

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(78) 395 final

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PROPOSAL FOR A
COUNCIL REGULATION (EURATOM, CECA, CEE)

amending the Staff Regulations of Officials and
Conditions of Employment of Other Servants of the
European Communities and establishing an Administrative
Tribunal of the European Communities

(presented by the Commission to the Council)

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Proposal for a Council Regulation amending the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities and establishing an Administrative Tribunal of the European Communities.

(Explanatory memorandum)

I. At the meeting of the Conference of Ministers of Justice on 26 November 1974 the Council agreed to the principle of setting up a court of first instance to hear litigation between the institutions and their staff, and asked the Commission to submit proposals.

II. There can hardly be any doubt as to the value of setting up such a body, for the following considerations:

(a) The volume of cases of all kinds brought before the Court of Justice has expanded considerably in recent years as progress has been made in the building of Europe, as three new Member States have joined the Community and as courts in the Member States have made increasing use of the procedure for seeking preliminary rulings from the Court of Justice on the interpretation of points of Community law.

The number of new cases entered in the register (excluding applications for interpretation, for review and for interim measures) rose from 31 in 1966 to 82 in 1972 and 158 in 1977. There were 151 new cases in the first half of 1978 alone.

The new jurisdiction conferred on the Court of Justice by Article 63 of the European Patent Convention is also likely to bring about a further increase in its workload.

Of these cases a fairly substantial proportion is accounted for by litigation involving Community staff - 41 out of 102 new cases in 1974, 26 out of 130 in 1975, 19 out of 126 in 1976 and 25 out of 158 in 1977.

These cases often require detailed investigation in order to ascertain fairly complex circumstances of fact, and considerable time is consequently taken up.

There is no doubt that the Court's burden would be lightened if, as proposed, there were an Administrative Tribunal with jurisdiction over such cases. While it is true that, as a result of Article 179 of the EEC Treaty, it would be impossible to withdraw all jurisdiction from the Court of Justice, the fact remains that the volume of staff litigation before the Court of Justice would be lightened, if only through removal of the need for detailed investigation of the facts, by subdivision of jurisdiction in such terms that the Court would be confined to hearing applications for annulment of judgments given by the Tribunal on a point of law.

(b) As regards the law affecting civil servants in the several Member States, it is exceedingly rare for litigation in such matters to be within the exclusive and unlimited jurisdiction of the highest court in the land.

Apart from litigation affecting the most senior officials, there is generally a court or tribunal of first instance (administrative court or the ordinary courts).

The current system, giving the highest court in Europe exclusive and unlimited jurisdiction in litigation between the Communities and their staff, would accordingly not appear to be consonant with the general approach to jurisdiction in such matters in the Member States.

(c) Modern conceptions of the administration of justice are bringing the judges closer and closer to the litigant. This would be properly reflected if an Administrative Tribunal were set up to hear cases involving the institutions and their staff with membership giving representation to both sides and the power to attempt a conciliation between the parties. Furthermore, access to the Tribunal should be made as easy as possible by provision for a circuit-type arrangement and by giving staff litigants the possibility of pleading their own case or of being assisted by any person of their choice, not necessarily a lawyer, according to a simple procedure.

2. As regards the legal basis for establishment of the Tribunal by amendment of the Staff Regulations rather than of the Treaties, Article 179 of the EEC Treaty authorizes the Council, as the body having power to adopt Staff Regulations, to determine the jurisdiction of the Court of Justice in litigation involving staff. This jurisdiction, which has hitherto been unlimited (except that, as soon as the first Staff Regulations appeared, local staff found that the Court of Justice was closed to them), can thus be altered by straightforward amendment of the Staff Regulations. A Tribunal having jurisdiction at first and final instance as to questions of fact and at first instance as to questions of law on terms safeguarding the general position of the Court of Justice, which would then act as a kind of final court of appeal in its task of ensuring that the law is observed (Article 164 of the EEC Treaty), can legitimately be set up by Council Regulation amending the Staff Regulations.

III. The main features of the new Tribunal to be set up by this proposal for a Regulation are as follows:

1. The Tribunal is to have jurisdiction at both first and final instance as regards questions of fact and at first instance as to questions of law.

Before a case is taken to the Tribunal the preliminary procedures must be complied with (complaint to the appointing authority), though a number of changes are made to the time limits.

Legal representation is optional, and the appellant may plead his case personally or may be assisted or represented by any person of his choice or by any trade union or staff association covered by Article 24a of the Staff Regulations, duly empowered so to act.

The Tribunal may at any time attempt a conciliation between the parties. Decisions of the Tribunal are to be binding on the parties and are to be enforceable in manner provided in Article 192 EEC.

The rules of procedure are to be adopted by the Court on a proposal from the Tribunal, subject to approval by the Council.

2. An appeal may be brought before the Court of Justice to have a decision of the Tribunal set aside on grounds of a substantial formal defect, for violation of the Treaties, for violation of the Staff Regulations or for violation of any other material rule or principle of law.

Appeals, which must be filed within two months from notification of the Tribunal's decision, are to have no suspensory effect. But the Court of Justice may order a stay of execution.

If the Court sets aside a decision of the Tribunal, it may either remit the case to the Tribunal or give final judgment on the merits.

3. There is to be equal representation in membership of the Tribunal. The President and Vice-President are to be selected and appointed by the Court from a list submitted by the judges.

A judge and an alternate judge are to be selected and appointed by the Court from a list submitted by the institutions and other bodies treated as such.

A judge and an alternate judge are to be selected and appointed by the Court from a list of names submitted by the Staff Committees.

Unlike the President and Vice-President, judges and alternate judges must be selected from officials in active employment.

The term of office is to be six years, during which the members will be seconded in the interests of the service to the Court of Justice.

The Vice-President and the alternate judges will sit on the Tribunal (and therefore be seconded to the Court in the case of alternate judges) only where the full members are unable to act.

The Tribunal, attached to the Court for administrative and budgetary purposes, is to be headquartered in Luxembourg, but it may decide to hear cases elsewhere.

A series of rules governing the members of the Administrative Tribunal aim to ensure their full independence. They are not to be answerable to the superiors to whom they were answerable in their original institution. No disciplinary action may be taken against them in respect of the opinions which they express in the discharge of their duties. They may accept no binding orders. They may not engage in any other occupation whatsoever. They are immune from legal proceedings in respect of acts performed by them in their official capacity, and Articles 12 to 15 of the Protocol on Privileges and Immunities apply. If immunity is waived, they are triable in criminal proceedings only by the court competent to judge members of ordinary courts of first instance in the capital city of a Member State.

The members of the Tribunal are required to take an oath before the Court of Justice to discharge their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Tribunal. They are also required to undertake that they will respect the obligations arising from their term of office (in particular the duty to behave with integrity and discretion). They may be deprived of their office by unanimous judgment of the Court of Justice where they no longer fulfil the obligations arising from their office or satisfy the requirements for appointment.

4. It is provided that the jurisdiction of the Tribunal may by Council regulation be extended to litigation involving the staff of organizations other than the institutions or other bodies of the Communities, if such organizations are subject to the jurisdiction of the Court of Justice (EIB, Berlin and Dublin Foundations, etc.).

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(presented by the Commission to the Council)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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, made after consultation
with the Staff Regulations Committee,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Court of Justice,

Whereas it is for the Council, acting by a qualified majority on a proposal
from the Commission after consulting the other institutions concerned, to
amend the Staff Regulations of Officials and Conditions of Employment of Other
Servants of the European Communities laid down by Regulation (EEC, Euratom, ECSC)
No 259/68¹, as last amended by Regulation (Euratom, ECSC, EEC) No 912/78 (2)

whereas the Council is required in particular, by
Article 179 of the EEC Treaty and Article 152 of the Euratom Treaty, to
determine the limits within which and the conditions under which the Court of
Justice is to have jurisdiction in disputes between the Communities and their
staff;

Whereas experience has shown the need to establish an Administrative Tribunal
of the European Communities having jurisdiction as provided in this Regulation
to hear, before any reference is made to the Court of Justice, any dispute
between the Communities and persons to whom the Staff Regulations of Officials
and Conditions of Employment of Other Servants of the European Communities apply;
whereas the Staff Regulations and Conditions of Employment must be amended
accordingly;

Whereas this Administrative Tribunal is established within the European
Communities system and will act with full respect for the provisions of
Community law governing, inter alia, the staff of the Communities; whereas the
terms upon which certain general provisions will apply to the Administrative
Tribunal and its members must be specified,

HAS ADOPTED THIS REGULATION:

Article 1

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

¹OJ No L 56, 4 March 1968, p. 1.

²OJ No L 119, 3 May 1978, p. 1

1. The following Article is inserted after Article 10a:

"Article 10b

An Administrative Tribunal of the European Communities shall be set up, having jurisdiction in disputes between the Communities and any person to whom these Staff Regulations apply as provided in Article 91.

The organization of the Tribunal and rules applicable to its members are determined by Annex X.

The Rules of Procedure of the Tribunal shall be laid down by the Court of Justice on a proposition of the Tribunal and shall require the approval of the Council.

The Tribunal shall itself make internal rules governing its mode of operation."

2. The first paragraph of Article 25 is rescinded.

3. The following Article is inserted after Article 25:

"Article 25a

Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him.

The authority shall notify the person concerned of its reasoned decision within three months from the date on which the request was made.

If at the end of that period no reply to the request has been received, an implied decision rejecting it shall be presumed to have been taken; a complaint in respect thereof may be lodged in accordance with Article 90.

A request by an official shall be submitted through his immediate superior, except where it concerns that person, in which case it may be submitted direct to the authority next above."

4. The provisions at Title VII are replaced by the following:

"TITLE VII

ADMINISTRATIVE AND JUDICIAL APPEAL PROCEDURES

CHAPTER I

ADMINISTRATIVE PROCEDURE

Article 90

1. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, 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;

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- on the date of notification of the decision to the person concerned, or on the date on which he became aware of the decision, whichever is the earlier, if the measure affects a specified person; if, however, an act affecting a specified person also adversely affects another person, the period shall start to run in respect of that other person on the date on which he becomes aware of the act or on the date of publication, whichever is the earlier;
 - on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided in Article 25a.

The authority shall notify the person concerned of its reasoned decision within three 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, an implied decision rejecting it shall be presumed to have been taken; an appeal against such decision may be lodged under Article 91.

2. A complaint by an official shall be submitted through his immediate superior, except where it concerns that person, in which case it may be submitted direct to the authority next above.

CHAPTER 2 JUDICIAL PROCEDURE

Article 91

1. The Administrative Tribunal shall have jurisdiction as tribunal both of first and of final instance as to questions of fact and as tribunal of first instance as to questions of law in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(1). In disputes of a financial character the Administrative Tribunal shall have unlimited jurisdiction.

Notwithstanding the expiry of the limitation period for the institution of proceedings before the Court of Justice pursuant to Articles 173 of the EEC Treaty and 146 of the Euratom Treaty against the regulations of the Council or of the Commission all parties may in the event of litigation submitted to the Tribunal and concerning a regulation relating to the rights and obligations of servants of the Communities seek to establish the illegality of the regulation with the object of establishing it to be inapplicable to the judgement in question.

Where an action pursuant to Articles 173 of the EEC Treaty and 146 of the Euratom Treaty is instituted before the Court of Justice against such a regulation the Tribunal will defer its judgement concerning the applicability of such a regulation with the judgement of the Court is delivered which it must then apply.

2. An appeal to the Tribunal shall lie only if:

- the appointing authority has previously had a complaint submitted to it pursuant to Article 90(1) within the period prescribed therein, and
- the complaint has been rejected by express or implied decision.

3. Appeals under paragraph 2 shall be filed within three months. The period shall start to run:

- on the date of notification of the decision taken in response to the complaint;
- on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(1); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh on the date of notification of the decision to the person concerned.

4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the appointing authority pursuant to Article 90(1), immediately file an appeal with the Tribunal, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Tribunal shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.

5. Appeals to the Tribunal shall be filed and pleaded by the appellant in person or the appellant assisted or represented by a lawyer or other person of his choice or by an organisation within the meaning of Article 24 (a) of the Staff Regulations duly authorised to that effect within the conditions laid down in the procedural rules of the Tribunal.

An institution which is a party to the proceedings shall be represented by an agent appointed for the case; the agent may be assisted by an adviser or lawyer entitled to practise before a court of a Member State.

6. The President of the Tribunal or a judge designated by him may at any time attempt a conciliation between the parties. Appeals under this Article shall be investigated and, where the conciliation fails, heard as provided in the Rules of Procedure of the Tribunal.

The Tribunal shall state the reasons on which its judgment is based.

7. Proceedings before the Tribunal shall be free of charge. The Tribunal shall adjudicate upon costs as provided in its Rules of Procedure.

8. Decisions of the Tribunal shall be binding on the parties as soon as they are made and shall be enforceable in manner provided in Article 192 of the EEC Treaty, Article 164 of the Euratom Treaty and Article 92 of the ECSC Treaty.

Article 91a

1. The Court of Justice of the European Communities shall have jurisdiction to hear any appeal to have a decision of the Administrative Tribunal set aside on grounds of a substantial formal defect, for violation of the Treaties establishing the European Communities, for violation of these Staff Regulations or of the Conditions of Employment of Other Servants, or for violation of any other material rule or principle of law.

2. Appeals under paragraph 1 shall be filed within two months from notification of the decision to the appellant; appeals filed out of time shall be inadmissible.

3. An appeal shall have no suspensory effect. However, the Court of Justice may at the appellant's request order a stay of execution of the decision made in the principal action or interim measures where such execution is likely to have harmful consequences which are difficult to redress.

4. Where a decision of the Tribunal is set aside in whole or in part by the Court of Justice, the Court may either:

- remit the case to the Tribunal, which shall then apply the law as found by the Court of Justice; or
- give final judgment on the merits; in such event the Court of Justice shall have unlimited jurisdiction in disputes of a financial character.

5. Appeals under this Article shall be investigated and heard as provided in the Rules of Procedure of the Court of Justice."

5. The following Annex X is added to the Staff Regulations:

"ANNEX X

ORGANIZATION OF THE ADMINISTRATIVE TRIBUNAL OF THE
EUROPEAN COMMUNITIES AND RULES

GOVERNING ITS MEMBERS

CHAPTER I

ORGANIZATION OF THE ADMINISTRATIVE TRIBUNAL

Section 1

MEMBERSHIP OF THE TRIBUNAL

Article 1

1. The Administrative Tribunal shall consist of:

- a President and a Vice-President selected and appointed by the Court of Justice from a list of at least four names presented by the judges appointed as hereinafter prescribed; should no such list be presented within two months following the appointment of the judges, the Court shall select and appoint the President and Vice-President directly; the same procedure shall apply in the event that such a list not be presented within the two months following the termination of the functions of the President or Vice-President.

- a judge and an alternate judge selected and appointed by the Court of Justice from a list of at least four names presented by the institutions and by other bodies treated as such by virtue of the second paragraph of Article 1 of the Staff Regulations, with the exception of the Court of Justice;
- a judge and an alternate judge selected and appointed by the Court of Justice from a list of at least four names presented by common agreement between the Staff Committees of all the institutions and like bodies.

To establish and publish the lists referred to in the 2nd and 3rd paragraphs above the institutions and like bodies on the one hand and the Staff Committees on the other then shall have a maximum delay period of four months commencing from the date of the request which is simultaneously addressed to them by the President of the Court of Justice.

In the event of failure to designate one of the judges or alternate judges in the manner prescribed above, the Court shall make the appointment directly. The judge thus appointed shall act in that capacity until such time as an appointment is made in the manner prescribed above.

2. If the President or one of the judges is unable to discharge his duties, whether temporarily or permanently, notably by reason of resignation, compulsory resignation retirement or death, he shall be replaced by the Vice-President or the alternate judge appointed with him, as the case may be. If the President or one of the judges is permanently unable to discharge his duties, he shall be replaced by the Vice-President or the appropriate alternate judge until a new President or judge is appointed as provided in paragraph 1.

Article 2

1. The President and the Vice-President shall be selected from persons whose independence is beyond doubt and who are jurisconsults of recognized competence, particularly in the field of the rights and obligations of public servants; such persons shall not be officials or other servants of the Communities.

2. The judge and the alternate judge to be appointed by virtue of the second indent of Article 1(1) shall be selected from established officials who are in active employment, have legal training and have special competence in the field of the rights and obligations arising from the Staff Regulations.

SECTION 2

TERM OF OFFICE

Article 3

1. The President and the Vice-President shall be appointed for six years. The judges and the alternate judges shall also be appointed for six years, except that the first such persons appointed shall hold office for three years only.

The term of office of a judge or alternate judge appointed late as provided in the third subparagraph of Article 1(1) shall not extend beyond the normal date of expiry, when it shall end as if the delay in appointment had not occurred.

2. The President, the Vice-President, the judges and the alternate judges shall be eligible for reappointment in manner provided in Article 1(1).

SECTION 3

OPERATION

Article 4

The Tribunal shall for administrative and budgetary purposes be attached to the Court of Justice.

Article 5

The headquarters of the Tribunal shall be in Luxembourg. The Tribunal may nevertheless decide to hear cases elsewhere if the need arises.

Article 6

The Tribunal shall be assisted by an official appointed by the Court of Justice to act as Registrar.

CHAPTER II

RULES GOVERNING THE MEMBERS OF THE ADMINISTRATIVE TRIBUNAL

Article 7

The members of the Tribunal shall enjoy full independence in the discharge of their duties. They shall accept no binding orders. During their term of office they shall not be answerable to the superiors to whom they were answerable in their original institution. No disciplinary action shall be taken against them in respect of the opinions which they express in the discharge of their duties.

The same provisions shall apply to the Vice-President and alternate judges when replacing the President or one of the judges.

Article 8

Before taking up their duties the members of the Tribunal, including the Vice-President and the alternate judges, and the official appointed to act as Registrar shall take before the Court of Justice an oath to discharge their duties impartially and conscientiously and to preserve the secrecy of the deliberations of the Tribunal.

When taking up their duties the members of the Tribunal, including the Vice-President and the alternate judges, shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom, in particular the duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Any doubt on this point shall be settled by decision of the Court of Justice.

Article 9

The members of the Tribunal, including the Vice-President and the alternate judges when replacing a member, may not engage in any other occupation whatsoever, unless exemption is exceptionally granted by the Court of Justice.

Article 10

A member of the Tribunal, or the Vice-President or an alternate judge, may be deprived of his office only if, in the opinion of the Court of Justice, he no longer fulfils the obligations arising from his office or satisfies the requirements for appointment.

Article 11

1. The members of the Tribunal, including the Vice-President and the alternate judges when replacing a member, and the official appointed to act as Registrar shall be immune from legal proceedings in respect of acts performed by them in their official capacity, including words spoken or written. They shall continue to enjoy such immunity after they have ceased to hold office.

The Court, after hearing the person concerned, may waive the immunity.

Where immunity has been waived and criminal proceedings are instituted against a member of the Tribunal or the official appointed to act as Registrar, the person concerned may be tried only by the court competent to judge members of ordinary courts of first instance in the capital city of a Member State.

2. Subject to paragraph 1, Articles 12 to 15 of the Protocol on the Privileges and Immunities of the European Communities shall apply to the President and the Vice-President of the Tribunal.

3. The privileges, immunities and facilities thus conferred are granted solely in the interest of the Communities.

The Court of Justice shall waive immunity wherever it considers that such waiver is not contrary to the interests of the Communities.

Article 12

1. The judges shall for their full term of office be seconded in the interests of the service by their original institution to the Court of Justice, and Article 38 of the Staff Regulations shall apply accordingly.

2. An alternate judge who is called upon to replace a judge who is unable to discharge his duties for a foreseeable period of three months or more shall for such period be seconded in the interests of the service as provided in paragraph 1.

An alternate judge who replaces a judge for less than three months shall be granted special leave by his institution for the period required for the discharge of his duties on the Tribunal. He shall then be entitled to reimbursement of any travel and accommodation costs as provided in Articles 11 to 14 of Annex VII to the Staff Regulations.

Article 13

The Council, acting by a qualified majority, shall determine the emoluments of members of the Tribunal."

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Article 2

The Conditions of Employment of Other Servants of the European Communities are amended as follows:

1. In the first paragraph of Article 54, "Articles 11 to 25" is replaced by "Articles 11 to 25a".
2. In Article 83, "Article 23 and the second paragraph of Article 25" is replaced by "Article 23, the second paragraph of Article 25 and Article 25a"; and "90 and 91" is replaced by "90, 91 and 91a".

Article 3

The jurisdiction of the Administrative Tribunal established by this Regulation may, by a regulation of the Council on a proposition of the Commission, be extended to disputes between its Staff and an organisation not being an institution or other body in the sense of Article 1 & 2 of the Staff Regulations provided that such disputes are within the jurisdiction of the Court of Justice.

Article 4

This Regulation shall enter into force on the day following its publication in the Official Journal of the European Communities. It shall take effect on the date when the President of the Court of Justice declares that the Administrative Tribunal has been constituted.

The time limits set in Articles 90 and 91 of the Staff Regulations as applying before the date on which this Regulation takes effect shall remain applicable to requests and complaints lodged before that date.

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