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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, ECSC, EURATOM) No 2594/98

of 27 November 1998

amending Regulation (EEC, Euratom, ECSC) No 259/68 laying down the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing a Single Council and a Single Commission of the European Communities, and in particular Article 24 thereof,

Having regard to the proposal from the Commission presented after consulting the Staff Regulations Committee ([1]),

Having regard to the opinion of the European Parliament ([2]),

Having regard to the opinion of the Court of Justice ([3]),

Having regard to the opinion of the Court of Auditors ([4]),

Whereas Regulation (ECSC, EEC, Euratom) No 2175/88 ([5]) provides for a weighting of 100 to be applied to payments made under the Community pension scheme and allowances paid pursuant to Article 50 of the Staff Regulations to recipients who have established their residence in a non-member country, and to family allowances paid for dependent children of officials or former officials to other persons residing in a non-member country;

Whereas, in its judgment of 14 December 1995 in Case T-285/94, the Court of First Instance found that Article 3 of the said Regulation was unlawful because it conflicted with the second and third subparagraphs of Article 82(1) of the Staff Regulations from which it could not depart by virtue of the principle of the hierarchy of norms;

Whereas the institutions are required to maintain equality of treatment in respect of their officials irrespective of the situations in which they are placed in accordance with the requirements of the service;

Whereas weightings are designed to correct salaries and emoluments in order to ensure that officials enjoy equivalent purchasing power in the various countries where they are required to take up residence;

Whereas former officials and officials assigned non-active status, unlike serving officials, choose their place of residence exclusively on personal grounds;

Whereas the considerable differences between the situation of serving officials and that of former officials and officials assigned non-active status are justification for limiting the application of the weightings fixed for non-member countries to serving officials only;

Whereas these weightings are applied only to the remuneration of staff serving in non-member countries and cannot therefore be applied to the financial entitlements of persons residing in such countries who are not in active service;

Whereas the Staff Regulations of Officials laid down by Regulation (EEC, Euratom, ECSC) No 259/68 ([6]) and last amended by Regulation (EC, ECSC, Euratom) No 2458/98 ([7]) should therefore be amended,

HAS ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of officials of the European Communities are hereby amended as follows:

1. the sixth and seventh subparagraphs of Article 41(3) shall be replaced by the following:

   'The allowance and the total remuneration last received, as referred to in the fourth subparagraph, shall be weighted at the rate fixed for the country inside the Communities where the recipient proves he has his residence.

([1]) OJ C 266, 25. 8. 1998, p. 13.
([2]) OJ C 313, 12. 10. 1998.
([3]) Opinion delivered on 14 October 1998.
([4]) Opinion delivered on 23 September 1998.
([5]) OJ L 191, 22. 7. 1988, p. 1.
([6]) OJ L 56, 4. 3. 1968, p. 1.
([7]) OJ L 307, 17. 11. 1998, p. 1.

If the recipient establishes his residence in a country outside the Communities, the weighting shall be equal to 100.';

2. the first subparagraph of Article 67(4) shall be replaced by the following:

'Where, by virtue of Articles 1, 2 and 3 of Annex VII, such family allowances are paid to a person other than the official, these allowances shall be paid in the currency of the country in which that person is resident, calculated where applicable on the basis of the exchange rates referred to in the second subparagraph of Article 63. They shall be subject to the weighting for the country in question if it is inside the Communities or to a weighting equal to 100 if the country of residence is outside the Communities.';

3. the second and third subparagraphs of Article 82(1) shall be replaced by the following:

'They shall be weighted at the rate fixed for the country inside the Communities where the recipient proves he has his residence.

If the recipient of a pension establishes his residence in a country outside the Communities, the weighting of 100 shall be applied.'

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 27 November 1998.

For the Council

The President

C. EINEM