

Annex II - Legal references (emphasis added)

I. STAFF REGULATIONS

- **Article 26:** The personal file of an official shall contain:
 - (a) all his documents concerning his administrative status and all reports relating to his ability, efficiency and conduct;
 - (b) any comments by the officials on such documents.(...)

An official shall have the right, even after leaving the service, to acquaint himself with all the documents in his file and to make copies of them.

- **Article 34:** 1. Officials shall serve a nine-month **probationary period** before they can be established. Where, during his probationary period, an official is prevented, by sickness, maternity leave under Article 58, or accident, from performing his duties for a continuous period of at least one month, the appointing authority may extend his probationary period by the corresponding length of time.

2. A report on the probationer may be made at any time during the probationary period if his work is proving obviously inadequate.
This report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within a period of eight days. The report and the comments shall be transmitted immediately by the probationer's superior to the appointing authority, which shall, within a period of three weeks, obtain the opinion of the Joint Reports Committee on the action to be taken. The appointing authority may decide to dismiss the probationer before the end of the probationary period, giving him one month's notice. (...)

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the probationer to perform the duties pertaining to his post and also his efficiency and conduct in the service. This report shall be communicated to the probationer, who shall have the right to submit his comments in writing within a period of eight days.
Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period, the report and the comments should be transmitted immediately by the probationer's immediate superior to the appointing authority, which shall, within a period of three weeks, consult the Joint Reports Committee on the action to be taken.

- **Article 43:** The ability, efficiency and conduct in the service of each official shall be the subject of a **periodical report** made at least once every two years as provided for by each institution in accordance with Article 110. Each institution shall lay down provisions conferring the right to lodge **an appeal within the reporting procedure**, which has to be exercised before lodging a complaint as referred to in Article 90(2).

As of grade 4, for officials in function group AST, the report may also contain an opinion as to whether, on the basis of performance, he has the potential to carry out an administrator's function.
The report shall be communicated to the official. He shall be entitled to make any comments thereon which he considers relevant.

- **Article 45:** 1. **Promotion** shall be by decision of the Appointing Authority in the light of Article 6(2). It shall be effected by appointment of the official to the

next higher grade in the function group to which he belongs. Promotion shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion. When considering comparative merits, the Appointing Authority shall in particular take account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with Article 28(f) and, where appropriate, the level of responsibilities exercised by them.

2. Officials shall be required to demonstrate before their first promotion after recruitment **the ability to work in a third language** among those referred to in Article 314 of the EC Treaty. The institutions shall adopt common rules by agreement between them for implementing this paragraph. These rules shall lay down the detailed arrangements for the assessment of official's ability to work in a third language, in accordance with Article 7(2)(d) of Annex III.

- **Article 45a [Certification]:** 1. By way of derogation from Article 5(3)(b) and (c), an official in function group AST may, from grade 5, be appointed to a post in function group AD, on condition that:

(a) he has been **selected** in accordance with the **procedure laid down in paragraph 2 of this Article** to take part in a compulsory training programme as set out in point (b) of this paragraph,

(b) he has completed a training programme defined by the Appointing Authority comprising a set of compulsory training modules, and

(c) he is on the list drawn up by the Appointing Authority of candidates who have passed an oral and written examination demonstrating that he has successfully taken part in the training programme mentioned under point (b) of this paragraph. The contents of this examination shall be determined in accordance with Article 7(2)(c) of Annex III.

2. The Appointing Authority shall draw up a draft list of AST officials selected to take part in the aforesaid training programme on the basis of their periodical reports referred to in Article 43 and their level of education and training and taking account of the needs of the services. This draft shall be submitted to a joint committee for its opinion.

This committee may hear officials who have applied to take part in the aforesaid training programme, and representatives of the Appointing Authority. It shall, by a majority vote, deliver a reasoned opinion on the draft list proposed by the Appointing Authority. The Appointing Authority shall adopt the list of officials who are entitled to take part in the aforesaid training programme.

3. Appointment to a post in function group AD shall not affect the grade and step occupied by the official at the moment of appointment.

(...)

5. The institutions shall adopt general provisions for giving effect to this Article in accordance with Article 110.

- **Article 90(2):** Any person to whom these Staff Regulations apply may submit **to the appointing authority a complaint** against an act affecting him adversely, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

- on the date of publication of the act if it is a measure of a general nature;

- on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person is such as to affect adversely another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;
- on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided in paragraph 1.

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.

- **Article 110(1):** The general provisions for giving effect to these Staff Regulations shall be adopted by each institution after consulting its Staff Committee and the Staff Regulations Committee. Agencies shall adopt the appropriate implementing rules for giving effect to these Staff Regulations, after consultation of the relevant Staff Committee and in agreement with the Commission. (...)

Annex II to Staff Regulations

(on Composition and Procedure of the bodies provided for in Article 9)

- **Article 10:** Members of the Report Committee shall be appointed each year by the Appointing Authority and the Staff Committee, each appointing the same number from among officials of the institution in function group AD. The Committee shall elect its chairman. Members of the Joint Committee shall not be members of the Reports Committee. (...)
- **Article 11:** The proceedings of the Reports Committee shall be secret.

Annex III to Staff Regulations

- **Article 7(2):** The task of the European Personnel Selection Office shall be to:
 - (c) determine the contents of all examinations organised by the institutions in order to ensure that the requirements of Article 45a(1)(c) of the Staff Regulations are met in a harmonised and consistent manner.
 - (d) assume general responsibility for the definition and organisation of the assessment of linguistic ability in order to ensure that the requirements of Article 45(2) of the Staff Regulations are met in a harmonised and consistent manner.

Annex XIII to Staff Regulations

(on Transitional measures applicable to EU officials - Article 107a)

- **Article 10:**
 1. Officials in service before 1 May 2004 categories C or D shall be assigned as of 1 May 2006 to career streams allowing for promotions:
 - (a) in former category C up to grade AST 7;
 - (b) in former category D up to grade AST 5.
 (...)
 3. An official to whom paragraph 1 applies may become a member of the assistants' function group without restriction if he passes an open competition or on the basis of an attestation procedure. The attestation procedure shall be based on the seniority, experience, merit and level of training of officials and the

availability of posts in the function group AST. A joint committee shall examine the candidatures of officials for attestation. The institutions shall adopt rules implementing this procedure before 1 May 2004. (...)

II. CONDITIONS OF EMPLOYMENT OF OTHER SERVANTS

- **Article 10(3) [Regrading]:** Assignment of temporary staff to a post carrying a higher grade than that at which they were engaged shall be recorded in an agreement supplementary to their contract of service. (...)
- **Article 11(1):** The provisions of Articles 11 to 26 of the Staff Regulations, concerning the rights and obligations of officials, shall apply by analogy. (...)
- **Article 14:** A member of the temporary staff may be required to serve a probationary period not exceeding six months. (...)

Not less than one month before the expiry of the **probationary period**, a report shall be made on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his conduct and efficiency in the service. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing. (...)

A report on the probationary member of temporary staff may be made at any time during the probationary period if his work is proving obviously inadequate. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing. On the basis of the report, the authority authorized to conclude contracts of engagement may decide to dismiss the member of the temporary staff before the end of the probationary period by giving him one month's notice.

- **Article 15:** 1. Temporary staff shall be graded initially in accordance with Article 32 of Staff Regulations.

Where a member of the temporary staff is **assigned to a post corresponding to a higher grade**, as provided for in the third paragraph of Article 10, his grading shall be determined in accordance with Article 46 of the Staff Regulations.

2. The provisions of Article 43 of the Staff Regulations, concerning **reports**, shall apply by analogy.

- **Article 81:** Article 11 shall apply by analogy.
- **Article 84:** A member of the contract staff whose contract is concluded for duration of at least one year shall serve a probationary period for the first six months of his period of employment if he is in function group I and the first nine months if he is in any other function group. (...)

Not less than one month before the expiry of the **probationary period**, a report shall be made on the ability of the member of the contract staff to perform the duties pertaining to his post and also on his conduct and efficiency in the

service. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing.

A report on the probationary member of the contract staff may be made at any time during the probationary period if his work is proving obviously inadequate. The report shall be communicated to the person concerned, who shall have the right to submit his comments in writing. On the basis of the report, the authority referred to in the first paragraph of Article 6 may decide to dismiss the member of the contract staff before the end of the probationary period by giving him one month's notice.

- **Article 85(3)**: Contract staff in function group IV shall before renewal of a contract for an indefinite period be required to demonstrate **the ability to work in a third language** among those referred to in Article 314 of the EC Treaty. The common rules on access to training and the modalities of the assessment mentioned in Article 45(2) of the Staff Regulations shall apply by analogy.
- **Article 87(1)**/ The first paragraph of Article 43 of the Staff Regulations, concerning **reports**, shall apply by analogy to contract staff referred to in Article 3a engaged for a period of not less than one year.