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REPORT

drawn up on behalf of the Committee on Legal Affairs and Citizens' Rights

on the proposals from the Commission of the European Communities to the Council (COM(84) 680 final - Doc. 2-1539/84) for regulations

- I. introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal
- II. introducing special measures to terminate the service of officials of the European Communities
- III. amending Regulation (EEC, EURATOM, ECSC) No. 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities
- IV. amending Regulation (EURATOM, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

Rapporteur: Mr W. ROTHLEY

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By letter of 24 January 1985, the Council of the European Communities requested the European Parliament to deliver an opinion, pursuant to Articles 24 and 28 of the Treaty establishing a Single Council and a Single Commission and Article 15 of the Protocol on the Privileges and Immunities of the European Communities, on proposals from the Commission of the European Communities to the Council for regulations

- A. introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal,
- B. introducing special measures to terminate the service of officials of the European Communities,
- C. amending Regulation (EEC, EURATOM, ECSC) No. 260/68 Laying down the conditions and procedure for applying the tax for the benefit of the European Communities<sup>1</sup>,
- D. amending Regulation (EURATOM, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply (COM(84) 680 final)<sup>1</sup>.

At the sitting of 11 February 1985, the President of the European Parliament referred these proposals to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Budgets for its opinion.

At its meeting of 27 and 28 February 1985, the Committee on Legal Affairs and Citizens' Rights appointed Mr Rothley rapporteur.

The committee considered the Commission proposals and the draft report at its meetings of 24 and 25 April 1985 and 14 and 15 May 1985. At the last meeting the committee decided:

- unanimously to recommend to Parliament that it approve the Commission proposal (A) above subject to the following amendments;
- by 11 votes to 1 to recommend to Parliament that it approve the Commission proposal (B) above subject to the following amendments;
- unanimously to recommend to Parliament that it approve the Commission proposal (C) above subject to the following amendment;
- unanimously to recommend to Parliament that it approve the Commission proposal (D) above subject to the following amendment.

The committee then adopted unanimously the motion for a resolution as a whole.

<sup>1</sup>See explanatory statement, paragraph 4

The following took part in the vote: Mrs VAYSSADE, chairman; Mr ROTHLEY, rapporteur; Mr ALBER, Mr BARZANTI, Mr CASINI, Mr CHAMBEIRON, Mr COSTE-FLORET, Mrs FONTAINE, Mr PETRONIO, Mr PROUT, Graf STAUFFENBERG, Mr TOPMANN and Mr TORTORA.

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The opinion of the Committee on Budgets is attached.

The report was tabled on 21 May 1985.

The deadline for tabling amendments to this report will be indicated in the draft agenda for the part-session at which it will be debated.

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The Committee on Legal Affairs and Citizens' Rights hereby submits to the European Parliament the following amendments to the Commission's proposals and motion for a resolution together with explanatory statement:

- A. Commission proposal for a regulation introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal

Text proposed by the Commission  
of the European Communities

Amendments tabled by the Committee  
on Legal Affairs and Citizens' Rights

Preamble and recital unchanged

Article 1(1) unchanged

Paragraph 2

For the purposes of implementing Article 1, appointments to career brackets A3, A5/4, A7/6, A8, LA3, LA5/4, LA7/6, LA8, B1, B3/2, B5/4, C1, C3/2, C5/4, D1, D3/2 and D4 shall be made following a competition based on tests or on qualifications and tests, organized in accordance with the provisions of Annex III to the Staff Regulations.

Paragraph 3

Except in the case of A1 and A2 posts, vacant posts shall be adequately advertised both inside and outside the Community institutions.

Amendment No. 1  
Paragraph 2

Appointments to grades A3, A4, A5, LA3, LA4, LA5, B1, B2, B3 and C1 shall be made following a competition based on qualifications, organized in accordance with the provisions of Annex III to the Staff Regulations.

Appointments to grades A6, A7, A8, LA6, LA7, LA8, B4, B5, C2, C3, C4, C5 D1, D2, D3 and D4 shall be made following a competition based on tests or on qualifications and tests, organized in accordance with the provisions of Annex III to the Staff Regulations.

Amendment No. 2

(9 words deleted) Vacant posts shall be adequately advertised both inside and outside the Community institutions, having due regard for the provisions of the Staff Regulations of Officials

Article 2 unchanged  
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B. Commission proposal for a regulation introducing special measures to terminate the service of officials of the European Communities

Text proposed by the Commission of the European Communities

Title

Proposal for a Council regulation introducing special measures to terminate the service of officials of the European Communities

Amendments tabled by the Committee on Legal Affairs and Citizens' Rights

Amendment No. 3

Title

Proposal for a Council regulation introducing special measures to terminate the service of officials of the European Communities and of temporary staff within the meaning of Article 2(c) of the conditions of employment of other servants of the European Communities

Preamble and recital unchanged

Article 1

In the interests of the service and in order to meet requirements resulting either from the accession of Spain and Portugal to the European Communities or from the needs to acquire staff with new skills, the institutions within the meaning of Article 1 of the Staff Regulations are authorized to adopt measures terminating the services of officials

Article 1

In the interests of the service and in order to meet requirements resulting either from the accession of Spain and Portugal to the European Communities or from the need to acquire staff with new skills, the institutions within the meaning of Article 1 of the Staff Regulations are authorized to adopt measures terminating the service of officials

Amendment No. 4

and temporary staff within the meaning of Article 2(c) of the conditions of employment of other servants of the European Communities<sup>1</sup>

in grades

in grades

A3, LA3, A4, LA4, A5, LA5, B1, B2, C1, C2, D1 and D2 who are over 55 years of age, under the conditions specified below.

Amendment No. 5

A1, A2, A3, LA3, A4, LA4, A5, LA5, B1, B2, C1, C2, D1 and D2 who are over 55 years of age, under the conditions specified below.

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<sup>1</sup>Add 'or other servant(s)' after 'official(s)' wherever the latter word appears in the text of Articles 2, 3 and 4

Article 1, second paragraph unchanged

Article 2

The number of termination of service decisions may not exceed the number fixed each year by the budgetary authority on a proposal from each institution, within a ceiling of 20% of the total number of officials eligible under this Regulation.

Article 2

unchanged

Amendment No. 6

The appointing authority shall decide annually, after receiving authorization from the budgetary authority, the number of temporary staff to whom measures to terminate service may apply; this number shall not be added to the ceiling specified in this Article.

Article 3

Having due regard for the interests of the service, the institutions shall select, within the limits laid down in Article 2 and after consulting the Joint Committee, from officials requesting the application of measures terminating their service under Article 1 those to whom such measures shall be applied.

Unchanged

To this end it shall take into consideration their age, ability, efficiency, conduct in the service, family situation and seniority. Minimum seniority of 10 years shall be required. This requirement shall not apply to the Court of Auditors until 1 January 1988.

Amendment No. 7

By way of derogation from Article 1, this Regulation shall apply to officials who:

- have reached the age of 50 and have 25 years' seniority;
- have reached the age of 51 and have 22 years' seniority;
- have reached the age of 52 and have 19 years' seniority;
- have reached the age of 53 and have 16 years' seniority;
- have reached the age of 54 and have 13 years' seniority.



Amendment No. 8

The institution shall grant any  
request for termination of service  
submitted by officials of 60 or more  
years of age.

Article 4 unchanged.

Amendment No. 9

Article 5 (new)

1. The officials referred to in the  
last subparagraph of Article 2 of  
Regulation (EEC, Euratom, ECSC)  
No. 259/68 and in Article 102(5) of  
the Staff Regulations, with the  
exception of those who before  
1 January 1962 held Grade A1 or A2  
posts under the Staff Regulations  
of the European Coal and Steel  
Community, to whom the measures  
provided for in Article 1(1) are  
applied, may request that their  
remuneration be determined in  
accordance with the provisions of  
Article 34 of the Staff Regulations  
of the European Coal and Steel  
Community and Article 50 of the Rules  
and Regulations of the European Coal  
and Steel Community.

2. Officials who before 1 January  
1962 held Grade A1 or A2 posts under  
the Staff Regulations of the European  
Coal and Steel Community, to whom the  
measures provided for in Article 1(1)  
are applied, may request that their  
remuneration be determined in  
accordance with the provisions of  
Article 42 of the Staff Regulations  
of the European Coal and Steel  
Community.

3. However, the provisions of  
Article 4(5) to (10) of this  
Regulation shall continue to apply to  
the officials referred to in this  
article.

Article 5, which becomes Article 6, unchanged

C. Commission proposal for a regulation amending Regulation (EEC, EURATOM, ECSC) No. 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities

Text proposed by the Commission  
of the European Communities

Amendments tabled by the Committee  
on Legal Affairs and Citizens' Rights

Preamble unchanged

Amendment No. 10

Having regard to the opinion of the  
European Parliament,

Recital and Articles 1 and 2 unchanged

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D. Commission proposal for a regulation amending Regulation (EURATOM, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

Text proposed by the Commission  
of the European Communities

Amendments tabled by the Committee  
on Legal Affairs and Citizens' Rights

Title and first three paragraphs of preamble unchanged

Fourth paragraph of preamble

Amendment No. 11

Having regard to the opinion of the  
European Parliament,<sup>1</sup>

Having regard to the opinion of the  
European Parliament<sup>1</sup>,

- Whereas Parliament delivered a  
favourable opinion on a similar  
proposal<sup>2</sup>,

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<sup>1</sup>0J No. C 182, 19.7.1982, p.127

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<sup>1</sup>  
<sup>2</sup>0J No. C 182, 19.7.1982, p.127

Recital and Articles 1 and 2 unchanged

MOTION FOR A RESOLUTION

closing the procedure for consultation of the European Parliament on the proposals from the Commission of the European Communities to the Council for Council regulations

- I. introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal
- II. introducing special measures to terminate the service of officials of the European Communities
- III. amending Regulation (EEC, EURATOM, ECSC) No. 260/68 laying down the conditions and procedure for applying the tax for the benefit of the European Communities
- IV. amending Regulation (EURATOM, ECSC, EEC) No. 549/69 determining the categories of officials and other servants of the European Communities to whom the provisions of Article 12, the second paragraph of Article 13 and Article 14 of the Protocol on the Privileges and Immunities of the Communities apply

The European Parliament,

- having regard to the proposals from the Commission to the Council<sup>1</sup>,
  - having been consulted by the Council pursuant to Articles 24 and 28 of the Treaty establishing a Single Council and a Single Commission of the European Communities and Article 16 of the Protocol on the Privileges and Immunities of the European Communities (Doc. 2-1539/84),
  - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Budgets (Doc. A2-35/85),
  - having regard to the result of the vote on the Commission's proposals,
  - whereas the proposals for regulations submitted by the Commission constitute a coherent package of measures whose purpose is to enable the Community institutions to recruit Spanish and Portuguese officials rapidly and under the best possible conditions and to acquire staff with new skills,
1. Particularly welcomes the proposal that termination of the service of officials should be on a voluntary basis;
  2. Considers it essential for the scope of the proposal for a regulation introducing special measures to terminate the service of officials of the European Communities to be broadened, notably with a view to bringing within its ambit officials with a particularly high level of seniority and staff engaged for an indefinite period on a temporary contract in accordance with Article 2 of the Conditions of employment of other servants of the Community;

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<sup>1</sup>0J No. C 35, 7.2.1985, p. 7

3. Requests the Commission to adopt the amendments made to its proposals by Parliament;
4. Approves, subject to these amendments, the Commission's proposals and requests the Council to adopt them without delay;
5. Instructs its President to forward to the Council and the Commission, as Parliament's opinion, the Commission's proposals as voted by Parliament and the corresponding resolution.

EXPLANATORY STATEMENTI. INTRODUCTION

1. The purpose of the measures proposed by the Commission is to enable Spanish and Portuguese nationals to be recruited as officials of the Community institutions<sup>1</sup> within the framework of the budgetary structure of each institution and at a sufficiently rapid rate for the Community to be able to operate normally after the accession date.

To this end, it is proposed :

- to waive certain statutory provisions applicable to the recruitment of officials (in particular, the requirement that posts should not be reserved for candidates of a given nationality);
- to introduce measures to release posts on the establishment plans by terminating the service of certain officials.

2. Similar measures were adopted on various occasions in the past, e.g. in 1968<sup>2</sup>, with the aim of rationalizing the Commission's services, and in 1972<sup>3</sup> and 1982<sup>4</sup>, with a view to paving the way for the accession of other new States.

However, specific comparisons between the proposals submitted for our consideration and the regulations already adopted are not always useful because there are substantial differences between them, notably in the legislative procedure followed (in the present case, four different proposals have been put forward for the adoption of provisions which were contained in a single regulation in 1972 and in three regulations in 1982), and in the period of validity of the measures concerned. Moreover, the de facto situation is different in each case. For instance, the number of officials to be recruited in connection with the forthcoming enlargement will be far greater than that needed for the accession of Greece. Nevertheless, wherever it is thought appropriate, comparisons will be made with the measures adopted previously.

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1 Article 1 of the Staff Regulations of Officials of the European Communities provides that 'the Economic and Social Committee and the Court of Auditors shall, for the purpose of the Staff Regulations, be treated as institutions of the Communities'.

2 See OJ No. L 56, 4.3.1968.

3 See OJ No. L 272, 5.12.1972.

4 See OJ No. L 228, 4.8.1982.

## II. Consultation of the European Parliament

3. The Commission has submitted :
- (A) a proposal for a regulation introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal
  - (B) a proposal for a regulation introducing special measures to terminate the service of officials of the European Communities
  - (C) + (D) a proposal for a regulation to ensure that the officials covered by the preceding proposal continue to pay Community tax, and a proposal for a regulation exempting those same officials from payment of national taxes (see Article 13 of the Protocol on the Privileges and Immunities of the European Communities).

The latter two proposals contain adjustments which will be a necessary consequence of the adoption of proposal (B). It is to be noted that the Council has not consulted Parliament on these two proposals.

4. It has to be pointed out, however, that the legal basis of proposal (D) (see preamble) is not only Article 28 of the Merger Treaty, but also Article 16 of the Protocol on Privileges and Immunities, which provides for consultation of 'the other institutions concerned'. Accordingly, Parliament should have been consulted not just on the first two proposals, but on proposal (D) as well. In all probability, the problem here arises from an unintentional oversight on the part of the Council in drafting its letter consulting Parliament, and it can be assumed that Parliament's opinion is in fact sought on all four proposals which, moreover, are included in a single document (see Amends. 5 and 6).

5. Furthermore, the preamble of proposal (D) contains the citation 'Having regard to the opinion of the European Parliament', and the accompanying footnote refers to an opinion delivered by Parliament in 1982 on a similar proposal concerning the termination of service of officials following the accession of Greece. It is clearly not possible to refer in a proposal submitted in 1985 to an opinion delivered on that proposal by Parliament in 1982! This is why an amendment has been tabled to clarify the de jure and de facto situation (see Amend. No. 11).

## III. The recruitment of Spanish and Portuguese officials

6. The proposal for a regulation introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequence of the accession of Spain and Portugal, which is appropriately based on Article 24 of the Merger Treaty, temporarily waives the statutory provisions requiring that no posts be reserved for candidates of a specific nationality (see third paragraph of Article 27 of the Staff Regulations) and that the assignment of officials to posts must be without regard to nationality (see Article 7(1) of the Staff Regulations).

The period of validity of the proposal, whose purpose is to ensure that Spanish and Portuguese officials are recruited efficiently and rapidly, ends on 31 December 1987. The Commission is to be commended for proposing, in Article 1(2), that, with the exception of grades A1 and A2, officials should be recruited only after the holding of competitions based on tests or on

qualifications and tests, organized in accordance with the provisions of the Staff Regulations and, in particular, Annex III thereto.

7. Article 1(3), which is modelled on the provisions adopted during the two successive enlargements of the Community in 1973 and 1981, stipulates that: 'Except in the case of A1 and A2 posts, vacant posts shall be adequately advertised both inside and outside the Community institutions'.

Now, while Article 29(2) of the Staff Regulations provides that a recruitment procedure other than the competition procedure may be followed for recruitment to A1 and A2 posts, it neither prohibits the institutions from holding competitions for such posts nor, more importantly, does it forbid the advertising of vacant posts, which is to the obvious advantage of the institutions inasmuch as they must secure the services of officials 'of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis ...' (see Article 27 of the Staff Regulations).

This is why a different wording is proposed for Article 1(3) (see Amend. No. 2), and the Commission is recommended to adopt this form of words, not just for the proposal under consideration, but also for all future proposals concerning vacant posts, so as to avoid the impression of discriminatory treatment being applied to Spanish and Portuguese candidates for A1 and A2 posts by comparison with the nationals of the other Member States. Attention is drawn to the flexibility inherent in the amendment proposed: it does not envisage the systematic advertising of vacant posts, but 'adequate' publicity for the post to be filled, in keeping with the provisions of the Staff Regulations.

#### IV. Termination of service

8. The proposal for a regulation introducing special measures to terminate the service of officials of the European Communities empowers the institutions to adopt measures terminating the service of officials in grades A3, LA3, A4, LA4, A5, LA5, B1, B2, C1, C2, D1 and D2 who are over 55 years of age and have at least ten years' seniority<sup>1</sup>.

9. Article 4 of the proposal spells out the rights and duties of officials following termination of their service, the procedures to be followed for payment of the allowance, the rules applicable where the allowance is received concurrently with new income, and other practical measures, which are modelled on earlier provisions and on the corresponding articles of the Staff Regulations.

10. A further provision - which is to be welcomed - is that termination of service should only be on a voluntary basis. If this were not the case, the proposal for a regulation would be unacceptable and might even be illegal, since it would introduce provisions which might act to the detriment of officials and who could not have known them when they took up their duties; indeed, the principle of legitimate expectation might thus be violated.

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<sup>1</sup> This requirement would not apply to officials in the youngest of the 'institutions', the Court of Auditors, until the beginning of 1988.

The regulation will be general in scope and its practical application (see Article 2) will be decided each year by the budgetary authority on a proposal from each institution up to a maximum of 20% of the total number of eligible officials, with no distinction being made as between grades.

11. A significant difference between the present proposal and those adopted during previous enlargements of the Community is that it is not solely concerned with the adjustments necessarily resulting from the accession of two new States: it also spells out the need for the Community institutions 'to acquire staff with new skills' (see Article 1).

This objective merits unstinting support, as does the instrument proposed to attain it, in that it will constitute a useful adjunct to the statutory provisions currently applicable to termination of service.

12. The importance of the measures proposed, which are designed to achieve an objective which is truly felt to be necessary in the day-to-day management of all the institutions, is underscored by the considerable interest they have evoked. For instance, when the proposal was at the initial drafting stage, Parliament's Bureau, as the body responsible for the establishment plan, adopted various ideas and guidelines which were transmitted to the chairman and rapporteur of the Committee on Legal Affairs and Citizens' Rights.

Most of these ideas, which were prompted by a concern to ensure the smooth functioning of Parliament, have been taken up by the committee. It also endorses the suggestion - contained in a document signed by all the political group chairmen and forwarded to the chairmen of the two parliamentary committees concerned - that temporary staff engaged for an indefinite period on a temporary contract should be brought within the ambit of the regulation (c.f. Amendments No. 4 and 6).

13. The Committee on Legal Affairs and Citizens' Rights has tabled other amendments which are also compatible with the aims of the proposal for a regulation and take account of the need to avoid excessively complicating a set of measures which must remain acceptable to the Council and to the budgetary authority.

14. The amendment tabled to the first paragraph of Article 1, Amendment No. 5, broadens the scope of the regulation to include grades A1 and A2; if one of the aims of the proposal is to acquire staff with new skills, the highest grades must not be excluded from its field of application. The objection that termination of service for officials in grades A1 and A2 is already covered by Article 50 of the Staff Regulations, which provides for retirement in the interests of the service, fails to allow for the fact that, in practice, Article 50 is not applied in a uniform manner in the various institutions, whereas uniformity of application is essential in the case of the regulation with which we are here concerned.

15. In view of the fact that the 20% ceiling specified in Article 2 is to apply each year to the total number of eligible officials, it does not seem necessary to take up the suggestion that this limit should be abolished.



16. On the other hand, the Committee on Legal Affairs and Citizens' Rights has tabled an amendment to Article 3 to which it attaches the utmost importance (see Amend. No. 7) and which aims to broaden the scope of the regulation on the basis of seniority. Let us consider the position, which has been discussed in committee, of an official aged 55 with 10 years' seniority and of another official aged 50 with 26 years of service. Under the terms of the current proposal and the provisions in force, the first would be entitled to an allowance of 70% of his basic salary, and the second to 26%<sup>1</sup>. The amendment was not only prompted by an obvious concern to ensure fair treatment, it was also felt to be consistent with the aim of the regulation to acquire 'new blood'. Its incorporation in the proposal would not broaden the scope of the regulation to any marked extent.

17. A second amendment has been tabled to Article 3 (see Amend. No. 8) which obliges the institutions to grant requests for termination of service submitted by officials of at least 60 years of age. This reintroduces a provision adopted in 1972 in connection with the first enlargement

18. Finally, consideration was given to the idea of annually decreasing the allowance (first year, 80% of the basic salary; the year preceding retirement, 70% of the basic salary), which would have had the positive effect of encouraging more officials to request termination of service. The Committee on Legal Affairs and Citizens' Rights decided not to press this idea in order to avoid excessively complicating the relevant provisions and, in particular, in order not to risk rejection of amendment No. 3 on the need for seniority to be taken into account for the purpose of determining eligible officials. provision adopted in 1972 in connection with the first enlargement.

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<sup>1</sup> It should be pointed out in passing that the fact that allowances covered by the present proposal for a regulation, like the pension covered by Annex VIII to the Staff Regulation, are expressed as a percentage of the basic salary means that allowances (for example, the 16% expatriation allowance) received by officials when in post are excluded: the 70% of basic salary is a sum which does not normally exceed half the salary received by the official when in post.

## O P I N I O N

(Rule 101 of the Rules of Procedure)

of the Committee on Budgets  
Draftsman: Mr CURRY

On 28 March 1985 the Committee on Budgets appointed Mr CURRY draftsman of the opinion.

At its meeting on 13 May the committee considered and adopted the draft opinion unanimously by 31 votes in favour and no abstention.

The following took part in the vote: Mr COT, chairman; Mr RYAN, vice-chairman; Sir James SCOTT-HOPKINS, vice-chairman; Mr CURRY, draftsman; Mr ARNDT, Mr BARDONG, Mr BONACCINI (deputizing for Mrs BARBARELLA), Mr BONDE, Mrs BOSERUP, Mr CORNELISSEN, Mr DANKERT, Mr DI BARTOLOMEI, Mr James ELLES, Mr FICH, Mr GATTI (deputizing for Mr CHAMBEIRON), Mr LALOR, Mr LANGES, Mr MIZZAU, Mr B. NIELSEN (deputizing for Mr LOUWES), Mr NORMANTON, Mr d'ORMESSON, Mr PITT, Mr PORDEA (deputizing for Mr COLLINOT), Mr PÖTSCHKI (deputizing for Mr PFENNIG), Mr PRICE (deputizing for Sir Fred Catherwood), Mrs SCRIVENER, Mr SPINELLI, Mr TOMLINSON, Mr TOPMANN (deputizing for Mrs HOFF), Mr von der VRING and Mr van der WAAL (deputizing for Mr CICCIOMESSERE).

## INTRODUCTION

1. These four proposals for regulations are all concerned with staffing issues which arise out of the enlargement of the Community to include Spain and Portugal. The first introduces a number of temporary derogations to the Staff Regulation designed to ensure that Spanish and Portuguese officials can be recruited as efficiently and quickly as possible. The second relates to special measures intended to terminate the service of Community officials so as to free posts as a result of the accession of Spain and Portugal and of the need to acquire staff with new skills. The third and fourth proposals are amendments to existing regulations confirming that certain categories of staff, including those affected by the second proposal, are subject to Community tax.

2. The most important of these proposals is the second one. The first proposal introduces procedures which were used without major controversy at the time of the previous enlargements, while the third and fourth proposals are of a technical character which require no particular comment. By contrast, special measures for terminating the service of officials have been of major interest in the past (see for example, Doc. 1-87/81 - the LEGA report) and have already on this occasion provoked wide discussion. In July 1984, the Bureau of the Parliament gave its view on an initial version of this proposal before the Commission finalised its position in January of this year.

3. The Commission's position can be summarised as follows.

First, it is based on the voluntary principle : as Article 3 indicates, "The institution shall select... from officials requesting the application of measures terminating their service".

Second, it is restricted in the following way as to the number of people to whom it may apply : they must be over 55, have a minimum of 10 years service and be in grades A3, LA3, A4, A5, LA5, B1, B2, C1, C2, D1 or D2. Moreover, in any one year only 20% of those eligible are able to benefit.

Third, it is unlimited in duration, thus the accession of Spain and Portugal is not the only ground given for introducing the regulation; "the need to acquire staff with new skills" is also cited (Article 1).

Fourth, it offers a financial settlement, comparable to that at the time of the Greek accession i.e. 70% of basic salary until retirement.

#### The voluntary principle

4. It is not at all clear that the best interests of the institutions are served by an entirely voluntary system. Just as the appointing authorities should have the right to say no to those who ask to leave, on the grounds that their departure could harm the operations of a particular service, so those same authorities should be entitled to invite some individuals to take advantage of the measures because their departure would permit desirable flexibility in the institution.

5. There are obvious difficulties with such a policy. Article 49 of the Staff Regulations lays down very strict limits on compulsory resignation and the institutions could be drawn into very lengthy and ultimately unsuccessful litigation in the European Court of Justice. Nevertheless, the recognition that particular circumstances might require some element of compulsion was what lay behind the Commission's proposal to terminate the services of certain officials at the Joint Research Centre in Ispra. Why then should the same principle not apply in a wider set of circumstances?

6. Furthermore, in the context of the Parliament at least, there is a growing appreciation of the need to manage career development by means other than the creation of new posts. Mobility is one of those ways, as the Parliament agreed in its debate on the Parliament's budget last November, but a judicious use of the measures under discussion here could also be of major help. Hence the Secretary-General should be invited to examine the ways in which such measures could be applied so that a selection could be made from the officials fulfilling the basic conditions and not just those requesting the opportunity to benefit.

### The scope of the measures

7. The main issue here is not the age criterion (over 55) nor the length of service (at least 10 years) but the range of grades who may benefit. All the institutions would be obliged to gain approval during the budgetary procedure of a certain sum to be made available for the termination of service, so there does not seem to be any reason in principle why the distribution could not be decided autonomously by each institution and why the widest possible number of grades should not be included.

8. This would mean, for example, that the measures would be extended beyond the Commission's proposals to include A1 and A2 grades at the top end of the scale. It is true that Article 50 is already available to cater for the early departure of people in these grades and so these measures should not be seen as replacing that article. Nevertheless, the inclusion of these grades offers wider scope to the institutions with each of them obliged to weigh up whether to release more people of higher grade and less in lower grades and vice versa.

9. However, such an extension of those eligible should not extend beyond those who are established officials. To do so would be to embody a dangerous precedent within Community legislation. If the political groups in the European Parliament want to grant similar treatment to members of their own staff, there is no reason why ad hoc measures cannot be adopted as they were for those made redundant by the 1984 elections.

### The duration of the measures

10. In 1972 and 1982, special measures of this kind were restricted in their duration and directly linked to the accession of new Member States. On this occasion no time limit is set and a justification other than accession, is specifically stated i.e. 'the need to acquire staff with new skills'.

11. This extension is to be welcomed as introducing greater flexibility into the management of the institutions. With each institution obliged to present its demands annually through the budgetary procedure, it should be possible to control the financial cost to the Community. In any one year the budgetary authority would be entitled to refuse requests which it considered excessive. However, to help the budgetary review of the demands made, the Community should provide an annual report on the way in which appropriations voted have been used.

#### The financial settlement

12. It is regrettable that in its proposals the Commission has given no estimates of what these measures might be expected to cost in any one year. Such estimates must be provided to enable the budgetary authority to assess the likely demand on resources. Furthermore, the measures should be shown separately in the budget.

13. It is true that the cost would be less than an alternative where present occupants of posts and newcomers both receive full salaries, in other words, where Spanish and Portuguese officials could only be given new posts. However, there is the additional possibility of reserving vacant posts for officials of the new member states, a less costly mechanism which should be exploited to the full.

14. As for the terms offered, they are as generous as those available under the regulation agreed after Greek accession (OJ no. L228, Regulation no. 259/68, i.e. 70% of the basic salary) and less than those provided for in 1972 (OJ no. L272, Regulation no. 2530/72). In the latter case, officials received full pay for a year, then for the next 30 months 80% and thereafter 70% of their basic salary. There seems to be no good reason to return to the earlier régime.

15. Provision is made under Article 4 (4) to prevent former officials from taking up any new employment which enables them to earn more than the total gross remuneration that they last received with the Communities. It is difficult to see how such a measure can be enforced. The provision should at least be strengthened by ensuring that any people who quit an institution cannot be hired in another capacity by the Community.

## Conclusions

16. The Committee on Budgets :
- a) welcomes these proposals in principle as facilitating arrangements for the accession of Spain and Portugal;
  - b) considers that the special measures to terminate the service of officials should not only be applied on a voluntary basis;
  - c) believes that these measures should cover as wide a range of grades of established officials as possible;
  - d) supports the Commission's intention that the measures become a permanent feature in the management of the institutions;
  - e) calls for the presentation of an annual report by the Commission indicating clearly how the appropriations voted have been used;
  - f) regrets that no financial estimates of the costs of the measures have been provided and insists that the Commission should provide upper and lower estimates of departures over the first years of the measures so that the budgetary authority can assess the likely demand on Community resources;
  - g) requires that the measures be shown separately in the budget;
  - h) invites the Commission to present a table of vacant posts and to ensure that as far as possible such posts are filled with Spanish and Portuguese officials;
  - i) urges the Commission to indicate how the system of adjustments to take account of other earnings can be monitored.

