***Union Syndicale Eurojust (USEJ)***

***Paper on different issues of common interest in EU Agencies***

***Title “Improving the working conditions of employment of other staff members of the EU employed mainly in the EU agencies and bodies”***

***To be presented at the USF Congress in Bratislava (30/05/2019 - 02/06/2019)***

This paper aims at addressing issues that are of common interests of the European Union agencies and bodies and suggesting possible solutions, including the creation of working groups tasked with finding the best possible way to solve a specific matter.

In particular, the paper will try to address the necessity to equal as much as possible the rights of officials with those of other agents of the European Union (hereinafter “*EU*”), mainly employed by the EU agencies and bodies[[1]](#footnote-1) with an emphasis on the possibility of changing grades and type of contracts via internal competitions as well as job security.

The paper will not only look at the legal aspects in *sensu stricto* but will try to present a broader policy oriented approach in order to explore possible ways to negotiate and obtain rules that could provide for rules applicable to other servants of the EU as closest as possible to those applied to officials, in particular in terms of working conditions and job security.

In accordance with the [Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20140501&from=EN) [[2]](#footnote-2) (hereinafter “*SRs and CEOS*”), there are two categories of staff – officials and other servants of the EU, employed under different contracts, namely temporary agents (hereinafter “*TA*”) and contract agents (hereinafter “*CA*”) and subject to different rights and entitlements, including emoluments.

EU agencies make use mainly of other servants with some exceptions[[3]](#footnote-3). Usually, pursuant to establishing decisions and regulation EU agencies staff members shall be subject to the SRs and the CEOS, particularly as regards their recruitment and status.

One of the main arguments used to defend the different status between officials and other servants is the different recruitment procedure. This argument, however, should not be given such a weight especially with regard to termination of employment and extension of contracts.

1. **Certification for TA AST staff and Internal competitions**

A procedure that we would like to see transported from the EU institutions to the EU agencies is the certification for ASTs, which would allow this category of staff to become ADs following a specifically organised training programme and successfully passed exams. In our view, this could be implemented either at the level of each agency, or if too ambitious, a solution at EU agencies level could be sought. However, this should be indeed an option available to EU AST agencies’ staff as it is in the EU institutions.

Another important subject are internal competitions, currently legally not possible for other servants of the EU not employed by an EU institution but available for officials. TAs and CAs employed by the respective EU institution can also participate.

In other words, any TA and CA not employed by an EU institution does not have access to the internal competitions organised by it on a regular basis and the possibility to organise such competitions at the level of the EU agency is not foreseen by the legislator.

Moreover, with the adoption of the implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f)[[4]](#footnote-4) of the CEOS, internal competitions have been explicitly excluded. In accordance with the rules, a vacant post may be filled only by internal or interagency mobility or through engagement following an external selection procedure. It is also true that not all agencies have adopted the so called 2 (f) rules[[5]](#footnote-5), which once more creates divergences among the agencies.

It should be further underlined that internal competitions and internal and inter-agency mobility are different in scope and nature. Internal competitions should be seen as a possibility for professional growth within the agency, which is the current employer. They should be organised not only when a post has become vacant but in order to establish reserve lists to be used when the need arises.

Again, more beneficial rules and better career opportunities are granted to officials. Moreover, TAs and CAs of the EU institution(s) could also benefit from them while such a possibility is inexistent for other servants employed by the EU agencies.

Such less favourable professional opportunities should not be accepted as normal and discrimination between officials and other EU servants should not be allowed. Agencies’ staff, therefore, should have the right to either participate in internal competitions organised by the EU institutions on the grounds of equal treatment and/or agencies should be allowed to organise their own internal competitions where career growth and personal motivation are of utmost importance for the day-to-day work of the agency.

1. **Pension rights**

An additional topic relating to staff matters that deserves special attention is pension rights, in particular in the context of inter-agency mobility.

Inter-agency mobility has been introduced by the abovementioned 2(f) implementing rules as one of the ways to fill in a vacant post. It provides for the possibility for EU agencies’ staff members to apply under certain conditions to vacancy posts advertised by an EU agency different than the one they are employed by.

This raised some questions like the continuity of contracts, in particular, if the staff member concerned is in possession of an indefinite contract, whether a probationary period has to be served again and transfer of pension rights.

While the contract, probationary period and the transfer of personal file were explicitly address in the 2(f) implementing rules, the same cannot be said with regard to pension rights.

The issue with pension rights is important because it has an impact on the pension age and accrual rate applicable.

The matter seems to be solved to a certain extent by a recent ruling of the European Court of Justice[[6]](#footnote-6), wherein the Court ruled that in case of change from one agency to another after 2014, staff members keep their accrual rate and a retirement age under the rules applicable before 2014 as there had been continuous affiliation to the pension scheme.

However, it appears that the Commission has a different understanding of the ruling and is of the view that the date of the last contract will determine the rules applicable to the calculation of the pension age.

The Commission, and more precisely PMO, does not intend to change its current practice in terms of calculation of pension rights/career reconstruction in case of multiple contracts following the judgement as according to PMO the decisive element in the court assessment is that it concerns an official on CCP and therefore, there is indeed only one date of entering the EU service, which would not be the case in case of multiple contracts of other servants of the EU. Hence, PMO esteems that when an official leaves on CCP the link with the pension system and entry into function is not impacted.

PMO believes that the decision does not clarify the most problematic situation of a staff member who is not an official and whose only link with the EU system has been a contract. Hence, for the time being, PMO is of the view that in case there is a new contract, there is also a new statutory link.

We believe that the current practice of PMO contradicts the ruling and that therefore, an intervention from the Trade Unions would be beneficial in solving the matter. In other words, we are of the view that the Court did not make such a distinction between officials and other servants and that therefore, PMO’s application of the judgement is wrong and not supported by the decision and creates another, this time artificial, distinction between officials and other servants.

It should be further noted that officials and other servants of the EU are all under the same social security scheme (pensions and JSIS).

When changing jobs from one agency to another or from one institution to another or from agency to institution and *vice versa*, continuity exists. As staff members continue to be part of the same scheme within the EU family, they remain part of the system and continue to contribute to it. Therefore, they should be treated in the same way as officials with regards to pension rights.

Regardless of who is your actual employer, we are all Union staff. Hence, unless there is an interruption in service for 30 days and beyond, the conditions must remain the same as from the date of entry into service.

1. **Childcare allowances**

Active and non-active staff of the EU is entitled to receive the so-called pre-school allowance equal to €100,18 per month for each dependent child who is less than 5 years old or is not yet in regular full-time attendance at a primary school (until the child reaches the maximum age of 8).

On top of this, we are aware that in EU institutions, staff members receive child day care (crèche) allowances. For instance, the formula used by the Commission is based on the principle that an entire household income would not pay more than 9% of its income to childcare. These allowances are not paid in all EU agencies though and therefore, we would like to explore the possibility to establish a harmonised approach and introduce them as a rule.

It should be stressed that the importance of childcare allowance is very high considering that childcare is extremely expensive in some countries and costs can vary significantly from one state to another. Therefore, part of the costs should be born by the employer, which is already the case when it comes to EU institutions.

In accordance with the Rules for the Interinstitutional day nurseries and kindergartens managed either by the early childhood centre of the European Commission’s office for infrastructure and logistics in Brussels (OIB) or by a third party[[7]](#footnote-7), the parental contribution per child, expressed as a percentage of the total income of the household, shall be equal to:

* 9 % for a household with one dependent child;
* 7 % per child, for a household with 2 dependent children;
* 6 % per child, for a household with 3 dependent children;
* 5 % per child, for a household with 4 or more dependent children.

However, the parental contribution is limited to an amount equivalent to 2.85 x dependent child allowance.

Where the child attends the day nursery/kindergarten on a half-day basis, the daily parental contribution charged is two-thirds. If the care time is exceeded on an occasional basis the fee is increased in proportion to the excess time recorded.

 A reduction of 25 % is applied to the parental contribution for the second child (and subsequent children) enrolled at the day nursery/kindergarten.

 A fixed reduction of 8.4 % is applied automatically to the monthly salary deduction, regardless of the type of attendance programme (Full-time, hereafter “FT” or Half-time, hereafter “HT”), to take account of annual leave and missions.

It is clear from the above that officials and other servants of the EU, employed in Brussels and Luxembourg, enjoy better childcare conditions compared to the one available to other servants of the EU employed in a different location.

Recruiting staff from all over the EU is a goal for the agencies and the institutions as it is gender balance and the encouragement to employ female staff.

Due to budget constraints, there is a tendency to recruit more and more vacant posts at lower grades which are likely to attract younger people who already have kids or would want to start a family. This is another reason why childcare, schooling and stability are very important.

In addition, currently there are two different types of EU schools – Type 1 and Type 2. The concerns lie with those staff members to whom only type 2 is available. The specificity of European Schools is to offer the opportunity of education in the mother tongue, or alternatively to have mother tongue lessons.

Although, it is understandable that it would be very difficult to provide kindergartens and schools for EU staff members in states with one or two and small in size agencies, it is necessary to establish a rule that applies equally between all agencies without a Type 1 or Type 2 school.

The double education allowances are not sufficient to this regard as they do not cover the expenditures of the staff members in the same way. A revision of the education allowances is necessary on an annual basis. For those locations with no access to EU schools/kindergartens, there should be a lump sum that would be high enough to cover the possibly higher costs.

Without any doubt, Type 1 schools are the best option as they provide for a certain level of education for staff members’ children. These Type 1 schools are legally considered as public entities in the countries where they are located. Currently, there are 13 European Schools Type 1 located in 6 EU Member States: Belgium, Germany, The Netherlands, Spain and Italy.

Staff in the service of the Union institutions and some other organisations[[8]](#footnote-8), employed directly and continuously for a minimum period of one year can enrol their children without any school tuition fees. These children are called "category I students".[[9]](#footnote-9)

Type 2 schools are different in nature. Member States can request accreditation of national public and private schools, to offer a European curriculum and the European Baccalaureate.

These schools provide a European curriculum, which meets the pedagogical requirements laid down for the European Schools, but within the framework of the national school networks (outside the legal, administrative and financial framework of the European Schools). Most of Type 2 schools are located close to European Agencies.

Type 2 schools are not necessarily accredited for all the primary and secondary cycles. For the non-accredited cycles, parents would have to pay the school tuition fees. Up to date there are 14 Type 2 schools. However, only 8 of them have concluded a Contribution Agreement with the European Commission. Children of the European Union staff, including orphans, of active or retired staff members of institutions or other entities of the European Union are entitled to benefit from a school allowance, as mentioned in the Article 3, paragraph 1 of the Annex VII of the Staff Regulations of officials and other servants of the EU and can be enrolled without any tuition fees and with priority in these 8 schools. As staff members who enrol their children in one of these 8 schools will not have to pay any tuition fees, they will not receive an education allowance. On the contrary. All other staff members whose children are enrolled in a Type 2 school are entitled to education allowance under certain conditions.

Despite of the strict accreditation process, not being managed directly by the Commission, a doubt arises to whether Type 2 schools provide the same level of education as Type 1. In our view, once something has been outsourced, it is difficult to ensure 100% guarantee. Therefore, staff should be given the possibility to choose adequate schooling for their children and to have the right to receive a proportionally cover of their costs.

A uniformed approach is required to treat EU civil servants in the same way and make sure that those that are not in reach of Type 1 schools receive equal treatment.

Therefore, we believe that an action at Union level should be undertaken in order to make the necessary achievements and ensure a uniformed approach to treat EU civil servants in the same way and make sure that those staff members not in reach of Type 1 schools receive equal treatment.

1. **Job Perspective**

EU agencies and bodies have legal personalities and enjoy the widest powers granted by law to legal persons. The executive/administrative director(s) are the legal representatives of the respective agency and act also as the authority authorised to conclude contracts of employment (hereinafter “*AACC*”). As confirmed by the European Court of Justice, AACCs enjoy wide discretionary powers when deciding on extension of employment contracts. Additionally, each agency has its own contract extension policy creating in this way and in some cases quite an important, difference between the rules applied from one agency to another in this regard. Therefore, with regard to job security and stability, different rules apply not only between officials and other servants but also between other servants depending on the actual employer, i.e. the respective EU agency.

Such a different status between officials and other servants has an important impact on job security. Although, by definition, contracts of other servants are not permanent, there should be some job certainty and perspective.

As mentioned above, the different status, including job perspective, is explained to some extend with the different recruitment procedure officials and other servants of the EU are subject to.

In our view, the recruitment tests although slightly different (i.e. the CBT tests run by EPSO for officials) cannot be used as an excuse that would defend the important differences concerning job perspective. The recruitment procedures run by the EU agencies are almost harmonised – applications are received as a response to a published vacancy, sifting of CVs by a selection board (pre-selection of candidates), a case study and a competency-based interview, establishing a reserve list. Hence, an individual could only become a staff member if he/she is successful in a recruitment procedure following a EU wide publication of a vacancy and if the criteria set out in Article 12(2) of the CEOS have been met (same as the ones applicable to officials).

We believe that this way of recruiting ensures that the best candidate(s) are selected and consequently employed by the respective agency, which is the very aim of the recruitment procedure used by the EU institutions as well.

It is unproved that the slightly different process adopted by the EU institutions guarantees a better selection of staff. At least, we are not aware of any studies performed showing that the fashion in which EU institutions select their own staff is better and ensures to a greater extent that only the best candidates are recruited by using this testing system compared to the recruitment procedures adopted by the EU agencies.

The legal framework governing the renewal of contracts of TAs and CAs is found in Articles 8 and 85 CEOS respectively, which provide that the contracts of staff engaged for a fixed period may be renewed not more than once for a fixed period. With some limited exceptions, any further renewal would be for an indefinite period.

Each year, following the yearly budgetary lifecycle, Eurojust evaluates its human resources needs on the basis of its strategic objectives and Work Programme. A similar approach is probably used by most of the agencies to evaluate their human resources needs as well. Certainly, in some cases, the lack of job stability is due to the lack of budget availability. However, in others, it could undoubtfully be explained with the adoption of staff unfriendly contract renewal policies.

At present, the renewal of other servants’ contracts is merely an option only if in the interest of the service. Staff members of EU agencies, therefore, cannot claim any expectation that their contract would be renewed. Even though the AACC is under the obligation to balance the interest of the service with that of the staff member concerned, the so-called duty of care, we believe that this is not sufficient to guarantee an appropriate job security. Moreover, a decision to assign duties to officials in the future justifies non-renewal of CEOS contracts.[[10]](#footnote-10) Therefore, additional measures should be envisaged not only to secure the contract renewals but also to have a harmonised approach applicable to all EU agencies.

One of the main consequences of the lack of job stability is the drainage of highly qualified staff. We truly believe that this is a twofold lost. From one side, the agency loses often its best human resources capital and knowhow, and, on the other side, it loses also financial resources necessary to organise new recruitment procedure(s) and to train newly recruited staff.

As a first step, it should be envisaged that staff members are informed well in advance about the possible extension of their contracts. Considering that recruitment procedures organised by the EU agencies are often time consuming and last approximately nine months from start to end, we believe that such notification should be given at least one year prior to the expiry date of the employment contract. Also, we believe that this approach should be spread to all agencies, without exception.

It should be further mentioned that currently officials cannot be dismissed, or at least this is a very difficult procedure rarely used. On the contrary, other servants are often not extended and in a lot of cases, this is not due to bad performance. Hence, even if a TA or a CA is performing well and this is duly recorded in the appraisal reports, the staff member might still not be extended. Another important aspect is the termination based on Article 48(b) of the CEOS[[11]](#footnote-11). While invalidity is a possibility for both officials and other servants, the way it is implemented is not the same. An official who has been placed on invalidity would be able to resume his/her duties once his/her health conditions allow him/her to do so. On the contrary, a TA or CA who has been placed on invalidity, but whose invalidity is not of a permanent nature, and whose contract has been terminated would remain unemployed if the conditions for the invalidity are no longer there and it would not be, therefore, justified to extend it.

Furthermore, on the basis of the current legal framework, the European Court of Justice, which is the only one institution under which remit the interpretation of the rules fall, ruled that other servants, such as staff members of EU agencies, do not have a right to renewal of their contract.

Additionally, some EU agencies do not even legally have the possibility to offer indefinite contracts, the pillar of job security, due to restrictions in their establishing legal basis[[12]](#footnote-12) or to internal policies adopted by their management boards.[[13]](#footnote-13)

This requires that the relevant steps are taken by Trade Unions in order to put this matter on the table of any upcoming social dialogues and negotiations of future revisions of the SRs and the CEOS.

1. **Conclusion**

We believe that Trade Unions should be more active and undertake concrete actions in order to abolish the current precarity to which other servants of the EU are subject to.

It should be noted that after an important period spent within the EU system with competences and knowledge focused on EU public administration, finding an occupation in the private sector is not an easy task. In our view, inter-agency mobility is a step forward in the right direction as it creates a flexible market and a pool of excellence and expertise. However, we should not forget about the fact that EU agencies are spread in all EU Member States with often a significant distance between them. One of the biggest assets EU administration advocates is a conciliation of family and work. Therefore, we all should think about appropriate measures to be implemented in order to ensure less divergency among different categories of staff in terms of rights and more job security for all other servants of the EU.

1. For the purpose of this paper, all references to EU agency do cover EU bodies as well [↑](#footnote-ref-1)
2. OJ 45, 14.6.1962, p. 1385 [↑](#footnote-ref-2)
3. Some agencies could employ also officials under certain conditions [↑](#footnote-ref-3)
4. Article 2 of the CEOS has introduced in its paragraph (f) a new category of temporary staff which is exclusively engaged by the agencies of the Union [↑](#footnote-ref-4)
5. For example, Europol [↑](#footnote-ref-5)
6. Case T-128/17 Torné v Commission (COM/PMO) (CPQS-D-1133/19), para 91 [↑](#footnote-ref-6)
7. https://myintracomm.ec.testa.eu/staff/Documents/family/children/creches/brussels/creches-parental-contribution-en.pdf [↑](#footnote-ref-7)
8. Members of the Union Institutions; Officials covered by the Staff Regulations; Staff covered by the CEOS; Persons with a directly binding contract of employment, governed by private law, with the Community Institutions; National experts seconded to Community Institutions; Employees of the EIB; Staff of any Community organisation set up by an act of the Community Institutions and staff in the service of other organisations recognised by the Board of Governors; UKAEA staff seconded to the JET project at Culham; Staff of the European Investment Fund’s Secretariat; National officials attached to the Permanent Representations of the Member States to the European Communities, with the exception of staff recruited locally; Teaching staff and the administrative and ancillary staff of the European Schools and of the Office of the Representative of the Board of Governors; Staff covered by the Service Regulations of the EPO in Munich.

 [↑](#footnote-ref-8)
9. category II students are covered by specific agreements between the schools and public/private entities that cover the school tuition fees of their staff's children; category III students are all the other students whose parents need to pay the school tuition fees. [↑](#footnote-ref-9)
10. T-584/16, HF v Parliament (24/04/2017), para. 120 [↑](#footnote-ref-10)
11. *Employment, whether for a fixed or for an indefinite period, may be terminated by the institution without notice if the servant is unable to resume his duties at the end of a period of paid sick leave as provided for in Article 16. In such case, the servant shall receive an allowance equal to this basic salary, plus family allowances at the rate of two days per month of service completed.* [↑](#footnote-ref-11)
12. European Institute for Innovation and Technology, European Defence Agency [↑](#footnote-ref-12)
13. Europol [↑](#footnote-ref-13)