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**On Council Regulations on
Shift work (300/76)
Standby duty (495/77)
Particularly arduous working conditions
(858/2004, replacing 1799/72)**

Annex to the

**Proposal for a
COUNCIL REGULATION (EC, EURATOM)
Amending Regulation (ECSC, EEC, Euratom) n° 300/76 determining the categories of
officials entitled to allowances for shift work, and the rates and conditions thereof**

**Proposal for a
COUNCIL REGULATION (EC, EURATOM)
Amending Regulation (EEC, Euratom, ECSC) n°495/77 determining the categories of
officials entitled to, and the conditions for and rates of, allowances for regular standby
duty**

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1. INTRODUCTION

Following the reform of the “Staff Regulations of officials of the European Communities”, a number of Council Regulations had to be adapted in order to maintain their applicability under the new rules. These adaptations were basically technical, necessary to take into account the new career structure and to include contract staff. At the time of the modification of the Council Regulations on shift work, on standby duty and on arduous working conditions, the Commission committed itself *to examine, in consultation with the administrations of the other institutions, their application, to prepare a report to the Council, and, if necessary, to present proposals by the end of the first quarter 2005*”.

The present report is based on 2004 figures, these being the latest full year figures available at the time of its preparation. References to the Staff Regulations and to the Council Regulations which serve to apply the Staff Regulations are generally to the pre-reform provisions, in particular, as regards grades and categories. Given, however, that, besides this, the modifications to these provisions resulting from the administrative reform were largely technical, no systematic distinction is made in this report between the time before and after the entry into force of the reform (1 May 2004). Attention is drawn to the few exceptional cases, where the reform did substantively change these allowances.

2. RULES

The basic rules for all three allowances are defined in separate articles of the *Staff Regulations*, whilst the respective *Council Regulations* determine the types and groups of personnel entitled to them and the conditions for granting them as well as the rates thereof.

2.1. Shift work allowance

The legal bases for this allowance are Article 56a of the Staff Regulations, which remained unchanged in the reform, and Council Regulation 300/76 of 9 February 1976, last modified by Council Regulation 860/2004 of 29 April 2004.

The above provisions limit the allowance to officials paid from *research appropriations* and employed in:

- an establishment of the Joint Research Centre, or
- in indirect action,

or paid from *operating appropriations* and employed in:

- a computer centre,
- a security department,
- a telex service or

- involved in the dispatch of the Official Journal of the EC.

Four different rates of the monthly allowance are foreseen (2004 figures):

- rate 1: work with two shifts, excluding weekends: 335 €
- rate 2: work with two shifts, including nights and weekends: 505 €
- rate 3: 24 hrs per day, excluding weekends: 553 €
- rate 4: 24 hrs per day, 7 days a week: 753 €

2.2. Standby duty allowance

The legal bases for this allowance are Articles 55 and 56b of the Staff Regulations, which also remained unchanged in the reform, and Council Regulation 495/77 of 8 March 1977, last modified by Council Regulation 859/2004 of 29 April 2004.

These provisions limit the allowance to officials paid from *research appropriations* and employed in:

- an establishment of the Joint Research Centre, or
- in indirect action,

or paid from *appropriations in the operating budget* and employed

- to run or supervise technical installations, or
- to work in the medical service.

The standby duty allowance is expressed in points. The number of points granted for each hour of actual standby duty is fixed as follows:

- standby duty at home, working day: 2.15 pts
- standby duty at home, weekend: 4.3 pts
- standby duty at the place of work, working day: 11 pts
- standby duty at the place of work, weekend: 22 pts

Each point is equal to 0,032% of the basic salary of an official in grade 1, step 1 (~0.74 €).

2.3. Allowance for particularly arduous working conditions

The legal bases for this allowance are Article 56c of the Staff Regulations, which, as part of the reform, was created by the transposition of the former Article 100, and Council Regulation 858/2004 of 29 April 2004, which replaced Council Regulation 1799/72.

The former Article 100 of the Staff Regulations restricted this allowance to personnel paid from appropriations in the research and investment budget. The transposition of this provision to Article 56c makes it now possible for all officials to benefit from the allowance – under the condition, of course, that they fulfil the criteria as defined in the corresponding Council Regulation.

The particularly arduous working conditions allowance is expressed in terms of points. The number of points granted for each hour of actual work distinguishes between special working conditions resulting from ‘Safety of the individual’, ‘Place of work’ and ‘Nature of work’. This number varies between 2 pts e.g. for an average sound level exceeding 85 decibels and an upper limit of 50 pts in the case of an official wearing a self-contained fire protection suit.

Each point is equal to 0,032% of the basic salary of an official in grade 1, step 1 (~0.74 €).

3. NUMBER OF BENEFICIARIES: FIGURES BY INSTITUTION

The figures below show that not all institutions refer to the types of services giving rise to entitlement to one of the three allowances under examination. In particular, the arduous working conditions allowance being limited until April 2004 to personnel paid from the research budget, only the Commission in 2004 made use of it. In addition to this, the European Parliament, the Court of Justice, the Court of Auditors, the Committee of the Regions, the European Social and Economic Committee and the European Mediator did not make any use of the shift work and standby duty allowances either. The following 2004 figures give an overview on the numbers of allowances granted by institution, data thus being limited to the Commission and the Council.

3.1. Shift work allowance: Number of beneficiaries by rate and by category

by rate:

Institution	Rate 1	Rate 2	Rate 3	Rate 4	Total
Commission	31	-	8	70	109
<i>- of which: JRC</i>	-	-	8	35	43
Council	25	-		45	70
Parliament	-	-	-	-	-
CoJ	-	-	-	-	-
CoA	-	-	-	-	-
ESEC	-	-	-	-	-
CoR	-	-	-	-	-
Mediator	-	-	-	-	-
Total	56	-	8	115	179

by category:

Institution	Category A	Category B	Category C	Category D	aux/contr agents	Total
Commission	-	8	79	16	6	109
- of which: JRC	-	7	25	5	6	43
Council	-	4	61	5	-	70
Parliament		-	-	-	-	-
CoJ	-	-	-	-	-	-
CoA	-	-	-	-	-	-
ESEC	-	-	-	-	-	-
CoR	-	-	-	-	-	-
Mediator	-	-	-	-	-	-
Total	-	12	140	21	6	179

3.2. Standby duty: Numbers of beneficiaries by type of standby duty and by category

by type of standby duty:

Institution	Standby at home	Standby at place of work	Standby at home + place of work	Total
Commission	167	25	75	267
- of which: JRC	157	25	-	182
Council	18	-	-	18
Parliament	-	-	-	-
CoJ	-	-	-	-
CoA	-	-	-	-
EESC	-	-	-	-
CoR	-	-	-	-
Mediator	-	-	-	-
Total	185	25	75	285

by grade:

Institution	Category A	Category B	Category C	Category D	aux/contr agents	Total
Commission	55	93	88	9	22	267
- of which: JRC	47	38	66	9	22	182
Council	-	4	14	-	-	18
Parliament	-	-	-	-	-	-
CoJ	-	-	-	-	-	-
CoA	-	-	-	-	-	-
EESC	-	-	-	-	-	-
CoR	-	-	-	-	-	-
Mediator	-	-	-	-	-	-
Total	55	97	102	9	22	285

3.3 Particularly arduous working conditions

As mentioned above, under the Staff Regulations as they were until April 2004, the allowance for particularly arduous working conditions was strictly limited to personnel paid under the research budget, and thus to the Commission. Since then, in principle, all staff from all institutions has access to this allowance, under the condition that they fulfil the criteria as defined in the Council Regulation. These criteria having remained unchanged and being of very specific and technical nature, in practice still only research personnel benefited of it in 2004. Within the Commission, even though some members of the research personnel are attached to other Directorates General, this allowance has been exclusively used by the Joint Research Centre.

Institution	Category A	Category B	Category C	Category D	aux/contr agents	Total
Commission	15	93	60	8	43	219
- of which: JRC*	15	93	60	8	43	219
Council	-	-	-	-	-	-
Parliament	-	-	-	-	-	-
CoJ	-	-	-	-	-	-
CoA	-	-	-	-	-	-
EESC	-	-	-	-	-	-
CoR	-	-	-	-	-	-
Mediator	-	-	-	-	-	-
Total	15	93	60	8	43	219

* Partly approximations. Exact figures and a complete and detailed breakdown by grade were not available on the basis of existing statistics, but will become available once the ongoing internal revision in the research centres is completed (see pt. 7.1 below). The indicative breakdown between research centres is as follows: Ispra 59 officials/68.132 pts; Petten 11 officials/14.236 pts; Geel 32 officials/65.607 pts; Karlsruhe 117 officials/561.002 pts.

4. SERVICES CONCERNED AND MOTIVATION

4.1. Shift work

Commission: The Commission accounts for more than half the total cases where shift work allowance is paid (109 out of 179), and within the Commission, it is the JRC which has, for mainly technical reasons, the greatest need for this type of work organization (43 out of 109). In general, shift work in the JRC is done by security personnel in a broad sense (safety, security, radiological protection), except for one service where it has been established for functional reasons in order to assure the continuous running of certain installations. In the other Commission Directorates General, shift work exists either in the security service, including technical services, in information and communication technology (ICT) services (both in the central informatics DG DIGIT as well as in certain informatics units within DGs) or, to a limited extent, in specific services such as that responsible for cipher operations or the expedition of the Official Journal. Whilst, in general, the use of a two shift arrangement predominates (rate 1), in the majority of safety and security related services, a continuous presence at work has to be assured (rate 4). By doing this, the permanent security desk at the Commission, for example, covers not only security functions, but also serves as a continuous 24 hour a day central contact point for the standby services organized in other Directorates General.

Council: Shift work is mainly organized in the security service, to which 53 out of the 70 beneficiaries of the allowance are attached. To a lesser extent (13 persons), it exists in the informatics service, and in the telex/prevention service (3 cases). The types of shift work are either a two shift arrangement (rate 1) or a continuous 24 hour a day service (rate 4).

Other Institutions: In the other institutions, no shift work is undertaken.

4.2. Standby duty

Commission: In 2004, the Commission paid standby allowance to some 267 members of staff, two thirds of them being employed in one of the research centres.

Of the total of 182 persons committed to standby duty in the JRC, 65 were posted in Ispra, 22 in Karlsruhe, 56 in Geel and 39 in Petten. The reasons for standby duty are in general security and safety related, from firemen through radiological protection to radiation monitoring, plus some technical services. In all cases at the JRC, standby duty is carried out at home, with the exception of 25 volunteer firemen in Ispra who undertake this duty at the workplace.

In the other Commission Directorates General, standby service is maintained, in particular, in the central informatics service (DIGIT), where some 40 persons carry out this type of duty. Besides this, certain technical services (Offices for Infrastructure in Brussels and Luxemburg, Publication Office) also have to maintain standby services, as well as a limited number of security personnel. Furthermore, two officials of the Antifraud Office, who must at all times process authorized access to specifically protected OLAF zones, do standby duty, and three officials of the

Justice, Freedom and Security Directorate General, who have to assure the continuous operation of the EURODAC central processing unit .

In no cases are standby services carried out by members of the medical service, a target group specifically mentioned in the Regulation.

Council: All 18 persons receiving standby duty allowance in the Council in 2004 were linked to the running and the supervision of technical installations and in particular to informatics centres. They all exercised standby duty exclusively at home.

The Council does not, unlike the Commission, use standby duty for its security personnel, because it interprets the Regulation rather narrowly so as not to allow such use. It has therefore organized its security in shifts or as continuous work. However for higher graded personnel who in general do not actively participate in the shifts but intervene only in case of need, this is not considered to be a satisfactory situation. For them, standby duty would seem the appropriate solution.

European Parliament: There is no standby service in the EP so far. The administration is, however, currently examining its possible use for the information technologies directorate and for its security service.

4.3. Particularly arduous working conditions

Commission: The Commission is the only institution to use this provision, and, within the Commission, its use is again limited to the Joint Research Centre. Even though the research centres base their application on a common internal directive, the actual use of arduous working conditions allowance varies between them. Whereas in Ispra, it is mainly granted to technical services (electricians, builders, painters), in Karlsruhe more than 100 persons handling nuclear materials benefit from it and in Geel and Petten it is largely reserved for personnel dealing with accelerators, radioprotection, high flux reactors, clean energy etc. Common to all sites is the existence of a local committee for arduous working conditions with a view to ensuring internal harmonization.

With respect to the criteria for arduous working conditions, all three types of condition listed in the Regulation and for which the allowance can be granted exist, that is, concerning a) the safety of the individual (e.g. the wearing of particularly uncomfortable protective clothing), b) the place of work (e.g. high noise levels, dangerous sites) and c) the nature of work (e.g. the handling of corrosive substances).

As regards the form of payment and control procedures, in Geel and Petten, day to day records are generally used. Ispra, and in particular Karlsruhe, use the possibility of paying monthly flat rates, based on average figures of use in the past and on condition that the number of hours and the type of work remain stable over time.

5. BUDGETARY EXPENDITURE 2004, BY INSTITUTION AND BY ALLOWANCE (IN €)

Institution	Shift work	Standby duty	Arduous working conditions	Total
Commission	741.066	995.720	482.104	2.218.890
- of which: JRC	301.551	310.913	482.104	1.094.568
Council	508.757	12.744	-	521.501
Parliament	-	-	-	-
CoJ	-	-	-	-
CoA	-	-	-	-
EESC	-	-	-	-
CoR	-	-	-	-
Mediator	-	-	-	-
Total	1.249.823	1.008.464	482.104	2.740.391

Total expenditure, that is, the amount spent for all three allowances and in all Community institutions together, was less than 3 mio € in 2004. Expenditure is not necessarily proportional to the numbers of beneficiaries in each institution, due to the different rates which exist for these allowances. Standby duty at work, for example, leads to higher payments per person than standby duty at home, and having to wear a self-contained protective suit against fire is compensated at a significantly higher level than having to work in confined spaces.

6. PROBLEMS ENCOUNTERED WITH THE APPLICATION OF THE COUNCIL REGULATIONS

The major problem encountered by all (current or would-be) users of the provisions in question is the strict limitation of its application to specific *situations* and *services*. In fact, the Regulations not only specify the criteria and conditions under which these allowances can be granted, but also restrict their use to specific, nominative and exhaustively listed services – regardless of whether or not other services need this kind of work organization and entirely fulfil the other criteria. In particular, technological developments over the last decades have thus led to a situation where a number of newly created services need to offer, e.g., standby services or to work in shifts, but the wording of the relevant Regulations excludes them from this benefit, or allows them to be covered only with some difficulty, whilst other services, mentioned by the Regulations, have become obsolete.

6.1. Shift work

The majority of cases in which shift work had to be organized fully correspond with the target groups identified in the Regulation, in particular, computer centres and security departments. However, the reference to a 'telex service' is outdated: Such services only play a marginal role at best today (the Commission having just phased out its telex infrastructure). Instead, shift work de facto exists in a number of telecommunication services in a broad sense, namely switchboards and cipher. Equally, the reception desks of major buildings require prolonged service hours, while the staff serving there could only be covered by considering them as having security related functions in a very broad sense (an interpretation which institutions so far do not apply). The application of the shift work Regulation to these cases causes problems and a clarification would be highly desirable. It would seem appropriate not to pre-determine the groups of potential beneficiaries by exhaustively listing the services concerned under the operating budget (e.g. the dispatching of the Official Journal of the EC), but to rather concentrate on the factual need to offer prolonged service hours in certain fields. A general clause, linked to strict criteria, would seem to be an appropriate solution, allowing for the situation to be reviewed regularly, and to be adapted where necessary.

The Secretariat General of the Council is faced with a particular problem. During European Council meetings, but also in the context of its newly attributed responsibility for crisis management, it regularly has to assure around the clock services by a significant number of staff for short periods. This is not covered by the current shift work provisions.

6.2. Standby duty

Again, the large majority of current cases fit fully with the target groups as defined in the Council Regulation of 1977. However, whereas for personnel employed in a research centre or in indirect action, no specific target groups are determined, for personnel paid under the general budget, the application of standby duty is strictly limited by the Regulation to those employed to run or supervise technical installations (and to the medical service). In practice, this limitation causes continuous problems and does not take into account either technical or political developments.

Security, for example, is considered by the Commission in a number of cases as being part of the supervision of technical installations in a broad sense, an interpretation which the Council Secretariat General does not share. Clarification is needed in this area. In addition, security is not limited to the security of technical installations, but, to a growing extent, concerns the security of persons (e.g. Commissioners) or entire services (e.g. a standby service had to be installed recently for the urgent evacuation of Commission personnel in high risk zones).

In other cases, the Commission, in particular, is often bound, by political decisions taken by the Council, to assure a (growing!) number of permanent services for the Member States. For example, the CIVIL PROTECTION mechanism (Council Decision 2001/792/EC) in respect of major, natural or man-made disasters obliges the Commission to "establish and manage a monitoring and information centre accessible and able to react immediately 24 hours a day and serving the Member

States and the Commission for the purposes of the mechanism.” ECURIE, the European Community Urgent Radiological Information Exchange (Council Decision 87/600/EURATOM), is also operates 24 hours a day, 7 days a week. And, as mentioned above, the central unit of EURODAC (Council Regulations (EC) 2725/2000 and 407/2002), placed in the Commission, has to guarantee that requests from national authorities on asylum seekers are handled within 24 hours, and in urgent cases, within one hour – even at night and during weekends. Many of these services are not covered by the current Regulation on standby services. The persons assuring them fall outside the pre-defined target groups and thus do not qualify for the allowance. In practice, this means that the staff concerned receives only partial compensation or no compensation at all for this type of work.

The number of services faced with this problem, that is, the political and legal commitment to maintain certain services around the clock while at the same time being excluded from standby service allowance, may well increase further with the creation of agencies for maritime and aviation safety etc.

Another problem regularly arises when standby duty turns into real interventions. Contrary to shift work, which is predominantly assured by C officials, standby duty is often imposed on A and B officials. For them, weekend or night interventions resulting from this duty cannot be treated as overtime, as the Staff Regulations exclude them from this benefit. This does not cause any problems as long as real interventions are the exception. The situation is more complicated in services which (for technical reasons) often and regularly have to schedule routine interventions overnight or during weekends. No satisfactory solution has been found for these cases yet.

6.3. Particularly arduous working conditions

The application of this provision was, until April 2004, strictly limited to personnel paid from research appropriations. There were no particular problems experienced with it, leaving aside the more practical difficulties mentioned in point 4.3 above concerning variations between the different research centres.

However, the reform of the Staff Regulations transferred this provision from the chapter reserved for scientific personnel to the general part of the Staff Regulations, applicable to all personnel. The idea behind this modification was the fact that there are other groups of personnel, whose specific working conditions could equally be considered as particularly arduous. Nuclear inspectors who are sometimes obliged to wear heavy protective clothing are one example. An in-depth examination of services potentially concerned has, however, not resulted in the need to review the criteria for granting the allowance at this stage.

7. CONCLUSIONS

The conclusions to be drawn from the above findings are twofold: They concern on one hand the proper and uniform application of the existing rules within the institutions, and on the other hand the possible need to modify the rules as such.

7.1. Internal revision of practice within the institutions

Since the entry into force of the new Staff Regulations, the Commission and the Council have started internal revisions of their respective use of shift work, standby duty and arduous working conditions allowances. In the Commission, a few cases of shift work, in which compliance with existing rules was not entirely clear, have been terminated. A special effort is being made by the Joint Research Centre, in order to increase transparency, to ensure uniformity between the different centres, and in particular, to improve the reporting system, which today does not provide for satisfactory statistical information, e.g., on the numbers and types of hours worked under arduous conditions and the categories of the persons concerned.

7.2. Proposed modifications to the Council Regulations

The most substantial complications in the application of the Regulations have, however, their origin in the fact that the current provisions to a very large extent no longer reflect the reality of work in the European institutions, due partly to technical progress, but also to political developments and to newly acquired responsibilities. Resulting from what has been mentioned under points 4 and 6, it is therefore suggested to envisage the following modifications to the respective Council Regulations:

Shift work:

- The strict limitation of shift work allowance to specific and pre-defined services should be abandoned. Instead the decision to institute shift work should be based on the proven need either to ensure a continuous service (e.g. security) or extended service hours (e.g. reception desks, switchboards, certain help desks).
- Extend the provision to ‘short term shift work’, in order to allow for the coverage of occasional needs e.g. for European Council meetings.

Standby duty:

- Confirm ‘security’ as a service qualifying for standby duty allowance.
- Remove the ‘medical service’ from the list of services qualifying for standby allowance.
- Introduce a general clause allowing for the creation of future standby services in cases of confirmed necessity (e.g. Civil Protection Mechanism, ECURIE).

Particularly arduous working conditions:

No modification proposed at this stage.