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(Acts adopted under the EC Treaty/Euratom Treaty whose publication is obligatory)

REGULATIONS

COUNCIL REGULATION (EC) No 160/2009

of 23 February 2009

amending the Conditions of Employment of Other Servants 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 Protocol on the Privileges and Immunities of the European Communities, and in particular Article 13 thereof,

Having regard to the proposal presented by the Commission after consulting the Staff Regulations Committee,

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

Having regard to the opinion of the Court of Justice,

Having regard to the opinion of the opinion of the Court of Auditors,

Whereas:

(1) In accordance with Article 21 of Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament [2], Members are entitled to assistance from personal staff whom they may freely choose.

(2) At present, Members of the European Parliament employ all their staff directly under contracts subject to national law, while recovering the costs incurred from the European Parliament, subject to a fixed maximum amount.

(3) On 9 July 2008, the Bureau of the European Parliament adopted implementing measures for the Statute for Members of the European Parliament. Pursuant to Article 34 of those implementing measures, Members shall make use of:

(a) 'accredited parliamentary assistants', employed at one of the European Parliament's three places of work under the specific legal arrangements adopted on the basis of Article 283 of the Treaty and whose contracts are concluded and administered directly by the European Parliament, and

(b) natural persons who are to assist Members in their Member States of election and who have concluded an employment or service contract with them in keeping with applicable national law, in accordance with the conditions laid down in the aforementioned implementing measures, hereinafter referred to as 'local assistants'.

(4) In contrast to local assistants, accredited parliamentary assistants are, as a general rule, expatriates. They work in the premises of the European Parliament in a European, multilingual and multicultural environment and undertake tasks which are directly linked to the work carried out by one or several Members of the European Parliament in the exercise of their functions as Members of the European Parliament.

[1] Opinion of 16 December 2008 (not yet published in the Official Journal).
[2] OJ L 262, 7.10.2005, p. 1.

(5) For these reasons, and with a view to ensuring transparency and legal certainty through common rules, it is appropriate to provide for accredited parliamentary assistants to be employed by way of direct contracts with the European Parliament. However, local assistants, including those working for Members elected in one of the Member States in which the European Parliament's three places of work are located, should continue to be employed, in accordance with the implementing measures for the Statute for Members of the European Parliament, by Members of the European Parliament under contracts concluded under the applicable national law in the Member State in which they are elected.

(6) It is therefore appropriate for accredited parliamentary assistants to be subject to the Conditions of employment of other servants of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68 of the Council [1] in such a way as to take account of their particular circumstances, the particular tasks they are called on to perform and the specific duties and obligations they have to fulfil vis-à-vis the Members of the European Parliament for whom they are called on to work.

(7) The introduction of this specific category of servants does not affect Article 29 of the Staff Regulations of Officials of the European Communities, laid down by Regulation (EEC, Euratom, ECSC) No 259/68, hereinafter referred to as the 'Staff Regulations', which provides that internal competitions are only open to officials and temporary staff, and no provision of this Regulation may be construed as giving accredited parliamentary assistants privileged or direct access to posts of officials or other categories of servants of the European Communities or to internal competitions for such posts.

(8) As is the case for contract staff, Articles 27 to 34 of the Staff Regulations should not apply to accredited parliamentary assistants.

(9) Accredited parliamentary assistants should thus constitute a category of other servants specific to the European Parliament, in particular with regard to the fact that they provide, under the direction and authority of one or several Members of the European Parliament and in a relationship of mutual trust, direct assistance to that Member or those Members in the exercise of their functions as Members of the European Parliament.

(10) Accordingly, it is necessary to amend the Conditions of employment of other servants of the European Communities in order to incorporate this new category of other servants, taking account, on the one hand, of the specific nature of the duties, functions and responsibilities of accredited parliamentary assistants, which are designed to allow them to provide direct assistance to Members of the European Parliament in the exercise of their functions as Members of the European Parliament, under their direction and authority, and, on the other, of the contractual relationship between those accredited parliamentary assistants and the European Parliament.

(11) Where provisions of the Conditions of employment of other servants of the European Communities apply to accredited parliamentary assistants, directly or by analogy, these factors should be taken into account, having strict regard, in particular, to the mutual trust which has to characterise the working relationship between the accredited parliamentary assistants and the Member or Members of the European Parliament whom they assist.

(12) In the light of the nature of the duties of accredited parliamentary assistants, it is necessary to provide for only one category of accredited parliamentary assistants, but divided into grades, to which such assistants should be assigned by indication of the Members concerned in accordance with the implementing measures adopted by internal decision of the European Parliament.

(13) The contracts of accredited parliamentary assistants concluded between them and the European Parliament should be based on mutual trust between the accredited parliamentary assistant and the Member or Members whom he assists. The duration of such contracts should be directly linked to the duration of the mandate of the Members concerned.

(14) Accredited parliamentary assistants should have statutory representation outside the system that applies to officials and other staff of the European Parliament. Their representatives should act as interlocutor vis-à-vis the competent authority of the European Parliament, taking into account that a formal link should be established between the statutory representation of staff and the autonomous representation of assistants.

(15) The principle of budgetary neutrality should be observed in respect of the introduction of this new category of staff.

(16) The implementing measures laid down by internal decision of the European Parliament should include further rules for the implementation of this Regulation, based on the principle of sound financial management as set out in Title II of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [2].

[1] OJ L 56, 4.3.1968, p. 1.

[2] OJ L 248, 16.9.2002, p. 1.

(17) The entry into force of these new provisions should coincide with the entry into force of the Statute for Members of the European Parliament,

HAS ADOPTED THIS REGULATION:

Article 1

The Conditions of employment of other servants of the European Communities are hereby amended as set out in the Annex.

Article 2

The appropriations entered in the European Parliament section of the general budget of the European Communities and earmarked to cover parliamentary assistance, the annual amounts of which will be determined within the framework of the annual budgetary procedure, cover all the costs directly associated with Members' assistants, be they accredited parliamentary assistants or local assistants.

Article 3

The European Parliament shall, no later than 31 December 2011, present a report on the application of this Regulation in order to examine the possible need to adapt the rules applying to parliamentary assistants.

On the basis of this report, the Commission may make any proposals it deems appropriate to this effect.

Article 4

This Regulation shall enter into force on the first day of the European Parliament parliamentary term beginning in 2009.

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

Done at Brussels, 23 February 2009.

For the Council
The President
A. VONDRA

ANNEX

The Conditions of Employment of other servants of the European Communities are hereby amended as follows:

1. in Article 1, the following indent shall be inserted after '— special advisers,':

'— accredited parliamentary assistants.';

2. the following Article shall be inserted after Article 5:

'Article 5a

For the purposes of these Conditions of employment, "accredited parliamentary assistants" means persons chosen by one or more Members and engaged by way of direct contract by the European Parliament to provide direct assistance, in the premises of the European Parliament at one of its three places of work, to the Member or Members in the exercise of their functions as Members of the European Parliament, under their direction and authority and in a relationship of mutual trust deriving from the freedom of choice referred to in Article 21 of Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (*).

(*) OJ L 262, 7.10.2005, p. 1.';

3. Titles VII and VIII with Articles 125 to 127 become Titles VIII and IX with Articles 140 to 142. A new Title VII shall be inserted:

'TITLE VII

PARLIAMENTARY ASSISTANTS

CHAPTER 1

General provisions

Article 125

1. The European Parliament shall adopt implementing measures by internal decision for the purposes of the application of this Title.

2. Accredited parliamentary assistants shall not be assigned to a post included in the list of posts appended to the section of the budget relating to the European Parliament. Their remuneration shall be financed under the appropriate budget heading and they shall be paid from the appropriations allocated to the section of the budget relating to the European Parliament.

Article 126

1. The accredited parliamentary assistant shall be classified by grade in accordance with the indication given by the Member or Members whom the assistant will support, in accordance with the implementing measures referred to in Article 125(1). In order to be classified in grades 14 to 19, as set out in Article 133, accredited parliamentary assistants shall be required, as a minimum, to have a university degree or equivalent professional experience.

2. Article 1e of the Staff Regulations, on measures of a social nature and working conditions, shall apply by analogy, provided that such measures are compatible with the particular nature of the tasks and responsibilities taken on by accredited parliamentary assistants.

By way of derogation from Article 7, the arrangements relating to the autonomous representation of accredited parliamentary assistants shall be laid down by the implementing measures referred to in Article 125(1) taking into account that a formal link shall be established between the statutory representation of staff and the autonomous representation of assistants.

CHAPTER 2

Rights and obligations

Article 127

Articles 11 to 26a of the Staff Regulations shall apply by analogy. Having strict regard, in particular, to the specific nature of the functions and duties of accredited parliamentary assistants and the mutual trust which has to characterise the working relationship between them and the Member or Members of the European Parliament whom they assist, the implementing measures relating to this area, adopted pursuant to Article 125(1), shall take account of the specific nature of the working relationship between Members and their accredited parliamentary assistants.

CHAPTER 3

Conditions of engagement

Article 128

1. Article 1d of the Staff Regulations shall apply by analogy, taking into account the relationship of mutual trust between the Member of the European Parliament and his accredited parliamentary assistant or assistants, it being understood that Members of the European Parliament may base their selection of accredited parliamentary assistants also on political affinity.

2. An accredited parliamentary assistant shall be selected by the Member or Members of the European Parliament whom he is to assist. Without prejudice to any additional requirements which may be laid down in the implementing measures referred to in Article 125(1), the assistant may be engaged only on condition that he:

(a) is a national of one of the Member States of the Communities, unless an exception is authorised by the authority referred to in the first paragraph of Article 6, and enjoys his full rights as a citizen;

(b) has fulfilled any obligations imposed on him by the laws concerning military service;

(c) produces the appropriate character references as to his suitability for the performance of his duties;

(d) is physically fit to perform his duties;

(e) has a thorough knowledge of one of the languages of the Community and a satisfactory knowledge of another Community language to the extent necessary for the performance of his duties; and

(f) has completed:

(i) a level of post-secondary education attested by a diploma;

(ii) a level of secondary education attested by a diploma giving access to post-secondary education, and appropriate professional experience of at least three years; or

(iii) where justified in the interest of the service, professional training or professional experience of an equivalent level.

Article 129

1. An accredited parliamentary assistant shall provide evidence of physical fitness to the European Parliament's medical service in order that the European Parliament may be satisfied that he fulfils the requirements of Article 128(2)(d).

2. Where a negative medical opinion is given as a result of the medical examination provided for in paragraph 1, the candidate may, within 20 days of being notified of this opinion by the institution, request that his case be submitted for the opinion of a medical committee composed of three doctors chosen by the authority referred to in the first paragraph of Article 6 from among the institutions' medical officers. The medical officer responsible for the initial negative opinion shall be heard by the medical committee. The candidate may refer the opinion of a doctor of his choice to the medical committee. Where the opinion of the medical committee confirms the conclusions of the medical examination provided for in paragraph 1, the candidate shall pay 50 % of the fees and of the incidental costs.

Article 130

1. The contracts of accredited parliamentary assistants shall be concluded for a fixed period and shall specify the grade in which the assistant is classified. A contract shall not be extended more than twice during a parliamentary term. Unless otherwise specified in the contract itself and without prejudice to Article 139(1)(c), the contract shall terminate at the end of the parliamentary term during which it was concluded.

2. The implementing measures referred to in Article 125(1) shall set out a transparent framework for classification taking account of Article 128(2)(f).

3. Where an accredited parliamentary assistant concludes a new contract, a new decision concerning his grading shall be taken.

CHAPTER 4

Working conditions

Article 131

1. Accredited parliamentary assistants shall be engaged to perform either part-time or full-time duties.

2. The weekly working hours of an accredited parliamentary assistant shall be set by the Member, but in normal circumstances may not exceed 42 hours per week.

3. Accredited parliamentary assistants may not be required to work overtime except in the event of an emergency or exceptional workload. Article 56, first subparagraph, of the Staff Regulations shall apply by analogy. The implementing measures referred to in Article 125(1) may lay down rules in this regard.

4. However, overtime worked by accredited parliamentary assistants shall carry no right to compensation or remuneration.

5. Articles 42a, 42b, 55a and 57 to 61 of the Staff Regulations (leave, hours of work and public holidays) and Articles 16(2) to (4) and Article 18 of the present Conditions of employment shall apply by analogy. Special leave, parental leave and family leave shall not extend beyond the term of the contract.

CHAPTER 5

Remuneration and expenses

Article 132

Save as otherwise provided in Articles 133 and 134, Article 19, Article 20(1) to (3) and Article 21 of these Conditions of employment and Article 16 of Annex VII to the Staff Regulations (remuneration and expenses) shall apply by analogy. The arrangements for reimbursement of mission expenses shall be laid down in the implementing measures referred to in Article 125(1).

Article 133

The scale of basic salaries shall be as provided for in the following table:

Grade	1	2	3	4	5	6	7
Full-time basic salary	1 619,17	1 886,33	2 045,18	2 217,41	2 404,14	2 606,59	2 826,09
Grade	8	9	10	11	12	13	14
Full-time basic salary	3 064,08	3 322,11	3 601,87	3 905,18	4 234,04	4 590,59	4 977,17
Grade	15	16	17	18	19		
Full-time basic salary	5 396,30	5 850,73	6 343,42	6 877,61	7 456,78		

Article 134

By way of derogation from the last subparagraph of Article 4(1) of Annex VII to the Staff Regulations, the expatriation allowance shall not be less than EUR 350.

CHAPTER 6

Social security benefits

Article 135

Save as otherwise provided in Article 136, Articles 95 to 115 (social security) shall apply by analogy.

Article 136

1. By way of derogation from the second subparagraph of Article 96(3) and without prejudice to the other provisions of that Article, the amounts calculated under that provision may neither be less than EUR 850 nor exceed EUR 2 000.

2. By way of derogation from Articles 77 and 80 of the Staff Regulations and Articles 101 and 105 of these Conditions of employment, the minimum amounts used for the purpose of calculating pension and invalidity benefits shall correspond to the basic salary of an accredited parliamentary assistant in grade 1.

3. Article 112 shall only apply to contracts concluded for a period not exceeding one year.

CHAPTER 7

Recovery of undue payment

Article 137

The provisions of Article 85 of the Staff Regulations on the recovery of undue payment shall apply *mutatis mutandis*.

CHAPTER 8

Appeals

Article 138

The provisions of Title VII of the Staff Regulations on appeals shall apply by analogy. The implementing measures referred to in Article 125(1) may lay down complementary rules on the internal procedures.

CHAPTER 9

Termination of employment

Article 139

1. Apart from cessation on death, the employment of the accredited parliamentary assistant shall cease:

(a) on the date stated in the contract as provided for in Article 130(1);

(b) at the end of the month in which the accredited parliamentary assistant reaches the age of 65;

(c) in the case of an assistant engaged to assist only one Member of the European Parliament pursuant to Article 128(2), at the end of the month in which that Member's term of office ends, whether by death or resignation or for any other reason;

(d) taking into account the fact that trust is the basis of the working relationship between the Member and his accredited parliamentary assistant, at the end of the period of notice specified in the contract, which shall give the accredited parliamentary assistant or the European Parliament, acting at the request of the Member or Members of the European Parliament whom the accredited parliamentary assistant was taken on to assist, the right to terminate the contract before its expiry. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months. The period of notice shall not, however, start to run during maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during maternity or sick leave subject to these limits;

(e) where the accredited parliamentary assistant no longer satisfies the conditions laid down in Article 128(2)(a), subject to any authorisation of an exception pursuant to that provision. Should an exception not be authorised, the period of notice referred to in point (d) shall apply.

2. Where the contract ceases pursuant to paragraph 1(c), the accredited parliamentary assistant shall be entitled to compensation equal to one third of his basic salary for the period between the date when his duties end and the date when his contract expires, subject however to a maximum of three months' basic salary.

3. Without prejudice to Articles 48 and 50 which are applicable by analogy, the employment of an accredited parliamentary assistant may be terminated without notice in serious cases of failure to comply with his obligations, whether intentionally or through negligence on his part. A reasoned decision shall be taken by the authority referred to in the first paragraph of Article 6, after the person concerned has had an opportunity to submit his defence.

Specific provisions relating to the disciplinary procedure shall be laid down in the implementing measures referred to in Article 125(1).

4. Periods of employment as an accredited parliamentary assistant shall not be regarded as constituting "years of service" for the purposes of Article 29(3) and (4) of the Staff Regulations.';

4. in Article 126, the words 'subject to Article 127' shall be replaced by the words 'subject to Article 142'.