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**REPORT FROM THE COMMISSION TO THE COUNCIL**

**Study on  
Article 45(2) of the Staff Regulations**

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### **Study on Article 45(2) of the Staff Regulations**

#### **1. INTRODUCTION**

On 16 July 2009, the Council asked the Commission to undertake a study on the implementation in the institutions of the Common Rules laying down the procedure for implementing Article 45(2) of the Staff Regulations.

In the context of the reform of the Staff Regulations, the Council decided that in future each official must be able to work in a third language. With a view to implementing this decision, Article 45(2) of the Staff Regulations establishes a direct link between the requirement to demonstrate ability to work in a third language and the securing of a first promotion after recruitment.

The institutions have adopted common rules for implementing this paragraph. These rules apply to officials whose first promotion takes effect after 30 April 2006<sup>1</sup>. In particular they provide for access by officials to training in a third language. The rules state that for all promotions taking effect before 31 December 2008, the required level corresponds to level 4 of interinstitutional language training (equivalent to level A2 of the Council of Europe's Common European Framework of Reference for Languages), while for promotions taking effect from 1 January 2009, the required level is level 6 (equivalent to level B2 of the Council of Europe's Common European Framework of Reference for Languages).

The structure of the study is based on eight questions asked at the request of the Council.

The study covers all the institutions. To this end, each institution has provided the necessary figures concerning its own staff. The figures in the study therefore cover all the institutions, with the exception of some statistics whose origin is indicated. The figures relate to the situation at 31 December 2009 unless otherwise indicated.

#### **2. THE PERSONS CONCERNED BY THIS MEASURE**

The following people are potentially affected by the requirement to demonstrate ability in a third language before promotion:

- all the officials in the institution in active employment at 1 May 2004 who had not been promoted for the first time following recruitment by 1 May 2006, and
- all the officials recruited after 1 May 2004.

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<sup>1</sup> By virtue of Article 11 of Annex XIII to the Staff Regulations the new obligation under Article 45(2) is not to apply to promotions taking effect before 1 May 2006. It must also be stated that officials who have passed certain competitions for lawyer-linguists, translators or interpreters automatically fulfil the condition relating to ability to work in a third language.

The table below shows the numbers potentially affected in each institution.

	In active employment at 1 May 2004 but not yet promoted	Recruited 2004	Recruited 2005	Recruited 2006	Recruited 2007	Recruited 2008	Situation at 1 January 2009	Recruited 2009	Total
EP	271	227	378	269	469	273	1887	186	2073
COUNCIL	248	187	225	128	255	289	1332	156	1488
COMMISSION	3612	674	1416	1245	1400	1146	9493	857	10350
ECJ	275	166	77	185	160	101	964	79	1043
Court of Auditors	111	14	77	54	105	43	404	57	461
EESC	54	30	57	42	78	58	319	42	361
CoR	27	30	50	25	61	43	236	45	281
Total	4598	1328	2280	1948	2528	1953	14635	1422	16057

**3. LANGUAGES STUDIED AS A THIRD LANGUAGE IN CONNECTION WITH ARTICLE 45(2) OF THE STAFF REGULATIONS, WITH AN INDICATION OF THE NUMBER OF OFFICIALS WHO CHOSE EACH LANGUAGE, BROKEN DOWN BY NATIONALITY WHERE POSSIBLE**

Officials can prove their competence in a third language in three ways:

- (1) by providing diplomas which are examined and recognised by EPSO (European Personnel Selection Office);
- (2) by passing a language test organised by EPSO;
- (3) by following an interinstitutional or other language course and passing the final examination.

In the third case, the Common Rules state that the applications for language training by the officials affected by the third language requirement take priority over other training applications.

Between May 2004 and December 2009, 13 394 applications for language training (interinstitutional courses<sup>2</sup>) were submitted which benefited from the priority relating to Article 45(2).

The table below shows the languages studied, indicating the percentage of officials who selected the most often chosen languages.

	Commission	Council <sup>3</sup>	European Commission	Other Institutions <sup>4</sup>	Total
French	52 %	53 %	52 %	43 %	50 %
English	18 %	20 %	24 %	21 %	20 %
German	9 %	5 %	8 %	12 %	9 %
Spanish	8 %	7 %	6 %	7 %	8 %
Dutch	7 %	10 %	3 %	4 %	6 %
Italian	4 %	3 %	5 %	6 %	4 %
Other	2%	2%	2%	7%	3 %
Total	100 %	100 %	100 %	100 %	100 %

French and English account for almost 70% of all the languages. However, applications were submitted for training courses in all the Community languages.

#### **4. OFFICIALS WHO SECURED THEIR FIRST PROMOTION DURING THE TRANSITIONAL PERIOD WITHOUT HAVING REACHED LEVEL 6**

During the transitional period, which ended on 31 December 2008, 961 officials were promoted without having reached level 6 of the interinstitutional language courses.

There were three ways of demonstrating competence in a third language during this period:

- (4) recognition of a certificate/diploma by EPSO (equivalent to level 4 or higher);
- (5) passing of a test organised by EPSO (at level 4);
- (6) passing of an interinstitutional or other language course (at level 4).

<sup>2</sup> Most officials who follow a language course to demonstrate ability to work in a third language choose an interinstitutional language course. This makes it easier to gather data as the organisation of these courses is centralised. Nevertheless, it must be borne in mind that other language courses exist which the Commission is unable to take into account in this study.

<sup>3</sup> May 2004 - December 2008

<sup>4</sup> The Court of Justice cannot distinguish between participants following an Article 45(2) priority course and those following a course for other reasons.

Of these three methods, 48% of officials who, during the transitional period, demonstrated their ability at level 4 chose to do an interinstitutional language course. The other officials chose to do an EPSO test or to have a diploma recognised, which means that they already had a sufficient knowledge of a third language.

Methods of demonstrating language competence chosen by officials who secured their first promotion during the transitional period:

	Language courses	%	EPSO test	%	Diplomas recognised by EPSO	%	Total
<b>EP</b>	85	56%	49	32%	19	12%	<b>153</b>
<b>COUNCIL</b>	58	76%	13	17%	5	7%	<b>76</b>
<b>COMMISSION</b>	276	40%	250	37%	158	23%	<b>684</b>
<b>Other Institutions</b>	40	83%	6	13%	2	4%	<b>48</b>
<b>Total</b>	<b>459</b>	<b>48%</b>	<b>318</b>	<b>33%</b>	<b>184</b>	<b>19%</b>	<b>961</b>

**5. OFFICIALS WHO SECURED THEIR FIRST PROMOTION AFTER HAVING REACHED LEVEL 6 BY MEANS OF LANGUAGE TRAINING**

Following the end of the transitional period on 31 December 2008, all officials who had not been promoted for the first time were required to demonstrate ability equivalent to level 6.

However, even though this was not compulsory, some officials reached level 6 in language courses during the transitional period even though the level required was level 4.

The table below shows:

- in the first column: the number of officials who reached level 6 by means of language training and who were promoted during the transitional period;
- in the second column: the number of officials who reached level 6 by means of language training and who were promoted in 2009;

Officials promoted after passing level 6 in language courses:

	Transitional period	Year 2009	Total
EP	147	122	269
Council	108	92	200
Commission	1672	907	2579
Court of Justice	42	28	70
Court of Auditors	60	24	84
EESC	24	45	69
Committee of the Regions	17	21	38
Total	2070	1239	3309

It emerges from this that 2 070 officials were promoted after having reached level 6 by means of language training during the transitional period, and an additional 1239 officials were promoted after having reached level 6 by means of language training in 2009.

**6. OFFICIALS WHOSE PROMOTION WAS DELAYED BECAUSE OF FAILURE IN A LANGUAGE TEST<sup>5</sup>**

The promotion exercise is different in each institution. At the Commission and Parliament, the system involves the accumulation of points: officials are promoted when they reach the threshold for promotion. It is therefore possible, in this kind of system, to identify officials who have reached the threshold but have not yet demonstrated their ability in a third language, and whose promotion was delayed as a result. However, in some other institutions, such as the Council, there is no points system. Officials who do not comply with the requirement laid down in Article 45(2) are included on the list of those eligible for promotion (officials who have acquired the necessary seniority to be promoted) but are automatically excluded from promotion without any examination of their merit. The number of such officials is easy to calculate but one cannot be certain that they have been promoted if they complied with the requirement in Article 45(2) because promotion is granted after a comparative examination of merit. Other institutions have still different systems. Therefore it is not possible to conduct a full comparison of "delayed" promotions.

<sup>5</sup>

Or failure to demonstrate competence by another means.

The table below therefore shows the number of cases of non-promotion or the number excluded from the list of those eligible for promotion, for each year.

	2006	2007	2008	2009	Total
<b>EP</b>	<b>0</b>	<b>4</b>	<b>4</b>	<b>9</b>	<b>17</b>
<b>Council</b>	<b>0</b>	<b>17</b>	<b>9</b>	<b>19</b>	<b>45</b>
<b>Commission</b>	<b>17</b>	<b>20</b>	<b>30</b>	<b>106</b>	<b>173</b>
<b>Court of Justice</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>12</b>	<b>12</b>
<b>Court of Auditors</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>	<b>2<sup>6</sup></b>
<b>EESC</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>6</b>
<b>Committee of the Regions</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>5</b>	<b>9<sup>7</sup></b>
<b>Total</b>	<b>20</b>	<b>45</b>	<b>47</b>	<b>156</b>	<b>268</b>

**7. RESOURCES AND MEANS USED TO MEET SPECIFIC TRAINING NEEDS WITH A VIEW TO OBTAINING THE QUALIFICATIONS LAID DOWN IN ARTICLE 45(2) OF THE STAFF REGULATIONS, INCLUDING THE TIMETABLES (ORGANISATION OF NEW LANGUAGE COURSES, APPLICATIONS SATISFIED BY MEANS OF EXISTING LANGUAGE COURSES, ETC.)**

The institutions essentially use existing interinstitutional language courses. As basic language courses were already offered in 2004 in all 23 official languages, no new interinstitutional courses were developed after the introduction of the new Staff Regulations; however, the number of groups was increased. Level 1 to level 6 courses are provided in the 23 official languages in both Brussels and Luxembourg.

It should be emphasised that a third language is learned not solely with a view to promotion, but in response to the needs of the service. Article 45(2) has merely created an additional individual motivation in order to promote a policy of linguistic diversity within the institutions. Given the choice of languages, most of the courses concerned would have taken place even in the absence of Article 45(2). Even within the framework of Article 45(2), the language to be studied must be chosen in response to the interests of the service.

<sup>6</sup> At the Court of Auditors, this was the same two people for 2008 and 2009.

<sup>7</sup> At the Committee of the Regions the total number of officials concerned was nine because two officials were in the same situation in that they were eligible for promotion in 2009 but had not fulfilled the requirements in Article 45(2) in 2008.

Interinstitutional language courses consist of three sessions per year lasting an average of 60 hours (one level can be acquired in each session):

- twice-weekly courses from March to July (1 hour 50 minutes per class);
- twice-weekly courses from September to January (1 hour 50 minutes per class);
- intensive summer courses in July or August (4 hours per day).

Monitoring of the application of Article 45(2) in each institution is usually carried out by two AST officials who spend between 15% and 50% of their working hours doing this. In addition, three officials/contract staff members at EPSO work on analysing diplomas and organising language tests for those not following interinstitutional language courses<sup>8</sup>. The interinstitutional courses are organised by 16 members of staff<sup>9</sup>.

The courses taken on the basis of an Article 45(2) priority account for 19.7% of the total. It can thus be calculated that three officials/contract staff members<sup>10</sup> are involved in organising courses pursuant to Article 45(2) and that, on the basis of the following table, the cost for the period from 2004 to 2009 was approximately € 130 000<sup>11</sup>.

The annual cost in euros of all interinstitutional language courses, including those taken for the purposes of Article 45(2) (19.7%).

Annual cost of interinstitutional language courses	2004 *	2005	2006	2007	2008	2009	Total 2004-2009
<b>BRUSSELS<sup>12</sup></b>	701.142	1.915.782	2.201.553	2.049.209	2.760.097	2.558.344	12.186.127
<b>LUXEMBOURG<sup>13</sup></b>	185.818	569.148	624.427	683.351	851.415	794.597	3.708.756
<b>Total</b>	<b>886.960</b>	<b>2.484.930</b>	<b>2.825.980</b>	<b>2.732.560</b>	<b>3.611.512</b>	<b>3.352.941</b>	<b>15.894.883</b>

\* the period from 30 April 2004 to 31 December 2004 comprised one weekly course

It should be noted that in addition to the interinstitutional courses, several institutions organised internal courses and courses in places other than Brussels and Luxembourg mainly for officials encountering problems in demonstrating the required language ability.

<sup>8</sup> With the help of an assessment committee consisting of three permanent members from the institutions and 46 language advisors who are consulted by means of the written procedure for the purpose of evaluating diplomas. The committee meets six times a year.

<sup>9</sup> We estimate that account needs to be taken not only of the staff at centralised level but also of 0.1 AST per DG/service at decentralised level to administer the statutory requirements in connection with the third language.

<sup>10</sup> 19.7% of 16 people.

<sup>11</sup> 19.7% of the total cost of the courses in the period from 2004 to 2009.

<sup>12</sup> NB: the annual cost covers four semi-intensive courses, four intensive courses (February-July-August-September) and two twice-weekly courses (March-July & September-January).

<sup>13</sup> NB: the annual cost covers one semi-intensive course (February), one intensive course (July-August) and two twice-weekly courses (March-July & September-January).

## **8. AVERAGE NUMBER OF PAID HOURS WHICH OFFICIALS SPEND PREPARING THE THIRD LANGUAGE TEST**

The officials affected by the third language requirement take part in an average of 100 hours of interinstitutional language courses in order to demonstrate their knowledge of a third language. We are unable to count the number of courses organised internally by the institutions. This figure comprises an average of 200 hours for those who have taken a course and is negligible for those who have demonstrated their knowledge of a third language in some other way.

The standard interinstitutional language courses are, in general, organised at such times – that is to say, in the morning, during the lunch hour or in the evening – as to minimise the impact on the officials' everyday work. In many cases, the staff in practice work additional hours in order both to manage their work and to take language courses.

## **9. TOTAL NUMBER OF OFFICIALS REQUIRED TO DEMONSTRATE KNOWLEDGE OF A THIRD LANGUAGE AND THE NUMBER OF OFFICIALS WHO HAD NOT COMPLIED WITH THIS REQUIREMENT AT 1 JANUARY 2009 (LEVEL 4)**

At 1 January 2009, 14 635 officials were potentially affected by the requirement to demonstrate knowledge of a third language (see section 2).

The number of officials who still had to demonstrate such knowledge stood at 3 560 at 1 January 2009. Of these officials, 47 were not promoted during the transition period because they had not demonstrated the required level 4. These 47 officials must now reach level 6.

Institution	Total number of officials still required to demonstrate third-language competence at 1 January 2009	Number of officials not promoted at 1 January 2009 because of failure to demonstrate level 4	%
EP	418	4	0,96%
Council	267	9	3,37%
Commission	2275	30	1,32%
Court of Justice	212	0	0,00%
Court of Auditors	49	2	4,08%
EESC	288	0	0,00%
Committee of the Regions	51	2	3,92%
<b>Total</b>	<b>3.560</b>	<b>47</b>	<b>1,32%</b>

**10. NUMBER OF OFFICIALS USING IN THEIR WORK THE THIRD LANGUAGE REQUIRED FOR PROMOTION**

The institutions do not have any computerised tools that allow them to quantify the use by officials in their work of the third language acquired for the purposes of promotion.

It must be pointed out, however, that in choosing the third language account must be taken of the needs of the service and the institution.

It can be seen that English and French accounted for 70% of requests for training made in accordance with the Article 45(2) priority by 31 December 2009 (see section 3). Learning of the other languages also meets the needs of the service in specific areas.

## **11. CONCLUSION**

The languages most often chosen as third languages were French (50%) and English (20%). Slightly more than half of officials already knew a third language, a fact they demonstrated with the help of diplomas awarded or tests organised by EPSO. The other half of the officials chose interinstitutional language courses as a way of demonstrating their ability to work in a third language. The cost for the institutions amounted to approximately 20% of the language training budget, and an average of 100 hours was spent in language courses. Nonetheless, the greater portion of the costs would have arisen even in the absence of a provision such as Article 45(2). Most officials were able to demonstrate ability to work in a third language, and few had their promotion delayed because of failure to do so.