

DISCUSSION PAPER: Modernising the employment conditions of local agents in EU Delegations

1 March 2017

The Administration proposes an ambitious package to modernise and improve the employment conditions of the 3200 local agents employed by the EU (and indirectly of the 10000 beneficiaries of the local agents' complementary health insurance).

WHY MODERNISE?

The "Framework rules laying down the conditions of employment of local staff of the Commission of the European Communities serving in non-member countries" (FR), adopted in 1990, no longer serve us well. Much has changed in 28 years:

- Then, the Commission employed 650 local agents in 80 delegations – now the EU employs 3200 local agents in 140 delegations;
- Today our complementary health insurance covers 10.000 local agents and dependents – but the rules need improving and a stronger legal basis to give more rights to the local agents;
- The Provident Fund also needs a stronger legal basis with guarantees for local agent rights.

We need **more contemporary, more comprehensive and clearer** rules. We want to offer a fair and balanced package which must also respect our commitment to budget neutrality.

MORE CONTEMPORARY RULES

More can be done to modernise some of the rights of local agents and to address some of their recurring requests.

1. **Better post-employment conditions:** The Provident Fund currently pays a lump sum (funded by 5% employer and 5% employee contributions on the salaries plus the accrued interests). It is possible to allow for an increase in the employer contribution and additional voluntary contributions by the employee (the benefits of this will depend on the local context – this is why the additional employee contributions will remain voluntary on the basis of a collective decision by the local agents in each Delegation).
2. **Increasing the speed of promotions (faster careers):** The current promotion policy allows one extra step four times during the local agent career. We could make each promotion equivalent to 2 extra steps (instead of 1) OR increase the number of promotions.
3. **Increasing certain social rights in line with the times:** Increase the minimum maternity leave entitlement in line with EU Directive 92/85/EC (from the current 8 to 14 weeks); allow for the possibility of special paid leave in cases of adoption (currently no provision); improved rights in cases of termination of contract due to medical incapacity (eligibility to severance grant with 12 months' salary ceiling – currently not eligible).

4. **A fairer Severance Grant (SG):** The SG is an additional non-contributory benefit paid from the salary budget to all local agents who resign after more than 3 years of service but before having reached the retirement age set in the FR (65). The SG is calculated as one month's salary per year worked, capped at 12 months' salary.

For future recruits, the SG will be retained (with its current ceiling of 12 months) only for the purposes of (i) economic dismissals and (ii) dismissals for medical incapacity (currently no SG is foreseen for medical incapacity dismissals).

A transition clause for local agents already in service (grandfathering) will preserve their SG rights even after they sign the addenda accepting the revised FR. Also, for existing staff, the current anomaly of having to resign a few weeks before reaching retirement age in order to be eligible for the SG will be removed.

Local agents will also be able to request the payment of the SG into a financial institution of their choice (to encourage the use of this money as complementary pension provision).

5. **Further extension of the complementary medical cover after retirement:** The CSISLA currently allows local agents to continue their affiliation for one year after reaching retirement age, on condition of paying employer and employee contributions. It is proposed to further extend this by allowing extra 6-month periods for a maximum length of time proportionate to the length of service of the local agent (1 year of service = 1 month of additional cover).
6. Improving **the social security cover** in line with the preferences expressed in the CSISLA Survey, in particular:
 - a. improved cover for conditions requiring extended treatment and particularly expensive therapy for severe and chronic conditions;
 - b. more flexibility for expenses incurred outside the country of employment;
 - c. cover for dental prostheses.

MORE COMPREHENSIVE RULES

The FR will offer more legal certainty for the staff and the managers in a single document which will contain the following:

1. Rule that FR shall apply **without prejudice to more favourable provisions in local legislation, in so far as it does not prejudice the diplomatic mission and functioning of the Delegation**" (currently a matter of practice and international law);
2. A clear legal basis for **evaluation procedure** (currently a matter of policy);
3. A clear legal basis for the rights and obligations of local agents (rules on **ethics and conflict of interest**);
4. A legal basis for authorising **Flexitime** rights;

5. Clearer rules on how to apply **corrective measures to redress administrative mistakes** relating to grading, promotion, recovery of sums unduly paid, etc. (currently a matter of policy);
6. **Remove condition that salaries "shall be paid monthly in arrears"** – the rule should remain an administrative instruction, but allowing for flexibility (e.g. some Delegations follow local practice of paying the salary in two portions, half on the 15th of the month and the second half on the 30th – this respects the 'arrears' principle but not the 'monthly' rule);
7. More comprehensive rules on obligations relating to **medical absence from work** + the right of local agents to a **contradictory procedure on medical examination** by doctors designated by the Delegation;
8. More comprehensive rules on the **notice period**;
9. Rules which strengthen the rights of local agents in procedures for **dismissal for inefficiency or incompetence**;
10. Rules which strengthen the rights of local agents in an **appeal procedure** (including the right to re-submit an appeal on the basis of new facts);
11. The need for flexibility in Delegations explains why we accept the use of replacement or emergency interim staff - this allows for the possibility of local agents being absent for certain periods (e.g. unpaid leave, maternity leave, sick leave, etc.). The new FR will provide a legal basis for employing **interim staff** on the basis of local law, for short-term needs only, especially when the use of interim agencies (service contracts) is not possible or feasible.

CLEARER RULES

The conditions of employment of local agents follow the rules and practice at the place where they are employed. Implementing local labour law and practice in parallel with our own rules makes the EU an attractive employer. We propose to add a clear legal basis which enshrines our policy of applying local law over our FR when local law is more favourable to the local agent (so far this is only a matter of practice and internal policy).

The FR set minimum standards for local agents in delegations worldwide. They are not directly applicable until the entry into force of the Specific Conditions of Employment (SCE), adopted for each place of employment. SCE merge the provisions of the FR with local law and serve as the main source for the management of local agents' rights. This system is the source of many problems because:

- i. the SCEs duplicate the rules in the FR and the local law. Duplication of legal norms goes contrary to good legal practice: it is a source of **interpretation problems and legal conflict**.
- ii. The procedure for adopting/amending SCEs is an **unnecessary administrative burden**.

To avoid these problems, the SCE will be replaced by an administrative reference document for each delegation (possible title: 'National Law Reference guide' (NLR)). The set of rights and obligations of local agents which are independent of local law will remain enshrined in the FR. The NLR will provide

a practical guide for managing the local agents in a Delegation and will allow for quick and regular updates of local law to preserve the rights of local agents. The NLR will:

- catalogue relevant local labour law;
- be drawn up with the assistance of the delegation local lawyer under the responsibility of the Head of Administration and on the basis of a standard template – final administrative approval and amendments by EEAS BA.HR.5;
- be open for review on an *ad hoc* basis when a delegation becomes aware of changes in local law;
- allow for additional rights based on local practice or non-compulsory legislation to be authorised by note from Headquarters on a request by the Head of Delegation; these notes would be recorded as annexes to the NLR.

THE WAY FORWARD

Consultations with the Trade Unions on the Discussion Paper	informal
Consultations EEAS - Commission on draft legislative texts	informal
Approval of negotiating texts at EUDEL at working level (Directors)	Article 4(1) of the Joint Decision of the Commission and the High Representative of 28.03.2012 on Cooperation Mechanisms concerning the Management of Delegations of the EU
Inter-Service Consultation	Commission Rules of Procedure
Consultation of Trade Unions on draft legislative texts: separate formal procedures for EEAS and Commission	For the EEAS: Article 8 <i>Agreement between the EEAS and the Trade Unions or Staff Associations ('Framework Agreement')</i> For the Commission: Article 14 of the ' <i>Accord Cadre concernant les relations entre la Commission Européenne et les organisations syndicales et professionnelles</i> '
Joint adoption by Commission and HRVP	CEOS, Art 120-121 and Art 6