



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 6 May 2013

9318/13

LIMITE

**JUR 243
STAT 15**

CONTRIBUTION OF THE LEGAL SERVICE¹

Subject: Commission Proposal for a reform of the Staff Regulations
– Compatibility of envisaged reform measures with general principles of Union law

I. INTRODUCTION

1. On 14 December 2011, the Commission made a 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 of the European Union.² In this context, the Working Party on the Staff Regulations has been considering a range of comprehensive and far-reaching changes, including a new method for the annual adjustment of salaries and pensions, to be suspended for two years, a new solidarity levy, and measures relating to pensions and career structure.

¹ This document contains legal advice protected under Article 4(2) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, and not released by the Council of the European Union to the public.

² Document 18638/11.

2. The Council Legal Service has been asked to make a number of oral interventions on different aspects of the proposals under discussion. It has also made a number of written contributions (see documents 8542/12, 14600/12 and 16515/12). At the meeting of the Working Party on Staff Regulations on 26 April 2013, the Council Legal Service recalled the principles that would need to be taken into account in considering the package of proposals for amendment of the Staff Regulations. These are recorded below.
3. The Council Legal Service recalls that the legislator is free to adapt conditions of employment of Union officials provided that it respects the Treaties and general principles of Union law including fundamental rights.³ In this context, the general principles which require particular attention of the legislator insofar as they affect the legal positions of serving and retired staff are the following :
 - The **principle of acquired rights** is a general principle of Union law and closely related to the fundamental right of property. Where legal provisions have already given rise to rights or benefits, their retroactive withdrawal would be contrary to such general principle of law.⁴ Union institutions have carefully respected the acquired rights of staff taken over from other related entities which had earlier granted that staff, either by statutory provisions or by contract, certain rights or benefits.⁵

³ Legal Service contribution 8542/12, point 32.

⁴ See in this sense e.g. the judgments of the Court of First Instance of 27 March 1990, *Chomel / Commission*, T-123/89, Rec. 1990 p. II-131, point 34 and of the European Court of Justice of 22 September 1983, *Verli-Wallace / Commission*, 159/82, ECR 1983 p. 2711, point 8.

⁵ See e. g. Council Regulation No 3018/87 of 5 October 1987 introducing special transitional measures for the recruitment of overseas staff of the European Association for Cooperation as officials of the European Communities, Official Journal 1987, L 286, p. 1.

- The **principle of legitimate expectations** protects officials in service from changes to provisions of the Staff Regulations that have been fundamental to their decision to become officials of the Union, which implies, *inter alia*, leaving, in most cases, their country of origin as well as their social security system.⁶ Beyond the protection of fundamental conditions of employment, the principle of legitimate expectations requires the legislator to avoid abrupt changes to the legal and economic situation of officials in service and to permit them to adapt to the new situation by means of adequate transitional measures, which should be sufficiently long-lasting, progressive and appropriate, taking into account current legal regimes and legitimate concerns of officials with respect to the concrete measure affecting them.⁷

- By virtue of the general **principle of proportionality**, the legality of Union rules is subject to the condition that the means employed must be appropriate to attainment of the legitimate objective pursued by those rules, must not go further than is necessary to attain it, and, where there is a choice of appropriate measures, must, in principle, choose the least onerous one.⁸ In this context, attention must also be paid to the need for the legislator to state reasons which withstand legal scrutiny in court.

- Moreover, in adopting rules in the sphere of the civil service of the Union, the legislature is obliged to observe the general **principle of equal treatment**.⁹ A breach of the principle of equal treatment occurs when two categories of person whose factual and legal circumstances disclose no essential difference are treated differently and that difference in treatment is not objectively justified. The same applies where two different situations are treated identically.¹⁰ In this respect due account should also be taken of differences in the current legal regimes of officials.

⁶ See Legal Service contribution 8542/12, point 19.

⁷ See Legal Service opinion 8384/03, point 18 and 19 and Legal Service contribution 8542/12, point 25 and e. g. Article 22 of Annex XIII to the Staff Regulations.

⁸ See e.g. judgment of the General Court of 18 October 2011, *Purvis / Parliament*, T-439/09, not yet published, points 90 to 123.

⁹ Judgment of the European Court of Justice of 4 March 2010, *Angé Serrano and others / Parliament*, C-496/08 P, ECR 2010 p. I-1793, point 100.

¹⁰ *Ibidem*, points 99 and 101.

4. These principles are described in more detail in Legal Service contribution 8542/12, which also makes a preliminary assessment of their applicability in particular in relation to possible changes to the pension scheme.
5. The Council Legal Service also recalls that it will be for Union Courts to assess the adopted reform measures against these principles, both individually and taken as a package. It has explained on various occasions the detail and depth of judicial review which must be expected. The Union Courts will scrutinise each individual measure as regards compliance with general principles of law. Such measures will therefore need to respect the acquired rights of serving and retired officials, comply with the principles of proportionality, equal treatment and provide for appropriate and sufficient transitional measures, in particular insofar as legitimate expectations are affected.
6. The envisaged measures would mean unprecedented changes to the conditions of employment of Union officials and agents applying to officials in service and retired under the Staff Regulations and CEOS. This makes it difficult to predict to what extent a particular combination of measures would be found in breach of general principles and fundamental rights by Union Courts. However, the legislator should pay particular attention to the importance of their combined effect and strike the right balance between the attainment of legitimate aims and a justifiable overall effect on officials in service and retired.
7. As the Council Legal Service has advised at the meetings of the Working Party of Staff Regulations a number of the proposals under discussion - in particular as regards changes to the method for salary and pension adjustment, pension reform measures and career structure - raise issues as their compatibility with the above general principles of EU law. It underlines the importance of being able to demonstrate that modifications to the Staff Regulations are proportionate, reasoned and that provision is made for adequate transitional periods, in particular where legitimate expectations are engaged. The compatibility of such proposed measures, both individually and as a whole, with the general principles of EU law will need to be kept under review during the on-going consideration and negotiation of the proposed package of reforms.