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Contents

Page

I *Information*

Court of Auditors

2003/C 21/01

Opinion No 14/2002 of the Court of Auditors of the European Communities on a proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities

1

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(Information)

COURT OF AUDITORS

OPINION No 14/2002

of the Court of Auditors of the European Communities on a proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities

(2003/C 21/01)

EXPLANATORY MEMORANDUM

On 24 April 2002 the Commission presented a proposal for a Council Regulation amending the Staff Regulations of officials and the Conditions of Employment of other servants of the European Communities ⁽¹⁾.

The Council requested the Court's opinion on this proposal in a letter received at the Court on 10 June 2002.

The Court has examined the proposal and issued the present opinion, based on the following reasoning:

I. The Court's attitude towards the overall policy behind the Staff Regulations reform

1. The Court of Auditors agrees with the main principles and values stated by the Commission in its explanatory memorandum to the proposal, the key words of which are competence, independence, loyalty, impartiality, permanence, social welfare and fighting against discrimination and harassment.

2. The Court considers it important that the European public administration should be enabled to perform the tasks assigned to it by the Treaties in the best way possible. It is, in this context, essential that the European civil service should possess the qualities of independence, competence, high productivity, effectiveness

and integrity. The Court therefore shares the Commission's view that the Staff Regulations should help to provide the Communities with staff of the highest calibre.

3. The Court shares the Commission's view that it is important to integrate different working cultures and that new staff should be highly-qualified persons recruited on the widest possible geographical basis from within the Union.

4. The Court is aware of the fact that recruiting and retaining well-qualified staff involves offering sufficiently attractive financial incentives to the candidates. In this regard it is important that the career system should promote the will and the ability to cooperate and avoid the divisiveness that undue emphasis on individual results at the expense of teamwork creates.

5. The Court also considers that satisfactory working conditions and management efforts to improve job satisfaction have an important role to play in motivating staff. On the other hand appropriate and robust disciplinary procedures are required.

6. The Court agrees that it is necessary to harmonise the provisions relating to officials in the scientific and technical services and the Conditions of Employment of other servants with the new provisions applicable to officials.

⁽¹⁾ COM(2002) 213 final of 24 April 2002.

7. In general, it is the Court's opinion that the present proposed amendments to the Staff Regulations are likely to improve the performance of the European Institutions.

II. Additional remarks

8. Having studied the Commission's proposal for an amended set of Staff Regulations, it appears to the Court that some subjects have not been covered. The Court therefore recommends that the following issues should also be taken into consideration:

9. The periodical staff reporting procedure should include an obligatory annual two-way dialogue between the superior and the subordinate about their work and cooperation, the results achieved and the goals for the coming year. This should enable staff to improve their performance and, perhaps, suggest ways in which their working conditions could be improved.

10. It should be considered whether staff should have a right, and maybe also a duty, to undertake additional training, of say, five to 10 days every year. This could create a process of lifelong learning and contribute to improving the staff performance and motivation.

11. It is important to ensure that it is always the best-qualified applicant who is assigned to a management position. With this in mind, it might be worthwhile to think of ways of broadening the procedure for announcing and filling management vacancies.

12. The Staff Regulations should deal with situations where a member of staff impedes or evades a medical examination. They should also provide for easier and swifter appeals and arbitration mechanisms, and lower the threshold period of sick leave required before the institution can start the invalidity procedure.

III. Reservations on specific subjects

13. The Court has a number of reservations about certain amendments proposed by the Commission:

14. The proposed amendments to Annex VIII of the Staff Regulations (Article 9a) provide for flexible retirement, as advocated by the Court on several occasions ⁽¹⁾. The Court considers the possibility of retiring between 55 and 60 years of age without the application of a coefficient reducing the pension entitlements acquired until the date of retirement as an economical and fair scheme. In this regard the new and more expensive measure concerning the 'termination-of-service scheme', as set out in Article 47a of the amended Staff Regulations, is, in the Court's opinion, unnecessary.

15. The proposed amendments to Annex VIII (Article 12) provide for less-favourable conditions of awarding a pension to an official and a temporary staff member aged less than 60 years, whose service terminates and who is not entitled to a retirement pension. Furthermore it is proposed that the benefits shall no longer be transferred to the interested party but to a private insurance or a pension fund subject to four specified guarantees, one of which being that the capital will not be repaid. Since the new rules could be in breach of the legitimate expectations of temporary staff in particular, it should be considered whether it might create legal problems in the future. This could be avoided by a temporary provision in the reformed Staff Regulation. Such a provision might allow temporary staff, whose service had begun before the entry into force of the reform, to continue to benefit from the present severance grant, currently provided for, at the moment of their leaving. It should also be considered how the private funds compliance with the four guarantees will be controlled.

16. According to Articles 22a and 22b of the proposed amended text of the Staff Regulations, any official who becomes 'aware of evidence which gives rise to a presumption of the existence of illegal activity' or of a failure to comply with the obligations of officials, shall inform one of his superiors (Head of Service, Director-General, Secretary-General) or the European Anti-Fraud Office directly. The official shall not suffer any adverse consequences as a result of his denunciation if 'he acted reasonably and honestly'. The complaint system should be organised in a way that every complainant knows exactly to whom a complaint should be addressed (Appointing Authority or any other person charged by the Appointing Authority).

17. The proposal provides for compensation or remuneration of overtime worked by officials in the new AST function group. This is not logical, because officials in grades AST 5 to AST 11 will receive the same remuneration as the correspondent AD 5 to AD 11 grades and will be able to be transferred, on certain conditions, to the AD function group. Compensation or remuneration of overtime should be allowed, if ever, only for grades AST 1 to AST 4.

⁽¹⁾ Lately in its opinions Nos 5, 6 and 7/2002 on termination-of-service schemes (OJ C 236 of 1.10.2002).

18. According to the new wording of Articles 90a and 90b of the Staff Regulations, any person to whom the Staff Regulations apply can request the Director of OLAF to take a decision relating to him or submit a complaint against an act adversely affecting him. Requests and complaints may also be submitted to the European Data Protection Supervisor. No reference is made to the relevant provisions of the regulations laying down the tasks of these bodies and no indication is given about any particular consequences or follow-up of such requests and complaints. The meaning and the scope of the proposed amendments should be clarified.

19. Regarding the new 'invalidity allowance', the words 'in his career brackets' contained in the first paragraph of Article 13 of Annex 8 should be replaced by the words 'in his function group', as in the amended text of Article 78 of the Staff Regulations. The latter wording would allow the assignment of an 'invalid' to other tasks within the same function group.

IV. The cost of the reform, evaluation of the Commission's calculations

20. The Court, having reviewed the methodology applied by the Commission to evaluate the financial consequences of the reform of the Staff Regulations, considers the Commission's forecast of a moderate increase of the expenditure from 2004 to 2010 (between 0,6 % and 2,5 % of the 2002 expenditure for remuneration per year) reasonable. For the following years the Commission, under the present known conditions, forecasts moderate savings. However, this forecast is based on the assumption that the number of staff and pensioners and their main characteristics (staff age and family structure, distribution within the different career positions) will remain the same over time.

V. The need for appropriate tools for the carrying out of the reform

21. The transition from the present to the new career and remuneration system will inevitably be a rather complex procedure. The Commission will have a key role to play in this procedure, by providing the other institutions, and in particular the smaller ones, with appropriate information technology tools.

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Commission proposal of 24 April 2002 ⁽¹⁾,

Having regard to the Council's request for an opinion on this proposal, received at the Court on 10 June 2002,

HAS ADOPTED THE FOLLOWING OPINION:

1. The Court approves the principles and values underlying the proposed reform of the Staff Regulations, particularly with respect to the high qualities which European Union staff must possess.

2. The Court considers that additional issues should be dealt with in the proposal, in particular:

- an obligatory annual two-way dialogue in the framework of the periodical report procedure,
- additional education and a broader procedure for filling management vacancies,
- improving certain mechanisms of the invalidity procedure.

3. On the following issues the Court expresses the reservations set out in the explanatory memorandum above:

- as a flexible retirement scheme is already proposed, 'termination-of-service' schemes are not necessary,
- it should be considered whether the amended rules applicable to staff leaving the service without being entitled to an immediate or deferred retirement pension will breach legitimate expectations and therefore a temporary provision could be introduced to avoid legal problems,
- the complaint system concerning alleged irregularities should be organised in a one-line channel,
- a compensation of overtime worked by officials in grades AST 5 to AST1 1 is not justified,
- the meaning and the scope of the provisions relating to certain requests and complaints submitted to the Director of OLAF or to the European Data Protection Supervisor should be clarified,
- for the invalidity allowance, the same wording should be used in the main text and in the annexes of the amended Staff Regulations.

⁽¹⁾ COM(2002) 213 final of 24 April 2002.

4. Having reviewed the Commission's evaluation of the cost of the reform of the Staff Regulations, the Court considers the forecast of a moderate increase in expenditure from 2004 to 2010 reasonable. However, the Commission's forecast of decreasing

expenditure in the following years appears to be based on the assumption that the numbers and characteristics of staff and pensioners will not change over the years.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 5 December 2002.

For the Court of auditors

Juan Manuel FABRA VALLÉS

President
