, the net financial impact of this change needs to be considered carefully by the legislator.

11. The Commission proposal introduces an automatic exception clause for partly postponing by one year any upward adjustment of salaries and pensions. It would trigger a further one year delay over and above the existing delay of up to one year under the current regulations⁵ if all conditions for its application are verified⁶. The delay of these adjustments reduces the alignment of salaries and

29 June 2011 “Draft Interinstitutional Agreement between the European Parliament, the Council and the Commission on cooperation in budgetary matters and on sound financial management”).

⁵ See Article 65 and Annex XI of the Staff Regulations.

⁶ The mechanism is triggered if (i) a decrease in the gross domestic product (GDP) of the European Union is forecast for the current year; (ii) the adjustment value

pensions of EU staff to Member States civil services. Such adjustments should ideally be made at the closest time to the conditions which trigger the change.

Changes to the career structure

12. The proposal introduces a new staff category 'AST/SC' for secretaries and clerks in addition to the existing function groups for administrators (AD) and for assistants (AST). The pay level proposed for AST/SC entry grades will, in some circumstances, make it difficult to recruit staff with the linguistic skills required by the nature of the Institutions' work and to maintain geographical balance.

13. The Commission proposes restructuring the career stream in the AST function group in such a way to reserve the two highest grades for staff who exercise significant responsibilities. In future, there will be "senior assistants" (AST 10 and AST 11) and "assistants" (AST 1 to AST 9). However, the transitional provisions proposed for staff in service on 31 December 2012 might cause problems of unequal treatment⁷ for assistants recruited after the 2004 reform of the Staff Regulations.

Flexibility in the workplace

14. The proposal on flexible working-time arrangements applies to all staff with the exception of those appointed Head of Unit, Director or Director General. The Court recommends to consider whether it would be appropriate for similar arrangements to apply to managers, taking into account, on the one hand, the commitment that can reasonably be expected of managers, and, on the other hand, the need for the Institutions to make the best possible use of all their staff, including those wishing to combine working and parental responsibilities.

calculated by Eurostat based on the salary changes of civil servants in Member States is positive and (iii) the adjustment value exceeds the forecast change in GDP by two percentage points.

⁷ See a similar remark in paragraph 2 of the Court's Opinion No 1/2004.

Coherence of implementing rules

15. The Court welcomes the proposal that, for the sake of transparency, the Court of Justice should establish a register containing the implementing rules of all Institutions and that the Commission should report every three years on rules adopted by each Institution to give effect to the Staff Regulations. In addition, the Court recommends that the Commission proposes a procedure for prior consultation in order to avoid cases where divergences in implementing rules from one Institution to another result in an unequal treatment of staff.

Addressing geographical imbalances

16. The Commission proposal to address long lasting and significant geographical imbalances where nationalities are under-represented in comparison with the relative size of their population should be considered with due care. Any such arrangements should respect the principle of equality of EU citizens and the principle that no post is to be reserved for nationals of any specific Member State.

New category of temporary staff for agencies

17. The Commission proposes creating in the CEOS a new category for temporary staff at the agencies. This category of temporary staff would be recruited for a fixed or indefinite period. Those recruited for an indefinite period would *de facto* benefit from a status similar to that of an official in almost all respects. However, there are no provisions to guarantee that the selection of such staff would be carried out in accordance with the same principles and standards and with the same rigour as applied for the selection of officials.

ADDITIONAL OBSERVATIONS***Administrative investigations by OLAF within the Institutions***

18. The Court recalls that there is a need to strike the right balance between safeguarding the efficiency of OLAF investigations on the one hand and

protecting fundamental rights on the other. It should be clarified that the notion of an “act adversely affecting” a person to whom the Staff Regulations apply, as mentioned in Article 90a, includes any act performed by OLAF in the exercise of its investigative mission which deprives staff of the effective exercise, or of the benefit, of a fundamental right, in particular in cases where OLAF has drawn up its final report and/or transmitted information to national judicial authorities. Furthermore, practical experience has shown that the current legal provisions⁸ are not precise enough to avoid confusion about the role of OLAF in cases of serious misconduct where the EU’s financial interests are not at stake.

The European Personnel Selection Office

19. Since its creation, the European Personnel Selection Office (EPSO)⁹ has become the main point of contact for EU citizens who wish to work for the European Institutions. The current rules on competitions to be organized by EPSO as set out in the Staff Regulations¹⁰ are rudimentary. Since they were introduced in 2004, a considerable body of case-law has clarified important principles in the selection process, for example with regard to the role of the Selection Boards or with regard to the use of languages. In the interest of transparency, the Commission should consider proposing the necessary amendments to reflect these clarifications in the relevant provisions of the Staff Regulations.

⁸ See Article 22a of the Staff Regulations.

⁹ Decision of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office (OJ L 197, 26.7.2002, p. 53).

¹⁰ See Article 7 of Annex III of the Staff Regulations.

Simplification

20. Over the years the Staff Regulations and the CEOS have become increasingly complicated. The Commission should carry out a study in consultation with the other Institutions concerned to identify options for simplification with a view to improving sound financial management. Such a study should include an examination of the rules of other international organisations and of those EU Institutions and bodies not covered by the Staff Regulations.

Provisions for an open, efficient and independent administration

21. Whilst Article 336 TFEU remains the basis for regulating the relationship between the Institutions and their staff, the newly introduced Article 298 TFEU requires the EU legislator to adopt provisions for an open, efficient and independent European administration. Such provisions would usefully complement the rules of the Staff Regulations. The Commission should consider proposing provisions for improving the relationship between the citizens and the European administration based on Article 298 TFEU; for example by clarifying how the Institutions ensure equal treatment of citizens by their staff or how they deal with cases of alleged conflicts of interest.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 14 June 2012.

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA
President