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I

(Legislative acts)

REGULATIONS

REGULATION (EU, EURATOM) No 1080/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 24 November 2010****amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of those Communities**

THE EUROPEAN PARLIAMENT AND THE COUNCIL 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 proposal from the European Commission, submitted following consultations with the Staff Regulations Committee,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Justice ⁽¹⁾,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) According to Article 27 of the Treaty on European Union, the High Representative of the Union for Foreign Affairs and Security Policy (the High Representative) is to be assisted by a European External Action Service (EEAS). This service is to work in cooperation with the diplomatic services of the Member States and

is to comprise officials from relevant departments of the General Secretariat of the Council and of the Commission as well as staff seconded from national diplomatic services of the Member States. It is to form part of the Union's open, efficient and independent European administration, as provided for in Article 298 of the Treaty on the Functioning of the European Union (TFEU).

(2) In view of its specific tasks, the EEAS should be granted autonomy within the framework of the Staff Regulations. Therefore, for the purposes of the Staff Regulations and the Conditions of Employment of Other Servants ⁽⁴⁾ (hereinafter referred to as the 'Staff Regulations', and the 'Conditions of Employment of Other Servants', respectively), the EEAS should be treated as an institution of the Union.

(3) The High Representative should act as Appointing Authority and Authority to Conclude Contracts for the staff of the EEAS, with the possibility of delegating powers in that capacity to the EEAS. As the Heads of Delegations will have to carry out tasks for the Commission as part of their normal duties, provision should be made for the participation of the Commission in certain decisions concerning those staff members.

(4) Officials of the Union and temporary agents coming from the diplomatic services of the Member States should have the same rights and obligations and be treated equally, in particular as concerns their eligibility to assume all positions under equivalent conditions. No distinction should be made between temporary agents coming from national diplomatic services and officials of the Union as regards the assignment of duties to perform in all areas of activities and policies implemented by the EEAS.

⁽¹⁾ Opinion of 7 July 2010 (not yet published in the Official Journal).

⁽²⁾ Opinion No 5/2010 of 28 September 2010 (OJ C 291, 27.10.2010, p. 1).

⁽³⁾ Position of the European Parliament of 20 October 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

⁽⁴⁾ Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1).

- (5) It is appropriate to clarify that staff of the EEAS who carry out tasks for the Commission as part of their duties should, in accordance with Article 221(2) of the TFEU, follow instructions given by the Commission. Likewise, Commission officials working in Union delegations should follow instructions from the Head of Delegation.
- (6) For the avoidance of doubt, it should be confirmed that officials and temporary staff occupying a post in an organisational entity which is transferred from the General Secretariat of the Council or the Commission to the EEAS pursuant to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service⁽¹⁾ are deemed to be transferred with the post. This should apply *mutatis mutandis* to contract and local staff assigned to such an organisational entity. The staff concerned by such transfer will be informed in advance.
- (7) Officials from institutions other than the EEAS who have taken up duties in the EEAS should be able to apply for vacant posts within their institution of origin on an equal footing with internal candidates of that institution.
- (8) Until 30 June 2013, in order to take account of specific situations in a flexible manner (for example a need for future transfers of technical support tasks from the General Secretariat of the Council or from the Commission to the EEAS), a transfer of officials in the interest of the service with their post, that is without prior publication of a vacant post, from the Council or the Commission to the EEAS should also be possible in duly justified exceptional cases.
- (9) Until 30 June 2014, with regard to those officials from the General Secretariat of the Council or from the Commission who have been transferred to the EEAS during the start-up phase, it should be possible to transfer such EEAS officials without their post, in the interest of the service, from the EEAS to the Council or the Commission.
- (10) In order to give effect to Article 27(3) of the Treaty on European Union, which identifies three sources of staff for the EEAS, it should be provided that until 30 June 2013, the EEAS will recruit exclusively officials originating from the General Secretariat of the Council and the Commission as well as staff from the diplomatic services of the Member States. During this period, it is necessary to ensure that staff from national diplomatic services and candidates from the General Secretariat of the Council and the Commission, as well as internal candidates, can apply for posts in the EEAS on an equal footing. During the same period, it should however be possible, in exceptional cases and after having exhausted the possibilities of recruiting from the three exclusive sources, to recruit from outside those sources technical support staff at Administrator (AD) level necessary for the good functioning of the EEAS, such as specialists in the areas of crisis management, security and IT. From 1 July 2013, access to posts in the EEAS should also be opened to officials from other institutions.
- (11) In addition, with a view to attaining the objective that staff from national diplomatic services should represent at least one third of all EEAS staff at AD level, it is necessary to provide for a temporary derogation until 30 June 2013 from Article 98(1) of the Staff Regulations enabling the High Representative to give priority for certain posts in function group AD in the EEAS to candidates from such national diplomatic services in the case of equivalent qualifications.
- (12) In order to ensure a proper balance amongst the different staff components of the EEAS and in accordance with Decision 2010/427/EU, when the EEAS has reached its full capacity, personnel from the diplomatic services of the Member States appointed as temporary agents should represent at least one third of all EEAS staff at AD level and Union officials should represent at least 60 % of all EEAS staff at AD level. This should include staff coming from the diplomatic services of the Member States who have become permanent officials of the Union in accordance with the provisions of the Staff Regulations.
- (13) Selected candidates who are seconded by the national diplomatic services of the Member States should be employed as temporary agents and thus be put on an equal footing with officials. They should be recruited on the basis of an objective and transparent procedure and the implementing provisions to be adopted by the EEAS should guarantee equivalent career prospects within the EEAS for temporary agents and officials.
- (14) In accordance with Article 27 of the Staff Regulations and the first subparagraph of Article 12(1) and Article 82 of the Conditions of Employment of Other Servants, recruitment or engagement should be directed to securing for the EEAS the services of officials and temporary staff of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. This will apply to the EEAS as a whole and to its various staff components, including temporary staff as referred to in point(e) of Article 2 of the Conditions of Employment of Other Servants. In addition, the staff of the EEAS should comprise an appropriate and meaningful presence of nationals from all the Member States.

⁽¹⁾ OJ L 201, 3.8.2010, p. 30.

- (15) The High Representative will take appropriate measures, as provided for in Article 1d(2) and (3) of the Staff Regulations, to promote equal opportunities for the under-represented gender in certain function groups, more particularly in the AD function group.
- (16) In order to avoid unnecessary restrictions on the employment in the EEAS of staff from national diplomatic services, specific rules on the length of contracts should be adopted, together with a guarantee of reinstatement at the end of their period of service, in accordance with relevant provisions. For this particular category of temporary staff, the rules on secondment and maximum retirement age should be aligned with those applicable to officials.
- (17) Those specific rules should also be made applicable, with the agreement of the High Representative and of the national diplomatic service concerned, to temporary agents from national diplomatic services of the Member States who were engaged by the relevant departments of the General Secretariat of the Council or of the Commission, or whose contract was amended, before the establishment of the EEAS but after the entry into force of the Lisbon Treaty.
- (18) The EEAS may, in specific cases, have recourse to a limited number of specialised seconded national experts (SNEs), seconded with a view to their performing specific tasks, in particular tasks relating to crisis management or military functions, over whom the High Representative should have authority. Their secondment should not be counted in the one third of all EEAS staff at AD level which staff from Member States should represent when the EEAS reaches its full capacity.
- (19) In order to ease the administrative burden of the EEAS, the Disciplinary Board established in the Commission should also serve as the Disciplinary Board for the EEAS, until the High Representative decides to establish a Disciplinary Board for the EEAS. The High Representative's decision should be taken by 31 December 2011 at the latest.
- (20) Until a Staff Committee is set up within the EEAS in accordance with the first indent of Article 9(1)(a) of the Staff Regulations, which should be by 31 December 2011 at the latest, it should be provided that the Staff Committee of the Commission also represents EEAS staff, who will be entitled to vote and stand as candidates in its elections.
- (21) As the specific provisions laid down in Annex X to the Staff Regulations for officials serving in a third country are not applicable during parental or family leave, it proves difficult in practice for officials working in delegations to take such leave. This runs counter to the general objective of better reconciling private and professional life and, in particular, constitutes an obstacle for women who might otherwise be interested in taking up a post in a Union delegation. It is therefore appropriate that the provisions of that Annex should continue to apply, to a limited extent, during parental and family leave.
- (22) In the light of the experience gathered since 2004, there seems to be no justification for maintaining the existing limitation with regard to the application of Annex X to the Staff Regulations to contract staff. This means in particular that contract staff should take part fully in the mobility procedure under Articles 2 and 3 of that Annex. To this end, it is necessary to provide that contract staff engaged in delegations, to whom Article 3a of the Conditions of Employment of Other Servants applies, may be temporarily assigned to the seat of the institution.
- (23) As regards social security for local staff, Article 121 of the Conditions of Employment of Other Servants refers to the social security contributions under current regulations in the place where the servant is to perform his duties. As social security systems are non-existent or insufficient in certain countries, a statutory basis should be created for the setting-up of an autonomous or complementary system of social security.
- (24) To facilitate matters for staff travelling outside the European Union in the performance of their duties, it should be possible to issue *laissez-passer* when the interest of the service so requires, and special advisers should be covered by this possibility.
- (25) The terms used in the Staff Regulations and the Conditions of Employment of Other Servants need to be adapted to the Treaty on European Union and the Treaty on the Functioning of the European Union.
- (26) This Regulation should enter into force at the earliest possible date, since the amendments to the Staff Regulations and Conditions of Employment of Other Servants constitute a necessary condition for the proper functioning of the EEAS,

HAVE ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of Officials of the European Communities shall be amended as follows:

1. the title shall be replaced by 'Staff Regulations of Officials of the European Union';

2. except in Article 66a(1), the words 'European Communities' shall be replaced by 'European Union'.

With the exception of the references to the European Coal and Steel Community, the European Economic Community or the European Atomic Energy Community in Articles 68 and 83, the words 'Community' and 'Communities' shall be replaced by 'Union' and any necessary grammatical changes shall be made.

The words 'the three European Communities' and 'one of the three European Communities' shall be replaced by 'the European Union';

3. in Article 64, second paragraph, and in Article 65(3), the words 'in the first indent of the second subparagraph of Articles 148(2) of the Treaty establishing the European Economic Community and 118(2) of the Treaty establishing the European Atomic Energy Community' shall be replaced by 'in Article 16(4) and (5) of the Treaty on European Union'. In Article 13, first paragraph, second sentence, of Annex X, the words 'in the first eventuality set out in the second subparagraph of Article 148(2) of the Treaty establishing the European Economic Community and of Article 118 of the Treaty establishing the European Atomic Energy Community' shall be replaced by 'in Article 16(4) and (5) of the Treaty on European Union'.

In Article 83a(5), Article 14(2) of Annex XII and Article 22(3) of Annex XIII, the words 'in the first indent of Article 205(2) of the EC Treaty' shall be replaced by 'in Article 16(4) and (5) of the Treaty on European Union'. In Article 13(3) of Annex VII, the words 'in the first indent of the second subparagraph of Article 205(2) of the EC Treaty' shall be replaced by 'in Article 16(4) and (5) of the Treaty on European Union'.

In Article 45(2) the words 'Article 314 of the EC Treaty' shall be replaced by 'Article 55 of the Treaty on European Union';

4. in Article 7(1) of Annex III the words 'European Communities Personnel Selection Office' shall be replaced by 'European Personnel Selection Office'.

In Article 7(3) of Annex VII the words 'in Annex IV to the Treaty establishing the European Economic Community' shall be replaced by 'in Annex II to the Treaty on the Functioning of the European Union'.

In Article 40 of Annex VIII the words 'Commission of the European Communities' shall be replaced by 'European Commission';

5. the second subparagraph of Article 6(4) shall be replaced by the following:

'The European Parliament and the Council shall decide in accordance with Article 336 of the Treaty on the Functioning of the European Union.'

In Article 9(2) of Annex VIII and in Article 15(2) of Annex XI, the words 'Article 283 of the EC Treaty' shall be replaced by 'Article 336 of the Treaty on the Functioning of the European Union'.

In Article 10 of Annex XI the words 'the Council shall act in accordance with the procedure laid down in Article 283 of the EC Treaty' shall be replaced by 'the European Parliament and the Council shall decide in accordance with Article 336 of the Treaty on the Functioning of the European Union';

6. Article 1b shall be amended as follows:

- (a) the following point shall be inserted:

'(a) the European External Action Service (hereinafter referred to as the EEAS);

- (b) points (a) to (d) shall become points (b) to (e);

7. in Article 23, the third paragraph shall be replaced by the following:

'The laissez-passers provided for in the Protocol on Privileges and Immunities shall be issued to heads of unit, to officials in grade AD12 to AD16, to officials serving outside the territory of the European Union and to other officials for whom this is required in the interest of the service.';

8. in Article 77, the third paragraph shall be replaced by the following:

'However, in the case of officials who have been assisting a person holding an office provided for in the Treaty on European Union or the Treaty on the Functioning of the European Union, the elected President of one of the institutions or organs of the Union or the elected Chairman of one of the political groups in the European Parliament, the entitlement to pensions corresponding to the years of pensionable service acquired while working in that capacity shall be calculated by reference to the final basic salary received during that time if the basic salary received exceeds that taken as reference for the purposes of the second paragraph of this Article.';

9. Title VIIIa shall become Title VIIIb. The following Title shall be inserted after Title VIII:

TITLE VIIIa

SPECIAL PROVISIONS APPLICABLE TO THE EEAS

Article 95

1. The powers conferred by these Staff Regulations on the Appointing Authority shall be exercised by the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter referred to as the High Representative) in respect of staff of the EEAS. The High Representative may determine who within the EEAS shall exercise those powers. Article 2(2) shall apply.

2. In respect of Heads of Delegation, the powers concerning appointments shall be exercised, using a thorough selection procedure based on merit and having regard to gender and geographical balance, on the basis of a list of candidates on which the Commission has agreed within the framework of the powers that the Treaties confer on it. This shall apply *mutatis mutandis* to transfers in the interest of the service made in exceptional circumstances and for a defined temporary period to a post of Head of Delegation.

3. In respect of Heads of Delegation, in cases where they have to carry out tasks for the Commission as part of their duties, the Appointing Authority shall initiate administrative inquiries and disciplinary proceedings as referred to in Articles 22 and 86 and Annex IX if the Commission so requests.

For the purposes of the application of Article 43 the Commission shall be consulted.

Article 96

Notwithstanding Article 11, a Commission official working in a Union delegation shall take instructions from the Head of Delegation in accordance with the latter's role as provided for in Article 5 of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (*).

An EEAS official who has to carry out tasks for the Commission as part of his duties shall take instructions from the Commission with regard to those tasks, in accordance with Article 221(2) of the Treaty on the Functioning of the European Union.

The detailed arrangements for implementing this Article shall be agreed between the Commission and the EEAS.

Article 97

Until 30 June 2014, with regard to those officials who have been transferred to the EEAS pursuant to Decision 2010/427/EU, by way of derogation from Articles 4 and 29 of these Staff Regulations and under the conditions set out in Article 7(1) thereof, the Appointing Authorities of the institutions concerned may in exceptional cases, acting by common agreement and solely in the interest of the service, after having heard the official concerned, transfer such an EEAS official from the EEAS to a vacant post of the same grade in the General Secretariat of the Council or in the Commission without notifying the staff of the vacant post.

Article 98

1. For the purposes of Article 29(1)(a), when filling a vacant post in the EEAS, the Appointing Authority shall consider the applications of officials of the General Secretariat of the Council, the Commission and the EEAS, of temporary staff to whom Article 2(e) of the Conditions of Employment of Other Servants applies and of staff from national diplomatic services of the Member States without giving priority to any of those categories. Until 30 June 2013, by way of derogation from Article 29, for recruitment from outside the institution, the EEAS shall recruit exclusively officials from the General Secretariat of the Council and from the Commission as well as staff from the diplomatic services of Member States.

However, in exceptional cases and after having exhausted the possibilities to recruit in accordance with these provisions, the Appointing Authority may decide to recruit from outside the sources listed in the first sentence of the first subparagraph technical support staff at AD level necessary for the good functioning of the EEAS, such as specialists in the areas of crisis management, security and IT.

As from 1 July 2013, the Appointing Authority shall also consider the applications of officials from institutions other than those referred to in the first subparagraph without giving priority to any of those categories.

2. For the purposes of Article 29(1)(a) and without prejudice to Article 97, the Appointing Authority of institutions other than the EEAS shall, when filling a vacant post, consider applications from internal candidates and officials of the EEAS who were officials of the institution concerned until they became officials of the EEAS without giving priority to any of those categories.

Article 99

1. Until the High Representative decides to establish a Disciplinary Board for the EEAS, the Disciplinary Board of the Commission shall also serve as the Disciplinary Board for the EEAS. The High Representative's decision shall be taken no later than 31 December 2011.

(*) OJ L 201, 3.8.2010, p. 30.

Pending the establishment of the Disciplinary Board for the EEAS, the two additional members referred to in Article 5(2) of Annex IX shall be appointed from amongst EEAS officials. The Appointing Authority and the Staff Committee referred to in Articles 5(5) and 6(4) of Annex IX shall be those of the EEAS.

2. Until a Staff Committee is set up within the EEAS in accordance with the first indent of Article 9(1)(a), which shall be no later than 31 December 2011, by way of derogation from the provision contained in that indent, the Staff Committee of the Commission shall also represent officials and other servants of the EEAS.;

10. in Chapter 3 of Annex X, the following Article shall be added:

'Article 9a

During parental and family leave as provided for in Articles 42a and 42b of the Staff Regulations, Articles 5, 23 and 24 of this Annex shall continue to apply for a cumulative maximum period of six months within each two-year period of assignment to a third country, and Article 15 of this Annex shall continue to apply for a cumulative maximum period of nine months within each two-year period of assignment to a third country.;

Article 2

The Conditions of Employment of Other Servants of the European Communities shall be amended as follows:

1. the title shall be replaced by 'Conditions of Employment of Other Servants of the European Union';
2. except in Article 28a(8), the words 'European Communities' shall be replaced by 'European Union' and the words 'Community' and 'Communities' shall be replaced by 'Union' and any necessary grammatical changes shall be made;
3. in Article 12(3) and Article 82(5) the words 'European Communities Personnel Selection Office' shall be replaced by 'European Personnel Selection Office';
4. in Article 39(1) the words 'Article 283 of the EC Treaty' shall be replaced by 'Article 336 of the Treaty on the Functioning of the European Union';

5. Article 2 shall be amended as follows:

(a) in point (c) the words 'the Treaties establishing the Communities or the Treaty establishing a Single Council and a Single Commission of the European Communities, or the elected President of one of the institutions or organs of the Communities' shall be replaced by 'the Treaty on European Union or the Treaty on Functioning of the European Union, or the elected President of one of the institutions or organs of the Union';

(b) the following point shall be added:

'(e) staff seconded from national diplomatic services of the Member States engaged to fill temporarily a permanent post in the EEAS.;

6. in the first paragraph of Article 3a, the following subparagraph shall be added:

'Staff engaged for the performance of full-time or part-time duties in Union delegations may be temporarily assigned to the seat of the institution under the mobility procedure set out in Articles 2 and 3 of Annex X to the Staff Regulations.;

7. in Article 3b, the second paragraph shall be replaced by the following:

'Except in the cases referred to in the second subparagraph of Article 3a(1), the use of contract staff for auxiliary tasks is excluded where Article 3a applies.;

8. Article 10 shall be amended as follows:

(a) the four existing paragraphs shall be numbered;

(b) the last sentence of paragraph 4 shall be deleted;

(c) the following paragraph shall be added:

'5. Articles 95, 96 and 99 of the Staff Regulations shall apply by analogy to temporary staff. Title VIIIb of the Staff Regulations shall apply by analogy to temporary staff serving in a third country.;

9. in Article 47, point (a) shall be replaced by the following:

'(a) at the end of the month in which the servant reaches the age of 65 years or, where applicable, at the date fixed in accordance with Article 50c(2); or';

10. the following Chapter shall be added to Title II:

‘CHAPTER 10

Special provisions for members of temporary staff referred to in Article 2(e)

Article 50b

1. Staff from national diplomatic services of the Member States who were selected under the procedure laid down in Article 98(1) of the Staff Regulations and who are seconded by their national diplomatic services shall be engaged as temporary staff under Article 2(e).

2. They may be engaged for a maximum period of four years. Contracts may be renewed for a maximum period of four years. Their engagement should not exceed eight years in total. However, in exceptional circumstances and in the interest of the service, at the end of the eighth year, the contract may be extended for a maximum period of two years. Each Member State shall provide its officials who have become temporary agents in the EEAS with a guarantee of immediate reinstatement at the end of their period of service to the EEAS, in accordance with the applicable provisions of its national law.

3. The Member States shall support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of EEAS temporary agents referred to in Article 2(e) of these Conditions of Employment.

Article 50c

1. Articles 37, 38 and 39 of the Staff Regulations shall apply by analogy. Secondment shall not extend beyond the term of the contract.

2. The second subparagraph of Article 52(b) of the Staff Regulations shall apply by analogy.’;

11. the following paragraph shall be added to Article 80:

‘5. Articles 95, 96 and 99 of the Staff Regulations shall apply by analogy.’;

12. Article 118 shall be replaced by the following:

‘Article 118

Annex X to the Staff Regulations shall apply by analogy to contract staff serving in third countries. However, Article 21 of that Annex shall only apply if the duration of the contract is for a period of not less than one year.’;

13. Article 121 shall be replaced by the following:

‘Article 121

As regards social security, the institution shall be responsible for the employer’s share of the social security contributions under current regulations in the place where the servant is to perform his duties, unless the seat agreement provides otherwise. The institution shall set up an autonomous or complementary system of social security for countries where coverage by the local system either does not exist or is insufficient.’;

14. in Article 124, the words ‘the first and second paragraphs of Article 23’ shall be replaced by ‘Article 23’.

Article 3

1. Officials and temporary staff occupying a post in an organisational entity which is transferred from the General Secretariat of the Council or the Commission to the European External Action Service (EEAS) pursuant to Decision 2010/427/EU shall be deemed to be transferred to the EEAS from the relevant institutions at the date laid down in Article 7 of that Decision. This shall apply *mutatis mutandis* to contract and local staff assigned to such an organisational entity, for whom the conditions of the contract shall remain unchanged. The Appointing Authority of the Council or of the Commission, as the case may be, shall inform in advance the staff concerned by such a transfer.

2. With the agreement of the High Representative and of the national diplomatic service concerned, the contracts of temporary staff from national diplomatic services of the Member States who were engaged, or whose contract was amended, after 30 November 2009 and who occupy a post in an organisational entity which is transferred from the General Secretariat of the Council or the Commission to the EEAS pursuant to Decision 2010/427/EU shall be transformed, without a new selection procedure, into contracts under point(e) of Article 2 of the Conditions of Employment of Other Servants. For the rest, the conditions of the contract shall remain unchanged.

3. Until 30 June 2013 and by way of derogation from Article 7 of the Staff Regulations, officials and other servants of the General Secretariat of the Council or of the Commission exercising technical support functions for the EEAS may, after having been heard, be transferred to the EEAS by common agreement of the institutions concerned, in full respect of the prerogatives of the budgetary authority. This transfer shall take effect on the date determined in the relevant budgetary Decision providing for the corresponding posts and appropriations in the EEAS.

4. In accordance with Article 27 of the Staff Regulations and the first subparagraph of Article 12(1), and Article 82 of the Conditions of Employment of Other Servants, recruitment or engagement shall be directed to securing for the EEAS the services of officials and temporary staff of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. This shall apply to the EEAS as a whole and to its various staff components, including temporary staff referred to in point(e) of Article 2 of the Conditions of Employment of Other Servants. In addition, the staff of the EEAS shall comprise an appropriate and meaningful presence of nationals from all the Member States.

5. In accordance with Article 1d(2) and (3) of the Staff Regulations, the High Representative shall take appropriate measures to promote equal opportunities for the under-represented gender in certain function groups, more particularly in the AD function group.

6. In order to guarantee adequate representation of staff from national diplomatic services in the EEAS, the High Representative shall decide that, by way of derogation from Article 29 and from the first subparagraph of Article 98(1) of the Staff Regulations, priority may be given until 30 June 2013 for certain posts in the AD function group in the EEAS to candidates from national diplomatic services of the Member States in the case of equivalent qualifications.

Article 4

By mid-2013, the High Representative shall submit a report to the European Parliament, the Council and the Commission on the implementation of this Regulation, with a particular emphasis on gender and geographical balance of staff within the EEAS.

Article 5

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 Strasbourg, 24 November 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

REGULATION (EU, EURATOM) No 1081/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European External Action Service

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾ (hereinafter the 'Financial Regulation'), lays down the budgetary principles and financial rules which should be respected in all legislative acts. It is necessary to amend certain provisions of the Financial Regulation in order to take account of the amendments introduced by the Treaty of Lisbon and of the establishment of the European External Action Service, pursuant to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service ⁽⁴⁾.

(2) The Treaty of Lisbon establishes a European External Action Service (hereinafter the 'EEAS'). Decision 2010/427/EU provides that the EEAS is a service of a *sui generis* nature and should be treated as an institution for the purposes of the Financial Regulation.

(3) In the context of the discharge, given that the EEAS should be treated as an institution for the purposes of the Financial Regulation, the EEAS should be fully subject to the procedures provided for in Article 319 of the Treaty on the Functioning of the European Union and in Articles 145 to 147 of the Financial Regulation. The EEAS should fully cooperate with the institutions

involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies. The Commission should remain responsible, in accordance with Article 319 of the Treaty on the Functioning of the European Union, for the implementation of the budget, including operational appropriations implemented by Heads of Delegations who are sub-delegated authorising officers of the Commission. In order to allow the Commission to fulfil its responsibilities, the Heads of Union Delegations should provide the necessary information. The High Representative of the Union for Foreign Affairs and Security Policy (hereinafter the 'High Representative') should be informed at the same time and should facilitate the cooperation between Union Delegations and Commission departments. Given the novelty of this structure, high-standard provisions on transparency and budgetary and financial accountability need to be applied.

(4) Within the EEAS, a Director-General for budget and administration should be responsible to the High Representative for the administrative and internal budgetary management of the EEAS. The Director-General should work within the existing format and follow the same administrative rules which are applicable to the part of Section III of the Union budget that falls under heading 5 of the multiannual financial framework.

(5) The setting up of the EEAS should be guided by the principles enunciated by the European Council of 29 and 30 October 2009, in particular by the principle of cost-efficiency aiming towards budget neutrality.

(6) The Treaty on the Functioning of the European Union provides that Commission Delegations will become part of the EEAS as Union Delegations. In order to ensure their efficient management, all administrative and support expenditure of Union Delegations which finance common costs should be executed by a single support service. To that effect, the Financial Regulation should provide the possibility for detailed arrangements, to be agreed with the Commission, in order to facilitate the implementation of the Union Delegations' administrative appropriations.

(7) It is necessary to ensure the continuity of the functioning of Union Delegations and, in particular, continuity and efficiency in the management of external aid by the Delegations. Therefore, the Commission should be authorised to sub-delegate its powers of budget implementation of operational expenditure to Heads of Union

⁽¹⁾ OJ C 145, 3.6.2010, p. 4.

⁽²⁾ Position of the European Parliament of 20 October 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

⁽⁴⁾ OJ L 201, 3.8.2010, p. 30.

Delegations belonging to the EEAS as a separate institution. Furthermore, where the Commission implements the budget under direct centralised management, it should be allowed to do so also through sub-delegation to Heads of Union Delegations. The authorising officers by delegation of the Commission should continue to be responsible for the definition of internal management and control systems, while the Heads of Union Delegations should be responsible for the adequate setting up and functioning of internal management and control systems and for the management of the funds and the operations carried out within their Delegations. They should report twice a year to that effect. Such delegation may be withdrawn in accordance with the rules applicable to the Commission.

- (8) In order to comply with the principle of sound financial management, Heads of Union Delegations, when acting as sub-delegated authorising officers of the Commission, should apply the Commission rules and should be subject to the same duties, obligations and accountability as any other sub-delegated authorising officer of the Commission. For those purposes, they should also refer to the Commission as their institution.
- (9) The accounting officer of the Commission remains responsible for the entire Commission section of the budget, including accounting operations relating to appropriations sub-delegated to Heads of Union Delegations. Therefore, it is necessary to clarify that the responsibilities of the accounting officer of the EEAS should concern only the EEAS section of the budget, to avoid any overlapping of responsibilities. The Accounting Officer of the Commission should also act as the Accounting Officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to review.
- (10) In order to ensure coherence and equality of treatment between sub-delegated authorising officers who are EEAS staff and those who are Commission staff, and to ensure that the Commission is properly informed, the special financial irregularities panel of the Commission should also be responsible for handling irregularities within the EEAS where the Commission sub-delegated implementation powers to Heads of Union Delegations. Nevertheless, in order to maintain the link between financial management responsibility and disciplinary action, the Commission should be entitled to request the High Representative to initiate proceedings if the panel finds irregularities concerning those competences of the Commission sub-delegated to the Heads of Union Delegations. In such a case the High Representative should take the appropriate action in accordance with the Staff Regulations ⁽¹⁾.
- (11) The internal auditor of the Commission should act as the internal auditor of the EEAS in respect of the implementation of both the Commission and the EEAS sections of the budget, subject to review.
- (12) In order to ensure democratic scrutiny of the implementation of the Union's budget, Heads of Union Delegations should provide an assurance, together with a report including information on the efficiency and effectiveness of internal management and control systems in their Delegation, as well as on the management of operations sub-delegated to them. The Heads of Union Delegations' reports should be annexed to the annual activity report of the responsible authorising officer by delegation and made available to the budgetary authority.
- (13) The term 'High Representative of the Union for Foreign Affairs and Security Policy' should, for the purposes of the Financial Regulation, be interpreted in accordance with the various functions of the High Representative under Article 18 of the Treaty on European Union.
- (14) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1605/2002 is hereby amended as follows:

1. Article 1 is replaced by the following:

'Article 1

1. This Regulation lays down the rules for the establishment and the implementation of the general budget of the European Union, (the "budget") and the presentation and auditing of the accounts.

2. For the purposes of this Regulation:

— the term "institution" refers to the European Parliament, the European Council and the Council, the European Commission, the Court of Justice of the European Union and the European Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (hereinafter the "EEAS").

⁽¹⁾ Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1.)

— the European Central Bank shall not be considered an institution of the Union.

3. Any reference to “the Communities” or to “the Union” shall be understood as a reference to the European Union and / or the European Atomic Energy Community as the context may require.’

2. In the second paragraph of Article 16, the words ‘the Commission’s External Service’ are replaced by ‘the Commission and the EEAS’.

3. In Article 28(1), the first subparagraph is replaced by the following:

‘1. Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter the “High Representative”) or by a Member State, which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and by the evaluation provided for in Article 27(4).’

4. In Article 30(3), the first subparagraph is replaced by the following:

‘3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 51, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.’

5. In the first paragraph of Article 31, the words ‘the European Council and’ are inserted in front of the words ‘the Council’ and the words ‘and the European External Action Service’ are inserted in front of the words ‘shall draw up’.

6. In Article 31, the following paragraph is inserted after the first paragraph:

‘The EEAS shall draw up an estimate of its revenue and expenditure, which it shall send to the Commission before 1 July each year. The High Representative will hold consultations with the Members of the Commission responsible for development policy, neighbourhood policy and international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities.’

7. In Article 33, the following paragraph is added:

‘3. In accordance with Article 8(5) of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service (*) and in order to ensure the budgetary transparency in the area of external action of the Union, the Commission shall transmit to the budgetary authority, together with the draft budget, a working document presenting, in a comprehensive way,

— all administrative and operational expenditure related to the external actions of the Union, including Common Foreign and Security Policy / Common Security and Defence Policy (CFSP/CSDP) tasks, and financed from the Union’s budget;

— the EEAS’ overall administrative expenditure for the previous year, broken down into expenditure by delegation and expenditure for the EEAS’ central administration; together with the operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.

The working document shall also:

— show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the budget appropriations in each Union Delegation, as well as in the central administration of the EEAS;

— show any increase or reduction of posts by grade and category in the central administration of the EEAS, and in all Union Delegations based on the preceding year;

— show the number of posts authorised for the financial year, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, Council and Commission staff; provide a detailed picture of all staff in place in the Union Delegations at the time of presenting the draft budget, including a breakdown by geographic area, individual country and mission, distinguishing establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.

(*) OJ L 201, 3.8.2010, p. 30.’

8. In Article 46(1), the following point is added:
- ‘(6) the total amount of Common Foreign and Security Policy (CFSP) expenditure shall be entered into one budget chapter, entitled CFSP, with specific budgetary articles. Those articles shall cover CFSP expenditure and shall contain specific budget lines identifying at least the single major missions’.
9. In the first paragraph of Article 50, the following sentences are added:
- ‘However, detailed arrangements may be agreed with the Commission in order to facilitate the implementation of the Union Delegations’ administrative appropriations. Those arrangements shall not contain any derogation from the provisions of the Financial Regulation or its implementing rules.’
10. In Article 51, the following paragraphs are added:
- ‘However, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section to the Heads of Union Delegations. It shall, at the same time, inform the High Representative thereof. When Heads of Union Delegations act as sub-delegated authorising officers of the Commission, they shall apply the Commission rules for the implementation of the budget and shall be submitted to the same duties, obligations and accountability as any other sub-delegated authorising officer of the Commission.
- The Commission may withdraw that delegation in accordance with its own rules.
- For the purposes of the second paragraph, the High Representative shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments.’
11. Article 53a is replaced by the following:
- ‘Article 53a
- Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed, either directly by its departments or by Union Delegations in accordance with the second paragraph of Article 51, or indirectly, in accordance with Articles 54 to 57.’
12. In Article 59, the following paragraph is added:
- ‘5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 51, they shall be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by sub-delegation. The Commission shall, at the same time, inform the High Representative thereof.’
13. At the end of the second subparagraph of Article 60(7), the following sentence is added:
- ‘The annual activity reports of the authorising officers by delegation shall also be made available to the budgetary authority.’
14. In section 2, the following Article is added:
- ‘Article 60a
1. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 51, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.
- To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget sub-delegated to them as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks sub-delegated to them.
- Where a situation or conflict of the type referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.
2. If Heads of Union Delegations find themselves in a situation referred to in Article 60(6), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 66(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.

3. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 51 shall report to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 60(7). The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them, and provide the assurance pursuant to Article 66(3a). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the budgetary authority taking into account, where appropriate, their confidentiality.

The Heads of Union Delegations shall fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information. In this context, they may be requested to attend meetings of the relevant bodies and assist the responsible authorising officer by delegation.

4. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 51 shall reply to any request by the authorising officer by delegation of Commission at its own request or, in the context of discharge, at the request of the European Parliament.

5. The Commission shall ensure that sub-delegating powers are not detrimental to the discharge procedure, in accordance with Article 319 of the Treaty on the Functioning of the European Union.'

15. In Article 61(1), the following subparagraphs are added after point (f):

'The responsibilities of the accounting officer of EEAS shall concern only the EEAS section of the budget as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire Commission section of the budget, including accounting operations relating to appropriations sub-delegated to Heads of Union Delegations.

The accounting officer of the Commission shall also act as the accounting officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 186a.'

16. Article 66 is amended as follows:

(a) the following paragraph is inserted:

'3a. In the event of sub-delegation to the Heads of Union Delegations, the authorising officer by delegation

shall be responsible for the definition of the internal management and control systems put in place, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of the budget, in accordance with Article 50 of the Implementing Rules.

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 60a(3).

Each year, Heads of Union Delegations shall provide to the authorising officer by delegation of the Commission the assurance on the internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them and the results thereof, in order to allow the authorising officer to establish his statement of assurance, as provided for in Article 60(7).'

(b) the following paragraph is added:

'5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 51, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 4 of this Article shall be competent for cases referred to in that paragraph.

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative and to the authorising officer by delegation of the Commission, provided the latter is not the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative to initiate, in the High Representative's capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by sub-delegation if irregularities concern the competencies of the Commission sub-delegated to them. In such a case, the High Representative will take appropriate action in accordance with the Staff Regulations in order to enforce decisions on disciplinary action and/or the payment of compensation, as recommended by the Commission.

The Member States shall fully support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of temporary staff to whom Article 2, point (e) of the Conditions of Employment of Other Servants of the European Communities applies.'

17. In Article 85, the following paragraphs are added:

'For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 51 shall be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 186a.'

18. The following Article is inserted:

'Article 147a

The EEAS shall be fully subject to the procedures provided for in Article 319 of the Treaty on the Functioning of the European Union and in Articles 145 to 147 of this Regulation. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.'

19. In Article 163, the first sentence is replaced by the following:

'The actions referred to in this Title may be implemented on a centralised basis by the Commission pursuant to Article 53a, by shared management, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations in compliance with the relevant provisions of Articles 53 to 57.'

20. In Article 165, the first sentence is replaced by the following:

'The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission and by Union Delegations in accordance with the second paragraph of Article 51.'

21. The following Article is inserted:

'Article 186a

The third subparagraph of Article 61(1) and the third paragraph of Article 85 will be reviewed in 2013 taking due account of the specificity of the EEAS and in particular that of the Union Delegations, and, where appropriate, an adequate financial management capacity of the EEAS.'

Article 2

This Regulation shall enter into force on the third 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 Strasbourg, 24 November 2010.

For the European Parliament
The President
J. BUZEK

For the Council
The President
O. CHASTEL

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