



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 08.07.1998
COM(1998) 421 final

98/0235 (CNS)

Proposal for a

COUNCIL REGULATION (EC)

**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**

(presented by the Commission)

EXPLANATORY MEMORANDUM

Council Regulation (ECSC, EEC, Euratom) No 2175/88 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.

In its judgment of 14 December 1995 in Case T-285/94, the Court of First Instance found that Article 3 of the Regulation was unlawful because it conflicted with the second and third subparagraphs of Article 82(1) of the Staff Regulations, which provide that pensions are weighted at the rate fixed for the country where the recipient resides, whether inside or outside the Communities.

The Court ruled that, by virtue of the principle of the hierarchy of norms, a regulation such as the one under review (adopted without the procedure laid down for the revision of the Staff Regulations having been followed) could not amend a specific provision of the Staff Regulations.

It is therefore necessary to remedy the conflict of norms highlighted by the Court ruling.

Since the situation of former officials differs from that of serving staff, in particular with regard to the choice of place of residence, there are grounds for maintaining the distinction introduced by Regulation No 2175/88 limiting the application of weightings exclusively to the remuneration of staff serving in non-member countries.

In order to comply with the ruling referred to above, Articles 82, 41 and 67 of the Staff Regulations should be amended by applying the procedure laid down for the purpose.

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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,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Court of Justice,

Having regard to the opinion of the Court of Auditors,

Whereas Council Regulation (ECSC, EEC, Euratom) No 2175/88 of 18 July 1988 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 above 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,

HAS ADOPTED THIS REGULATION:

Article 1

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

1. The second and third subparagraphs of Article 82(1) are 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.”

2. The sixth and seventh subparagraphs of Article 41(3) are 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.

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

3. The first subparagraph of Article 67(4) is 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 paragraph 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.”

Article 2

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

It shall apply from

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

Done at Brussels,

**For The Council
The President**

FINANCIAL STATEMENT

1. TITLE OF OPERATION

Amendment of Articles 82, 41 and 67 of the Staff Regulations
Weightings outside the Union.

2. BUDGET HEADINGS INVOLVED

A 1090 - A 1290 - A 1990

3. LEGAL BASIS

Article 82(1), 2nd paragraph; Article 41(3), 6th and 7th paragraphs; Article 67(4),
1st paragraph of the Staff Regulations

4. DESCRIPTION OF OPERATION

4.1 General objective: to fix the weighting for pensions at 100 for countries
outside the Union in order to resolve the conflict of norms raised by the
ruling of the Court of First Instance in Case T-285/94.

4.2. Period covered and arrangements for renewal or extension: with
effect from the date of adoption - no renewal required.

5. CLASSIFICATION OF EXPENDITURE OR REVENUE

5.1. Compulsory expenditure

5.2. Non-differentiated appropriations

5.3. **Type of revenue involved:** Not applicable.

6. TYPE OF EXPENDITURE OR REVENUE

Staff expenditure

7. FINANCIAL IMPACT

7.1. Method of calculating total cost of operation (definition of unit costs):
Not applicable

7.2. Itemised breakdown of cost

Breakdown	Budget n	n + 1	...	n + 5 et seq.	TOTAL
A 1090	n/a	n/a			n/a
A 1290	n/a	n/a			n/a
A 1990	n/a	n/a			n/a

8. ELEMENTS OF COST-EFFECTIVENESS ANALYSIS

8.1. Specific and quantified objectives; target population

- **Specific objectives:** to resolve the conflict of norms by amending the Staff Regulations
- **Target population:** more than 110 people in receipt of retirement pensions or allowances in respect of non-active status, retirement in the interests of the service or dismissal.

8.2. Grounds for the operation

Under the terms of Council Regulation (ECSC, EEC, EURATOM) No 2175/88, the weighting applicable to benefits payable under the Community pension scheme, to allowances payable under Article 50 of the Staff Regulations where the recipient has established his residence in a third country, and to family allowances payable to third parties having the care of children of officials or former officials and residing in a third country, is 100.

In its judgment of 14 December 1995 in Case T-285/94, the Court of First Instance held that Article 3 of the said Regulation was illegal, since it conflicted with the provisions of the second and third paragraphs of Article 82(1) of the Staff Regulations, which states that pensions are to be weighted at the rate fixed for the country inside or outside the Communities where the recipient has his residence

Since the position of former officials is different from that of serving officials, particularly as regards the choice of their place of residence, it is justified to maintain the distinction made in Regulation No 2175/88 as regards the application of weightings and to confine this application exclusively to the remuneration of staff serving in non-member countries.

In order to comply with the above ruling, therefore, it is necessary to amend **Articles 41, 67 and 82** of the Staff Regulations by means of the procedural arrangements laid down for the revision of these Regulations.

9. ADMINISTRATIVE EXPENDITURE (PART A OF THE BUDGET)

9.1. Impact on number of staff - None

**9.2. Increase in other operating expenditure as a result of the operation.
Method of calculation**

None: the weighting of 100 is currently applied to pensions paid in countries outside the Union on the basis of Council Regulation No 2175/88 and remains fixed at 100 by the amendment to the Staff Regulations.

ISSN 0254-1475

COM(98) 421 final

DOCUMENTS

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Catalogue number : CB-CO-98-428-EN-C

ISBN 92-78-37844-5

Office for Official Publications of the European Communities

L-2985 Luxembourg