

Brussels, 05 October 2016

CLPHU (16) –SV/HC/ia /79

Note to the attention of Mr. G DI VITA Director General, Budget and Administration, EEAS

Subject: CLP HU comments to the EU Delegations' Guide on Local Agents

With your note dated 30 March 2016 (ref. Ares(2016)1503406) the CLPHU was informed about the forthcoming updates to the Local Agents' Section of the EU Delegations' Guide. These updates were subsequently published on 27 April 2016. The CLPHU would like to underline that certain updates to the Guide contain significant changes having a direct, often negative impact on the working conditions of Local Agents serving in EU Delegations.

In this context, the CLPHU stressed during its Plenary in May 2016 the need to engage in a constructive and open social dialogue on prominent issues concerning staff working in EU Delegations. It was therefore agreed that the CLPHU would review the proposed changes to the EU Delegation Guide and send its comments and observations to your services for further discussion.

The above-mentioned changes with our comments are indicated below:

Chapter 1 – Introduction

The chapter provides an all-inclusive list of the relevant legal basis applicable to the Local Agents (LAs) and includes an updated description of LAs' role in EU Delegations. The updated text reads as follows:

A Local Agent cannot officially represent the EU [...]

We believe that the Guide should elaborate further on the meaning of "*officially represent the EU*" by giving clear guidance on what a LAs can or cannot do. As it stands, the text would prevent LAs from attending meetings and other events without the presence of an Official, Temporary Agent or a Contract Agents, seriously undermining business continuity and fostering demotivation.

[...] Notwithstanding the contents of their job description or job title, a Local Agent is required to serve as support staff for the work of the Delegation [...]

Firstly, we would like to draw your attention on the fact that it should be the primary responsibility of the Institution to ensure alignment of the job description or job title with the key duties and responsibilities assigned to individual local agents in line with their group of function.

Secondly, the selection of terminology "*support staff*" appears inconsistent with the relevant legal basis:

According to Article 4, Title I of CEOS:

[...] Local staff means staff engaged in places outside the European Union according to local practice for manual or service duties, assigned to a post not included in the list of posts appended to the section of the budget [...]

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Annex I, A of The Framework Rules gives the following overview of LAs' groups of function:

<i>Group I:</i>	<i>Administrative, advisory and supervisory posts</i>
<i>Group II:</i>	<i>Executive posts</i>
<i>Group III:</i>	<i>Senior clerical posts</i>
<i>Group IV:</i>	<i>Clerical Posts</i>
<i>Group V:</i>	<i>Skilled manual posts</i>
<i>Group VI:</i>	<i>Manual posts</i>

As there are six distinguishable function groups, it is thus inaccurate for the Guide to label all LAs positions as "support staff", that is also not consistent with the language used in the different local labour contracts and codes.

The CLPHU hereby requests to re-consider the wording in line with the relevant legal basis and the reality of the ground. Alternative options could be "technical staff and support staff" or "advisory staff and support staff".

To conclude, a more accurate description of the LAs' roles in individual function groups would facilitate the job-matching exercise within the framework of the salary review process.

Chapter 2 – Specific conditions of employment

[...] In the case of a discrepancy, local law prevails over the CEOS, the Framework Rules and the SCE. In the case of a discrepancy, the CEOS and the Framework Rules prevail over the SCE [...]

The CLPHU welcomes this guidance on the order of prevalence of different legal bases. However, as there have been cases where the EEAS ignored the supremacy of local law citing the Vienna Convention, the Guide should foresee a provision for any decision that contradicts the local law to be approved at the HRVP level.

Chapter 4 – Right to appeal

This chapter addresses appeal procedures as laid down in the Framework Rules and the Special Conditions of Employment.

[...] Such cases may also be preceded by arbitration. In all cases, the Delegation should immediately consult with EEAS Division 'Local Agents' (BA.HR.5) for guidance [...]

The text should be made consistent with Article 122 of Title V of CEOS, which also addresses the dispute procedure and is applicable to the local agents:

Any dispute between the Institution and a member of the local staff serving in a third country shall be submitted to an arbitration board on the conditions defined in the arbitration clause contained in the local staff member's contract.

A Local Agent might have an individual issue with BA.HR.5. In this context, the Local Agent would not be in a position to seek guidance from the same unit. The EU Delegations' Guide should therefore enable Local Agents to address their individual issues to an arbitration board directly.

Chapter 5 – Security and Emergency Situation

The CLPHU welcomes additional information provided in this chapter as it comes in response to the increasing number of security and emergency situations in third countries. In such cases, dismissal of local staff is considered a last resort (e.g. Yemen, Central African Republic, and South Sudan). The CLPHU also welcomes the Institution's commitment to re-recruit the dismissed staff if the Delegation re-opens, as confirmed by Mr Bjorn Larsson during the CLPHU Plenary in May 2016. The CLPHU therefore would like to request for the EU Delegations' Guide to be more explicit about this commitment. It is proposed to amend the text as follows:

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*[...] If the Delegation re-opens, ~~it should be encouraged to give priority~~ **will be given** to re-recruiting the dismissed staff, taking account of the Delegation's needs at that time [...]*

Chapter 6 – Recruitment

According to the newly introduced changes to the Guide, spouses of EU Officials/Contract Agents and spouses of diplomats serving in EU Member States diplomatic missions are eligible to apply for LAs' vacant posts in Delegations. While we understand that this provision is aimed at offering incentives for families to apply to EU Delegations posts, the fact that "*[...] the spouse of the Official/Contract Agent/MS may be given preference in case of equal competences with other candidates [...]*" could raise concerns.

The CLPHU proposes to reconsider the text on preferred recruitment of spouses. The wider public could interpret it as lacking in transparency, and thus create tensions internally, especially in view of LAs' limited opportunities for internal mobility and career development.

On Selection Committees, the following text should be reconsidered:

[...] A Staff Representative may be invited as an observer [...]

In order to ensure transparency and equal treatment, presence of staff representatives in the selection committees should be made mandatory and spelled out in the EU Delegation's Guide.

Chapter 11 – Working conditions

[...] The maximum number of transferable hours per month is capped at 19 hours – any credit in excess at the end of the month shall be automatically reduced to 19 hours [...]

The CLPHU welcomes the increase in the capped hours from 15 to 19, and urges to align the e-TIM system accordingly. The system, in the Delegations where it is implemented, continues to allow transfer of a maximum of 15 hours of credit time.

Chapter 15 – Termination of Contracts

[...] If the reference letter is requested from a Head of Section, he/she should obtain the approval of the Head of Delegation before issuing the reference letter [...]

The CLPHU requests to omit such guidance as such an approval can become an obstacle in view of management rotation and in cases of dismissal/termination of contract (excluding the cases of disciplinary measures and unsatisfactory performance). A reference letter is a personal letter from an individual to a potential employer of the relevant person and there is an existing obligation by the Commission to use the disclaimer on reference letters. "*This message represents solely the views of its author and cannot be regarded as the official position of the European External Action Service*".

[...] The Local Agent is expected to keep all relevant documents after employment. Nevertheless, the Delegation shall also keep the personnel file for 8 years after the extinction of all rights of the person concerned and of any dependants, and for at least 120 years after the date of birth of the person concerned unless local legislation provides otherwise [...]

The CLPHU would like to propose to include information about the records for medical files, which are kept for 30 years as confirmed by CSISLA Section - EEAS.BA.HR.5.

Chapter 16 – Remuneration

[...] To create a new allowance or to adjust the amount of an existing allowance, the Delegation must submit a reasoned request to the AECC. The amount proposed should be based on the average data obtained from at least five employers, which should include the markers used in the salary review [...]

The CLPHU notes that a recommendation to provide data from at least five employers has now become

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a requirement. This requirement contradicts many of the Specific Conditions of Employments (SCEs) in the Delegations where allowances are implemented. The SCEs normally entitle the local agents to certain types of allowances irrespective of what other employers are doing. The requirement is also inconsistent with the salary review method, where data from only three markers is considered.

Chapter 17 – Salary Review

[...] The fact that the salary of one or more reference employers has not been revised when the salary review is carried out is not a valid reason for delaying the review [...]

The CLPHU considers that this guidance undermines the implementation of the EU Delegations' Salary Review Method. The method depends on the data from reference employers, who follow their own annual salary review processes. While acknowledging that delay in the Delegation's proposal for a salary review cannot be indefinite, there should be a provision for at least three-month delay in cases where reference employers' data is out-dated.

Conclusion

The CLPHU wishes to express its appreciation for the close collaboration with your services and is looking forward to further engaging on the matters raised above during the next Plenary in November 2016.

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CLPHU President
[signed]

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