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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, EURATOM) No 1746/2002

of 30 September 2002

introducing, in the context of the reform of the Commission, special measures to terminate the service of officials of the European Communities appointed to an established post in the Commission of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the Commission proposal submitted after receiving the opinion of the Staff Regulations Committee,

Having regard to the opinion of the European Parliament [1],

Having regard to the opinion of the Court of Justice [2],

Having regard to the opinion of the Court of Auditors [3],

Whereas:

(1) The reform of the Commission is designed in particular to refocus the use of resources on its priority activities.

(2) In its communication of 9 February 2000 [4] the Commission indicated that it intends to use its human resources as efficiently as possible.

(3) The Commission meets a significant part of its needs through internal rationalisation and redeployment.

(4) The Commission moreover is taking the necessary steps, in particular through training, to help redeployed staff to adjust in the most satisfactory and effective way possible.

(5) However, the skills of a section of officials, who have reached the age of 55 and who have completed at least 15 years of service, are too far removed from the duties to be performed.

(6) The Commission needs new skill profiles and a rebalancing of its establishment plan; the number of officials retiring in the normal way will not be sufficient to allow the necessary skills to be acquired through recruiting new staff within a satisfactory timescale.

(7) Special measures should accordingly be adopted with regard to termination of service together with internal administrative arrangements for effective monitoring of the implementation of this Regulation.

(8) These measures must be applied as a matter of urgency and as far as possible with due regard for geographical balance, in compliance with the provisions of this Regulation.

(9) These measures must be budget-neutral. To this end a monitoring mechanism should be set up by the budgetary authority,

HAS ADOPTED THIS REGULATION:

Article 1

The Commission is hereby authorised, in the interests of the service and in order to take account of the need to renew skills arising from the refocusing of the use of its resources on priority activities, to adopt measures up to 31 December 2004 for terminating the service, within the meaning of Article 47 of the Staff Regulations, of officials who have reached the age of 55 and have completed at least 15 years service, regardless of the budget (operating or research) from which they are paid, with the exception of those in Grades A 1 and A 2, under the conditions specified by this Regulation.

Article 2

The total number of officials to be covered by the measures referred to in Article 1 shall be 600.

Respect for budgetary neutrality shall be monitored during the annual budget procedure. To this end, the Appointing Authority shall, taking into account the link between the number of officials whose service was terminated and the number of officials recruited, report to the budgetary authority at the appropriate time, certifying that the condition of budgetary neutrality is met.

[1] Opinion delivered on 24 September 2002 (not yet published in the Official Journal).
[2] Opinion delivered on 15 May 2002.
[3] OJ C 236, 1.10.2002, p. 1.
[4] OJ C 81, 21.3.2000, p. 1.

Article 3

Within the ceilings laid down in Article 2, and with due regard to the interests of the service, the Commission, after having consulted its Joint Committee, shall select, from among the officials applying for termination of their service under Article 1, those to whom it wishes to apply this measure.

It shall consider as a priority officials affected by the reorganisation measures and measures for refocusing the use of its resources on priority activities, in particular redeployment, whose skills are deemed to be too far removed from the duties to be performed. It shall take account of the amount of training necessary for them to undertake new tasks, their age, ability, performance, conduct in the service, family circumstances and length of service.

Article 4

1. Former officials whose service is terminated under Article 1 shall be entitled to a monthly allowance set as a percentage of the last basic salary received according to age and length of service at the time of departure as shown in the table in the Annex to this Regulation. The last basic salary shall be that for the grade and step held by the official at the time of departure, determined by reference to the table in Article 66 of the Staff Regulations in force on the first day of the month for which the allowance is payable.

2. Such former officials may at any time, at their own request, receive a retirement pension on the terms and conditions laid down in the Staff Regulations. Entitlement to the allowance shall then cease. It shall cease in any event not later than the last day of the month in which the former official concerned reaches the age of 65 years or as soon as he or she is eligible before that age for the maximum retirement pension of 70 % (Article 77 of the Staff Regulations).

At that point the former official shall automatically receive a retirement pension, which shall take effect on the first day of the calendar month following the month in which the allowance was paid for the last time.

3. The allowance provided for in paragraph 1 shall be adjusted by the weighting fixed, in accordance with the second subparagraph of Article 82(1) of the Staff Regulations, for the country situated inside the Community in which the recipient proves that he is resident. Recipients shall provide evidence each year of their place of residence.

If the recipient resides in a country situated outside the Community, the weighting to be applied to the allowance shall be 100.

The allowance shall be expressed in euro. It shall be paid in the currency of the country of residence of the recipient. However, if it is subject to the weighting of 100 under the second subparagraph, it shall be paid in euro.

An allowance paid in a currency other than euro shall be calculated on the basis of the exchange rates referred to in the second subparagraph of Article 63 of the Staff Regulations.

4. Where gross income accruing to the former official from any new employment, when combined with the allowance provided for in paragraph 1, exceeds the total gross remuneration last received by the official concerned, determined by reference to the salary scales in force on the first day of the month for which the allowance is payable, the amount of the excess shall be deducted from that allowance. That remuneration shall be weighted as provided for in paragraph 3.

Gross income and total gross remuneration last received, as referred to in the first subparagraph, mean sums paid after deduction of social security contributions but before deduction of tax.

The former official shall give a formal undertaking to provide any written proof which may be required, including an annual statement of income in the form of a salary statement or audited accounts, as appropriate, and a sworn or authenticated declaration that he or she is not in receipt of any other income from any new employment, and shall notify the institution of any other factor which may affect his or her right to the allowance, failing which he or she shall be liable to disciplinary action as provided for in Article 86 of the Staff Regulations.

5. As set out in Article 67 of the Staff Regulations and Articles 1, 2 and 3 of Annex VII thereto, the household allowance, dependent child allowance and education allowance shall be paid either to the recipient of the allowance provided for in paragraph 1 or to the person or persons to whom custody of the child or children has been entrusted by law or by an order of court or of the competent administrative authority; the household allowance shall be calculated by reference to the allowance provided for in paragraph 1.

6. Provided they do not receive income from gainful employment, recipients of the allowance shall be entitled, in respect of themselves and persons covered by their insurance, to benefits under the sickness insurance scheme provided for in Article 72 of the Staff Regulations provided they pay the relevant contribution, calculated on the basis of the allowance provided for in paragraph 1.

7. During the period for which they are entitled to receive the allowance, but for not more than 65 months, former officials shall continue to acquire further rights to a retirement pension based on the salary carried by their grade and step, provided that the contribution provided for in the Staff Regulations by reference to that salary is paid during that period and provided that the total pension does not exceed the maximum specified in the second subparagraph of Article 77 of the Staff Regulations. For the purposes of Article 5 of Annex VIII to the Staff Regulations, such period shall be considered to be a period of service.

8. Subject to Articles 1(1) and 22 of Annex VIII to the Staff Regulations, the surviving spouse of a former official who dies while in receipt of the allowance provided for in paragraph 1 shall be entitled, provided that they have been the spouse of the former official for at least one year when he or she left the service of the institution, to a survivor's pension equal to 60 % of the retirement pension which would have been payable, in the absence of any reduction under Article 9 of Annex VIII to the Staff Regulations being made, to the former official if he or she had qualified for it at the time of death.

The survivor's pension referred to in the previous subparagraph shall not be less than the amounts specified in the second subparagraph of Article 79 of the Staff Regulations. However, in no case may it exceed the amount of the retirement pension to which the former official would have been entitled had he or she survived and been granted a retirement pension when ceasing to be eligible for the allowance referred to above.

The minimum duration of the marriage as referred to in the first subparagraph shall not be taken into account if there are one or more children of a marriage contracted by the official before he or she left the service provided that the surviving spouse maintains or has maintained those children.

Nor shall the duration of the marriage be taken into account if the death of the former official resulted from one of the circumstances referred to at the end of the second subparagraph of Article 17 of Annex VIII to the Staff Regulations.

9. On the death of a former official in receipt of the allowance provided for paragraph 1, dependent children within the meaning of Article 2 of Annex VII to the Staff Regulations shall be entitled to an orphan's pension on the conditions set out in the first, second and third subparagraphs of Article 80 of the Staff Regulations and in Article 21 of Annex VIII to the Staff Regulations.

Article 5

This Regulation shall enter into force on the day following that 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, 30 September 2002.

For the Council

The President

P. S. MØLLER

ANNEX

ALLOWANCE PERCENTAGE

The allowance percentage referred to in Article 4(1) of this Regulation will be determined on the basis of the age and length of service of officials at the time of departure as shown in the table below:

Age / Length of service	from 55 to 56 years	from 57 to 58 years	from 59 to 60 years	from 61 to 62 years	63 years and over
from 15 to 19 years	60,0 %	60,0 %	60,0 %	62,0 %	64,0 %
from 20 to 24 years	60,0 %	60,0 %	62,0 %	64,0 %	66,0 %
from 25 to 29 years	62,0 %	64,0 %	66,0 %	68,0 %	70,0 %
30 years and over	64,0 %	66,0 %	68,0 %	70,0 %	70,0 %

Level of allowance depending on age and length of service

Age and length of service will be considered in relation to the actual date of departure of the official concerned.

Applying these conditions to the target group of officials on a weighted basis gives a maximum average allowance of 62,5 %.