

'They can't have it both ways'

Report to the Centre for Brexit Studies on the U.K.'s obligations to pay future pensions liabilities for E.U. Commission officials upon Brexit, and as provided for under the U.K.'s proposed December 2018 Withdrawal Agreement

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Summary

Why Article 142 of the proposed Withdrawal Treaty is fatally flawed, and should be withdrawn or voted down, unless the legal advice is clear and accepted.

Has there been any formal legal advice given on the position of whether there is, or is not, any liability at all owed by the U.K. to the E.U. in respect of EU pensions on BREXIT?

The formal Legal Advice as to which treaties, articles and regulations now cause a crystallised liability to occur from the U.K. to the E.U. upon BREXIT in respect of future E.U. Pensions for the next 50 years needs to be published.

If not, then the payment of possibly over €10 Billion from the U.K. to the E.U. is a choice in the proposed Treaty: it is not a necessity.

BCU's Centre for Brexit Studies (CBS) asked in July and August 2018 that the government should check over the provisions of what would be a Withdrawal Treaty to ensure that the E.U. Pensions Provisions in (then) Article 135 (now 142) were actually necessary.

CBS pointed out to the Department for Exiting the E.U. that the government needed to provide its reasoning as to why the **final** standard payment (of around €230 Million) into the Pension scheme should not be the date of leaving the EU, or (at the latest) the end of the transition period, without any further sums being due.

Under the presently-drafted Withdrawal Agreement the UK is now proposing to commit by treaty to pay as much as €10-12 Billion after it leaves the EU, including £750 Million over the next 3 years, even after the U.K. has left, when there is no clear obligation to pay it, even as a member state now.

When the other 27 member states scrutinise this proposed treaty, they too will have to accept that for the first time they are committing to acceptance of an immediate crystallised pension fund liability, annually updated, which they would not have had prior to the signing of the U.K. – E.U. Withdrawal Treaty.

This would apply across all 27 current remaining EU Member States. They may not be fully aware of this yet as they consider it now.

The doubtful legal position which could and should have been tested before now in the E.U.'s or U.K.'s courts will instead be blocked and superseded by a full-blown treaty obligation. Any attempt by the EU to enforce a financial liability under the treaty would come to be determined under the provisions of the treaty, which gives a considerable legal advantage to the E.U.

More significantly, though, under Article 174 of the agreement the U.K. cedes all authority to the CJEU in determining all matters relating to the interpretation of EU law in so far as they affect the provisions or implementation of the treaty. ***It outranks the U.K.'s Supreme Court in these matters, and (it would seem) without time limit.***

There are no provisions in the proposed Withdrawal Treaty or before parliament as to what the liability figure will actually be. The UK government is proposing to ask parliament to agree to pay by

Treaty a sum which is completely unknown. This sum will be determined entirely by the E.U. commission at a future date.

The discount rate and other calculations used by the E.U. are contradictory and confused. They have not been tested by anyone as to their validity. Whilst there is a formula suggested in the proposed Treaty, there are no provisions in the draft Treaty as to which figures will be applied in the formula.

The monthly payments out of the pension scheme are by EU treaty and regulations treated as a charge to the revenue budget of the E.U. and have been since the 1950s and 1960s. There is no pension fund and no liabilities arise from the fund, because Member States by treaty guarantee all future payments from the scheme - which creates an "in balance" scheme.

The fact of a member state leaving should not give rise to any future liabilities at all. Indeed, should the size of the E.U.'s commission shrink because the U.K. has left (as it should), then neither should there be any higher future guaranteed annual payments in relation to E.U. pensions for remaining member states.

If the fund is being treated as a fund, rather than a scheme (which it should not be) then all of the UK's payments into the scheme to pay for the pensions of retired EU officials who did not work for their entire service since 1973 needs to be refunded at today's values to the U.K. upon leaving the E.U. Payments into the administration for that service of EU officials prior to accession should be refunded at today's values. E.U. Assets should have been placed against any 'unfunded' future liabilities.

The payments by way of deductions from E.U. officials' salaries for the pension scheme need also to be deducted from any gross EU purported liability, before any U.K. share is calculated.

They can't have it both ways – why the EU Pension Scheme does not give rise to a liability bill for member states.

The EU has to decide whether its Officials' Pension scheme is an in-balance scheme with future guaranteed annual commitments, or a real fund with liabilities. It can't be both.

Brexit and its UK divorce bill has forced an issue on the EU which it had not anticipated by regulations or treaties. The EU had to decide whether the annual administrative bill for actually-paid-out pensions in each year (apportioned, as with the rest of the budget), and added to each member state's annual EU Bill thereby fulfilled past and present (and fulfils future) pension commitments.

The Withdrawal Agreement creates a real liability as a choice by the U.K.

The Withdrawal Agreement implies that it does not. For it calls for an assessment of a continuing 'liability' under the pension scheme; and for the U.K. to commit to applying its usual divvy-up share to that liability. It also gives a few ways the U.K. could choose to pay that over time, but a liability it undoubtedly becomes under the agreement, *a fortiori* if ratified and turned into a treaty obligation for the U.K.

The U.K. would, voluntarily and for diplomatic and negotiation purposes, have agreed that it should **become** a liability. There is a strong case that it need not have, and should not have.

The Withdrawal Agreement could, just as legitimately and legally, have made it clear that the last day of the transition period, 31st December 2020, was the last date of **any** commitment by the U.K. to pay anything further for the E.U.'s Pensions.

Agreeing to pay these future liabilities calculated by reference to conditions on the last day of transition was a choice, not a necessity. The U.K. parliament agreeing to the current draft of the Withdrawal Agreement would be a choice, and, again, then involve a Treaty Obligation for the U.K. to pay something it did not, prior to withdrawal.

In July and August 2018, the Centre for Brexit Studies at Birmingham City University Business School pointed out the need to identify the precise treaties and regulations which give rise to a future liability. When challenged as to the status of this liability, rather than identify the precise legal basis of the acquisition of this liability, the government has simply stated (to the Spectator, 17th November 2018) that "it would not be appropriate" and "it would not be right" to cease further payments to the scheme.

The Withdrawal Agreement on Pensions Article 142 – Route 1: Keep Paying the Bills

The Withdrawal Agreement lacks any specificity in relation to what this liability amounts to.

It assumes (or rather, expresses the expectation that) the U.K. will simply continue to pay into the fund until the death of the last surviving qualifying dependent (usually the spouse) of every official employed on 31st December 2020, or who has retired prior to 31st December 2020.

It expects that the U.K. will get a bill every year starting in March 2020 (presumably after the accounts of the EU are completed) and the UK will be obliged to pay it every year until the E.U. stops sending the bills.

However, there is (to coin a phrase) a backstop, which rather messes with things philosophically, financially, mathematically and legally.

The U.K. is currently paying approximately €225 Million per year for E.U. Pensions.

	Annual EU Pensions Bill €M	UK Share €M
1998	€ 463	€ 58
1999	€ 518	€ 65
2000	€ 581	€ 73
2001	€ 640	€ 80
2002	€ 679	€ 85
2003	€ 757	€ 95
2004	€ 808	€ 101
2005	€ 900	€ 113
2006	€ 908	€ 114
2007	€ 962	€ 120
2008	€ 1,023	€ 128
2009	€ 1,099	€ 137
2010	€ 1,191	€ 149
2011	€ 1,245	€ 156
2012	€ 1,307	€ 163
2013	€ 1,389	€ 174
2014	€ 1,486	€ 186
2015	€ 1,559	€ 195
2016	€ 1,682	€ 210
2017	€ 1,797	€ 225

The Withdrawal Agreement Pensions ‘Backstop’ Article 142 – Route 2: Pay up the Liability

The backstop alternative, hidden away in the Withdrawal Agreement provisions, is that the U.K. can opt to pay the U.K. share of the entire future liability on request. It tells the EU in any March subsequent to 31st December 2020 to calculate the figure for the remaining entire future liability starting with the end of that year. The U.K. then pays up in 5 chunks over the following 5 years in March each year.

It follows that, in all circumstances, the Withdrawal Agreement provides that the UK will effectively continue to pay approximately the same amounts into the pension scheme until 31st December 2021 at the earliest, almost as if they had not left the EU until then. This is likely to amount to approximately €700M extra post-Deal Brexit.

Route 1: How long does this keep going on?

As an example, if an official has served 13 years for the E.U. at the end of 2018, 2 more years in the transition period, and another 13 years employment left with the EU after transition, then probably half that official’s pension will start to become subject to partial payment by the UK in 2035. Effectively 1/16th (half of 1/8th) will only then start to be paid by the U.K.

If the official lives until 90 and, perhaps a younger spouse survives a further 5 years, then the UK will still be paying this pension commitment in 2065.

So the Agreement is set up to provide for (and an obvious preference for) continuing annual pension payments by the U.K. until the death of the last qualifying dependant of everyone and anyone employed on or before 31st December 2020.

There is, under the withdrawal agreement, no choice when it comes to the pensions of MEPs and 'high level public office holders'. The liabilities ascribed to them in the EU consolidated accounts for 2020 have to be paid in full in 10 equal annual instalments from 2021.

In summary, the Agreement gives the UK two routes: pay off the 'debt' in full over the next 5 years; or keep paying the bill every year for the next 50 years or so.

Parliament needs to know the figures

It should be a neutral, objective decision as to which route to take, not the obviously E.U.-preferred 'keep paying the bills' route. For a neutral, objective decision, Parliament must know the likely size of the liability before it votes on what would become the Withdrawal Treaty. Otherwise the Treaty will have a huge hole in it, entirely to be filled in by the EU at some future date.

In addition, Parliament needs to know the liability figure (or the U.K. government should calculate it) because should there be a no-deal 'disorderly' Brexit, or a Brexit on a later deal which is not on the terms of the current draft Withdrawal Agreement, the EU may still attempt to enforce payment of the liability on other terms, presumably because its 2018 accounts would have a figure for the 'liability'.

It could also become a payment dependent upon a future trade deal, or the UK could use it to be a payment basis for future access to markets or customs arrangements. Alternatively, it could become a stumbling block to future trade and/or diplomatic relations.

Consequently, just leaving the Brexit Pension bills as 'too difficult' and already an accepted deal is not an option for parliament, at least not upon consideration of the Withdrawal Agreement before the vote.

Is the Brexit Divorce Bill for Pensions €10 Billion or €1 Billion?

With even more strength, then, parliament must know the size of the bill before it votes. If the bill is £1Billion rather than £10 Billion, or none at all, then that must affect the judgement of at least some parliamentarians.

It will also be a consideration for those parliamentarians considering voting down the agreement in favour of exiting without a deal in March 2019, or for other purposes. It might make it more, or less, palatable; or more, or less, advantageous financially.

The 2017 E.U. Accounts published in the early summer of 2018 described a 'liability' calculation, and will do so again in its 2018 Accounts. So an annual actuarial assessment of some description takes place at EU level and comes up with an accounting liability for accounting purposes (no-one ever expected the accounts figure to

become incarnate in legal and financial reality). Consequently also, little attention has been given to how it is or was arrived at.

Annual accounts of the European Union 2017

LIABILITIES

2.9. PENSION AND OTHER EMPLOYEE BENEFITS

Net employee benefit scheme liability

	Pension Scheme of European Officials	Other retirement benefit schemes	Joint Sickness Insurance Scheme	31.12.2017 Total	EUR millions 31.12.2016 Total
<i>Defined Benefit Obligation</i>	63 951	1 854	7 756	73 560	67 664
<i>Plan assets</i>	N/A	(137)	(301)	(438)	(432)
Net liability	63 951	1 717	7 455	73 122	67 231

There is no Fund. It's an 'in balance' scheme. It looks like a Fund and talks like a fund, but doesn't walk like one

The problem is, of course, that there is no pension fund. It is a non-funded, annually in-balance, pension scheme.

Just because there is an annual actuarial assessment for accounting purposes of what figure comprises the future commitments to pay, and to ensure that the scheme remains in-balance, this does not necessarily cause a 'liability' to occur when there is no actual fund. And not necessarily one which would become payable in some way by a member state upon leaving the EU.

As with any non-funded pension scheme, the scheme administrators may choose to apply a similar accounting procedure to that in an actually funded scheme (a real fund) and as a result the word 'liability' may also be used in that accounting procedure, but, again, it does not necessarily create one in the real world.

But because the accounting figure looks like a liability, and talks like a liability, it has been assumed to walk like one too. Which it does not.

If it did, then that immediately implies so much more, which would be even more awkward for the EU. If it wants to create a liability as if there was an actual fund, it would have to look, talk and walk like a fund.

If it's a fund – it needs assets and calculations going back decades

The commission would have to go back and put all of the previous payments by member states, plus all of its monthly payments from its employees, into an (at least notional) actual fund. Which, of course it hasn't, and does not appear to intend to. The salary deductions from employee for pensions (if not pension payments by member states for each year) would have to be taken as having been invested and a notional figure applied, at least, and brought into today's calculations.

Any notional deficit on future liabilities would at least have had to have assets of the EU placed against them annually and so deducted from the asset side. Notional investment returns from the notional fund might need to be deducted from the notional liabilities bill. It simply can't work as a principle. It cannot be two things at the same time. That the employees' contributions were effectively used to balance the EU budget annually indicates it was a scheme, not a fund.

If there's a fund, as new Member States paid up for pensions in full straight after accession – they are due a huge rebate

It would also need to divvy-down effective overpayments from member states in relation to annual pension payments relating to the service of officials which was prior to the accession to the EEC/EC/EU of that member state. The 'liability' or obligation would only relate to the service of officials post-the accession date of that member state. It certainly would not be an obligation to pay any pensions for those who retired before accession.

Thus, we start from the assumption that the U.K. paid by the end of 1973 its full share of the pensions of those who had **already retired** before 1973, as part of the annual administration bill for the EU in 1973. The EU accounts and reports in 1970s are very vague on these things.

If there is taken to be a fund which creates real liabilities, the consequential balancing must be that this money would have to be refunded to the U.K. Those payments would be subject to a reverse discount rate to establish their (considerably enhanced) refund level in today's money.

The U.K. would have overpaid (on a sliding scale) for the Pensions of those who retired from the EU from 1973 until 2006 on the basis of average service of approximately 33 years. Again, these would be subject to the appropriately augmented temporal value of today.

In addition, the U.K. would also be continuing to pay a pre-1973 retiree's pension after death to a surviving spouse and defined dependants. These would need to be credited and enhanced into today's money.

If there's a fund, the U.K. should only actually be obliged to pay the full U.K. share of pensions paid to those who served as officials for their entire career post January 1st 1973, with first full payment on average only as recently as 2006.

The Withdrawal Agreement 'Overhang'

The Withdrawal Agreement, instead, creates an obligation to pay up an eighth of the pension 'overhang', by continuing annually to pay an eighth of the annual pensions of everyone who retired on, or previously to, the last day of transition and then to any surviving dependants. In addition, though, there is then an obligation to pay, tapering down from 100%, the U.K.'s eighth share of the future pensions of everyone who has ***some*** service prior to the last day of transition on 31st December 2020 – whether 1 day or, say, 29 years.

The Withdrawal Agreement 'Underhang'

So the omission by negotiators (unless a negotiating position) was actually what might be called the 'underhang'. If the U.K. is committing to pay the 'overhanging' service commitments post-transition and full Brexit, for possibly the next 40-50 years, there needs to be a balancing deduction for the **underhanging** service: that prior to accession.

In a scheme, notional liability is guaranteed by future commitments

The legal difficulty for the EU is that no member state has actually agreed to be bound by this accounting pension 'liability' as a debt. The only thing EU member states have agreed by treaty to do is to pay their proportionate share of each year's actually-paid pensions bill.

Article 83

1. Benefits paid under this pension scheme shall be charged to the budget of the ► **M128** Union ◀. Member States shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.

And that is all that is provided for in the regulations dealing with member states' commitments on the pensions issue.

'The dog that didn't bark' – Pensions Liabilities weren't reported, because they were assumed dealt with

Remarkably, prior to 1999 the EU accounts and financial reports did not even bother to report any figure at all for an actuarial liability, or any calculation of any kind as to future commitments. Instead it simply reported a statement that "..... although contributions are made by employees, no separate fund is maintained from which the eventual liabilities will be met."

Indeed, the whole area of pensions becomes historically the dog which didn't bark. From the 1970s until the end of the century, astonishingly, no pensions figures are reported in the EU accounts or financial reports at all.

No figure is even given or reported anywhere for the actual pensions payouts for any given year until 1999 (reported in 2000). It is simply taken to be a part of Administrative Expenditure and, importantly, is taken to be **a budgetary charge to revenue**. This absence is crucial, as it is clear throughout three decades at least, the pension payments have been regarded to be an annual charge to the budget, with no wider liability arising anywhere else.

'in balance' scheme actuarial assessment of future commitments

The EU decided to provide an annual actuarial assessment, and include the figures in the budgets and reports, from 2000. But this was not for the purposes of establishing a liability – it was to assist in the calculations for the "scheme" to be kept "in balance". Article 83 of the staff regulations specifically provides that the whole point of the assessment is to adjust payments into the scheme (by employees, actually) to ensure continuing balance.

The crucial point is the scheme is provided and expressed to be on the fundamental basis that it **must** be kept in balance. That is so it can exist as an appropriate, on-going, annual charge to the budget without any actual liability arising. ***If there is any notional liability, then it is the E.U. commission's notional liability, not that of member states.***

The guarantee balances the liability but the Withdrawal Agreement creates a new, fresh liability

This can only be because the scheme stands or falls on that basis. It stands because each Member State pays into it annually as part of a "guarantee" to pay an that annual administrative expense, an administrative expenditure, not as part of an ongoing "liability". That they do so from the moment of accession, is enough to determine this principle.

The Withdrawal Treaty conveniently (for the EU) effectively side-steps this fundamental basis and principle. It imagines into being a continuing commitment or liability upon a member state's exiting the EU.

How long is a piece of EU liability string? The decision is entirely the EU's – and after Brexit

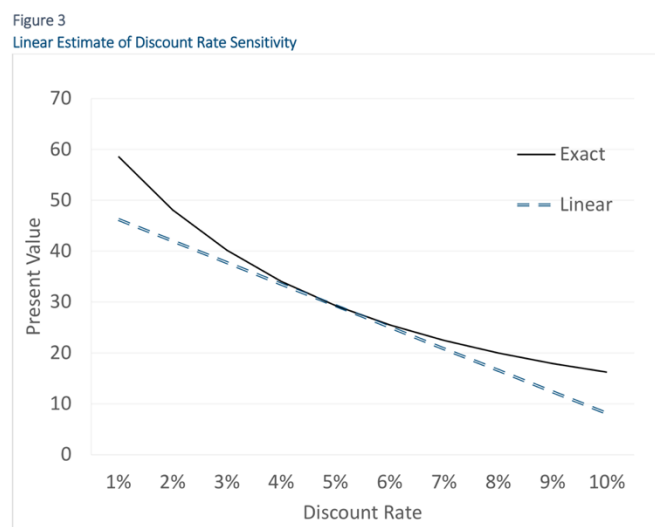
The other area of considerable difficulty for the E.U. is that the share of the liability which would be committed to under the Withdrawal Agreement/Treaty is not in any way an exact science. How that liability is calculated on the last day of the transition period of 31st December 2020 (or on the day before a 'disorderly' no-deal Brexit) is very much debatable and is not dealt with in enough detail in the Withdrawal Agreement, and should have been.

This figure (or a close as possible approximation of it) must be before Parliament before it votes on the final deal. Otherwise, the U.K. will be agreeing by treaty to pay a sum yet to be calculated and about which there could be considerable challenge.

It should also be noted that the Withdrawal Agreement has the calculation in the hands of the E.U. and not the U.K. Again, the U.K. would be ***treaty-bound to pay a sum over which it has no control or agreement, and the amount of which it does not yet know.***

Discount Rates have gone into freefall after Q.E. and will already have gone negative in the E.U.'s accounts for 2018

The fundamental calculation of that liability has recently soared due to the application of a discount rate which has fallen drastically since 2015. As discount rates fall, so liabilities rise. And an exponential effect occurs the nearer that discount rate gets to zero.



From *Discount Rate Sensitivities in Pension Plans* (Chandler, Canadian Institute of Actuaries, 2014)

Indeed, as there could at the end of 2018 have been a negative discount rate applied to the assessed liabilities by the EU, the bill could have rocketed by €20 Billion in the last 12 months.

Alternatively, there might need to be a suspension of the very use of a discount rate to calculate the liabilities, precisely because the methodology used by the EU thus far in its accounts simply cannot apply. There may be an argument that there is in fact no bill, because negative discount rates do not of their very nature actually even exist when assessing such liabilities.

The sum given in the 2017 accounts for liabilities is €73.122 Billion, with an implied UK share of an eighth being a €9.14 Billion bill. This is based on an accounting real discount rate at an inappropriately low figure of 0.4%. Had it been at the 1.6% real discount rate applied by the EU only as recently as 2012, then the liability is more likely to have been €40Billion and the UK's share at €5 Billion.

	Liability €Billion	Nominal Discount Rate	Inflation	Real Discount Rate
2017	73.122	1.90%	1.50%	0.40%
2016	67.231	1.70%	1.40%	0.30%
2015	64.242	2.00%	1.40%	0.60%
2014	59.053	2.00%	1.30%	0.70%
2013	46.818	3.70%	1.90%	1.90%
2012	42.503	3.60%	2.00%	1.60%

The impact on bond markets of Europe-wide full scale Quantitative Easing during this decade, and especially by the ECB since 2015, unaccountably (literally) forced down the discount rates applied by accountants to Pensions liabilities. It was a question of accounting fashion, not accounting certainty.

Parliament cannot vote on the Withdrawal Agreement without the figure for 2018, 2019 and 2020

Consequently the Withdrawal Agreement may well have to be amended to reflect this, and it will be extremely difficult for parliament to vote on the agreement without knowing the current likely assessed figure for those liabilities (even more so on a no deal, disorderly Brexit) and how they come up with those liabilities.

The Wrong Discount Rate under EU regulations?

Another immediate difficulty is that the EU staff regulations provide that the calculations relating to the Discount rate and other interest rates used to calculate liabilities should be smoothed over a 30 year period.

ANNEX XII Rules for implementing Article 83a of the Staff Regulations CHAPTER 2

6. A smoothing process shall be applied to determine the real discount rate and the rate of annual change in the salary scales of officials of the ► **M128** Union ◀. The smoothing shall be obtained through a ► **M131** 30-year ◀ moving average for the interest rate and for the increase in the salary scales.

So while this appears to have been used for some calculations on one side of the system, it has not in respect of the fundamental final rate which ultimately determines the figure for the U.K. bill - at least insofar as the figure for liabilities included in the formal consolidated accounts of the EU are concerned.

If smoothing were applied then we may find a real discount rate at an even higher level (as much as 5-6%), in which case the liability falls considerably, and is looking more in the range of €20-30 Billion.

There is obviously a different judgement to be made if the U.K. bill at the end of 2017 was €9.14 Billion when it could actually turn out to be €2.5 Billion.

What does a negative discount rate do?

More perplexing will be what figure the EU will actually come up with for the 2018 accounts. As inflation in the EU is outstripping the bond rates used to calculate discount rates, then in order to be consistent with previous accounts they would have to (try to) apply negative discount rates. Will this cause the total figure towards €100 Billion? And the UK's share to €12.5 Billion?

Again, the discount rate figure used for an accounting exercise to come up with an annual set of accounts is not linked in methodology, it would seem, to the actual staff pensions regulations themselves.

Do we deduct the contributions of the Officials?

In addition, we don't know yet whether the figure in the consolidated accounts, or any which the commission comes up with to represent the final figure for commitments based on the staff regulations, includes (and therefore deducts) the future contributions of the officials themselves. That could amount to an eventual one-third reduction in the eventual liability. On the above higher figure for discount rates, *this could reduce the UK's share to as little as €1.6 Billion.*

Parliament needs the figures

The draft withdrawal agreement should have set what the calculation actually is, based on the staff regulations (using smoothing and contributions). We should have at least the expected figure at December 31st 2018 (and expected figures for December 31st 2019 and 2020 for good measure). These should have been with the UK government and published by now, certainly before a vote in parliament. ***Instead the Withdrawal Agreement comes up with a formula, but no-one knows what the figures will be to put in to the formula.***

Without 'the Underhang', the Annual Pensions and Administration Payments must thereby function as a subscription

The fact that the Withdrawal Agreement does not make provision for 'the Underhang' indicates that ***the Agreement is fundamentally and fatally inconsistent when it comes to the Pensions Liability.*** It implies, in the absence of the Underhang that the annual payments made thus far in respect of pensions by Member states thereby function as an annual subscription only; and only while the Member State remains a member of the Club, so to speak.

It does not, obviously, prevent the EU attempting to elude this inconsistency and gain advantage over the UK by ***converting a debt which is not actually legally due, into one which becomes fully due and payable by dint of a full-blown treaty.***

What about the Assets?

The inconsistencies in the Withdrawal Agreement show that the E.U. is trying to have it both ways. The very article of the Withdrawal Agreement dealing with the alleged pensions bill (Article 142) states in s.1 that the U.K. will **not** be liable for "(a) liabilities with corresponding assets".

If the liabilities are taken on the one hand to exist as if there was a fund (notional or otherwise) then if there is a fund, there may be corresponding assets (notional or otherwise). If the annual contributions simply placed the scheme in balance, then future liabilities should correspondingly be set against physical and other assets of the E.U. itself.

But the very point is that the fund is in balance. The guaranteed future payments of Member States keep it so. That is all that is required to legally guarantee the future liabilities.

The EU could pursue the UK for the liability post-BREXIT?

An exit from the EU by the UK without an agreement in place would mean that the UK is no longer bound after March 29th 2020 by the rules of that Club. Legal Advice to the House of Lords Brexit committee concluded:

23. It follows that, under EU law, Article 50 TEU allows the UK to leave the EU without being liable for outstanding financial obligations under the EU budget, unless a withdrawal agreement is concluded which resolves this issue.

24. It is questionable whether an international court or tribunal could have jurisdiction. Article 344 TFEU prohibits EU Member states from submitting the legal interpretation of EU treaties to a court other than the CJEU....

26. The Supreme Court in Miller has made clear that once the UK withdraws from the EU, EU law will cease to be a source of domestic law

European Union Committee, Brexit and the EU budget

15th Report of Session 2016-17 - published 4 March 2017 - HL Paper 125

That would mean it is not bound by its regulations and treaties, and consequently pursuing from the UK a share of the liabilities figure in the EU's accounts, or an annual future pensions bill for the service of employees post-March 29th may ultimately be legally futile. Nevertheless, it may impact on the U.K.'s diplomatic and trade relationships with the E.U.

The same House of Lords EU committee, quite correctly, also concluded, by the way, that the nationality of the officials was an irrelevance to the matter. There was no special obligation to 'British' officials by the U.K. government.

Who judges disputes on the Pensions Liability (or anything else fundamental in the Treaty) – the CJEU?

The Withdrawal Agreement is effectively termed to frustrate the immediate implications of the decision of the U.K. Supreme Court judges in ***R(Miller) v Secretary of State for exiting the European Union***. Rather than the EU relying on the vagaries of applying international law in the future, it commits the UK by treaty to submit to the new treaty-based mechanism for determination of matters of dispute relating to what would become the Withdrawal Treaty. This would obviously include the existence or not, or the amount, of the Pensions liability.

Articles 164 and 170 provide for an ascending mechanism involving a Joint Committee and if not agreed there, thence to arbitration by the International Bureau of the Permanent Court of Arbitration. This is of itself a weakening of the U.K.'s legal position, and a strengthening of the E.U.'s, because (as the House of Lords legal advice suggests) the EU would otherwise have to pursue other far less certain and obscure International Law routes to pursue any alleged financial obligations.

However for the really significant issues (which would include the law around the pensions liability) all of this is undoubtedly trumped by a new proposed treaty obligation under Article 174.

ARTICLE 174

Disputes raising questions of Union law

1. Where a dispute submitted to arbitration in accordance with this Title raises a question of interpretation of a concept of Union law, a question of interpretation of a provision of Union law referred to in this Agreement or a question of whether the United Kingdom has complied with its obligations under Article 89(2), the arbitration panel shall not decide on any such question. In such case, it shall request the Court of Justice of the European Union to give a ruling on the question. The Court of Justice of the European Union shall have jurisdiction to give such a ruling which shall be binding on the arbitration panel.

The arbitration panel shall make the request referred to in the first subparagraph after having heard the parties.

The treaty binds the U.K. to accept the ruling of the CJEU. Its decision would become binding on the U.K. even though it has left the E.U. Through this treaty obligation the U.K. would be subject to the CJEU on interpretation of any provision of E.U. law in the implementation of this agreement. This would be at any time in the future, if it involves the interpretation of E.U. Law. Whether the annual charge to revenue of pensions creates a future liability would undoubtedly be such a provision.

This obviously and significantly relates to much more than the pensions issue. This accords with the current duty of a member state under Article 344 TFEU to accept only the and the supremacy of the CJEU on interpretation of E.U. Law. Under the Treaty the UK would still be accepting the CJEU's decisions on EU Law in so far as it affects the Withdrawal Agreement/Treaty without a time limit.

This provision means that **the U.K.'s Supreme Court would continue to be outranked by the CJEU in matters relating to the Withdrawal Agreement and later Treaty obligations which flow from it.** There is no timescale.

A Withdrawal Treaty with s142 still in it would bind the UK to pay sums it is not currently obliged to pay even as a member state

The immediate danger for law-makers in the U.K. and in other member states, regardless of where they might stand on the issue of Brexit in all its forms and manifestations, is that if Parliament agrees to the current text of the Withdrawal Agreement in respect of pensions it may be about to do two things:

- a) commit the U.K. to paying something by treaty which it is not currently obliged to pay even as a member state
- b) change the rules for the other remaining member states so that they too may become liable for such in the future

Conclusion – s142 ss2-6 must fall

The Withdrawal Agreement, in respect of creating a treaty obligation to pay a continuing liability which may not exist prior to leaving the Union, and its complete lack of specificity as to what that continuing liability is, or even might be, provides a fatal problem for that provision. ***It would be better excised from the agreement completely at the final vote stage.*** I am assuming that it is too late for the matter to be remedied in any event.

Instead, the determination of whether any sums are owed is for a separate legal tussle outside the immediate Brexit process. Should payment of an agreed sum or continuing sums for a notional or otherwise-defined liability be agreed separately then it could legitimately come into play in any trade negotiations.

For now, the provision in the Withdrawal Agreement in relation to Pensions must fall. Article 142, ss2-6 should be voted out of the Withdrawal Agreement. Otherwise it could immediately be referred for arbitration at 11.01 p.m. on Friday 29th March 2019, but that is likely to end up being decided by the C.J.E.U.. Should there be no withdrawal agreement ratified and no treaty, then Article 174 would not apply, and the matter of whether any liability is owing (and that is highly unlikely) can become a matter for later legal challenge and debate, with no payment after 29th March 2019 of pensions payments to the EU.

Annexes 1 and 2 are taken from the B.C.U. Centre for Brexit Studies Blogs earlier this year, outlining the problems of the estimate of the liabilities in the EU Accounts for 2017 and whether a liability exists.

Annex 1

The EU Pension Fund Discount Rate Problem

The liabilities included in the accounts for the EU's civil service Pension Fund liabilities have just hit €73Billion. The problem is that the UK, on leaving next March, has to commit to pay its share of that huge figure -one way or another. It is one of the biggest items on the Brexit bill. You'd have thought everyone would have been clear what it was.

But in all of the calculations by all of the apparent numbers experts very few have gone on to ask serious basic questions about this huge figure. Especially as there is actually no pension fund in existence.

Like our doctors and nurses in the NHS, our Teachers, the UK armed forces, judges and civil servants, there is a "pretend fund" for accounting purposes. But in reality it just pays out monthly pensions and takes in monthly contributions and they mostly balance at year end. If there's a shortfall the treasury plugs the gap, and if there's a surplus (there usually is) the Treasury happily gobbles it up. So with the EU. There's no Fund. Just an annual accounting exercise.

But the accounts say there's a big bill now of €73Billion. That's how much the EU has already committed to pay today's EU civil servants and expects to have to pay those same civil servants over the next few decades. They have come up with a figure every year for the last 15 years or so.

The problem is that just 5 years ago the figure was only(!) €42Billion. So the first obvious question to be asked (and our negotiators should have asked) is what on earth has happened to almost double the EU Pension Fund bill in five years?

It is, after all, rather unfortunate timing for the UK.

But why also so much of an increase just this last 2 years? It's gone up €10Billion since 2015 and over €6Billion since the last accounts. Surely this isn't the EU commission or its negotiators pulling a fast one at the last? So what happened this year to end up with such a shock increase in liabilities at year end?

The EU will also have another go on 31st December this year at naming the figure. Do we expect the December 31st 2018 figure to be substantially higher again?

If we do, then we should start seriously to question the entire basis for the EU's figures.

There is, actually, an explanation (if not an excuse) for these quickly inflating figures. And we need quickly to halt the train before it hurtles towards us at the last minute.

The explanation is that the EU has literally got its figures wrong. It has failed to reflect in its calculations the actual market conditions (or, rather, lack of them) which led to the €73 Billion calculation. In fact it could even be questioned as to whether it has in effect created false market conditions to come up with the figure.

When the EU calculates its accounts, it uses bond figures prevailing at the time to set the Discount Rate. This interest rate is the biggest factor when it calculates its final pension scheme liabilities. It values future liabilities and cash flows at today's prices by discounting a certain amount off the future big figure every year and calculates backwards to today. Over history discount rates have settled at around 7% for funded pension funds.

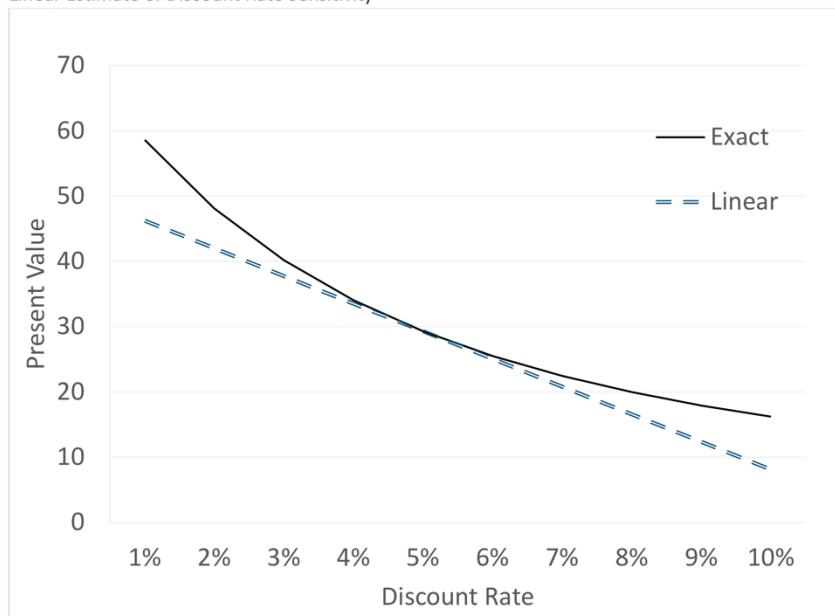
Perhaps counter-intuitively, the lower the discount rate, the higher the liabilities become, and vice- versa.

The future liabilities can be seen as a massive iceberg – the discount rate sets how many ice cubes you chip away (or rather the rate at which you chip away) from the iceberg over time, back to today - which gives you a smaller but prudent iceberg. On one level, if you chip away 7000 ice cubes a minute rather than 300 then your 7000 cube-cut iceberg's gets a lot smaller over time than the other.

Research also tells us that when you go below 3%, and the nearer you then get to zero, the then exponential effect makes liabilities sky-rocket. That's what's happened here.

Discount Rate Sensitivities in Pension Plans (Chandler, Canadian Institute of Actuaries, 2014) has given us a rather useful graph which helps to illustrate this point. Discount rates do not get applied in a linear manner, and the present value of liabilities starts to become considerably greater once we go below 3%, exponentially so as we get nearer zero.

Figure 3
Linear Estimate of Discount Rate Sensitivity



So the biggest of the other big questions we should have been asking relates to one actual accounting figure. Why has the EU used a nominal discount rate of only 1.9% to come up with the bill?

This figure when combined with inflation in the EU is the single reason why the bill has sky rocketed in the last couple of years. And similar (completely wrong) decisions as to this rate since the crash have caused the liability to almost double.

Why didn't the EU make a policy decision to freeze or place a ceiling (or, perhaps better put, a floor) on this discount rate when it was clear at each year end that it was causing ridiculous liability increases in the pension fund?

Another explanation (again not an excuse) is that nobody ever really bothers about this obscure, arcane entry in these annual notional figures.

But all of a sudden, this figure, it's real: Brexit has given it life and legs. Because the EU wants the UK to pay them a share of the liability as we "shut the door" and "leave".

A further explanation is that two parts of the European set-up (i.e., the Commission and the European Central Bank, or ECB) were not talking to each other which could have meant the figures were put right years ago.

When Mario Draghi at the European Central Bank got his bazooka out, his officials should have warned the EU Commission then and since that their annual accounting figures would go haywire. Draghi's "whatever it takes" humongous state and sovereign and corporate bond buying QE programme had an immediate, fundamental impact on markets across Europe.

In the "old days" (before 2015) the normal bond markets had settled post-crash, but wider interventions in bond markets in the U.K. and U.S. had depressed yields on sovereign and corporate bonds generally. But ECB quantitative easing (QE) changed the game. There suddenly wasn't a real market. So using it to set the discount rate in the EU accounts was madness.

The Central Bank's intervention was so hugely impactful that there was no real market in corporate Bonds. The fully functioning bond market ceased as soon as central interest rates collapsed after the Crash due to central (not market) interventions. When deflation threatened and recession came the ECB's utterly unprecedented intervention effectively dismissed the market in bonds in Europe in its entirety.

But elsewhere, the EU, simply continued as if nothing had happened. It pretended the figures coming out of a dysfunctional, effectively non-existent bond market were real. Worse, it came up with a discount rate every year that was just wrong. And those pension fund liabilities soared each year.

In addition, the very intention of the ECB was clearly expressed in its policy statements to actually "increase inflation" to 2% (this worked – achieving this aim in early 2018). This was seen as the healthy level after which the QE would start to stop.

The problem was the double whammy of ultra-low discount rates and increasing inflation at the same time. Once you just start the pension fund liability question with the 1.9% discount rate, you then deduct inflation for what they call the real discount rate. An Alice in Wonderland set up then occurs where liabilities are set at effectively negative discount rates. That could happen this year when the EU calculates the bill. If they do, then the Brexit bill won't just soar, it will go into orbit.

So let's see all of the actual calculations. And let's ask the Treasury and our negotiators to do alternative calculations. In particular, based on European Bond rates over 25 years, not now. And if we did that, then we could apply discount rates nearer to the norm of 5-7%, not next to zero. And the EU pension fund would see its pretend liabilities actually evaporate. There could even be a surplus.

The methodologies adopted by the EU are common-place and used within the UK also (e.g., calculating local government pension fund liabilities).

This raises wider issues – and, we would suggest – distinctly uncomfortable ones for the UK Treasury also as to how pension fund liabilities are calculated. Suffice to say, these concerns should also be of interest to the other 27 EU member states as regards to their own financial contributions to the EU budget.

In the meantime, let's see the EU's calculations, its policy statements on Discount Rates and the ECB's QE policy (if any), and what the Treasury and negotiators have done so far to challenge the figures. Did the EU in publishing the liability figure a matter of months away from the Brexit date pull a "fast one" at exactly the right time?

The €10 Billion Question - might the UK not actually owe the EU anything for pensions on January 1st 2021?

Then there is 'The €10Billion Question' – might the UK not actually owe the EU anything for pensions on January 1st 2021?

And even if it does, some would argue that the UK should be asking for a huge chunk of credit in today's money to set against what it might then be judged to owe.

Because when it joined the EC in 1973, there is an argument that the UK paid up straight away for pensions' liabilities which had then been "incurred" by the EC, and not by the UK. One justifiable reading of the position is that the UK took on and paid for those liabilities immediately, and it continued to pay up for them – for decades.

Shouldn't it now also drop, and stop paying for, alleged present 'liabilities' as it leaves? What's sauce for the EC goose in 1973 has to be sauce for the EU gander in 2021, doesn't it?

Surely the UK should not have paid its standard share (currently an eighth) of any official's full pension at all until probably about 2003?

The average age of an official actually joining the EU as an employee is unusually old. It's about 35 years old. They then have 25-30 years of service. Then they get a pension.

Hasn't the UK only incurred a first full liability share for an official who came to work for his/her first day on January 1st 1973 (the date the UK joined the EC) and then retired (probably) on, say, 31st December 2003?

Wasn't the liability to pay pensions for the service of officials employed prior to January 1st 1973 incurred by the EU-6 (Belgium, Denmark, France, Italy, Luxembourg & the Netherlands) and not the EU-9 (or indeed, later, the EU-10, 12, 15, 25 or 27!)?

There were, by the way, over 12,600 officials working for the EC in 1973, so it's not a minor matter, especially if calculated in today's money. At the least shouldn't that figure be actuarially calculated and deducted from the Brexit Pensions bill?

That extremely odd and complex accounting and actuarial equation, though, prompts a bigger (non-accounting) question of principle as to whether there are any continuing pensions liabilities at all, especially as there is no actual fund in existence for its now 32,000 officials?

It's a non-funded pension scheme. The EU simply pays out the full pensions bill each year out of revenue (which does notionally include the officials' pensions contributions out of pay). It's currently running at €1.7B a year. It comes out of the EU's 'administration' Budget heading. And the UK's paying about £190 Million a year to that for the near and, very likely, distant future – regardless of Brexit.

In other words, there is an important question not yet answered by the government: is paying up for annual pensions effectively just an annual administration subscription that gets paid when you join the club (as the UK did in 1973) and stops when you leave the club? In which case, so this reading goes, the UK government should not have agreed to pay anything further for pensions on Brexit.

It may very well be that this has indeed all been factored into various treaty amendments, new treaties and regulations agreed by the UK since 1973.

It's just that as the UK leaves, to be certain we are not paying over the odds under the withdrawal agreement, the government needs to spell out exactly how this might have actually happened. How did we come to agree to treat these as incurred liabilities, regardless of not necessarily incurring these liabilities on the ground, so to speak?

S62 of the Joint report from the UK-EU negotiators on the Withdrawal Agreement says "The UK will contribute its share of the financing of the Union's liabilities incurred before 31 December 2020". On the basis that nothing is agreed until everything is agreed, then we need to be much clearer what constitutes liabilities "incurred" before this gets signed off and voted upon. And we need to be much clearer about what constitutes "incurring".

End Notes:

[1] OBR. Economic and fiscal outlook – March 2018, B.27

Union liabilities at the end of 2020

1. The United Kingdom shall be liable to the Union for its share of the financing of the Union's liabilities incurred until 31 December 2020, with the exception of the following:
 - (a) liabilities with corresponding assets, including: Union financial assistance loan assets and the associated balance sheet liabilities, assets corresponding to property, plant and equipment and provisions related to the Joint Research Centre's nuclear sites dismantlement, and all lease- related obligations, intangible assets and inventories, any assets and liabilities relating to the management of foreign currency risk, accrued and deferred income and all provisions other than in respect of fines, legal proceedings and financial guarantee liabilities; and
 - (b) liabilities and assets which are related to the operation of the budget and the management of own resources, including outstanding pre-financing advances, receivables, cash, payables, and accrued charges, including those related to the European Agricultural Guarantee Fund or already included in the outstanding commitments (RAL).
2. In particular, the United Kingdom shall be liable for its share of the Union's liability for pension rights and rights to other employment-related benefits accrued on or before 31 December 2020. Payments related to this liability shall be made in accordance with paragraphs 5 and 6.

3. The Union shall communicate to the United Kingdom by 31 March of each year, starting in 2022, the payments made during the previous year corresponding to the liabilities outstanding at 31 December 2020 and the amount of the contribution of the United Kingdom to those payments.

4. By 31 March of each year, starting in 2022, the Union shall communicate to the United Kingdom a specific document on pensions relating to the situation at 31 December of the preceding year in respect of the liability referred to in paragraph 2, which shall provide:

- (a) the remaining amounts still to be paid in relation to the liabilities described in paragraph 5;
- (b) the calculations made and the data and assumptions used to determine the amount that the United Kingdom is to pay, by 30 June of the current year, in relation to staff pension payments and the Union budget contributions to the Joint Sickness Insurance Scheme (JSIS) made in the preceding year in accordance with paragraph 6 and an estimate of those amounts for the current year;
- (c) concerning the population at 31 December 2020, information on the numbers of actual beneficiaries and estimated future beneficiaries of the staff pension and sickness insurance schemes at the end of the previous year and their accumulated post-employment rights at that time; and

- (d) the outstanding United Kingdom liabilities calculated using actuarial valuations made in accordance with the relevant International Public Sector Accounting Standards and an explanation of the evolution of this liability compared to the previous year.

That document may be updated by 30 September of the same year to reflect the definitive figures for the preceding year.

5. With respect to the United Kingdom's liability for the pension rights and rights to other employment-related benefits referred to in paragraph 2 as regards pensions of the Members and EU high-level public office holders covered by Council Regulation 422/67/EEC, 5/67/Euratom¹, Decision 2005/684/EC, Euratom of the European Parliament² and Council Regulation (EU) 2016/300³, the United Kingdom shall contribute to the liabilities as they are recorded in the consolidated accounts of the Union for the financial year 2020 in 10 instalments starting on 31 October 2021.

¹ Regulation No 422/67/EEC, 5/67/Euratom of the Council of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice (OJ P 187, 8.8.1967, p. 1).

² Decision 2005/684/EC, Euratom of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament (OJ L 262, 7.10.2005, p. 1).

³ Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-

level public office holders (OJ L 58, 4.3.2016, p. 1).

6. With respect to the United Kingdom's liability for the pension rights and rights to other employment-related benefits referred to in paragraph 2 as regards pensions of officials of the Union established in accordance with Articles 77 to 84 of the Staff Regulations of Officials of the European Union and as regards the pensions of temporary staff, contract staff and parliamentary assistants established in accordance with Articles 33 to 40, Articles 101 to 114 and Article 135, respectively, of the Conditions of Employment of Other Servants of the European Union, the United Kingdom shall contribute annually to the net payments made from the Union budget to each beneficiary and to the related contribution of the Union budget to the JSIS for each beneficiary or person who benefits through a beneficiary. The payments of that contribution shall start on 30 June 2022.

For the pensions referred to in the first subparagraph, the payment by the United Kingdom shall be the sum of the net payments made by the Union budget in the preceding year for each beneficiary, multiplied by the United Kingdom's share and by a percentage that is specific to each beneficiary ("specific percentage"). The specific percentage shall be as follows:

- (a) for a beneficiary receiving pension on 1 January 2021, the specific percentage shall be 100 %;
- (b) for any other beneficiary of a pension, the specific percentage shall be calculated as the ratio between the pension rights acquired in accordance with the Staff Regulations of Officials of the European Union and in particular in Annex VIII thereto on or before 31 December 2020, including pension rights transferred in at that date, and the acquired pension rights at the date of retirement or death if earlier, or at the date the person leaves the scheme;

- (c) for the purposes of the contribution of the budget to the JSIS, the specific percentage shall be calculated as the ratio between the number of years during which the beneficiary contributed to the pension scheme until 31 December 2020 and the total number of years at retirement during which the beneficiary, or the person covered by the Staff Regulations of Officials of the European Union who is the basis for the rights under the JSIS, contributed to the pension scheme.

For a beneficiary of a survivor's pension or an orphan's pension established in accordance with the Staff Regulations of Officials of the European Union, the calculation shall be made on the basis of the career of the person covered by those Staff Regulations which is the basis for the survivor's pension or the orphan's pension.

As long as the liability in relation to this paragraph is not extinguished, in any given year ("year N") the United Kingdom may send the Union before 1 March of year N a request to pay the outstanding liability at 31 December of year N. The Union shall establish the amount of the outstanding liability in relation to the pension and JSIS post-employment benefits, using the same methodology as used in point (d) of paragraph 4. If the United Kingdom agrees, it shall pay that amount in five instalments, with the first payment taking place in the year N+1. The United Kingdom shall also cover its liability for the year N through the procedure set out in this paragraph. After that payment has been completed, and provided that the payments referred to in paragraph 5 have been completed, the remaining obligations under this Article shall be extinguished. The Committee on the financial provisions referred to in point (f) of Article 165(1) and the Joint Committee shall be informed of this situation.

Annex IV

Documentation relating to the regulations of the PSEO

**REGULATION No 31 (EEC), 11 (EAEC),
laying down the Staff Regulations of Officials and the Conditions of
Employment of Other
Servants of the European Economic Community and the European
Atomic Energy Community
(OJ 45, 14.6.1962, p. 1385)**

CHAPTER 3

▼ **M112**

Pensions and invalidity allowance

▼ **M131**

Article 77

An official who has completed at least ten year's service shall be entitled to a retirement pension. He shall, however, be entitled to such pension, irrespective of length of service, if he is over pensionable age, if it has not been possible to reinstate him during a period of non- active status or in the event of retirement in the interests of the service.

The maximum retirement pension shall be 70 % of the final basic salary carried by the last grade in which the official was classified for at least one year. 1,80 % of that final basic salary shall be payable to an official for each year of service reckoned in accordance with Article 3 of Annex VIII.

However, in the case of officials who have been assisting a person holding an office provided for in the Treaty on European Union or the Treaty on the Functioning of the European Union, the elected President of one of the institutions or organs of the Union or the elected Chairman of one of the political groups in the European Parliament, the entitlement to pensions corresponding to the years of pensionable service acquired while working in that capacity shall be calculated by reference to the final basic salary received during that time if the basic salary received exceeds that taken as reference for the purposes of the second paragraph of this Article.

The amount of the retirement pension must not be less than 4 % of the minimum subsistence figure per year of service.

The pensionable age shall be 66 years.

The pensionable age shall be assessed every five years starting on 1 January 2014 on the basis of a report by the Commission to the European Parliament and to the Council. The report shall examine, in particular, the evolution of pensionable age for staff in the civil services of the Member States and the evolution of life expectancy of officials of the institutions.

Where appropriate, the Commission shall make a proposal amending the pensionable age in line with the conclusions of that report, paying particular attention to developments in the Member States.

▼ **M131**

Article 78

An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity allowance in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his function group.

Article 52 shall apply by analogy to recipients of an invalidity allowance. If the recipient of an invalidity allowance retires before the age of 66 without having reached the maximum pension entitlement, the general rules on retirement pensions shall be applied. The amount of the retirement pension shall be based on the salary for the grade and step occupied by the official when he became an invalid.

The invalidity allowance shall be equal to 70 % of the official's last basic salary. However, it may not be less than the minimum subsistence figure.

The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

Where the invalidity arises from an accident in the course of or in connection with the performance of an official's duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity allowance may not be less than 120 % of the minimum subsistence figure. In such cases, moreover, contributions to the pension scheme shall be paid in full from the budget of the institution or body referred to in Article 1b.

▼ **B**

Article 79

The ► **M112** surviving spouse ◄ of an official or of a former official shall be entitled in the manner provided in chapter 4 of Annex VIII to a survivor's pension equal to ► **M5** 60 % ◄ of the retirement or disability pension which was paid to ► **M112** the deceased ◄, or which, irrespective of length of service ► **M62** or of age ◄, would have been payable to him if he had qualified for it at the time of his death.

The amount of the survivor's pension payable to the ► **M112** surviving spouse ◄ of an official who has died while in one of the administrative statuses specified in Article 35, ► **M62** ——— ◄, shall be neither less than the minimum subsistence rate nor less than ► **M23** 35 % ◄ of the last basic salary received by the official.

▼ **M62**

This amount shall not be less than 42 % of the final basic salary received by the official where death is due to one of the circumstances set out in ► **M112** the fifth paragraph of Article 78 ◄.

▼ **M112**

Article 80

▼ M112

Where an official or person entitled to a retirement pension or invalidity allowance dies leaving no spouse entitled to a survivor's pension, the children dependent on the deceased within the meaning of Article 2 of Annex VII at the time of his death shall be entitled to orphans' pension in accordance with Article 21 of Annex VIII.

▼ B

The same pension entitlement shall apply to children who fulfill the above conditions in the event of the death or remarriage of the ► M62 spouse in receipt of ◀ a survivor's pension.

▼ M23

Where an official or person entitled to ► M112 a retirement pension or invalidity allowance ◀ dies but the conditions set out in the first paragraph are not satisfied, the dependent children within the meaning of Article 2 of Annex VII shall be entitled to orphan's pension in accordance with Article 21 of Annex VIII; the pension shall, however, be equal to half the pension calculated in accordance with that Article.

▼ M112

For persons treated as dependent children within the meaning of Article 2(4) of Annex VII, the orphan's pension may not exceed an amount equal to twice the dependent child allowance.

Where a child has been adopted, the death of the natural parent who has been replaced by the adoptive parent shall not give rise to payment of an orphan's pension.

▼ M131

Entitlement as provided for in the first, second and third paragraphs shall apply in the event of the death of a former official entitled to an allowance under Article 50 of the Staff Regulations, Article 5 of Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾, Article 3 of Council Regulation (Euratom, ECSC, EEC) No 2530/72 ⁽²⁾ or Article 3 of Council Regulation (ECSC, EEC Euratom) No 1543/73 ⁽³⁾ and in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age.

▼ M112

Persons in receipt of an orphan's pension may not receive more than one such pension from the ► M128 Union ◀. Where a surviving child has entitlement to more than one ► M128 Union ◀ pension, he shall receive the pension providing the higher or highest amount.

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- (1) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).
 - (2) Council Regulation (Euratom, ECSC, EEC) No 2530/72 of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequences of the accession of new Member States, and for the termination of service of officials of those Communities (OJ L 272, 5.12.1972, p. 1).
 - (3) Council Regulation (ECSC, EEC Euratom) No 1543/73 of 4 June 1973 introducing special measures temporarily applicable to officials of the European Communities paid from research and investment funds (OJ L 155, 11.6.1973, p. 1).

Article 81

▼ **M112**

A person entitled to a retirement pension or to an invalidity allowance, or to a survivor's pension shall be entitled, under the conditions laid down in Annex VII, to the family allowances specified in Article 67; the household allowance shall be calculated by reference to the pension or the allowance of the recipient. These allowances shall be paid to recipients of a survivor's pension only in respect of the children dependent on the deceased official or former official at the time of death.

▼ **M23**

The amount of the dependent child allowance payable to the person entitled to a survivor's pension shall, however, be twice the amount of the allowance provided for in Article 67 (1) (b).

▼ **M62**

Article 81a

1. Notwithstanding any other provisions, notably those concerning the minimum amounts payable to persons entitled to a survivor's pension, the total amount payable by way of survivor's pension plus family allowances less tax and other compulsory deductions to the widow and other entitled persons may not exceed the following:

- (a) in the event of the death of an official having one of the administrative statuses set out in Article 35, the amount of the remuneration which the official would have received in the same grade and step if he had still been in the service, plus any family allowances received by him in that case and less tax and other compulsory deductions;
- (b) for the period following the date on which the official referred to in (a) above would have reached the ► **M131** age of 66 ◀, the amount of the retirement pension to which he would have been entitled thereafter, had he been alive, based on the same grade and step at the time of death, plus any family allowances which he would have received, less tax and other compulsory deductions;
- (c) in the event of the death of a former official entitled to a retirement pension or to an ► **M112** invalidity allowance ◀, the amount of the pension to which he would have been entitled, had he been alive, subject to the allowances and deductions referred to in (b);

▼ **M131**

- (d) in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age, the amount of the retirement pension to which he would have been entitled at pensionable age had he been alive, subject to the allowances and deductions referred to in point (b);

▼ M62

- (e) in the event of the death of an official or a former official entitled, on the day of his death, to an ► M131 allowance under Article 41, 42c or 50 ◀ of these Staff Regulations, Article 5 of Regulation (EEC, Euratom, ECSC) No 259/68, Article 3 of Regulation (Euratom, ECSC, EEC) No 2530/72, Article 3 of Regulation (ECSC, EEC, Euratom) No 1543/73, Article 2 of Regulation (ECSC, EEC, Euratom) No 2150/82 or Article 3 of Regulation (ECSC, EEC, Euratom) No 1679/85, the amount of the allowance to which he would have been entitled, had he been alive, subject to the allowances and deductions set out in (b);
- (f) for the period following the date on which the former official referred to in (e) would have ceased to be entitled to the allowance, the amount of the retirement pension to which he would have been entitled on that date, had he been alive and satisfied the relevant age requirements for the grant of pension rights, subject to the allowances and deductions set out in (b).

2. For the purposes of paragraph 1, weightings shall be disregarded, which could affect the various amounts in question.

3. The maximum amount as defined in subparagraphs (a) to (f) above shall be apportioned among the persons entitled to a survivor's pension in proportion to their respective entitlements, paragraph 1 being disregarded for this purpose.

The second, ► M112 and third ◀ subparagraphs of Article 82 (1) shall apply to the amounts thus apportioned.

▼ M112

Article 82

1. The pensions provided for above shall be calculated by reference to salary scales in force on the first day of the month in which entitlement commences.

No correction coefficient shall be applicable to pensions.

Pensions expressed in euro shall be paid in one of the currencies referred to in Article 45 of Annex VIII to the Staff Regulations.

▼ M131

2. Where remuneration is updated in accordance with Article 65(1), the same update shall be applied to pensions.

▼ M112

3. The provisions of paragraphs 1 and 2 shall apply by analogy to recipients of an invalidity allowance.

▼ B

Article 83

1. Benefits paid under this pension scheme shall be charged to the budget of the ► M128 Union ◀. Member States shall jointly guarantee payment of such benefits in accordance with the scale laid down for financing such expenditure.

▼ M131

▼**B**

2. Officials shall contribute one third of the cost of this pension scheme. The contribution shall be ►**M141** 9,8 %, ◀ of the official's basic salary, the weightings provided for in Article 64 not being taken into account. It shall be deducted monthly from the salary of officials.

►**M112** The contribution shall be adjusted in accordance with the rules laid down in Annex XII. ◀

3. The procedure for calculation of the pensions of officials who have spent part of their service with the European Coal and Steel Community or who belong to the institutions or organs common to the ►**M128** Union ◀, and the apportionment of the cost of such award between the European Coal and Steel Community pension fund and the budgets of the European Economic Community and the European Atomic Energy Community shall be settled by a Regulation made by agreement between the Councils and the Committee of Presidents of the European Coal and Steel Community, after consulting the Staff Regulations Committee.

▼**M112**

Article 83a

1. The scheme shall be kept in balance in accordance with the detailed rules set out in Annex XII.

▼**M131**

2. Agencies which do not receive a subsidy from the general budget of the European Union shall pay into that budget the entire amount of the contributions needed to finance the scheme. From 1 January 2016 agencies which are partly financed from that budget shall pay the part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues.

3. The balance of the pension scheme shall be ensured by the pensionable age and the rate of contribution to the scheme. On the occasion of the five-yearly actuarial assessment in accordance with Annex XII, the rate of contribution to the pension scheme shall be updated in order to ensure the balance of the scheme.

4. Each year the Commission shall update the actuarial assessment referred to in paragraph 3, in accordance with Article 1(2) of Annex XII. Where it is shown that there is a gap of at least 0,25 points between the rate of contribution currently applied and the rate required to maintain actuarial balance, the rate shall be updated, in accordance with the arrangements laid down in Annex XII.

5. For the purposes of paragraphs 3 and 4 of this Article, the reference figure set out in Article 83(2) shall be updated. The Commission shall publish the resulting updated rate of contribution within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

▼**B**

Article 84

Detailed rules governing the foregoing pension scheme are contained in Annex VIII.

ANNEX XII

Rules for implementing Article 83a of the Staff Regulations

CHAPTER 1

GENERAL PRINCIPLES

Article 1

1. In order to determine the contribution of officials to the pension scheme referred to in Article 83(2) of the Staff Regulations, the Commission shall, every five years starting in 2004, carry out the actuarial assessment of the balance of the pension scheme referred to in Article 83a(3) of the Staff Regulations. This assessment shall indicate whether the contribution of the officials is sufficient to finance one third of the cost under the pension scheme.

2. In preparation for the examination referred to in Article 83a(4) of the Staff Regulations, the Commission shall every year update this actuarial assessment, having regard to changes in the population as defined in Article 9 of this Annex, in the interest rate as defined in Article 10 of this Annex ► **C18** and in the rate of annual change in the salary scales of officials as defined in Article 11 of this Annex.

3. The assessment and updates shall be carried out in each year n, on the basis of the population of active members of the pension scheme at 31 December of the previous year (n-1).

▼ **M131**

Article 2

1. Any update of the contribution rate shall take effect on 1 July at the same time as the annual update of remuneration under Article 65 of the Staff Regulations. Any update shall not lead to a contribution being more than one percentage point above or below the valid rate of the previous year.

2. The difference established between the update of the contribution rate which would have resulted from the actuarial calculation and the update resulting from the variation referred to in the last sentence of paragraph 1 shall not be recovered at any time, or, consequently, taken into account in subsequent actuarial calculations. The contribution rate which would have resulted from the actuarial calculation shall be mentioned in the assessment report provided for in Article 1 of this Annex.

▼ **M112**

CHAPTER 2

ASSESSMENT OF THE ACTUARIAL BALANCE

Article 3

The five-yearly actuarial assessments shall lay down the conditions for balance by taking into account, as charges on the scheme, the retirement pension as defined in Article 77 of the Staff Regulations, the invalidity allowance as defined in Article 78 of the Staff Regulations, survivors' pensions as defined in Articles 79 and 80 of the Staff Regulations.

Article 4

1. The actuarial balance shall be assessed on the basis of the method for calculation set out in this chapter.
2. Under the method, the actuarial value of the pension rights earned before the calculation date represents a past service liability, while the actuarial value of the pension rights that will be earned in the year of service beginning on the calculation date represents the 'service cost'.
3. It is assumed that all retirements (except for invalidity) will occur at a fixed average age (r). The average retirement age shall be updated only on the occasion of the five-yearly actuarial assessment referred to in Article 1 of this Annex and may be different for different groups of staff.
4. In determining the actuarial values:
 - (a) the future changes in each official's basic salary between the calculation date and the assumed retirement age shall be taken into account;
 - (b) the pension rights earned before the calculation date (the past service liability) shall not be taken into account.
5. All the relevant provisions provided for in these Staff Regulations (particularly in Annexes VIII and XIII) shall be taken into account in the actuarial evaluation of the service cost.
6. A smoothing process shall be applied to determine the real discount rate and the rate of annual change in the salary scales of officials of the ►**M128** Union ◀. The smoothing shall be obtained through a ►**M131** 30-year ◀ moving average for the interest rate and for the increase in the salary scales.

Article 5

1. The contribution formula is based on the equation:
$$\text{year } n \text{ contribution rate } \frac{1}{4} \text{ year } n \text{ service cost} = \text{total annual basic salaries}$$
2. The contribution of officials to the cost of financing the pension scheme shall be calculated as one third of the ratio between the service cost of the current year (n) for all officials who are active members of the pension scheme and the total annual basic salaries for the same population of active members of the pension scheme at 31 December of the previous year ($n-1$).
3. The service cost shall be the sum of:
 - (a) the retirement service cost (detailed in Article 6 of this Annex), i.e. the actuarial value of the pension rights that will be earned during year n , including the value of the portion of that pension that will become payable to the surviving spouse and/or dependent children upon the death of the official after retirement (reversion);
 - (b) the invalidity service cost (detailed in Article 7 of this Annex), i.e. the actuarial value of the pension rights that will become payable to the active officials who are expected to become invalids during year n ; and

(c) the survivor's service cost (detailed in Article 8 of this Annex), i.e. the actuarial value of the pension rights that will become payable on behalf of active officials who are expected to die during year n.

4. The evaluation of the service cost shall be based on the pension rights and on the appropriate annuities, as detailed in Articles 6 to 8 of this Annex.

These annuities shall give the actuarial present value of EUR 1 per year, taking into account the interest rate, the rate of annual change in the salary scales and the probability to be still alive at the age of retirement.

5. The minimum subsistence figures mentioned in Chapter 2 of Title V of the Staff Regulations and in Annex VIII shall be taken into account.

Article 6

1. In order to calculate the value of retirement pensions, the pension rights earned during year n shall be calculated for each active official by multiplying his projected basic salary at retirement by his applicable accrual factor.

If the cumulated pension rights (rights from the recruitment, including transfers) credited to the official at 31 December of year n-1 are at least 70 % he will be deemed not to have acquired any right to pension during year n.

2. The projected basic salary (PS) at retirement shall be calculated starting from the basic salary at 31 December of the previous year and taking into account the rate of annual increase in the salary scales and the estimated annual rate of increase due to seniority and promotions as follows:

$$PS = SAL \cdot (1 + GSG)^m \cdot (1 + ISP)^m$$

where:

SAL = present salary

GSG = estimated annual rate of General Salary Growth, (the rate of annual change in the salary scales)

ISP = estimated annual rate of Increase due to Seniority and Promotions

m = difference between the assumed age of retirement (r) and the official's present age (x)

Since the calculations shall be made in real terms, net of inflation, the rate of annual change in the salary scales and the annual rate of increase due to seniority and promotions shall be rates of increases net of inflation.

3. On the basis of the calculation of the pension rights earned by a given official, the actuarial value of those pension rights (and of the reversionary pensions linked to them) shall be calculated by multiplying the annual pension rights as defined above by the sum of:

(a) an immediate deferred annuity at age x, deferred m years:

$${}_m j \alpha_x \frac{1}{4} \omega \times \frac{1}{k \frac{1}{4} m p 1} \frac{1}{1 p \tau} \hat{I}_{k \ddot{A} 0.5} \ddot{U}_{k p_x} \ddot{U}_{\delta 1 p} GSG \hat{P}_{k \ddot{A} m \ddot{A} 0.5}$$

where:

x = official's age at 31 December of year n-1

τ = interest rate

${}_k p_x$ = probability of a person of age x still being alive in k years

m = difference between the assumed age of retirement (r) and the official's present age (x)

GSG = estimated annual rate of General Salary Growth, (the rate of annual change in the salary scales)

ω = ceiling of the mortality table;

and

(b) an immediate deferred reversionary annuity at ages x and y, where y is the assumed age of the spouse. This latter annuity shall be multiplied by the probability of the official of being married and by the applicable reversion rate established in accordance with Annex VIII:

$${}_m j \alpha_{xy} \frac{1}{4} \omega \times \frac{1}{k \frac{1}{4} m p 1} \frac{1}{1 p \tau} \hat{I}_{k \ddot{A} 0.5} \ddot{U}_{k p_y} \ddot{U}_{\delta 1 \ddot{A}_{k p_x}} \ddot{U}_{\delta 1 p} GSG \hat{P}_{k \ddot{A} m \ddot{A} 0.5}$$

where:

x = official's age at 31 December of year n-1

y = age of the official's spouse at 31 December of year n-1

τ = interest rate

${}_k p_x$ = probability of an official of age x still being alive in k years

${}_k p_y$ = probability of a person of age y (spouse of the official of age x) still being alive in k years

m = difference between the assumed age of retirement (r) and the official's present age (x)

GSG = estimated annual rate of General Salary Growth, (the rate of annual change in the salary scales)

ω = ceiling of the mortality table.

4. The calculation of the service cost for retirement shall take into account:

- (a) the accrual incentive for officials remaining in service after the pensionable age;
- (b) the reduction coefficient for officials leaving the service before the pensionable age.

Article 7

1. In order to calculate the value of invalidity allowances, the number of such allowances expected to become payable during year n shall be measured by applying to each active official the probability that he could become an invalid during the year. That probability shall then be multiplied by the annual amount of the invalidity allowances to which the official should become entitled.

2. In calculating the actuarial value of the invalidity allowances first becoming payable in year n, the following annuities shall be used:

- (a) an immediate temporary annuity at age x:

$$\alpha_x \frac{1}{k} \frac{1 - \frac{1}{(1 + \tau)^k}}{1 - \frac{1}{(1 + \tau)^{\omega - x + 1}}} \ddot{U}_{k|x} \ddot{U}_{\omega - x + 1} \frac{1}{1 + GSG} \frac{1}{(1 + GSG)^{k-0.5}}$$

where:

x = official's age at 31 December of year n-1

τ = interest rate

$k p_x$ = probability of a person of age x still being alive in k years

m = difference between the assumed age of retirement (r) and the official's present age (x)

GSG = estimated annual rate of General Salary Growth, (the rate of annual change in the salary scales),

and

- (b) an immediate reversionary annuity. This latter annuity shall be multiplied by the probability of the official of being married and by the applicable reversion rate;

GSG = estimated annual rate of General Salary Growth, (the rate of annual change in the salary scales)

ω = ceiling of the mortality table.

CHAPTER 3

SYSTEM OF COMPUTATION

Article 9

1. The demographic parameters to be taken into consideration for the actuarial assessment shall be based on observation of the population of participants in the scheme, comprising staff in active service and pensioners. This information shall be collected annually by the Commission using information received from the different institutions and agencies whose staff are members of the scheme.

From the observation of this population shall be deduced in particular the structure of the population, the average age of retirement and the invalidity table.

2. The mortality table shall relate to a population which has characteristics as close as possible to those of the population of members of the scheme. It shall be updated only on the occasion of the five-yearly actuarial assessment referred to in Article 1 of this Annex.

Article 10

1. The interest rates to be taken into consideration for the actuarial calculations shall be based on the observed average annual interest rates on the long-term public debt of Member States as published by the Commission. An appropriate consumer price index shall be used to calculate the corresponding interest rate net of inflation as needed for the actuarial calculations.

2. The effective annual rate to be taken into consideration for the actuarial calculations shall be the average of the real average interest rates for the ►**M131** 30 years ◀ preceding the current year.

Article 11

1. The annual change in the salary scales of officials to be taken into consideration for the actuarial calculations shall be based on the specific indicators referred to in Article 1(4) of Annex XI.

2. The effective annual rate to be taken into consideration for the actuarial calculations shall be the average of the net specific indicators for the European Union for the ►**M131** 30 years ◀ preceding the current year.

▼**M131**

Article 11a

Until 2020, for the application of Articles 4(6), 10(2) and 11(2) of this Annex, the moving average shall be calculated on the basis of the following time scale:

In 2014 – 16 years

In 2015 – 18 years

In 2016 – 20 years

In 2017 – 22 years

In 2018 – 24 years

In 2019 – 26 years

In 2020 – 28 years

▼ **M131**

Article 12

The rate in Articles 4 and 8 of Annex VIII for the calculation of compound interest shall be the effective rate referred to in Article 10 of this Annex and shall, if necessary, be updated on the occasion of the five-yearly actuarial assessments.

With respect to the update, the rate referred to in Articles 4 and 8 of Annex VIII shall be understood as a reference rate. The Commission shall publish the updated effective rate within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

▼ **M112**

CHAPTER 4
IMPLEMENTATION

Article 13

1. Eurostat shall be the authority responsible for the technical implementation of this Annex.
2. Eurostat shall be assisted by one or more qualified independent experts in carrying out the actuarial assessments referred to in Article 1 of this Annex. Eurostat shall provide such experts with, in particular, the parameters referred to in Articles 9 to 11 of this Annex.
3. Each year on 1 September Eurostat shall submit a report on the assessments and updatings referred to in Article 1 of this Annex.
4. Any questions of methodology raised by the implementation of this Annex shall be dealt with by Eurostat in cooperation with national experts from the relevant departments of the Member States and the qualified independent expert or experts. Eurostat shall convene a meeting of this group for that purpose at least each year. However, Eurostat may convene more frequent meetings if it feels it necessary.

CHAPTER 5
REVISION CLAUSE

▼ **M131**

Article 14

1. In 2022 the Commission shall submit a report to the European Parliament and the Council. That report shall have regard to the budgetary implications of this Annex and shall assess the actuarial balance of the pension system. On the basis of that report the Commission will, if appropriate, submit a proposal to amend this Annex.
2. In 2018 the Commission shall submit an interim report to the European Parliament and the Council on the application of this Annex.

**Update with effect from 1 July 2016 of the rate of contribution to the pension scheme of officials
and other servants of the European Union ⁽¹⁾**

(2016/C 466/10)

The rate of the contribution referred to in Article 83(2) of the Staff Regulations shall be 9,8 %, with effect from 1 July 2016.

⁽¹⁾ Eurostat Report on the 2016 actuarial assessment of the Pension Scheme for European Officials of 1 September 2016.

REGULATION (EU, EURATOM) No 1023/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 22 October 2013

amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 336 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Union, and in particular Article 12 thereof,

Having regard to the proposal from the European Commission, submitted following consultation with the Staff Regulations Committee,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the Court of Justice ⁽¹⁾,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The European Union, and its more than 50 institutions and agencies, should continue to be equipped with a high-quality European public administration, so as to enable it to achieve its objectives, implement its policies and activities and perform its tasks to the highest possible standard in accordance with the Treaties in order to meet the challenges, both internal and external, that it will face in the future and to serve the citizens of the Union.

(2) Consequently, it is necessary to ensure a framework for attracting, recruiting and maintaining highly qualified and

multilingual staff, drawn on the broadest possible geographical basis from among citizens of the Member States, and with due regard to gender balance, who are independent and who adhere to the highest professional standards, and to enable such staff to carry out their duties as effectively and efficiently as possible. In that respect, it is necessary to overcome the current difficulties experienced by the institutions in recruiting officials or staff from certain Member States.

(3) Given the size of the European civil service when measured against the objectives of the Union and its population, a decrease in the number of staff of the institutions and agencies of the Union should not lead to any impairment of the performance of their tasks, duties and functions in accordance with the obligations and powers under the Treaties. In this regard, there is a need for transparency in relation to the personnel costs incurred by each institution and agency with respect to all categories of staff employed by them.

(4) The European civil service is expected to live up to the highest standards of professional ethics and to remain independent at all times. To that end, Title II of the Staff Regulations ⁽⁴⁾, which provides a framework for rights and obligations, should be further clarified. Any failure by officials or former officials to comply with these obligations should render them liable to disciplinary action.

(5) The value of the European civil service lies equally in its cultural and linguistic diversity, which can only be ensured if appropriate balance is secured regarding officials' nationality. Recruitment and appointments should ensure that staff are employed on the broadest possible geographical basis from among the nationals of all Member States of the European Union without, however, posts being reserved for nationals of any specific Member State. To that end and in order to address possible significant imbalances between nationalities among officials which are not justified by objective criteria, each institution should be given the possibility to adopt justified and appropriate measures. Such measures should never result in recruitment criteria other than those based on merit. The Commission should report to the European Parliament and to the Council on the implementation of the appropriate measures by the institutions.

⁽¹⁾ Opinion of 22 March 2012 (not published in the Official Journal).

⁽²⁾ OJ C 205, 12.7.2012, p. 1.

⁽³⁾ Position of the European Parliament of 2 July 2013 (not yet published in the Official Journal) and decision of the Council of 10 October 2013.

⁽⁴⁾ Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1).

- (6) In order to facilitate recruitment on the broadest possible geographical basis, the institutions should strive to support multilingual and multicultural education for the children of their staff. It is desirable that a contribution by the Union to the financing of the European Schools, determined by the budgetary authority in accordance with the relevant rules, be charged to the budget of the Union. Where necessary in the interests of the functioning of the institutions, the Commission should be able to ask the competent authorities to reconsider the location of a new European School.
- (7) A broader aim should be to optimise the management of human resources in a European civil service characterised by its excellence, competence, independence, loyalty, impartiality and stability, as well as by cultural and linguistic diversity and attractive recruitment conditions.
- (8) Officials should serve a nine-month probationary period. When deciding on the establishment of an official, the appointing authority should take into account the report on the probationary period made at the end of that period and the probationer's conduct with respect to his obligations under the Staff Regulations. It should be possible for a report on the probationer to be made at any time if the work of the probationer has proved obviously inadequate. Otherwise a report should only be made at the end of the probationary period.
- (9) In the interest of guaranteeing that the purchasing power of officials and other servants of the European Union develops in parallel with that of national civil servants in central governments of the Member States, it is essential to preserve the principle of a multi-annual mechanism for pay update, known as 'the method', by ensuring its application until the end of 2023 with a review at the beginning of 2022, while including a mechanism for the provisional prolongation of the method. Moreover, in order to remedy the difficulties with the application of the method in the past, provision should be made for a method to allow for an automatic annual update of all salaries, pensions and allowances, including an automatic crisis clause. To that effect, the relevant amounts contained in the Staff Regulations and the Conditions of Employment of Other Servants of the European Union should be understood as reference amounts which are subject to a regular and automatic update. Those updated amounts should be published by the Commission in the C series of the *Official Journal of the European Union* for information purposes. This update mechanism should equally be used for all other instances where such an update is provided for.
- (10) It is important to ensure the quality of statistical data used for updating remuneration and pensions. In accordance with the principle of impartiality, national statistical institutes or other appropriate authorities in the Member States should collect the data at national level and transmit them to Eurostat.
- (11) The potential advantages for officials and other servants of the European Union of the application of the method should be balanced by the reintroduction of the system of a 'levy'. As in the case of the method, the application of the solidarity levy may be provisionally prolonged. It seems appropriate in the present circumstances to increase the solidarity levy, as compared with the level of the special levy applicable from 2004 to 2012, and to provide for a more progressive rate. This is to take account of the particularly difficult economic and social context in the Union, and its ramifications for public finances throughout the Union. The need to consolidate public finances in the Union, including in the short term, requires a swift and particular effort of solidarity on the part of the staff of the institutions of the Union. Such a solidarity levy should thus apply to all officials and other servants of the Union as from 1 January 2014.
- (12) In its conclusions of 8 February 2013 on the multi-annual financial framework, the European Council pointed out that the need to consolidate public finances in the short, medium and long term requires a particular effort by every public administration and its staff to improve efficiency and effectiveness and to adjust to the changing economic context. That call reiterated in fact the objective of the 2011 Commission proposal for amendment of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, which strove to ensure cost-efficiency and acknowledged that challenges currently faced by the European Union require a particular effort by each and every public administration and each and every member of its staff to improve efficiency and to adjust to the changing economic and social context in Europe. The European Council called moreover, as part of the reform of the Staff Regulations, for the adjustment of remuneration and pensions of all staff of the Union institutions through the method to be suspended for two years and for the new solidarity levy to be reintroduced as part of the reform of the salary method.
- (13) In view of those conclusions and in order to respond to future budgetary constraints as well as to show solidarity on the part of the European civil service with the severe measures taken by Member States as a result of the unprecedented financial crisis and the particularly difficult social and economic context in the Member States and the Union as a whole, it is necessary to provide for suspension of the method for two years for all remuneration, pensions and allowances of officials and to apply the solidarity levy despite such suspension.

- (14) Demographic changes and the changing age structure of the population concerned require that the pension age be increased, subject however to transitional measures for officials and other servants of the European Union already in service. Those transitional measures are necessary in order to respect acquired rights of officials already in service who have contributed to the notional pension fund for European Union officials. The pension age should also be made more flexible by making it easier for staff to continue to work voluntarily until the age of 67 and by making it possible, in exceptional circumstances and under specific conditions, to work until the age of 70.
- (15) Since the European Union pension scheme is in actuarial balance and that balance has to be maintained in the short and in the long term, staff employed before 1 January 2014 should be compensated for their pension contribution by transitional measures, such as an adjusted accrual rate for the years of service after reaching pensionable age (Barcelona incentive) and by applying half of the reduction for early retirement between the age of 60 and the statutory retirement age.
- (16) Commonly accepted actuarial practice requires that a period of past observations between 20 and 40 years be used for interest rates and salary growth with a view to ensuring the balance of pension schemes. The moving averages for interest rates and salary growth should therefore be extended to 30 years with a transitional period of seven years.
- (17) The Council requested from the Commission a study and the submission of appropriate proposals on Article 5(4), Annex I, Section A, and Article 45(1) of the Staff Regulations with a view to establishing a clear link between responsibilities and grade and in order to ensure a greater emphasis on the level of responsibilities when comparing merits in the context of promotion.
- (18) Taking that request into account, it is appropriate that promotion to a higher grade should be made conditional on personal dedication, improvement of skills and competences, and the performance of duties the importance of which justifies the official's appointment to that higher grade.
- (19) The career stream in the AD and AST function groups should be restructured in such a way that the top grades will be reserved for a limited number of officials exercising the highest level of responsibilities. Therefore administrators can only progress as far as grade AD 12 unless they are appointed to a specific post above that grade, and grades AD 13 and 14 should be reserved for those staff whose roles entail significant responsibilities. Similarly, officials in grade AST 9 can be promoted to grade AST 10 only in accordance with the procedure laid down in Article 4 and Article 29(1) of the Staff Regulations.
- (20) With a view to adjusting career structures in the current domains of AST staff even further to different levels of responsibility and as an indispensable contribution to limiting administrative expenses, a new function group 'AST/SC' for secretarial and clerical staff should be introduced. Salaries and promotion rates should establish a suitable correlation between the level of responsibility and the level of remuneration. In this way it will be possible to preserve a stable and comprehensive European civil service. The Commission should assess and report on the scale and effects of introducing this new function group, taking particular account of the situation of women, so that the preservation of a stable and comprehensive European civil service can be ensured.
- (21) The minimum of two years in the grade before promotion of an official to the next higher grade is maintained in order to allow for faster promotions for high performers. Each institution should ensure that its internal human resources policies use the possibilities provided in the Staff Regulations to allow for appropriate careers for high-potential and high-performing officials.
- (22) Working hours applied in the institutions should be aligned with those in force in certain of the Member States of the European Union to compensate for the reduction of staff in the institutions. That alignment should take into account the working hours applied in the civil services of Member States. The introduction of a minimum number of weekly working hours will ensure that the staff employed by the institutions are able to carry out the work-load resulting from the European Union's policy objectives while, at the same time, harmonising working conditions in the institutions, in the interest of solidarity throughout the Union's civil service.
- (23) Flexible working-time arrangements are an essential element of a modern and efficient public administration allowing for family-friendly working conditions and enabling a suitable gender balance within the institutions. It is therefore necessary to introduce an explicit reference to those arrangements in the Staff Regulations.

- (24) The rules on travelling time and annual payment of travel expenses between the place of employment and the place of origin should be modernised, rationalised and linked with expatriate status in order to make their application simpler and more transparent. In particular, the annual travelling time should be replaced by home leave and limited to a maximum of two and a half days.
- (25) Likewise, the rules on the reimbursement of removal costs should be simplified in order to facilitate their application both for the administration and the staff members concerned. To that end, cost ceilings which take account of the official's or agent's family situation and of the average cost of removal and associated insurance should be introduced.
- (26) Some staff members frequently have to go on mission to the other principal places of work of their institution. These situations are at present not adequately taken into account in the rules on missions. These rules should therefore be adapted, in order to allow in such cases the reimbursement of accommodation costs on the basis of a flat-rate sum.
- (27) It is appropriate to modernise working conditions for staff employed in third countries and to render them more cost-effective whilst generating cost savings. Annual leave entitlements should be adjusted, and provision should be made for the possibility of including a wider range of parameters to fix the allowance for living conditions, without affecting the overall aim of generating cost savings. The conditions for granting the accommodation allowance should be revised to take better account of local conditions and to reduce the administrative burden.
- (28) It is appropriate to provide a more flexible framework for the employment of contract staff. The institutions of the Union should therefore be enabled to engage contract staff for a maximum period of six years in order to perform tasks under the supervision of officials or temporary staff. In addition, while the vast majority of officials will continue to be recruited on the basis of open competitions, the institutions should be authorised to organise internal competitions which may exceptionally and subject to specific conditions be open to contract staff.
- (29) Transitional arrangements should be laid down to enable the new rules and measures to be applied gradually, whilst respecting the acquired rights and legitimate expectations of the staff employed before the entry into force of these amendments to the Staff Regulations.
- (30) In common with other staff to whom the Staff Regulations apply, the staff of agencies are covered by the EU pension scheme. Agencies which are fully self-financed currently pay the employers' contribution to the scheme. In order to ensure budgetary transparency and more balanced burden-sharing, agencies which are partly financed from the general budget of the European Union should pay that part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues. As this new provision may require the adjustment of the relevant rules on the fees collected by the agencies, it should apply only with effect from 1 January 2016. Where appropriate, the Commission should submit proposals for the adaptation of those rules.
- (31) In the interest of simplification and of a consistent staff policy, the rules adopted by the Commission to implement the Staff Regulations should apply by analogy to the agencies. However, in order to ensure that the specific situation of agencies may, if necessary, be taken into account, agencies should be entitled to request the Commission's authorisation to adopt implementing rules which derogate from those adopted by the Commission, or not to apply the Commission's rules at all.
- (32) A register of all of the rules adopted to implement the Staff Regulations should be set up and administered within the Court of Justice of the European Union. That register, to be open to consultation by all institutions, agencies and Member States, will allow for transparency and promote a consistent application of the Staff Regulations.
- (33) In order to harmonise and clarify the rules on the adoption of implementing provisions, and having regard to their internal and administrative nature, it is appropriate to confer the relevant decision-making powers on the appointing authority and the authority authorised to conclude contracts.
- (34) Taking into account the high number of temporary staff within agencies and the need to define a consistent staff policy, it is necessary to create a new category of temporary staff and to lay down specific rules for that category.
- (35) The Commission should continue to monitor the budgetary situation of the Joint Sickness Insurance Scheme and take all necessary steps in the event of a structural imbalance of the system.

- (36) Article 15 of the Protocol No 7 on Privileges and Immunities of the European Union provides that certain data of officials and other servants are to be communicated to the governments of the Member States.
- (37) In order to achieve the objectives set out in the Staff Regulations, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission notably in respect of certain aspects of working conditions. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council,

HAVE ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of Officials of the European Union are amended as follows:

- (1) Article 1d is amended as follows:

- (a) in paragraph 3, the word 'institutions' is replaced by 'appointing authorities of the institutions';

- (b) paragraph 4 is replaced by the following:

'4. For the purposes of paragraph 1, a person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others. The impairment shall be determined in accordance with the procedure set out in Article 33.

A person with a disability meets the conditions laid down in point (e) of Article 28 if he can perform the essential functions of the job when reasonable accommodation is made.

"Reasonable accommodation", in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

The principle of equal treatment shall not prevent the appointing authorities of the institutions from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers.';

- (2) In Article 1e, paragraph 1 is replaced by the following:

'1. Officials in active employment shall have access to measures of a social nature, including specific measures to reconcile working life with family life, adopted by the institutions, and to services provided by the social welfare bodies referred to in Article 9. Former officials may have access to limited specific measures of a social nature.';

- (3) Article 5 is amended as follows:

- (a) paragraph 1 is replaced by the following:

'1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in an administrators' function group (hereinafter 'AD'), an assistants' function group (hereinafter 'AST') and a secretaries and clerks' function group (hereinafter 'AST/SC').';

- (b) paragraph 2 is replaced by the following:

'2. Function group AD shall comprise twelve grades, corresponding to managerial, conceptual and analytical as well as to linguistic and scientific duties. Function group AST shall comprise eleven grades, corresponding to executive and technical duties. Function group AST/SC shall comprise six grades, corresponding to clerical and secretarial duties.';

- (c) in point (a) of paragraph 3 the words 'and function group AST/SC' are inserted after the words 'in function group AST';

- (d) paragraph 4 is replaced by the following:

'4. A table showing types of posts is given in Annex I, Section A. By reference to that table, the appointing authority of each institution may define in more detail the duties and powers attaching to each type of post after consulting the Staff Regulations Committee.';

(4) Article 6 is replaced by the following:

'Article 6

1. The establishment plan appended to the section of the budget related to each institution shall indicate the number of posts in each grade and function group.
2. Without prejudice to the principle of promotion based on merit as laid down in Article 45, that plan shall ensure that, for each institution, the number of vacant positions at every grade of the establishment plan on 1 January of each year corresponds to the number of officials in the lower grade in active employment on 1 January of the preceding year, multiplied by the rates laid down in Annex I, Section B, for that grade. Those rates shall be applied on a five-year average basis as from 1 January 2014.
3. The rates laid down in Annex I, Section B, shall form part of the report referred to in Article 113.
4. The implementation of the provisions concerning function group AST/SC and of the transitional provisions laid down in Article 31 of Annex XIII, taking into account the evolution of the need for staff carrying out secretarial and clerical tasks in all institutions and the evolution of permanent and temporary posts in function groups AST and AST/SC, shall form part of the report referred to in Article 113.;

(5) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

- '1. Without prejudice to paragraph 1a, there shall be set up within each institution:
- a Staff Committee, which may be organised in sections for the different places of employment;
 - one or more Joint Committees, as appropriate for the number of officials at the places of employment;
 - one or more Disciplinary Boards, as appropriate for the number of officials at the places of employment;
 - one or more Joint Advisory Committees on professional incompetence, as appropriate for the number of officials at the places of employment;
 - a Reports Committee, if required;
 - an Invalidity Committee,

which shall perform the functions assigned to them by these Staff Regulations.;

(b) paragraph 1a is replaced by the following:

'1a. For the application of certain provisions of these Staff Regulations, a common Joint Committee may be established for two or more institutions. The other Committees referred to in paragraph 1 and the Disciplinary Board may be established as common bodies by two or more agencies.;

(c) in paragraph 2, the following subparagraph is inserted after the first subparagraph:

'The agencies may derogate from the provisions of Article 1 of Annex II regarding membership of Staff Committees to take into account the composition of their personnel. The agencies may decide not to appoint alternate members in the Joint Committee or Committees provided for in Article 2 of Annex II.;

(6) In the second sentence of the first paragraph of Article 10, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(7) Article 11 is replaced by the following:

'Article 11

An official shall carry out his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.

Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest. In such cases, the appointing authority shall take this into account in a duly reasoned opinion. If necessary, the appointing authority shall take the measures referred to in Article 11a(2).

This Article shall apply by analogy to officials returning from leave on personal grounds.';

(8) Article 16 is replaced by the following:

'Article 16

An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The appointing authority shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.

In the case of former senior officials as defined in implementing measures, the appointing authority shall, in principle, prohibit them, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

In compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council (*), each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed.

(*) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).';

(9) Article 18(1) is replaced by the following:

'1. All rights in any writings or other work done by any official in the performance of his duties shall be the property of the European Union where such writings or

work relate to its activities or, where such writings or work relate to activities of the European Atomic Energy Community, the property of that Community. The Union or, where applicable, the European Atomic Energy Community shall have the right to acquire compulsorily the copyright in such works.';

(10) Article 19 is replaced by the following:

'Article 19

An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings, information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Union so require and such refusal would not entail criminal consequences as far as the official is concerned. An official shall continue to be bound by this obligation after leaving the service.

The provisions of the first paragraph shall not apply to an official or former official giving evidence before the Court of Justice of the European Union or before the Disciplinary Board of an institution on a matter concerning a servant or former servant of the European Union.';

(11) In Article 21a, the following paragraph is added:

'3. An official who informs his superiors of orders which he considered to be irregular or likely to give rise to serious difficulties shall not suffer any prejudice on that account.';

(12) The following Article is inserted:

'Article 22c

In accordance with Articles 24 and 90, each institution shall put in place a procedure for the handling of complaints made by officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b. The institution concerned shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90.

The appointing authority of each institution shall lay down internal rules on *inter alia*:

- the provision to officials referred to in Article 22a(1) or Article 22b of information on the handling of the matters reported by them,
- the protection of the legitimate interests of those officials and of their privacy, and

- the procedure for the handling of complaints referred to in the first paragraph of this Article.;

(13) In Article 26a, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(14) Article 27 is replaced by the following:

'Article 27

Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. No posts shall be reserved for nationals of any specific Member State.

The principle of the equality of Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among officials which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the appointing authority of the institution concerned shall adopt general provisions for giving effect to this paragraph in accordance with Article 110.

After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the second paragraph.

In order to facilitate recruitment on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff.;

(15) In Article 29, paragraph 1 is replaced by the following:

'1. Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) whether the post can be filled by:

(i) transfer, or

(ii) appointment in accordance with Article 45a, or

(iii) promotion

within the institution;

(b) whether requests for transfer have been received from officials of the same grade in other institutions, and/or

(c) if it was not possible to fill the vacant post through the possibilities mentioned in points (a) and (b), whether to consider lists of suitable candidates within the meaning of Article 30, where appropriate, taking into account the relevant provisions concerning suitable candidates in Annex III and/or

(d) whether to hold a competition internal to the institution, which shall be open only to officials and temporary staff as defined in Article 2 of the Conditions of Employment of Other Servants of the European Union;

or follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Annex III lays down the competition procedure.

The procedure may likewise be followed for the purpose of constituting a reserve for future recruitment.

While maintaining the principle that the vast majority of officials are to be recruited on the basis of open competitions, the appointing authority may decide, by way of derogation from point (d) and only in exceptional cases, to hold a competition internal to the institution which shall also be open to contract staff as defined in Articles 3a and 3b of the Conditions of Employment of Other Servants of the European Union. That latter category of staff shall be subject to restrictions with regard to that possibility as laid down in Article 82(7) of the Conditions of Employment of Other Servants of the European Union and with regard to the specific tasks it was entitled to perform as contract staff.;

(16) Article 30 is replaced by the following:

'Article 30

For each competition, a selection board shall be appointed by the appointing authority. This board shall draw up a list of suitable candidates.

The appointing authority shall decide which of these candidates to appoint to the vacant posts.

These candidates shall have access to adequate information on appropriate vacancies published by the institutions and agencies.;

- (17) The first sentence of the first subparagraph of Article 31(2) is replaced by the following:

'Without prejudice to Article 29(2), officials shall be recruited only at grades SC 1 to SC 2, AST 1 to AST 4 or AD 5 to AD 8.';

- (18) In the third paragraph of Article 32, the word 'institution' is replaced by 'appointing authority of each institution';

- (19) Article 34 is replaced by the following:

'Article 34

1. Officials shall serve a nine-month probationary period before they can be established. The decision to establish an official shall be taken on the basis of the report referred to in paragraph 3 as well as on the basis of elements available to the appointing authority relating to the probationer's conduct with regard to Title II.

Where, during his probationary period, an official is prevented, by sickness, maternity leave under Article 58, or accident, from performing his duties for a continuous period of at least one month, the appointing authority may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the probationer may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the probationer's immediate superior to the appointing authority, which shall, within three weeks, obtain the opinion of the Joint Reports Committee on the action to be taken. The appointing authority may decide to dismiss the probationer before the end of the probationary period, giving him one month's notice, or to assign the official to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the probationer to perform the duties pertaining to his post and also on his efficiency and conduct in the

service. That report shall be communicated to the probationer, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the probationer's immediate superior to the appointing authority, which shall, within three weeks, consult the Joint Reports Committee on the action to be taken.

A probationer whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

4. Except where he is in a position forthwith to resume employment elsewhere, a dismissed probationer shall receive compensation equal to three months' basic salary if he has completed more than one year's service, two months' basic salary if he has completed at least six months' service and one month's basic salary if he has completed less than six months' service.

5. Paragraphs 2, 3 and 4 shall not apply to officials who resign before the end of their probationary period.';

- (20) In Article 35, the following point is added:

'(g) Leave in the interests of the service';

- (21) In the second indent of point (b) of Article 37, the word 'institutions' is replaced by 'appointing authorities of the institutions';

- (22) Article 40 is amended as follows:

- (a) the following paragraph is inserted:

'1a. Article 12b shall continue to apply during the period of leave on personal grounds. The permission under Article 12b shall not be granted to an official for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution.';

- (b) in the second subparagraph of paragraph 2, the words '15 years' are replaced by '12 years';

(c) the third subparagraph of paragraph 2 is amended as follows:

(i) point (ii) is replaced by the following:

'(ii) to follow his spouse, the latter also being an official or other servant of the Union required in the course of his duties to establish his habitual residence at such a distance from the place of employment of the applicant official that the establishment of their conjugal home in such a place would inconvenience the applicant official in the performance of his duties; or';

(ii) the following point is added:

'(iii) to assist his spouse, a relative in the ascending line, a relative in the descending line, a brother or a sister in the case of medically certified serious illness or disability,';

(23) Article 42a is replaced by the following:

Article 42a

An official shall be entitled to up to six months of parental leave without basic salary for every child, to be taken during the first twelve years after the birth or adoption of the child. The duration of the leave may be doubled for single parents recognised under general implementing provisions adopted by the appointing authority of each institution and for parents of dependent children with a disability or a severe illness recognised by the institution's medical officer. The minimum leave taken at any one time shall not be less than one month.

During parental leave, the official's membership of the social security scheme shall continue; the acquisition of pension rights, dependent child allowance and education allowance shall be maintained. The official shall retain his post, and continue to be entitled to advancement to a higher step or promotion in grade. The leave may be taken as full-time or half-time leave. Where parental leave is taken in the form of half-time leave, the maximum period provided for in the first paragraph shall be doubled. During parental leave, an official shall be entitled to an allowance of EUR 911,73 per month, or 50 % of such sum if on half-time leave, but may not engage in any other gainful employment. The full contribution to the social security scheme provided for in Articles 72 and 73 shall be borne by the institution and calculated on the basis of the basic salary of the

official. However, in the case of half-time leave this provision shall apply only to the difference between the full basic salary and the proportionally reduced basic salary. For the part of the basic salary actually received, the official's contribution shall be calculated by using the same percentages as if he were in full-time employment.

The allowance shall be EUR 1 215,63 per month, or 50 % of such sum if the official is on half-time leave, for the single parents and parents of dependent children with a disability or a severe illness recognised by the medical officer referred to in the first paragraph and during the first three months of parental leave where such leave is taken by the father during maternity leave or by either parent immediately after maternity leave or during or immediately after adoption leave.

Parental leave may be extended for a further six months with an allowance limited to 50 % of the amount referred to in the second paragraph. For single parents as referred to in the first paragraph, parental leave may be extended for a further twelve months with an allowance limited to 50 % of the amount referred to in the third paragraph.

The amounts mentioned in this Article shall be updated in line with remuneration.';

(24) In Chapter 2 of Title III, the following Section is added:

Section 7

Leave in the interests of the service

Article 42c

At the earliest five years before the official's pensionable age, an official with at least ten years of service may be placed by decision of the appointing authority on leave in the interests of the service for organisational needs linked to the acquisition of new competences within the institutions.

The total number of officials placed on leave in the interests of the service each year shall not be higher than 5 % of the officials in all institutions who retired the previous year. The total number thus calculated shall be allocated to each institution according to their respective numbers of officials at 31 December of the preceding year. The result of such allocation shall be rounded up to the nearest whole number in each institution.

Such leave shall not constitute a disciplinary measure.

The duration of the leave shall correspond in principle to the period until the official reaches pensionable age. However, in exceptional situations, the appointing authority may decide to put an end to the leave and reinstate the official.

When the official placed on leave in the interests of the service reaches pensionable age, he shall automatically be retired.

Leave in the interests of the service shall be governed by the following rules:

- (a) another official may be appointed to the post occupied by the official;
- (b) an official on leave in the interests of the service shall not be entitled to advancement to a higher step or promotion in grade.

An official thus placed on leave shall receive an allowance calculated in accordance with Annex IV.

At the official's request, the allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance. In such a case, the period of service as an official on leave in the interests of the service shall be taken into account for the purpose of calculating years of pensionable service within the meaning of Article 2 of Annex VIII.

The allowance shall not be subject to a correction coefficient.'

(25) Article 43 is replaced by the following:

'Article 43

The ability, efficiency and conduct in the service of each official shall be the subject of an annual report as provided for by the appointing authority of each institution in accordance with Article 110. That report shall state whether or not the performance level of the official has been satisfactory. The appointing authority of each institution shall lay down provisions conferring the right to lodge an appeal within the reporting procedure, which has to be exercised before the lodging of a complaint as referred to in Article 90(2).

As of grade AST 5, the report may also contain an opinion as to whether the official, on the basis of his performance, has the potential to carry out an administrator's function.

The report shall be communicated to the official. He shall be entitled to make any comments thereon which he considers relevant.';

(26) Article 44 is replaced by the following:

'Article 44

An official who has been at one step in his grade for two years shall automatically advance to the next step in that grade, unless his performance has been evaluated as unsatisfactory pursuant to the last annual report referred to in Article 43. An official shall advance to the next step in his grade after no later than four years, unless the procedure laid down in Article 51(1) is applied.

If an official is appointed head of unit, director or director-general in the same grade, and provided that his performance has been satisfactory within the meaning of Article 43 during the first nine months following his appointment, he shall retroactively benefit from advancement by one step in that grade at the time the appointment comes into effect. This advancement shall lead to an increase in his basic monthly salary corresponding to the percentage between the first and the second step in each grade. If the increase is less or if the official at that time is already in the last step of his grade, he shall receive an increase in basic salary ensuring the increase between the first and second step until his next promotion comes into effect.';

(27) Article 45 is amended as follows:

- (a) paragraph 1 is replaced by the following:

'1. Promotion shall be by decision of the appointing authority in the light of Article 6(2). Unless the procedure laid down in Articles 4 and 29(1) is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in Annex I, Section A, for the next higher grade. Promotion shall be effected by appointment of the official to the next higher grade in the function group to which he belongs. Promotion shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion. When considering comparative merits, the appointing authority shall in particular take account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with point (f) of Article 28 and the level of responsibilities exercised by them.';

- (b) in the first sentence of paragraph 2, the words 'Article 55 of the Treaty on European Union' are replaced by 'Article 55(1) of the Treaty on European Union';
- (c) in the second sentence of paragraph 2, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(28) Article 45a is amended as follows:

- (a) in the first subparagraph of paragraph 2, the words 'their periodical reports' are replaced by 'the annual reports';
- (b) in paragraph 5, the word 'institutions' is replaced by 'appointing authority of each institution';

(29) In the third paragraph of Article 48, the words 'function group AST' are replaced by 'function groups AST and AST/SC';

(30) In the eighth paragraph of Article 50, the words 'fifty-five' are replaced by 'fifty-eight';

(31) Article 51 is replaced by the following:

'Article 51

1. The appointing authority of each institution shall define procedures to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion.

When adopting internal provisions, the appointing authority of each institution shall respect the following requirements:

- (a) an official who, on the basis of three consecutive unsatisfactory annual reports as referred to in Article 43, still shows no progress in his professional competence shall be downgraded by one grade. If the following two annual reports still show unsatisfactory performance, the official shall be dismissed;
- (b) any proposal to downgrade or dismiss an official shall set out the reasons on which it is based and shall be communicated to the official concerned. The proposal from the appointing authority shall be referred to the Joint Advisory Committee provided for in Article 9(6).

2. The official shall have the right to obtain his complete personal file and to take copies of all documents relating to the procedure. He shall have at least 15 days, but no more than 30 days, from the date of receipt of the proposal to prepare a defence. He may be assisted by a person of his choice. The official may submit written comments. He shall be heard by the Joint Advisory Committee. The official may also call witnesses.

3. The institution shall be represented before the Joint Advisory Committee by an official designated for that purpose by the appointing authority. That official shall have the same rights as the official concerned.

4. In the light of the proposal under point (b) of paragraph 1 and any written and oral statements from the official concerned or from witnesses, the Joint Advisory Committee shall deliver by a majority a reasoned opinion stating the measure which it considers appropriate in the light of the facts established at its request. It shall forward that opinion to the appointing authority and to the official concerned within two months of the date on which the matter is referred to it. The chairman shall not vote on decisions of the Joint Advisory Committee, except in procedural matters and where votes are tied.

5. An official dismissed for incompetence shall, for the period defined in paragraph 6, be entitled to a monthly dismissal allowance equal to the basic monthly salary of an official in the first step of grade AST 1. The official shall also be entitled during the same period to the family allowances provided for in Article 67. The household allowance shall be calculated on the basis of the basic monthly salary of an official in grade AST 1 in accordance with Article 1 of Annex VII.

The allowance shall not be paid if the official resigns after the start of the procedure referred to in paragraphs 1 and 2 or if he is entitled to the immediate payment of a full pension. If he is entitled to unemployment benefit under a national unemployment scheme, the amount of that benefit shall be deducted from the above allowance.

6. The period during which the payments referred to in paragraph 5 are to be made shall be:

- (a) three months where the official has completed less than five years' service at the date on which the dismissal decision is taken;
- (b) six months where the official has completed at least five years' service but less than 10;

(c) nine months where the official has completed at least 10 years' service but less than 20;

(d) 12 months where the official has completed at least 20 years' service.

7. Officials who are downgraded on grounds of incompetence may after a period of six years ask for all references to that measure to be deleted from their personal files.

8. Officials shall be entitled to reimbursement of reasonable expenses incurred on their initiative in the course of the proceedings, including fees payable to a defending adviser not belonging to the institution, where the proceedings provided for in this Article end without any decision being taken to dismiss or downgrade.';

(32) Article 52 is replaced by the following:

'Article 52

Without prejudice to the provisions of Article 50, an official shall be retired:

(a) either automatically on the last day of the month in which he reaches the age of 66, or

(b) at his own request on the last day of the month in respect of which the request was submitted where he has reached pensionable age or where he is between 58 and pensionable age and satisfies the requirements for immediate payment of a pension in accordance with Article 9 of Annex VIII. The second sentence of the second paragraph of Article 48 shall apply by analogy.

However, an official may at his own request, and where the appointing authority considers it justified in the interests of the service, carry on working until the age of 67, or exceptionally, until the age of 70, in which case he shall be retired automatically on the last day of the month in which he reaches that age.

Where the appointing authority decides to authorise an official to remain in service beyond the age of 66, that authorisation shall be granted for a maximum duration of one year. It may be renewed at the official's request.';

(33) Article 55 is amended as follows:

(a) the paragraphs shall be numbered;

(b) the first sentence of the second paragraph is replaced by the following:

"The normal working week shall range from 40 to 42 hours, the hours of the working day to be determined by the appointing authority";

(c) the second sentence of the third paragraph is replaced by the following:

"The appointing authority of each institution shall lay down detailed rules for the application of this paragraph after consulting the Staff Committee";

(d) the following paragraph is added:

'4. The appointing authority of each institution may introduce flexible working-time arrangements. Under those arrangements, entire working days shall not be granted for officials in grade AD/AST 9 or higher. Those arrangements shall not be applicable to officials to whom the provisions of the second paragraph of Article 44 apply. Those officials shall manage their working time in agreement with their superiors.';

(34) In Article 55a, paragraph 2 is replaced by the following:

'2. The official shall be entitled to authorisation in the following cases:

(a) to care for a dependent child under 9 years of age,

(b) to care for a dependent child aged between 9 and 12, if the reduction in working time is no more than 20 % of normal working time,

(c) to care for a dependent child until he reaches the age of 14 when the official is a single parent,

(d) in cases of serious hardship, to care for a dependent child until he reaches the age of 14 if the reduction in working time is no more than 5 % of normal working time. In that case, the first two paragraphs of Article 3 of Annex IVa shall not apply. Where both parents are employed in the service of the Union, only one shall be entitled to such reduction,

(e) to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister,

(f) to take part in further training, or

(g) as of the age of 58 during the last three years before he reaches pensionable age.

Where part-time is requested in order to take part in further training, or during the last three years before reaching pensionable age, but not before the age of 58, the appointing authority may refuse authorisation or postpone its date of effect only in exceptional circumstances and for overriding service-related reasons.

Where such entitlement to authorisation is exercised to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister, or to take part in further training, the total of all such periods shall not exceed five years over the official's career.';

(35) The third paragraph of Article 56 is replaced by the following:

'As provided in Annex VI, overtime worked by officials in grades SC 1 to SC 6 and grades AST 1 to AST 4 shall entitle them either to compensatory leave or to remuneration where requirements of the service do not allow compensatory leave during two months following that in which the overtime was worked.';

(36) The second paragraph of Article 56a is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to such allowances, the conditions for granting the allowances and the rates thereof.';

(37) The second paragraph of Article 56b is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to such allowances, the conditions for granting the allowances and the rates thereof.';

(38) The second paragraph of Article 56c is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to the special allowances, the conditions for granting such allowances and the rates thereof.';

(39) In the first paragraph of Article 57, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(40) Article 58 is replaced by the following:

'Article 58

Pregnant women shall, in addition to the leave provided for in Article 57, be entitled on production of a medical certificate to 20 weeks of leave. The leave shall start not earlier than six weeks before the expected date of confinement shown in the certificate and end not earlier than 14 weeks after the date of confinement. In the case of multiple or premature birth or the birth of a child with a disability or serious illness, the duration shall be 24 weeks. Premature birth for the purposes of this provision is a birth taking place before the end of the 34th week of pregnancy.';

(41) Article 61 is replaced by the following:

'Article 61

Lists of public holidays shall be drawn up by agreement between the appointing authorities of the institutions of the Union after consulting the Staff Regulations Committee';

(42) Article 63 is replaced by the following:

'Article 63

Officials' remuneration shall be expressed in euros. It shall be paid in the currency of the country in which the official performs his duties or in euros.

Remuneration paid in a currency other than euros shall be calculated on the basis of the exchange rates used for the implementation of the general budget of the European Union on 1 July of that year.

Every year the exchange rates shall be updated retroactively at the time of the annual update of remuneration provided for in Article 65.';

(43) Article 64 is replaced by the following:

'Article 64

An official's remuneration expressed in euros shall, after the compulsory deductions set out in these Staff Regulations or in any implementing regulations have been made, be weighted at a rate above, below or equal to 100 %, depending on living conditions in the various places of employment.

The correction coefficients shall be created or withdrawn as well as annually updated in accordance with Annex XI. With respect to the update, all values shall be understood as reference values. The Commission shall publish the updated values within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

No correction coefficient shall be applicable in Belgium and Luxembourg, having regard to the special referential role of those places of employment as principal and original seats of most of the institutions.;

(44) Article 65 is replaced by the following:

'Article 65

1. The remuneration of the officials and other servants of the European Union shall be updated every year, taking into account the economic and social policy of the Union. Particular account shall be taken of any salary increases in the civil service of the Member States and of recruitment needs. The update of the remuneration shall be implemented in accordance with Annex XI. That update shall take place before the end of each year in the light of a report by the Commission based on statistical data prepared by the Statistical Office of the European Union in agreement with the national statistical offices of the Member States; the statistical data shall reflect the situation as at 1 July in each of the Member States. That report shall contain data pertaining to the budgetary impact of remuneration and pensions of Union officials. It shall be transmitted to the European Parliament and to the Council.

The amounts referred to in the second and third paragraphs of Article 42a, Articles 66 and 69, Articles 1(1), 2(1), 3(1) and (2), 4(1), 7(2), 8(2), 10(1) of Annex VII and Article 8(2) of Annex XIII, and in the former Article 4a of Annex VII to be updated in accordance with Article 18(1) of Annex XIII, the amounts referred to in Article 24(3), the second subparagraph of Article 28a(3), Articles 28a(7), 93, 94, the second subparagraph of Article 96(3) and Articles

96(7), 133, 134 and 136 of the Conditions of Employment of Other Servants, the amounts referred to in the first subparagraph of Article 1(1) of Council Regulation (ECSC, EEC, Euratom) No 300/76 (*) and the coefficient for the amounts referred to in Article 4 of Council Regulation (EEC, Euratom, ECSC) No 260/68 (**) shall be updated annually in accordance with Annex XI. The Commission shall publish the updated amounts within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

2. In the event of a substantial change in the cost of living, the amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be updated in accordance with Annex XI. The Commission shall publish the updated amounts and weightings within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

3. The amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be understood as amounts and weightings the actual value of which at a given point in time is subject to update without intervention of another legal act.

4. Without prejudice to Article 3(5) and (6) of Annex XI, no update provided for under paragraphs 1 and 2 shall be made in the years 2013 and 2014.

(*) Council Regulation (ECSC, EEC, Euratom) No 300/76 of 9 February 1976 determining the categories of officials entitled to allowances for shift work, and the rates and conditions thereof (OJ L 38, 13.2.1976, p. 1).

(**) Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the procedure and the conditions for applying the tax for the benefit of the European Communities (OJ L 56, 4.3.1968, p. 8.).;

(45) Article 66 is amended as follows:

(a) the introductory sentence of the first paragraph is replaced by the following:

'Basic monthly salaries are for each grade and step in function groups AD and AST as provided in the following table:'

(b) the following paragraph is added:

'Basic monthly salaries are for each grade and step in function group AST/SC as provided in the following table:

Grade	Step				
	1	2	3	4	5
SC 6	4 349,59	4 532,36	4 722,82	4 854,21	4 921,28
SC 5	3 844,31	4 005,85	4 174,78	4 290,31	4 349,59
SC 4	3 397,73	3 540,50	3 689,28	3 791,92	3 844,31
SC 3	3 003,02	3 129,21	3 260,71	3 351,42	3 397,73
SC 2	2 654,17	2 765,70	2 881,92	2 962,10	3 003,02
SC 1	2 345,84	2 444,41	2 547,14	2 617,99	2 654,17'

(46) Article 66a is replaced by the following:

'Article 66a

1. By way of derogation from Article 3(1) of Regulation (EEC, Euratom, ECSC) No 260/68 and in order to take account, without prejudice to Article 65(3), of the application of the method for updating the remuneration and pensions of officials, a temporary measure regarding remuneration paid by the Union to staff in active employment, to be known as the "solidarity levy", shall be applied from 1 January 2014 to 31 December 2023.

2. The rate of this solidarity levy, which shall apply to the base defined in paragraph 3, shall be 6 %. The rate shall however be 7 % for officials in grade AD 15, step 2, and above.

3. (a) The base for the solidarity levy shall be the basic salary used to calculate remuneration, minus:

(i) social security and pension contributions and the tax, before solidarity levy, payable by an official in the same grade and step without dependants within the meaning of Article 2 of Annex VII, and

(ii) an amount equal to the basic salary of an official in grade AST 1, step 1.

(b) The components used to determine the base for the solidarity levy shall be expressed in euro and weighted at 100.

4. The solidarity levy shall be deducted monthly at source; the proceeds shall be entered as revenue in the general budget of the European Union.';

(47) Article 67(3) is replaced by the following:

'3. The dependent child allowance may be doubled, by special reasoned decision of the appointing authority based on medical documents establishing that the child concerned has a disability or a long-term illness which involves the official in heavy expenditure.';

(48) Article 72 is amended as follows:

(a) in the first sentence of the first subparagraph of paragraph 1 and in the third subparagraph of paragraph 1, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(b) in paragraph 2, the words 'until the age of 63 years' are replaced by 'until pensionable age';

(c) in points (i) and (ii) of paragraph 2a, the words 'before reaching the age of 63' are replaced by 'before reaching pensionable age';

(d) in paragraph 2b, the words 'grade 1' are replaced by 'grade AST 1';

(49) In Article 73(1), the word 'Institutions' is replaced by 'appointing authorities of the institutions';

(50) In the second sentence of Article 76a, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(51) Article 77 is replaced by the following:

'Article 77

An official who has completed at least ten year's service shall be entitled to a retirement pension. He shall, however, be entitled to such pension, irrespective of length of service, if he is over pensionable age, if it has

not been possible to reinstate him during a period of non-active status or in the event of retirement in the interests of the service.

The maximum retirement pension shall be 70 % of the final basic salary carried by the last grade in which the official was classified for at least one year. 1,80 % of that final basic salary shall be payable to an official for each year of service reckoned in accordance with Article 3 of Annex VIII.

However, in the case of officials who have been assisting a person holding an office provided for in the Treaty on European Union or the Treaty on the Functioning of the European Union, the elected President of one of the institutions or organs of the Union or the elected Chairman of one of the political groups in the European Parliament, the entitlement to pensions corresponding to the years of pensionable service acquired while working in that capacity shall be calculated by reference to the final basic salary received during that time if the basic salary received exceeds that taken as reference for the purposes of the second paragraph of this Article.

The amount of the retirement pension must not be less than 4 % of the minimum subsistence figure per year of service.

The pensionable age shall be 66 years.

The pensionable age shall be assessed every five years starting on 1 January 2014 on the basis of a report by the Commission to the European Parliament and to the Council. The report shall examine, in particular, the evolution of pensionable age for staff in the civil services of the Member States and the evolution of life expectancy of officials of the institutions.

Where appropriate, the Commission shall make a proposal amending the pensionable age in line with the conclusions of that report, paying particular attention to developments in the Member States.;

(52) Article 78 is replaced by the following:

'Article 78

An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity allowance in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his function group.

Article 52 shall apply by analogy to recipients of an invalidity allowance. If the recipient of an invalidity allowance retires before the age of 66 without having reached the maximum pension entitlement, the general rules on retirement pensions shall be applied. The

amount of the retirement pension shall be based on the salary for the grade and step occupied by the official when he became an invalid.

The invalidity allowance shall be equal to 70 % of the official's last basic salary. However, it may not be less than the minimum subsistence figure.

The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

Where the invalidity arises from an accident in the course of or in connection with the performance of an official's duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity allowance may not be less than 120 % of the minimum subsistence figure. In such cases, moreover, contributions to the pension scheme shall be paid in full from the budget of the institution or body referred to in Article 1b.;

(53) The sixth paragraph of Article 80 is replaced by the following:

'Entitlement as provided for in the first, second and third paragraphs shall apply in the event of the death of a former official entitled to an allowance under Article 50 of the Staff Regulations, Article 5 of Council Regulation (EEC, Euratom, ECSC) No 259/68 (*), Article 3 of Council Regulation (Euratom, ECSC, EEC) No 2530/72 (**) or Article 3 of Council Regulation (ECSC, EEC Euratom) No 1543/73 (***) and in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age.

(*) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

(**) Council Regulation (Euratom, ECSC, EEC) No 2530/72 of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequences of the accession of new Member States, and for the termination of service of officials of those Communities (OJ L 272, 5.12.1972, p. 1).

(***) Council Regulation (ECSC, EEC Euratom) No 1543/73 of 4 June 1973 introducing special measures temporarily applicable to officials of the European Communities paid from research and investment funds (OJ L 155, 11.6.1973, p. 1).;

(54) Article 81a(1) is amended as follows:

(a) in point (b), the words 'age of 65' are replaced by 'age of 66';

(b) point (d) is replaced by the following:

'(d) in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age, the amount of the retirement pension to which he would have been entitled at pensionable age had he been alive, subject to the allowances and deductions referred to in point (b)';

(c) in point (e), the words 'allowance under Article 41 or 50' are replaced by 'allowance under Article 41, 42c or 50';

(55) Article 82(2) is replaced by the following:

'2. Where remuneration is updated in accordance with Article 65(1), the same update shall be applied to pensions.';

(56) The second subparagraph of Article 83(1) is deleted;

(57) Paragraphs 2, 3, 4 and 5 of Article 83a are replaced by the following:

'2. Agencies which do not receive a subsidy from the general budget of the European Union shall pay into that budget the entire amount of the contributions needed to finance the scheme. From 1 January 2016 agencies which are partly financed from that budget shall pay the part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues.

3. The balance of the pension scheme shall be ensured by the pensionable age and the rate of contribution to the scheme. On the occasion of the five-yearly actuarial assessment in accordance with Annex XII, the rate of contribution to the pension scheme shall be updated in order to ensure the balance of the scheme.

4. Each year the Commission shall update the actuarial assessment referred to in paragraph 3, in accordance with Article 1(2) of Annex XII. Where it is shown that there is a gap of at least 0,25 points between the rate of contribution currently applied and the rate required to

maintain actuarial balance, the rate shall be updated, in accordance with the arrangements laid down in Annex XII.

5. For the purposes of paragraphs 3 and 4 of this Article, the reference figure set out in Article 83(2) shall be updated. The Commission shall publish the resulting updated rate of contribution within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes';

(58) Title VIII is deleted;

(59) Article 110 is replaced by the following:

'Article 110

1. The general provisions implementing these Staff Regulations shall be adopted by the appointing authority of each institution after consulting the Staff Committee and the Staff Regulations Committee.

2. Implementing rules adopted by the Commission to give effect to these Staff Regulations, including the general implementing provisions referred to in paragraph 1, shall apply by analogy to the agencies. To that end, the Commission shall inform the agencies of any such implementing rule without delay after adoption.

Such implementing rules shall enter into force at the agencies nine months after their entry into force at the Commission or nine months after the date on which the Commission informed the agencies of the adoption of the respective implementing rule, whichever is later. Notwithstanding the foregoing, an agency may also decide that such implementing rules are to enter into force at an earlier date.

By way of derogation, an agency may, before the expiry of the nine-month period referred to in the second subparagraph of this paragraph and after consulting its Staff Committee, submit to the Commission for its agreement implementing rules which are different from those adopted by the Commission. Under the same conditions, an agency may request the agreement of the Commission to the non-application of certain of those implementing rules. In the latter case, the Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.

The nine-month period referred to in the second subparagraph of this paragraph shall be suspended from the date on which the agency has requested the Commission's agreement until the date on which the Commission has expressed its position.

An agency may also, after consulting its Staff Committee, submit to the Commission for its agreement implementing rules which concern subjects other than the implementing rules adopted by the Commission.

For the purposes of the adoption of implementing rules, the agencies shall be represented by the management board or the equivalent body referred to in the Union act establishing them.

3. For the purposes of the adoption of rules by agreement between the institutions, the agencies shall not be treated as institutions. However, the Commission shall consult the agencies before the adoption of those rules.

4. Rules giving effect to these Staff Regulations, including the general implementing provisions referred to in paragraph 1, and rules adopted by agreement between the appointing authorities of the institutions, shall be brought to the attention of the staff.

5. The administrative departments of the institutions and the agencies shall consult each other regularly concerning the application of these Staff Regulations. Agencies shall be jointly represented in those consultations in accordance with rules to be fixed by agreement between them.

6. The Court of Justice of the European Union shall administer a register of the rules adopted by the appointing authority of each institution to give effect to these Staff Regulations, and those rules adopted by the agencies to the extent that they derogate from the rules adopted by the Commission, in accordance with the procedure provided in paragraph 2, including any amendments thereto. Institutions and agencies shall have direct access to that register and the full right to amend their own rules. Member States shall have direct access to it. Moreover, every three years, the Commission shall present a report to the European Parliament and the Council on the rules adopted by the appointing authority of each institution to give effect to these Staff Regulations.';

(60) The following Articles are added:

'Article 111

The Commission shall be empowered to adopt delegated acts in accordance with Article 112 concerning certain

aspects of working conditions, certain aspects of the implementation of the rules on remuneration and the social security scheme.

Article 112

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 56a, 56b and 56c of the Staff Regulations, Article 13(3) of Annex VII and Article 9 of Annex XI thereto and Articles 28a(11) and 96(11) of the Conditions of Employment of Other Servants shall be conferred on the Commission for an indeterminate period of time from 1 January 2014.

3. The delegation of power referred to in Articles 56a, 56b, 56c of the Staff Regulations, Article 13(3) of Annex VII and Article 9 of Annex XI thereto and Articles 28a(11) and 96(11) of the Conditions of Employment of Other Servants may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 56a, 56b, 56c of the Staff Regulations, Article 13(3) of Annex VII or Article 9 of Annex XI thereto or Articles 28a(11) or 96(11) of the Conditions of Employment of Other Servants shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 113

The Commission shall, by 31 December 2020, submit a report to the European Parliament and to the Council assessing the functioning of these Staff Regulations.';

(61) Annex I is amended as follows:

(a) Section A is replaced by the following:

'A. Types of posts in each function group, as provided for in Article 5(4)

1. Function group AD

Director-General	AD 15 - AD 16
Director	AD 14 - AD 15
Adviser or equivalent	AD 13- AD 14
Head of unit or equivalent	AD 9 - AD 14
Administrator	AD 5 - AD 12

2. Function group AST

Senior assistant Carrying out administrative, technical or training activities requiring a high degree of autonomy and carrying significant responsibilities in terms of staff management, budget implementation or political coordination	AST 10 – AST 11
Assistant Carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions or as personal assistant of a Member of the institution, of the Head of a Member's private office or of a (Deputy) Director-General or an equivalent senior manager	AST 1 – AST 9

3. Function group AST/SC

Secretary/Clerk Carrying out clerical and secretarial tasks, office management and other equivalent tasks requiring a certain degree of autonomy (*)	SC 1 – SC 6
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(*) The number of posts of Parliamentary ushers in the European Parliament shall not exceed 85.;

(b) Section B is replaced by the following:

'B. Multiplication rates for guiding average career equivalence

1. Multiplication rates for guiding average career equivalence in function groups AST and AD:

Grade	Assistants	Administrators
13	—	15 %
12	—	15 %
11	—	25 %
10	20 %	25 %
9	8 %	25 %
8	25 %	33 %
7	25 %	36 %
6	25 %	36 %
5	25 %	36 %
4	33 %	—
3	33 %	—
2	33 %	—
1	33 %	—

2. Multiplication rates for guiding average career equivalence in function group AST/SC:

Grade	Secretaries / Clerks
SC 6	—
SC 5	12 %
SC 4	15 %
SC 3	17 %
SC 2	20 %
SC 1	25 %'

(62) Annex II is amended as follows:

(a) in the second sentence of the first paragraph of Article 1, the word 'institution' is replaced by 'appointing authority of each institution';

(b) the second sentence of the second paragraph of Article 1 is replaced by the following:

'However, the appointing authority of each institution may decide that the conditions for election are to be determined in accordance with the preference of the staff of the institution as expressed in a referendum';

(c) in the fourth paragraph of Article 1, the words 'both function groups' are replaced by 'the three function groups';

(d) in the first indent of the second paragraph of Article 2, the words 'the third subparagraph of' are deleted;

(63) The Sole Article of Annex IV is amended as follows:

(a) in the second subparagraph of paragraph 1, the words 'age of 63 years' are replaced by 'age of 66 years';

(b) the third subparagraph of paragraph 1 is deleted;

(c) in the last row of the table in paragraph 3, the words '59 to 64' are replaced by '59 to 65';

(d) in the fourth subparagraph of paragraph 4, the words 'age of 63 years' are replaced by 'age of 66 years';

(64) Annex IVa is amended as follows:

(a) in the second paragraph of Article 1, the words 'Article 55a(2)(e)' are replaced by 'point (g) of Article 55a(2)';

(b) in the first paragraph of Article 4, the words 'officials aged over 55 authorised to work half time in preparation for retirement' are replaced by 'officials authorised, in accordance with point (g) of Article 55a(2) of the Staff Regulations, to work half time';

(65) Annex V is amended as follows:

(a) Article 6 is replaced by the following:

Article 6

In addition to annual leave, an official may, on application, be granted special leave. In particular, in the following cases special leave shall be granted as shown:

- marriage of the official: four days;
- change of residence of the official: up to two days;
- serious illness of spouse: up to three days;
- death of spouse: four days;

— serious illness of a relative in the ascending line: up to two days;

— death of a relative in the ascending line: two days;

— marriage of a child: two days;

— birth of a child: 10 days, to be taken during the 14 weeks following birth;

— birth of a disabled or seriously ill child: 20 days, to be taken during the 14 weeks following the birth;

— death of the wife during maternity leave: a number of days corresponding to the remaining maternity leave; if the deceased wife is not an official, the remaining maternity leave is determined by applying the provisions of Article 58 of the Staff Regulations, by analogy;

— serious illness of a child: up to two days;

— very serious illness of a child, as certified by a doctor, or hospitalisation of a child aged 12 or under: up to five days;

— death of a child: four days;

— adoption of a child: 20 weeks, rising to 24 weeks in the case of the adoption of a disabled child:

Every adopted child shall confer entitlement to only one period of special leave, which may be shared between the adoptive parents if both are officials. It shall be granted only if the official's spouse engages in a gainful activity at least half-time. If the spouse works outside the institutions of the Union and benefits from comparable leave, a corresponding number of days shall be deducted from the official's entitlement.

The appointing authority may, in cases of necessity, grant additional special leave where the national legislation of the country in which the adoption procedure takes place and which is not the country of employment of the adopting official requires a stay of one or both adoptive parents.

Special leave of 10 days shall be granted if the official does not benefit from the full special leave of 20 or 24 weeks by reason of the first sentence of this indent; that additional special leave shall be granted only once for each adopted child.

The institution may also grant special leave in the case of further training and instruction, within the limits laid down in the further training and instruction programme drawn up by the institution pursuant to Article 24a of the Staff Regulations.

Special leave may furthermore be granted to officials on an exceptional basis in the case of exceptional work which goes beyond an official's normal obligations. Such special leave shall be granted at the latest three months after the appointing authority has taken a decision on the exceptional character of the work of the official.

For the purposes of this Article, the unmarried partner of an official shall be treated as the spouse where the first three conditions in point (c) of Article 1(2) of Annex VII are met.

Where special leave is granted pursuant to this section, any travelling time shall be fixed by special decision taking into account particular needs.;

(b) Article 7 is replaced by the following:

'Article 7

Officials who are entitled to the expatriation or foreign residence allowance shall be entitled to two and a half days of supplementary leave every year, for the purpose of visiting their home country.

The first paragraph shall apply to officials whose place of employment is within the territories of the Member States. If the place of employment is outside those territories, the duration of the home leave shall be fixed by special decision taking into account particular needs.;

(66) Annex VI is amended as follows:

(a) Article 1 is replaced by the following:

'Article 1

Within the limits laid down in Article 56 of the Staff Regulations, overtime worked by an official in grade SC 1 to SC 6 or grade AST 1 to AST 4 shall entitle him to compensatory leave or to remuneration as follows:

(a) for each hour of overtime, he shall be entitled to one hour and a half off as compensatory leave; if the hour of overtime is worked between 22:00 hours and 07:00 hours or on a Sunday or on a public holiday, the entitlement to compensatory leave shall be two hours off; in the granting of compensatory leave, account shall be taken of the requirements of the service and the preference of the official concerned;

(b) where the requirements of the service do not permit compensatory leave to be taken during two months following that during which the overtime was worked, the appointing authority shall authorise remuneration for uncompensated hours of overtime at the rate of 0,56 % of the monthly basic salary for each hour of overtime on the basis set out in point (a);

(c) to qualify for compensatory leave or remuneration for one hour's overtime, the extra time worked must have been more than thirty minutes.;

(b) Article 3 is replaced by the following:

'Article 3

Notwithstanding the foregoing provisions of this Annex, remuneration for overtime worked by certain groups of officials in grades SC 1 to SC 6 and grades AST 1 to AST 4 in special conditions may be paid in the form of a fixed allowance the amount and terms of which shall be determined by the appointing authority after consulting the Joint Committee.;

(67) Annex VII is amended as follows:

(a) in Article 1(3), the words 'grade 3' are replaced by 'grade AST 3';

(b) the second subparagraph of Article 3(1) is replaced by the following:

'Entitlement to that allowance shall commence on the first day of the month in which the child begins to attend a primary educational establishment and shall cease at the end of the month in which the child finishes its education or at the end of the month in which the child reaches the age of twenty-six, whatever is the earliest.;

(c) Article 7 is replaced by the following:

'Article 7

1. An official shall be entitled to a flat-rate payment corresponding to the cost of travel for himself, his spouse and his dependants actually living in his household:

- (a) on taking up his appointment, from the place where he was recruited to the place where he is employed;
- (b) on termination of service within the meaning of Article 47 of the Staff Regulations, from the place where he is employed to the place of origin as defined in paragraph 4 of this Article;
- (c) on any transfer involving a change in the place where he is employed.

In the event of the death of an official, the surviving spouse and the dependants shall be entitled to the flat rate payment under the same conditions.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the places referred to in paragraph 1.

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0,1895 for every km from	201 to 1 000 km
EUR 0,3158 for every km from	1 001 to 2 000 km
EUR 0,1895 for every km from	2 001 to 3 000 km
EUR 0,0631 for every km from	3 001 to 4 000 km
EUR 0,0305 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km.

To the above kilometric allowance shall be added a flat-rate supplement amounting to:

- EUR 94,74 if the geographical distance between the places referred to in paragraph 1 is between 600 km and 1 200 km,
- EUR 189,46 if the geographical distance between the places referred to in paragraph 1 is greater than 1 200 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

3. By way of derogation from paragraph 2, travel expenses which relate to a transfer involving a change between a place of employment within the territories of the Member States of the European Union and a place of employment outside those territories or to a transfer involving a change between places of employment outside those territories shall be reimbursed in the form of a flat-rate payment based on the cost of air travel in the class immediately superior to economy class.

4. An official's place of origin shall be determined when he takes up his appointment, account being taken in principle of where he was recruited or, upon express and duly reasoned request, the centre of his interests. The place of origin as so determined may by special decision of the appointing authority be changed while the official is in service or when he leaves the service. While he is in the service, however, such decision shall be taken only exceptionally and on production by the official of appropriate supporting evidence.

The effect of such a change shall not, however, be such as to recognise as the centre of the official's interests a place which is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association.';

(d) Article 8 is replaced by the following:

'Article 8

1. Officials entitled to the expatriation or foreign residence allowance shall be entitled, within the limit set out in paragraph 2, in each calendar year to a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin as defined in Article 7 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2.

Where a husband and wife are both officials of the European Union, each has the right in respect of himself or herself and in respect of dependants to the flat-rate payment of travelling expenses, in accordance with the above provisions; each dependant shall be entitled to one payment only. The payment in respect of dependent children is fixed at the request of the husband or wife, on the basis of the place of origin of one or other of them.

Where an official marries during a given year and thereby becomes entitled to the household allowance, the travel expenses payable for the spouse shall be calculated in proportion to the period from the date of the marriage to the end of the year.

Any alteration to the basis of calculation which may arise from changes in family status after the date of payment of the sums in question shall not render the official concerned liable to make repayment.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and his place of origin.

Where the place of origin as defined in Article 7 is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association, the flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and the capital city of the Member State whose nationality he holds. Officials whose place of origin is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association and who are not nationals of one of the Member States shall not be entitled to the flat-rate payment.

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0,3790 for every km from	201 to 1 000 km
EUR 0,6316 for every km from	1 001 to 2 000 km
EUR 0,3790 for every km from	2 001 to 3 000 km
EUR 0,1262 for every km from	3 001 to 4 000 km
EUR 0,0609 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km.

To the above kilometric allowance a flat-rate supplement shall be added, amounting to:

- EUR 189,48 if the geographical distance between the place of employment and the place of origin is between 600 km and 1 200 km,
- EUR 378,93 if the geographical distance between the place of employment and the place of origin is greater than 1 200 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

3. An official whose service is terminated in the course of a calendar year for any reason other than death or who is on leave on personal grounds during part of the year shall, if he is in active employment in the service of an institution of the Union for less than nine months of that year, be entitled only to part of the flat-rate payment provided for in paragraphs 1 and 2, calculated in proportion to the time spent in active employment.

4. Paragraphs 1, 2 and 3 of this Article shall apply to officials whose place of employment is within the territories of the Member States. Officials whose place of employment is outside the territory of the Member States shall be entitled for themselves and, if they are entitled to receive the household allowance, for their spouse and other dependants within the meaning of Article 2, in each calendar year, to a flat-rate payment for travel expenses to their place of origin, or to repayment of travel expenses to another place not exceeding the expense of travel to the place of origin. However, if the spouse and the persons referred to in Article 2(2) do not live with the official at the place of employment, they shall be

entitled each calendar year to reimbursement of travel expenses from the place of origin to the place of employment or to another place not exceeding the cost of the former journey.

The flat-rate payment shall be based on the cost of air travel in economy class.;

(e) Article 9 is replaced by the following:

'Article 9

1. Within the limits of costs ceilings, officials obliged to change their place of residence in order to comply with Article 20 of the Staff Regulations upon entry into service or on a subsequent change of place of employment while in service and who have not been reimbursed in respect of the same expenses from another source, shall be entitled to the reimbursement of expenses incurred in respect of the removal of furniture and personal effects, including the cost of insurance against ordinary risks (notably breakage, theft, fire).

The ceilings shall take into account the official's family situation at the time of the removal, and the average costs of removal and associated insurance.

General implementing provisions shall be adopted by the appointing authority of each institution to give effect to this paragraph.

2. On termination of service or on death of an official, the expenses incurred in respect of removal from the place where he was employed to his place of origin shall be reimbursed within the limits defined in paragraph 1. Where the deceased official was unmarried, the expenses shall be reimbursed to those entitled under him.

3. In the case of an established official, removal shall be effected within one year of the end of his probationary period. On termination of service, removal shall be effected within three years as provided in the second subparagraph of Article 6(4). Removals effected after the expiry of the time limits set out in this paragraph shall be reimbursed only in exceptional cases and by special decision of the appointing authority.;

(f) Article 13 is amended as follows:

(i) paragraph 3 is replaced by the following:

'3. The Commission shall review every two years the rates set out in point (a) of paragraph 2. That review shall take place in the light of a report on the prices of hotels, restaurants and catering services, and shall be based on the indexes on the evolution of such prices. For the purpose of that review, the Commission shall act by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations.;

(ii) the following paragraph is added:

'4. By way of derogation from paragraph 1, accommodation costs incurred by officials for missions to the principal places of work of their institution as referred to in Protocol No 6 to the Treaty on the Functioning of the European Union may be reimbursed on the basis of a flat-rate sum which shall not exceed the maximum fixed for the Member States in question.;

(g) in Article 13a, the words 'various institutions' are replaced by 'appointing authorities of the various institutions';

(h) Article 17 is amended as follows:

(i) paragraph 1 is replaced by the following:

'1. Payment shall be made to each official at the place and in the currency of the country where he carries out his duties or, at the request of the official, in euros in a bank within the European Union.;

(ii) the first subparagraph of paragraph 2 is replaced by the following:

'Under the conditions laid down in rules fixed by the appointing authorities of each institution by common consent after consulting the Staff Regulations Committee, officials may apply for special regular transfer of part of their remuneration.;

(iii) in the first sentence of paragraph 3, after the words 'shall be made', the words 'in the currency of the relevant Member State' are inserted;

(iv) in the first sentence of paragraph 4, after the words 'to another Member State', the words 'in local currency' are inserted;

(68) Annex VIII is amended as follows:

- (a) in point (b) of Article 3, the words 'under Articles 41 and 50' are replaced by 'under Articles 41, 42c and 50';

- (b) Article 5 is replaced by the following:

'Article 5

Notwithstanding the provisions of Article 2 of this Annex, officials who remain in service after pensionable age shall be entitled to an increase of their pension equal to 1,5 % of the basic salary taken into account for the calculation of their pension per year worked after that age, with the proviso that the total of their pension plus the increase does not exceed 70 % of their final basic salary as referred to in the second or third paragraph, as the case may be, of Article 77 of the Staff Regulations.

Such increase shall likewise be payable in the event of death of an official who has remained in the service after pensionable age.;

- (c) in Article 6, the words 'the first step of grade 1' are replaced by 'the first step of grade AST 1';

- (d) Article 9 is replaced by the following:

'Article 9

An official leaving the service before reaching pensionable age may request that his retirement pension:

- (a) be deferred until the first day of the calendar month following that in which he reaches pensionable age; or
- (b) be paid immediately, provided that he is not less than 58 years of age. In that case, the retirement pension shall be reduced by an amount calculated by reference to the official's age when he starts to draw his pension.

The pension shall be reduced by 3,5 % for every year before the one in which the official would become entitled to a retirement pension within the meaning

of Article 77 of the Staff Regulations. If between the age at which entitlement to a retirement pension is acquired within the meaning of Article 77 of the Staff Regulations and the age of the person concerned at the time, the difference exceeds an exact number of years, an extra year shall be added to the reduction.;

- (e) In the second subparagraph of Article 11(2), the word 'institution' shall be replaced by 'appointing authority of the institution';

- (f) Article 12 is amended as follows:

- (i) paragraph 1 is replaced by the following:

'1. An official aged less than the pensionable age whose service terminates otherwise than by reason of death or invalidity and who is not entitled to an immediate or deferred retirement pension shall be entitled on leaving the service:

- (a) where he has completed less than one year's service and has not made use of the arrangement laid down in Article 11(2), to payment of a severance grant equal to three times the amounts withheld from his basic salary in respect of his pension contributions, after deduction of any amounts paid under Articles 42 and 112 of the Conditions of Employment of Other Servants;

- (b) in other cases, to the benefits provided under Article 11(1) or to the payment of the actuarial equivalent of such benefits to a private insurance company or pension fund of his choice, on condition that such company or fund guarantees that:

- (i) the capital will not be repaid;

- (ii) a monthly income will be paid from age 60 at the earliest and age 66 at the latest;

- (iii) provisions are included for reversion or survivors' pensions;

- (iv) transfer to another insurance company or other fund will be authorised only if such fund fulfils the conditions laid down in points (i), (ii) and (iii).';

(ii) paragraph 2 is replaced by the following:

'2. By way of derogation from point (b) of paragraph 1, officials under pensionable age who, since taking up their duties, have, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of their choice which satisfies the requirements set out in paragraph 1, and whose service terminates for reasons other than death or invalidity without their qualifying for an immediate or deferred retirement pension, shall be entitled, on leaving the service, to a severance grant equal to the actuarial value of their pension rights acquired during service in the institutions. In those cases the payments made in order to establish or maintain their pension rights under the national pension scheme in application of Articles 42 or 112 of the Conditions of Employment of Other Servants shall be deducted from the severance grant.'

(g) in Article 15, the words '63 years' are replaced by 'the pensionable age'.

(h) in Article 18a, the words 'age of 63 years' are replaced by 'pensionable age';

(i) in the second paragraph of Article 27, the word 'adjusted' is replaced by 'updated';

(j) Article 45 is amended as follows:

(i) in the third paragraph, the words 'Member State of residence' are replaced by 'European Union';

(ii) in the first sentence of the fourth paragraph, the words 'in the European Union or' are inserted after the word 'bank';

(iii) in the second sentence of the fourth paragraph, the words 'in euro into a bank in the country where the institution has its headquarters, or' are deleted;

(69) Annex IX is amended as follows:

(a) in Article 2(3), the word 'institutions' is replaced by 'appointing authority of each institution';

(b) the first sentence of Article 5(1) is replaced by the following:

'A Disciplinary Board, hereinafter referred to as "the Board", shall be established in each institution, unless two or more agencies decide, in accordance with paragraph 1a of Article 9 of the Staff Regulations, to set up a common Board.'

(c) Article 30 is replaced by the following:

'Article 30

Without prejudice to Article 2(3), the appointing authority of each institution shall, if it sees fit, adopt implementing arrangements for this Annex after consulting the Staff Committee';

(70) Annex X is amended as follows:

(a) Article 6 is replaced by the following:

'Article 6

An official shall, per calendar year, be entitled to annual leave of two working days for each month of service.

Notwithstanding the first paragraph of this Article, officials posted already in a third country on 1 January 2014 shall be entitled to:

— three working days from 1 January 2014 until 31 December 2014;

— two and half working days from 1 January 2015 until 31 December 2015.'

(b) Article 7 is replaced by the following:

'Article 7

In the year in which an official takes up or ceases to perform his duties in a third country, he shall be entitled to two working days leave for each complete month of service, to two working days for an incomplete month consisting of more than 15 days and to one working day for an incomplete month of 15 days or less.

Where an official, for reasons other than the requirements of the service, has not used up his annual leave before the end of the current calendar year, the amount of leave which may be carried over to the following year shall not exceed 14 working days.'

(c) in Article 8, the following paragraph is added:

'Officials who take part in professional training courses pursuant to Article 24a of the Staff Regulations and who have been granted rest leave pursuant to the first paragraph of this Article shall undertake, where appropriate, to combine their periods of professional training with their rest leave.';

(d) Article 9(1) is replaced by the following:

'1. Annual leave may be taken all at once or in several periods, according to what the official desires and taking account of the requirements of the service. It must, however, include at least one period of two consecutive weeks.';

(e) Article 10 is replaced by the following:

'Article 10

1. An allowance for living conditions shall be fixed, according to the official's place of employment, as a percentage of a reference amount. That reference amount shall comprise the total basic salary, plus the expatriation allowance, household allowance and dependent child allowance, less the compulsory deductions referred to in the Staff Regulations or in the regulations adopted to implement them.

Where an official is employed in a country in which living conditions can be deemed equivalent to those normally obtaining in the European Union, no such allowance shall be payable.

In the case of other places of employment, the allowance for living conditions shall be fixed taking into account, *inter alia*, the following parameters:

- health and hospital environment,
- security,
- climate,
- degree of isolation,
- other local living conditions.

The allowance for living conditions fixed for each place of employment shall be reviewed and, where appropriate, adjusted each year by the appointing authority after the opinion of the Staff Committee has been obtained.

The appointing authority may decide to grant a supplementary premium in addition to the allowance for living conditions in cases where an official has had more than one assignment to a place of employment considered difficult or very difficult. That supplementary premium shall not exceed 5 % of the reference amount referred to in the first subparagraph and the appointing authority shall duly substantiate its individual decisions in order to respect equality of treatment, basing itself on the level of difficulty of the previous assignment.

2. If living conditions at the place of employment are such as to put the official at personal risk, a temporary additional allowance shall be paid to him by special reasoned decision of the appointing authority. That allowance shall be fixed as a percentage of the reference amount referred to in the first subparagraph of paragraph 1:

- where the authority recommends to its staff not to settle their families or other dependants in the place of employment, provided that they follow that recommendation;
- where the authority decides to reduce temporarily the number of staff serving in the place of employment.

In duly justified cases, the appointing authority may also determine that a post is a non-family posting. The above-mentioned allowance shall be paid to staff members who respect that determination.

3. Detailed provisions for the application of this Article shall be decided by the appointing authority.';

(f) in the first sentence of Article 11, the word 'Belgium' is replaced by 'the European Union';

(g) Article 13 is replaced by the following:

'Article 13

In order to ensure as far as possible that officials enjoy equivalent purchasing power irrespective of their place of employment, the weighting referred to in Article 12 shall be updated once a year in accordance with Annex XI. With respect to the update, all values shall be understood as reference values. The Commission shall publish the updated values within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

Where, however, in the case of a given country, the variation in the cost of living measured on the basis of the weighting and the corresponding exchange rate is found to have exceeded 5 % since the last update, an interim update of the weighting in accordance with the procedure laid down in the first paragraph shall take place.';

appointing authority waives that obligation for duly justified reasons linked to practices and local conditions in the place of employment in the third country concerned. The accommodation allowance shall be calculated depending primarily on the official's level of duties and subsequently on the composition of his dependent family.

(h) Article 23 is replaced by the following:

'Article 23

On the basis of a list of countries to be defined by the appointing authority, and where the official is not provided with accommodation by the institution, the appointing authority shall either pay the official an accommodation allowance or reimburse the rent paid by the official.

The rent shall be reimbursed, provided that the accommodation has been expressly authorised by the appointing authority and corresponds primarily to the official's level of duties and subsequently to the composition of his dependent family.

Detailed rules for the application of this Article shall be laid down by the appointing authority. The accommodation allowance shall not in any case exceed the costs incurred by the official.';

The accommodation allowance shall be paid upon presentation of a tenancy agreement unless the

(71) Annex XI is replaced by the following:

'ANNEX XI

RULES FOR IMPLEMENTING ARTICLES 64 AND 65 OF THE STAFF REGULATIONS

CHAPTER 1

ANNUAL UPDATE OF REMUNERATION PROVIDED FOR IN ARTICLE 65(1) OF THE STAFF REGULATIONS

Section 1

Factors determining annual updates

Article 1

1. Report from the Statistical Office of the European Union (Eurostat)

For the purposes of the update provided for in Article 65(1) of the Staff Regulations and in Article 13 of Annex X, Eurostat shall draw up every year before the end of October a report on changes in the cost of living in Belgium and Luxembourg, the economic parities between Brussels and certain places in the Member States and in third countries where necessary, and changes in the purchasing power of salaries in national civil services in central government.

2. Changes in the cost of living in Belgium and Luxembourg

Eurostat shall draw up an index to measure changes in the cost of living for officials of the Union in Belgium and Luxembourg. That index (hereinafter the "Joint Index") shall be calculated by weighting national inflation (as measured by the Harmonised Indices of Consumer Prices (HICP) in the case of Belgium and the Consumer Prices Index (CPI) in the case of Luxembourg) between June of the previous year and June of the current year according to the distribution of the staff serving in those Member States.

3. Changes in the cost of living outside Brussels

(a) Eurostat shall, in agreement with national statistical institutes or other appropriate authorities in the Member States as defined in Regulation (EC) No 223/2009 of the European Parliament and of the Council (*) (hereinafter "national statistical institutes or other appropriate authorities in the Member States"), calculate the economic parities which establish the equivalence of purchasing power:

(*) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European Statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

- (i) of the salaries of officials of the Union serving in the capitals of the Member States, except for the Netherlands where The Hague is used instead of Amsterdam, and in certain other places of employment with reference to Brussels,
 - (ii) of the pensions of officials paid in the Member States with reference to Belgium.
- (b) The economic parities shall refer to the month of June each year.
- (c) The economic parities shall be calculated in such a way that each basic component can be updated twice per year and checked by a direct survey at least once every five years. Eurostat shall update the economic parities using the change in the Harmonised Index of Consumer Prices of the Member States and the most appropriate indices as defined by the Working Group on Articles 64 and 65 of the Staff Regulations referred to in Article 13.
- (d) Outside Belgium and Luxembourg, changes in the cost of living during the reference period shall be measured by the implicit indices. Those indices are calculated by multiplying the Joint Index by the change in the economic parity.

4. *Changes in the purchasing power of salaries of national civil servants in central government (specific indicators)*

- (a) For the purpose of measuring the percentage change, either upward or downward, in the purchasing power of salaries in the national civil services, Eurostat shall, on the basis of information supplied before the end of September by the national statistical institutes or other appropriate authorities in the Member States, calculate specific indicators reflecting changes in the real remuneration of civil servants in central government, between the month of July of the previous year and the month of July of the current year. The two should include one twelfth of all annually-paid elements.

The specific indicators shall take two forms:

- (i) one indicator for each of the function groups as they are defined in the Staff Regulations,
- (ii) an average indicator weighted to reflect the number of national civil servants corresponding to each function group.

Each of those indicators shall be established in real gross and real net terms. For the transition from gross to net, account shall be taken of statutory deductions and general taxation factors.

To establish the gross and net indicators for the European Union total, Eurostat shall use a sample composed of the following Member States: Belgium, Germany, Spain, France, Italy, Luxembourg, Netherlands, Austria, Poland, Sweden and United Kingdom. The European Parliament and the Council, acting on a Commission proposal under Article 336 of the Treaty on the Functioning of the European Union, may adopt a new sample which represents at least 75 % of the Union gross domestic product (GDP) and which will apply from the year following its adoption. The results per country shall be weighted in proportion to the appropriate national GDP aggregate measured using purchasing power parities as shown in the most recent statistics published in accordance with the national accounts definitions in the European System of Accounts currently in force.

- (b) At the request of Eurostat, the national statistical institutes or other appropriate authorities in the Member States shall supply it with the additional information which it considers necessary in order to draw up a specific indicator accurately measuring changes in the purchasing power of national civil servants.

If, after further consultation of the national statistical institutes or other appropriate authorities in the Member States, Eurostat finds statistical anomalies in the information obtained or finds it impossible to draw up indicators which measure with statistical accuracy the changes in the real income of civil servants in a given Member State, it shall report to the Commission and provide it with all the material it needs to make an assessment.

- (c) Besides the specific indicators, Eurostat shall calculate appropriate control indicators. One such indicator shall be in the form of data on real per capita emoluments in central government, drawn up in accordance with the national accounts definitions in the European System of Accounts currently in force.

The Eurostat report on the specific indicators shall be accompanied by comments on the differences between those indicators and the control indicators referred to in this point.

Article 2

For the purposes of Article 15 of this Annex the Commission shall regularly survey the recruitment needs of the institutions.

Section 2

Arrangements for the annual update of remuneration and pensions

Article 3

1. Under Article 65 of the Staff Regulations, on the basis of the criteria set out in Section 1 of this Annex, the remuneration and pensions shall be updated before the end of each year, with effect from 1 July.
 2. The amount of the update shall be obtained by multiplying the Joint Index by the specific indicator. The update shall be in net terms as a uniform across-the-board percentage.
 3. The amount of the update thus fixed shall be incorporated, in accordance with the following method, in the basic salary tables appearing in Article 66 of the Staff Regulations and in Annex XIII to the Staff Regulations and in Articles 20, 93 and 133 of the Conditions of Employment of Other Servants:
 - (a) the net remuneration and net pension without correction coefficient shall be increased or reduced by the update referred to above,
 - (b) the new table of basic salaries shall be drawn up by calculating the gross amount which, after deduction of tax having regard to paragraph 4 and compulsory deductions for social security and pension contributions, corresponds to the net amount,
 - (c) the conversion of net amounts into gross amounts shall be based on the situation of an unmarried official who does not receive the allowances provided for in the Staff Regulations.
 4. For the purposes of applying Regulation (EEC, Euratom, ECSC) No 260/68, the amounts in Article 4 of that Regulation shall be multiplied by a factor composed of:
 - (a) the factor resulting from the previous update, and/or
 - (b) the rate of update of remuneration referred to in paragraph 2.
 5. No correction coefficient shall be applicable in Belgium and Luxembourg. The correction coefficients applicable:
 - (a) to the salaries of officials of the European Union serving in the other Member States and in certain other places of employment,
 - (b) by way of derogation from Article 82(1) of the Staff Regulations, to European Union pensions paid in the other Member States for the part corresponding to the rights acquired before 1 May 2004,shall be determined on the basis of the ratios between the corresponding economic parities referred to in Article 1 of this Annex and the exchange rates specified in Article 63 of the Staff Regulations for the relevant countries.
- The procedures laid down in Article 8 of this Annex concerning the retrospective application of correction coefficients in places of employment with a high rate of inflation shall apply.
6. The institutions shall make the corresponding positive or negative update to the remuneration and pensions of the officials, former officials and other persons concerned with retroactive effect for the period between the effective date and the date of entry into force of the next update.

If that retroactive update necessitates the recovery of sums overpaid, such recovery may be spread over a period of not more than 12 months from the date of entry into force of the next annual update.

CHAPTER 2

INTERMEDIATE UPDATES OF REMUNERATION AND PENSIONS (ARTICLE 65(2) OF THE STAFF REGULATIONS)

Article 4

1. An intermediate update of remuneration and pensions pursuant to Article 65(2) of the Staff Regulations, taking effect on 1 January, shall be effected in the event of a substantial change in the cost of living between June and December (by reference to the sensitivity threshold defined in Article 6 of this Annex) and with due allowance being made for the forecast of the change in purchasing power during the current annual reference period.
2. Such intermediate updates shall be taken into account in the annual salary update.

Article 5

1. In March each year Eurostat shall make a forecast of changes in purchasing power over the period concerned on the basis of the information supplied at the meeting provided for in Article 13 of this Annex.

If that forecast produces a negative percentage, half of that percentage shall be taken into account in the calculation of the intermediate update.

2. The change in the cost of living for Belgium and Luxembourg shall be measured by the Joint Index for the period from June to December of the previous calendar year.
3. For each place for which a correction coefficient has been set (other than Belgium and Luxembourg), an estimate for December of the economic parities mentioned in Article 1(3) shall be calculated. The change in the cost of living shall be calculated in accordance with the rules set out in Article 1(3).

Article 6

1. The sensitivity threshold for the six-month period mentioned in Article 5(2) of this Annex shall be the percentage corresponding to 6 % for a 12-month period.
2. The threshold shall be applied in accordance with the following procedure, subject to application of the second subparagraph of Article 5(1) of this Annex:
 - (a) if the sensitivity threshold is reached or exceeded in Belgium and Luxembourg (as measured by the Joint Index between June and December), the remuneration for all places shall be updated following the annual update procedure,
 - (b) if the sensitivity threshold is not reached in Belgium and Luxembourg, only the correction coefficients of places where the change in the cost of living (as measured by the implicit indices between June and December) has exceeded the threshold shall be updated.

Article 7

For the purposes of Article 6 of this Annex:

The amount of the update shall be the Joint Index, multiplied, where appropriate, by half of the specific indicator forecast if this is negative.

Correction coefficients shall be the ratio between the relevant economic parity and the exchange rate provided for in Article 63 of the Staff Regulations, multiplied, if the update threshold is not reached for Belgium and Luxembourg, by the value of the update.

CHAPTER 3

DATE ON WHICH A CORRECTION COEFFICIENT COMES INTO EFFECT (PLACES OF EMPLOYMENT WITH A HIGH COST-OF-LIVING INCREASE)

Article 8

1. For places with a high cost-of-living increase (as measured by the change in the implicit indices), the correction coefficient shall come into effect before 1 January in the case of the intermediate update, or 1 July in the case of the annual update. This is so as to bring the loss in purchasing power into line with what it would be in a place of employment where the change in the cost of living corresponded to the sensitivity threshold.

2. The effective dates for the annual update shall be as follows:

(a) 16 May for places of employment having an inflation rate higher than 6 %, and

(b) 1 May for places of employment having an inflation rate higher than 10 %.

3. The effective dates for the intermediate update shall be as follows:

(a) 16 November for places of employment having an inflation rate higher than 6 %, and

(b) 1 November for places of employment having an inflation rate higher than 10 %.

CHAPTER 4

CREATION AND WITHDRAWAL OF CORRECTION COEFFICIENTS (ARTICLE 64 OF THE STAFF REGULATIONS)

Article 9

1. The appropriate authorities of the Member States concerned, the administration of an institution of the Union or the representatives of officials of the Union in a given place of employment can request the creation of a correction coefficient specific to that place.

Such a request should be supported by objective factors revealing an appreciable difference over some years in the cost of living between that place of employment and the capital of the Member State concerned (except for the Netherlands, where The Hague is used instead of Amsterdam). If Eurostat confirms that the difference is appreciable (more than 5 %) and sustainable, the Commission shall enact, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, a correction coefficient for that place.

2. The Commission shall decide, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, to withdraw the application of a correction coefficient specific to a certain place. In that case the decision shall be based on one of the following:

(a) a request by the appropriate authorities of the Member State concerned, the administration of an institution of the Union or the representatives of officials of the Union in a given place of employment showing that the cost of living in that place is no longer significantly different (less than 2 %) from that in the capital of the Member State concerned. Such convergence should be sustainable and validated by Eurostat,

(b) the fact that there are no longer any officials and temporary staff of the Union employed in that place.

CHAPTER 5

MODERATION AND EXCEPTION CLAUSES

Article 10

The value of the specific indicator used for the annual update shall be subject to an upper limit of 2 % and a lower limit of - 2 %. If the value of the specific indicator exceeds the upper limit or is below the lower limit, then the value of the limit shall be used to calculate the update value.

The first paragraph shall not apply when Article 11 applies.

The remainder of the annual update resulting from the difference between the update value calculated with the specific indicator and the update value calculated with the limit shall be applied as from 1 April of the following year.

Article 11

1. If there is a decrease in the real Union GDP for the current year as forecast by the Commission and the specific indicator is positive, only part of the specific indicator shall be used to calculate the value of the update. The remainder of the update value corresponding to the remainder of the specific indicator shall be applied as from a later date in the following year. That remainder of the update value shall not be taken into account for the purposes of Article 10. The value of the Union GDP, the consequences in terms of split of the specific indicator, and the application date are defined in accordance with the following table:

Union GDP	Consequences on the specific indicator	Date of payment of the second part
[− 0,1 %; − 1 %]	33 %; 67 %	1 April of year n + 1
[− 1 %; − 3 %]	0 %; 100 %	1 April of year n + 1
below − 3 %	0 %	—

2. Where there is a gap between the forecast mentioned under paragraph 1 and the final data on Union GDP made available by the Commission and those final data would modify the consequences as laid down in the table under paragraph 1, the necessary corrections, including retroactive adjustments, either positive or negative, shall take place in accordance with the same table.

3. Any updated reference amount resulting from a correction shall be published by the Commission within two weeks from the correction in the C series of the *Official Journal of the European Union* for information purposes.

4. When the application of paragraph 1 or 2 has led to the fact that the value of the specific indicator did not serve the update of the remunerations and the pensions, that value shall form the basis of the calculation of a future update once the cumulative increase of the Union GDP measured from the year in which paragraph 1 or 2 was applied becomes positive. In any case the value mentioned in the first sentence shall be subject by analogy to the limits and the principles laid down in Article 10 of this Annex. The evolution of the Union GDP shall be regularly measured by Eurostat for this purpose.

5. If relevant, the legal consequences resulting from the application of Article 10 and this Article shall continue to have full effect even after the date of expiry of this Annex as referred to in Article 15.

CHAPTER 6

ROLE OF EUROSTAT AND RELATIONS WITH THE NATIONAL STATISTICAL INSTITUTES OR OTHER APPROPRIATE AUTHORITIES OF THE MEMBER STATES

Article 12

It shall be the task of Eurostat to monitor the quality of basic data and statistical methods used to work out the factors taken into account for the update of remuneration. In particular, it shall make any assessments or carry out any studies required for such monitoring.

Article 13

In March each year Eurostat shall convene a meeting of a working group composed of experts from the national statistical institutes or other appropriate authorities in the Member States, to be known as the 'Working Group on Article 64 and 65 of the Staff Regulations'.

At that meeting, the statistical methodology and its implementation concerning specific and control indicators, the joint index and economic parities shall be examined.

The information required to produce a forecast of changes in purchasing power for the purposes of the intermediate update of remuneration shall also be provided, together with the data on working hours in central government departments.

Article 14

At the request of Eurostat, Member States shall inform Eurostat of any factors having a direct or indirect impact on the composition and changes in the remuneration of central government civil servants.

CHAPTER 7

FINAL PROVISION AND REVIEW CLAUSE

Article 15

1. The provisions of this Annex shall apply from 1 January 2014 to 31 December 2023.
2. Before 31 March 2022 the Commission shall submit a report to the European Parliament and the Council. That report shall have regard to the survey conducted under Article 2 of this Annex and shall assess whether, in particular, the evolution of purchasing power of remuneration and pensions of Union officials is in accordance with the changes in the purchasing power of salaries in national civil services in central governments. On the basis of that report, if appropriate, the Commission shall submit a proposal to amend this Annex as well as Article 66a of the Staff Regulations on the basis of Article 336 of the Treaty on the Functioning of the European Union.
3. As long as the European Parliament and the Council have not adopted a Regulation on the basis of a Commission proposal, this Annex and Article 66a of the Staff Regulations shall continue to apply provisionally beyond the expiry dates laid down in paragraph 1 of this Article and in Article 66a of the Staff Regulations.
4. At the end of 2018 the Commission shall submit an interim report to the European Parliament and the Council on the application of this Annex and of Article 66a of the Staff Regulations.';

(72) Annex XII is amended as follows:

(d) the following Article is inserted:

(a) Article 2 is replaced by the following:

'Article 2

1. Any update of the contribution rate shall take effect on 1 July at the same time as the annual

update of remuneration under Article 65 of the Staff Regulations. Any update shall not lead to a contribution being more than one percentage point above or below the valid rate of the previous year.

2. The difference established between the update of

the contribution rate which would have resulted from the actuarial calculation and the update resulting from the variation referred to in the last sentence of paragraph 1 shall not be recovered at any time, or, consequently, taken into account in subsequent actuarial calculations. The contribution rate which would have resulted from the actuarial calculation shall be mentioned in the assessment report provided for in Article 1 of this Annex.';

- (b) in Article 4(6), the words '12-year' are replaced by '30-year';
- (c) in Articles 10(2) and 11(2) the words '12 years' are replaced by '30 years';

'Article 11a

Until 2020, for the application of Articles 4(6), 10(2) and 11(2) of this Annex, the moving average shall be calculated on the basis of the following time scale:

	In 2017 – 22 years
In 2014 – 16 years	In 2018 – 24 years
In 2015 – 18 years	In 2019 – 26 years
In 2016 – 20 years	In 2020 – 28 years';

(e) Article 12 is replaced by the following:

'Article 12

The rate in Articles 4 and 8 of Annex VIII for the calculation of compound interest shall be the effective rate referred to in Article 10 of this Annex and shall, if necessary, be updated on the occasion of the five-yearly actuarial assessments.

With respect to the update, the rate referred to in Articles 4 and 8 of Annex VIII shall be understood as a reference rate. The Commission shall publish the updated effective rate within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.';

(f) Article 14 is replaced by the following:

'Article 14

1. In 2022 the Commission shall submit a report to the European Parliament and the Council. That report shall have regard to the budgetary implications of this Annex and shall assess the actuarial balance of the pension system. On the basis of that report the Commission will, if appropriate, submit a proposal to amend this Annex.

2. In 2018 the Commission shall submit an interim report to the European Parliament and the Council on the application of this Annex.';

(73) Annex XIII is amended as follows:

(a) in the third subparagraph of Article 7(2), the word 'adjustment' shall be replaced by 'update';

(b) Articles 10, 14 to 17 and Article 18(2) are deleted;

(c) in Article 18(1), the word 'adjusted' is replaced by 'updated' and the word 'adjustment' is replaced by 'update';

(d) Article 19 is replaced by the following:

'Article 19

Notwithstanding the provisions of Regulation (EU) No 1023/2013 of the European Parliament and of the Council (*), Articles 63, 64, 65, 82 and 83a of the Staff Regulations, Annexes XI and XII thereto and Articles 20(1), 64, 92 and 132 of the Conditions of Employment of Other Servants as in force before 1.11.2013 shall continue to be in force exclusively for the purpose of any adjustment required to comply with a judgment of the Court of Justice of the European Union under Article 266 of the Treaty on the Functioning of the European Union on the application of those articles.

(*) Regulation (EU) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15)';

(e) Article 20 is amended as follows:

(i) paragraph 2 is deleted;

(ii) the second subparagraph of paragraph 3 is replaced by the following:

'Their pensions shall be subject to the correction coefficient only if the residence of the official coincides with their last place of employment or with the country of their place of origin within the meaning of Article 7(4) of Annex VII. However, for family or medical reasons, officials receiving a pension may request the appointing authority to change their place of origin; the decision in that regard shall be taken on production by the official concerned of appropriate supporting evidence.';

(iii) the last sentence of paragraph 4 is deleted;

(f) Article 21 is replaced by the following:

'Article 21

Notwithstanding the second sentence of the second paragraph of Article 77 of the Staff Regulations, officials who entered the service before 1 May 2004 shall be entitled to 2 % of their salary referred to therein for every year of pensionable service calculated in accordance with Article 3 of Annex VIII.

Officials who entered the service in the period from 1 May 2004 until 31 December 2013 shall be entitled to 1,9 % of their salary referred to therein for every year of pensionable service calculated in accordance with Article 3 of Annex VIII.';

(g) Article 22 is replaced by the following:

'Article 22

1. Officials with 20 or more years' service on 1 May 2004 shall become entitled to a retirement pension when they reach the age of 60.

Officials aged 35 years or more on 1 May 2014 and who entered the service before 1 January 2014 shall become entitled to a retirement pension at the age shown in the table below:

Age on 1 May 2014	Pensionable age	Age on 1 May 2014	Pensionable age
60 years and above	60 years	47 years	62 years 6 months
59 years	60 years 2 months	46 years	62 years 8 months
58 years	60 years 4 months	45 years	62 years 10 months

Age on 1 May 2014	Pensionable age	Age on 1 May 2014	Pensionable age
57 years	60 years 6 months	44 years	63 years 2 months
56 years	60 years 8 months	43 years	63 years 4 months
55 years	61 years	42 years	63 years 6 months
54 years	61 years 2 months	41 years	63 years 8 months
53 years	61 years 4 months	40 years	63 years 10 months
52 years	61 years 6 months	39 years	64 years 3 months
51 years	61 years 8 months	38 years	64 years 4 months
50 years	61 years 11 months	37 years	64 years 5 months
49 years	62 years 2 months	36 years	64 years 6 months
48 years	62 years 4 months	35 years	64 years 8 months

Officials aged less than 35 years on 1 May 2014 shall become entitled to a retirement pension at the age of 65 years.

However, for officials aged 45 years or more on 1 May 2014 who entered the service between 1 May 2004 and 31 December 2013, the pensionable age shall remain 63 years.

For officials in service before 1 January 2014 pensionable age to be taken into consideration for all references to the pensionable age in these Staff Regulations shall be determined in accordance with the above provisions, save as otherwise provided in these Staff Regulations.

2. Notwithstanding Article 2 of Annex VIII, officials who enter the service before 1 January 2014 and remain in service after the age at which they would have become entitled to a retirement pension shall be entitled to an additional increase of 2,5 % of their final basic salary for each year worked after that age, provided that their total pension does not exceed 70 % of the final basic salary within the meaning of the second or third paragraph of Article 77 of the Staff Regulations, as the case may be.

However, for officials aged 50 years or over or with 20 or more years' service on 1 May 2004, the increase in pension provided for in the previous subparagraph shall not be less than 5 % of the amount of the pension rights acquired at the age of 60.

The increase shall also be granted in the event of death, if the official has remained in service beyond the age at which he became entitled to a retirement pension.

If, pursuant to Annex IVa, an official who enters the service before 1 January 2014 and working part-time contributes to the pension scheme in proportion to the time worked, the increase in pension entitlements provided for in this Article shall be applied only in the same proportion.

3. If the official retires before reaching pensionable age as laid down in this Article, only half of the reduction laid down in point (b) of Article 9 of Annex VIII shall be applied for the period between the age of 60 and the pensionable age.

4. By way of derogation from the second subparagraph of paragraph 1 of the Sole Article of Annex IV, an official to whom a pensionable age of less than 65 years applies in accordance with paragraph 1 shall receive the allowance provided for in that Annex under the conditions laid down therein until the day on which the official reaches his pensionable age.

However, above that age and up to the age of 65 years the official shall continue to receive the allowance until he reaches the maximum retirement pension unless Article 42c of the Staff Regulations applied.;

(h) Article 23 is replaced by the following:

'Article 23

1. When point (a) of Article 52 of the Staff Regulations applies, and without prejudice to the provisions of Article 50, an official in service before 1 January 2014 shall be retired automatically on the last day of the month in which he reaches the age of 65. For officials in service before 1 January 2014, the words "age of 66" and "age 66" in the second paragraph of Article 78 and point (b) of Article 81a(1) of the Staff Regulations and in point (b) of Article 12(1) of Annex VIII shall be read as "age of 65" and "age 65".

2. Notwithstanding Article 52 of the Staff Regulations, officials who entered the service before 1 January 2014 and who leave the service before the age at which they would have become entitled to a retirement pension in accordance with Article 22 of this Annex may request that point (b) of Article 9 of Annex VIII be applied

(a) until 31 December 2015 as from the age of 55;

(b) until 31 December 2016 as from the age of 57.

3. By way of derogation from the eighth paragraph of Article 50 of the Staff Regulations, an official who is retired in the interests of the service in accordance with the first paragraph of Article 50 of the Staff Regulations shall be entitled to receive the payment of a pension under Article 9 of Annex VIII in accordance with the table below:

Date of the decision under the first paragraph of Article 50	Age
Until 31 December 2016	55 years
After 31 December 2016	58 years'

- (i) The following Article is inserted:

'Article 24a

In the case of a pension determined before 1 January 2014, the recipient's pension entitlement shall continue to be determined after that date in accordance with the rules applied when the entitlement was initially determined. The same applies to the cover under the joint sickness insurance scheme.';

- (j) Article 28 is replaced by the following:

'Article 28

1. Servants referred to in Article 2 of the Conditions of Employment of Other Servants who were under contract on 1 May 2004 and who are appointed as officials after that date and before 1 January 2014 shall, on retirement, be entitled to an actuarial adjustment of the pension rights they acquired as temporary servants which takes into account the change in their pensionable age as referred to in Article 77 of the Staff Regulations.

2. Servants referred to in Articles 2, 3a and 3b of the Conditions of Employment of Other Servants who are under contract on 1 January 2014 and are appointed as officials after that date shall, on retirement, be entitled to an actuarial adjustment of the pension rights they acquired as temporary or contract staff which takes into account the change in their pensionable age as referred to in Article 77 of the Staff Regulations, in the event that they are at least 35 years old on 1 May 2014.';

- (k) the following Section is added:

'Section 5

Article 30

1. By way of derogation from Annex I, Section A, point 2, the following table of types of posts in function group AD shall apply to officials in service on 31 December 2013:

Director-General	AD 15 – AD 16
Director	AD 14 – AD 15
Head of unit or equivalent	AD 9 – AD 14
Adviser or equivalent	AD 13 – AD 14
Senior Administrator in transition	AD 14
Administrator in transition	AD 13
Administrator	AD 5 – AD 12

2. With effect from 1 January 2014, the appointing authority shall classify officials in service on 31 December 2013 in function group AD in types of posts as follows:

- (a) Officials who were in grade AD 14 on 31 December 2013 and who were not Director or equivalent, Head of unit or equivalent or Adviser or equivalent shall be assigned to the type of post "Senior Administrator in transition".
- (b) Officials who were in grade AD 13 on 31 December 2013 and who were not Head of unit or equivalent or Adviser or equivalent shall be assigned to the type of post "Administrator in transition".
- (c) Officials who were in grades AD 9 to AD 14 on 31 December 2013 and who were Head of unit or equivalent shall be assigned to the type of post "Head of unit or equivalent".
- (d) Officials who were in grades AD 13 or AD 14 on 31 December 2013 and who were Adviser or equivalent shall be assigned to the type of post "Adviser or equivalent".
- (e) Officials who were in grades AD 5 to AD 12 on 31 December 2013 and who were not Head of unit or equivalent shall be assigned to the type of post "Administrator".

3. By way of derogation from paragraph 2, officials in grades AD 9 to AD 14 holding special responsibilities may be assigned by the appointing authority before 31 December 2015 to the type of post "Head of unit or equivalent" or "Adviser or equivalent". Each appointing authority shall lay down provisions to give effect to this Article. However, the total number of officials benefiting from this provision shall not exceed 5 % of the officials in function group AD on 31 December 2013.

4. The assignment to a type of post shall be valid until the official is assigned to a new function corresponding to another type of post.

5. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 12, step 5, holding a post of Administrator shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 4, and grade AD 12, step 3.

6. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 12, step 5, holding a post of Administrator and benefiting from the measure in paragraph 5 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 5, and grade AD 12, step 4.

7. By way of derogation from paragraph 5, the following provisions shall apply to officials in grade AD 12 holding a post of Administrator, who were recruited before 1 May 2004 and who have not been promoted between 1 May 2004 and 31 December 2013:

(a) provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in step 8 shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 4, and grade AD 12, step 3.

(b) provided they benefit from the measure in point (a), officials in step 8 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 5, and grade AD 12, step 4.

8. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 13, step 5, holding a post of Administrator in transition shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 13, step 4, and grade AD 13, step 3.

9. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 13, step 5, holding a post of Administrator in transition and benefiting from the measure in paragraph 8 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 13, step 5, and grade AD 13, step 4.

10. Officials receiving the increase in basic salary provided for in paragraphs 5 to 9 and subsequently appointed Head of unit or equivalent or Adviser or equivalent in the same grade shall keep such increase in basic salary.

11. By way of derogation from the first sentence of Article 46, officials appointed to the next higher grade and benefiting from the increase in basic salary provided for in paragraphs 5, 6, 8 and 9 shall be placed in the second step of that grade. They shall lose the benefit of the increase of basic salary provided for in paragraphs 5, 6, 8 and 9.

12. The increase of basic salary in paragraph 7 shall not be paid after promotion and shall not be included in the basis used for determining the increase in basic monthly salary referred to in Article 7(5) of this Annex.

Article 31

1. By way of derogation from Annex I, Section A, point 2, the following table of types of posts in function group AST shall apply to officials in service on 31 December 2013:

Senior Assistant in transition	AST 10 – AST 11
Assistant in transition	AST 1 – AST 9
Administrative Assistant in transition	AST 1 – AST 7
Support Agent in transition	AST 1 – AST 5

2. With effect from 1 January 2014, the appointing authority shall classify officials in service on 31 December 2013 in function group AST in types of posts as follows:

(a) Officials who were in grade AST 10 or AST 11 on 31 December 2013 shall be assigned to the type of post "Senior Assistant in transition".

(b) Officials not covered by point (a) who were before 1 May 2004 in the former category B or who were before 1 May 2004 in the former category C or D and have become a member of function group AST without restriction, as well as AST officials recruited since 1 May 2004, shall be assigned to the type of post "Assistant in transition".

(c) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category C shall be assigned to the type of post "Administrative Assistant in transition".

(d) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category D shall be assigned to the type of post "Support Agent in transition".

3. The assignment to a type of post shall be valid until the official is assigned to a new function corresponding to another type of post. Administrative Assistants in transition and Support Agents in transition may be assigned to the type of post of Assistant as defined in Annex I, Section A, only in accordance with the procedure laid down in Articles 4 and 29(1) of the Staff Regulations. Promotion shall only be allowed within the career streams corresponding to each type of post indicated in paragraph 1.

4. By way of derogation from Article 6(1) of the Staff Regulations and from Annex I, Section B, the number of vacant positions in the next higher grade required for promotion purposes shall be calculated separately for Support Agents in transition. The following multiplication rates shall apply:

	Grade	Rate
Support Agents in transition	5	—
	4	10 %
	3	22 %
	2	22 %
	1	—

As far as Support Agents in transition are concerned, comparative merits for the purposes of promotion (Article 45(1) of the Staff Regulations) shall be considered between eligible officials of the same grade and classification.

5. Administrative Assistants in transition and Support Agents in transition who were before 1 May 2004 in the former category C or D shall continue to be entitled either to compensatory leave or to remuneration, where the requirements of the service do not allow compensatory leave during the two months following that in which the overtime was worked, as provided for in Annex VI.

6. Officials who were authorised, on the basis of point (g) of Article 55a(2) of the Staff Regulations and Article 4 of Annex IVa to the Staff Regulations, to work part-time for a period starting before 1 January 2014 and extending beyond that date may continue to work part-time under the same conditions for a maximum overall period of five years.

7. For officials whose pensionable age under Article 22 of this Annex is less than 65 years, the period of three years referred to in point (g) of Article 55a(2) of the Staff Regulations may exceed their pensionable age, without however exceeding the age of 65 years.

Article 32

By way of derogation from the first sentence of the fourth paragraph of Article 1 of Annex II to the Staff Regulations, the representation of the function group AST/SC need not be ensured in the Staff Committee until the next elections of a new Staff Committee at which the AST/SC staff can be represented.

Article 33

By way of derogation from Article 40(2) of the Staff Regulations, when an official has, on 31 December 2013, been on leave on personal grounds for more than 10 years over the entire career, the total length of leave on personal grounds may not exceed 15 years in the course of the official's entire career.'

Article 2

The Conditions of Employment of Other Servants of the European Union are amended as follows:

(1) The second indent of Article 1 is deleted.;

(2) The following point is added to Article 2:

'(f) staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to an agency as referred to in Article 1a(2) of the Staff Regulations and which the budgetary authorities have classified as temporary, except heads of agencies and deputy heads of agencies as referred to in the Union act establishing the agency and officials seconded in the interests of the service to an agency.';

(3) Article 3 is deleted;

(4) In point (b) of Article 3b, point (i) is replaced by the following:

'(i) Officials or temporary staff in function groups AST/SC and AST;';

(5) In the first paragraph of Article 8, the words 'Article 2(a)' are replaced by 'Article 2(a) or Article 2(f)';

(6) Article 10(4) is deleted;

(7) Article 11 is amended as follows:

(a) in the first sentence of the first paragraph, the words 'Articles 11 to 26' are replaced by 'Articles 11 to 26a';

(b) in the third paragraph, the words 'second paragraph' are replaced by 'third paragraph';

(8) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union.

Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.

No posts shall be reserved for nationals of any Member State. However, the principle of equality of the Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among temporary staff which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the authority referred to in the first paragraph of Article 6 shall adopt general provisions for giving effect to this paragraph in accordance with Article 110 of the Staff Regulations.

After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the preceding subparagraph.

In order to facilitate engagement on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff;

(b) In paragraph 5, the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(9) Article 14 is replaced by the following:

'Article 14

1. A member of the temporary staff shall serve a nine-month probationary period.

Where, during his probationary period, a member of the temporary staff is prevented, by sickness, maternity leave under Article 58 of the Staff Regulations, or accident, from performing his duties for a continuous period of at least one month, the authority referred to in the first paragraph of Article 6 may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the member of the temporary staff may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the authority referred to in the first paragraph of Article 6. On the basis of the report, the authority referred to in the first paragraph of Article 6 may decide to dismiss the member of the temporary staff before the end of the probationary period, giving him one month's notice, or to assign the member of the temporary staff to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his efficiency and conduct in the service. That report shall be communicated to the member of the temporary staff, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the authority referred to in the first paragraph of Article 6.

A member of the temporary staff whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph as well as on the basis of elements available to the authority referred to in the first paragraph of Article 6 relating to the conduct of the member of the temporary staff with regard to Title II of the Staff Regulations.

4. A dismissed member of the temporary staff shall be entitled to compensation equal to one-third of his basic salary per month of probation completed.';

(10) In Article 15(1), the following sentence is added to the first subparagraph:

'Members of the temporary staff graded in accordance with the grading criteria adopted by the authority referred to in the first paragraph of Article 6 shall retain the seniority in the step acquired in that capacity if they are engaged as temporary staff in the same grade immediately following the preceding period of temporary service.';

(11) Article 16 is replaced by the following:

'Article 16

Articles 42a, 42b and 55 to 61 of the Staff Regulations, concerning leave, hours of work, overtime, shiftwork, standby duty at place of work or at home and public holidays, shall apply by analogy. Special leave and parental and family leave shall not extend beyond the term of the contract. In addition, Articles 41, 42, 45 and 46 of the Staff Regulations shall apply by analogy to the temporary servants referred to in Article 29 of Annex XIII to the Staff Regulations, irrespective of the date of their engagement.

The paid sick leave provided for in Article 59 of the Staff Regulations shall not, however, exceed three months or the length of time worked by the member of the temporary staff, where the latter is longer. The leave shall not extend beyond the term of his contract.

On expiry of those time limits, a servant whose contract is not terminated, notwithstanding that he is unable to resume his duties, shall be placed on unpaid leave.

However, where a servant contracts an occupational disease or sustains an accident in the performance of his duties, he shall continue to receive his full remuneration throughout the period during which he is incapable of working until such time as he is awarded an invalidity pension under Article 33.;

(12) Article 17 is replaced by the following:

'Article 17

In exceptional circumstances a member of the temporary staff may at his own request be granted unpaid leave on compelling personal grounds. Article 12b of the Staff Regulations shall continue to apply during the period of unpaid leave on personal grounds.

The permission under Article 12b shall not be granted to a member of the temporary staff for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution.

The authority referred to in the first paragraph of Article 6 shall determine the length of such leave, which shall not exceed one quarter of the length of time already worked by the servant or:

- three months if the servant's seniority is less than four years;

- twelve months in all other cases.

Any period of leave granted in accordance with the first paragraph shall not count for the purposes of the first paragraph of Article 44 of the Staff Regulations.

While a member of the temporary staff is on unpaid leave his membership of the social security scheme provided for in Article 28 shall be suspended.

However, a member of the temporary staff who is not gainfully employed may, not later than one month following that in which unpaid leave begins, apply to continue to be covered against the risks referred to in Article 28, provided that he bears half the cost of the contributions provided for in that Article for the duration of his leave; the contribution shall be calculated by reference to his last basic salary.

Moreover, a member of the temporary staff to whom Article 2(c) or (d) applies who proves that he cannot acquire pension rights under another pension scheme may apply to continue to acquire further pension rights throughout the period of unpaid leave, provided that he bears the cost of a contribution equal to three times the rate laid down in Article 41; the contributions shall be calculated by reference to the basic salary for his grade and step.

Women whose maternity leave begins before the end of their contract shall be entitled to maternity leave and maternity pay.;

(13) Article 20 is amended as follows:

- (a) in paragraph 1, the words 'adjustments to' are replaced by 'updates of';
- (b) in paragraph 3, the words 'special levy' are replaced by 'solidarity levy';
- (c) paragraph 4 is replaced by the following:

'4. Article 44 of the Staff Regulations shall apply by analogy to temporary staff.;

(14) Article 28a is amended as follows:

- (a) in the last sentence of paragraph 3, the word 'adjusted' is replaced by 'updated';
- (b) in paragraph 10, the words 'Institutions of the Union' are replaced by 'authorities of the institutions referred to in the first paragraph of Article 6';

(c) paragraph 11 is replaced by the following:

'Every two years the Commission shall present a report on the financial situation of the unemployment insurance scheme. Independently of that report, the Commission may, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, adjust the contributions provided for in paragraph 7 of this Article if this is necessary in the interests of the balance of the scheme.'

(15) In the second subparagraph of Article 33(1) the words 'age of 65' are replaced by 'age of 66';

(16) Article 34 is replaced by the following:

'Article 34

The persons entitled under a deceased servant, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to the survivor's pension as provided for in Articles 35 to 38.

Where a former servant in receipt of an invalidity allowance or a former servant within the meaning of Article 2 (a), (c), (d), (e) or (f) who was in receipt of a retirement pension or who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that during which he reached pensionable age dies, the persons entitled under the deceased servant, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to the survivor's pension as provided for in that Annex.

Where the whereabouts of a member of the temporary staff, or of a former member of temporary staff in receipt of an invalidity allowance or retirement pension, or of a former member of temporary staff who left the service before he reached pensionable age and who has requested that his retirement pension be deferred until the first day of the calendar month following that in which he reaches pensionable age, are unknown for more than one year, the provisions of Chapters 5 and 6 of Annex VIII to the Staff Regulations dealing with provisional pensions shall apply by analogy to his spouse and to persons recognised as his dependants';

(17) In the third sentence of the first paragraph of Article 36, the words 'Article 2(a), (c) or (d)' are replaced by 'Article 2 (a), (c), (d), (e) or (f)';

(18) In the fourth paragraph of Article 37, the words '63 years of age' are replaced by 'the pensionable age', and the words 'Article 2(a), (c) or (d)' are replaced by 'Article 2(a), (c), (d), (e) or (f)';

(19) Article 39(1) is replaced by the following:

'1. On leaving the service, a servant within the meaning of Article 2 shall be entitled to a retirement pension,

transfer of the actuarial equivalent or the payment of the severance grant in accordance with Chapter 3 of Title V of, and Annex VIII to, the Staff Regulations. Where the servant is entitled to a retirement pension his pension rights shall be reduced in proportion to the amounts paid under Article 42.';

(20) The first paragraph of Article 42 is replaced by the following:

'In accordance with conditions to be laid down by the authority referred to in the first paragraph of Article 6, a servant may request that authority to effect any payments which he is required to make in order to constitute or maintain pension rights in his country of origin.';

(21) Article 47 is replaced by the following:

'Article 47

Apart from cessation on death, the employment of temporary staff shall cease:

(a) at the end of the month in which the servant reaches the age of 66 or, where applicable, at the date fixed in accordance with the second and third paragraphs of Article 52 of the Staff Regulations; or

(b) where the contract is for a fixed period:

(i) on the date stated in the contract;

(ii) at the end of the period of notice specified in the contract giving the servant or the institution the option to terminate earlier. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months. For temporary staff whose contracts have been renewed the maximum shall be six months. The period of notice shall not, however, commence to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to the limits aforesaid. If the institution terminates the contract, the servant shall be entitled to compensation equal to one-third of his basic salary for the period between the date when his duties end and the date when his contract expires;

(iii) where the servant no longer satisfies the conditions laid down in point (a) of Article 12(2), subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in point (ii) shall apply; or

(c) where the contract is for an indefinite period:

- (i) at the end of the period of notice stipulated in the contract; the length of the period of notice shall not be less than one month for each completed year of service, subject to a minimum of three months and a maximum of 10 months. The period of notice shall not, however, commence to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to the limits aforesaid; or
- (ii) where the servant no longer satisfies the conditions laid down in point (a) of Article 12(2), subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in point (i) shall apply.';

(22) The following Article is inserted:

'Article 48a

In any given parliamentary term, Article 50 of the Staff Regulations may be applied by analogy to a maximum of five members of senior temporary staff of political groups in the European Parliament who are in grade AD 15 or AD 16, provided that they have attained the age of fifty-five years and have twenty years of service in the institutions and at least 2,5 years of seniority in their last grade.';

(23) Article 50c(2) is deleted;

(24) The following Chapter is added to Title II:

'CHAPTER 11

SPECIAL PROVISIONS FOR TEMPORARY STAFF REFERRED TO IN ARTICLE 2(f)

Article 51

Article 37, with the exception of point (b) of the first paragraph, and Article 38 of the Staff Regulations shall apply by analogy to the temporary staff referred to in Article 2(f).

Article 52

By way of derogation from the third paragraph of Article 17, the temporary staff referred to in Article 2(f) with a contract for an indefinite period may, irrespective of their seniority, be granted unpaid leave for periods not exceeding one year.

The total length of such leave may not exceed twelve years in the course of the staff member's entire career.

Another person may be engaged to the post occupied by the member of the temporary staff.

On the expiry of his leave a member of the temporary staff must be reinstated in the first post corresponding to his grade which falls vacant in his function group, provided that he satisfies the requirements for that post. If he declines the post offered to him, he shall retain his right to reinstatement when the next vacancy corresponding to his grade occurs in his function group subject to the same provisions; if he declines a second time, employment may be terminated by the institution without notice. Until effectively reinstated or placed on secondment he shall remain on unpaid leave on personal grounds.

Article 53

Temporary staff referred to in Article 2(f) shall be engaged on the basis of a selection procedure organised by one or more agencies. The European Personnel Selection Office shall, at the request of the agency or agencies concerned, provide assistance to the agencies, in particular by defining the contents of the tests and organising the selection procedures. The European Personnel Selection Office shall ensure the transparency of the selection procedures.

In the case of an external selection procedure, temporary staff referred to in Article 2(f) shall be engaged only at grades SC1 to SC2, AST 1 to AST 4 or AD 5 to AD 8. However, the agency may, where appropriate and in duly justified cases, authorise the engagement at grade AD 9, AD 10, AD 11 or, on an exceptional basis, at grade AD 12, for posts with corresponding responsibilities and within the limits of the approved establishment plan. The total number of engagements at grades AD 9 to AD 12 in an agency shall not exceed 20 % of the total number of engagements of temporary staff to the function group AD, calculated over a five-year rolling period.

Article 54

In the case of temporary staff referred to in Article 2(f), classification in the next higher grade shall be exclusively by selection from among staff members who have completed a minimum period of two years in their grade, after consideration of the comparative merits of such temporary staff and of the reports on them. The last sentence of Article 45(1) and Article 45(2) of the Staff Regulations shall apply by analogy. The multiplication rates for guiding average career equivalence, as set out for officials in Section B of Annex I to the Staff Regulations, may not be exceeded.

In accordance with Article 110 of the Staff Regulations, each agency shall adopt general provisions for the implementation of this Article.

Article 55

Where a member of the temporary staff referred to in Article 2(f) moves, following an internal publication of a post, to a new post within his function group, he shall not be classified in a lower grade or step than in his former post, provided that his grade is one of the grades set out in the vacancy notice.

The same provisions shall apply by analogy where the member of such temporary staff concludes a new contract with an agency immediately following a preceding contract for such temporary staff with another agency.

Article 56

In accordance with Article 110(2) of the Staff Regulations, each agency shall adopt general provisions on the procedures governing the engagement and use of temporary staff referred to in Article 2(f).';

(25) Title III is deleted;

(26) In Article 79(2), the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(27) Article 80 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Based on this table the authority referred to in the first paragraph of Article 6 of each institution, agency or entity referred to in Article 3a may, after consulting the Staff Regulations Committee, define in more detail the powers attaching to each type of duties.';

(b) paragraph 4 is replaced by the following:

'4. Articles 1d and 1e of the Staff Regulations shall apply by analogy.';

(28) Article 82 is amended as follows:

(a) in paragraph 6, the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(b) The following paragraph is added:

'7. Contract staff in function groups II, III and IV may be authorised to take part in internal competitions only after having completed three years of service in the institution. Contract staff in function group II may have access only to competitions at grades SC 1 to 2, in function group III at grades AST 1 to 2 and in function group IV at grades AST 1 to 4 or at grades AD 5 to 6. The total number of candidates who are members of the contract staff and

who are appointed to vacant posts at any of those grades shall never exceed 5 % of the total number of appointments to those function groups made per year in accordance with the second paragraph of Article 30 of the Staff Regulations.';

(29) Article 84 is replaced by the following:

'Article 84

1. A contract staff member whose contract is concluded for a duration of at least one year shall serve a probationary period for the first six months of his period of employment if he is in function group I and the first nine months if he is in any other function group.

Where, during his probationary period, a contract staff member is prevented by sickness, maternity leave under Article 58 of the Staff Regulations or accident from performing his duties for a continuous period of at least one month, the authority referred to in the first paragraph of Article 6 may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the contract staff member may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the immediate superior of the contract staff member to the authority referred to in the first paragraph of Article 6. On the basis of the report, the authority referred to in the first paragraph of Article 6 may decide to dismiss the contract staff member before the end of the probationary period, giving him one month's notice, or to assign the contract staff member to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the contract staff member to perform the duties pertaining to his post and also on his efficiency and conduct in the service. That report shall be communicated to the contract staff member, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the immediate superior of the contract staff member to the authority referred to in the first paragraph of Article 6.

A contract staff member whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph as well as on the basis of elements available to the authority referred to in the first paragraph of Article 6 relating to the conduct of the contract staff member with regard to Title II of the Staff Regulations.

4. A dismissed contract staff member shall be entitled to compensation equal to one-third of his basic salary per month of probation completed.';

(30) In Article 85(3), the words 'Article 314 of the EC Treaty' are replaced by 'Article 55(1) of the Treaty on European Union';

(31) Article 86(1) is amended as follows:

(a) the following sentence is added to the second subparagraph:

'However, the second paragraph of Article 32 of the Staff Regulations shall apply by analogy to contract staff recruited in grade 1.';

(b) the following subparagraph is added:

'General implementing provisions shall be adopted to give effect to this paragraph in accordance with Article 110 of the Staff Regulations.';

(32) In point (b) of the first paragraph of Article 88, the words 'three years' are replaced by 'six years';

(33) Article 91 is replaced by the following:

'Article 91

Articles 16 to 18 shall apply by analogy.

The second sentence of Article 55(4) of the Staff Regulations shall not apply by analogy to the contract staff.

Overtime worked by the contract staff in function groups III and IV shall carry no right to compensation or remuneration.

Under the conditions laid down in Annex VI to the Staff Regulations, overtime worked by the contract staff in function groups I and II shall entitle them either to compensatory leave or to remuneration where requirements of the service do not allow compensatory leave during two months following that in which the overtime was worked.';

(34) In Article 95, the words 'age of 63' are replaced by 'pensionable age';

(35) Article 96 is amended as follows:

(a) in paragraph 3, the word 'adjusted' is replaced by 'updated';

(b) paragraph 11 is replaced by the following:

'11. Every two years the Commission shall present a report on the financial situation of the unemployment insurance scheme. Independently of that report, the Commission may, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, adjust the contributions provided for in paragraph 7 if this is necessary in the interests of the balance of the scheme.';

(36) In the second sentence of the second subparagraph of Article 101(1), the words 'age of 65' are replaced by 'age of 66';

(37) Article 103 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. In the event of the death of a former contract staff member in receipt of an invalidity allowance or a former contract staff member who is in receipt of a retirement pension or who leaves the service before reaching pensionable age and requests that his retirement pension be deferred until the first day of the calendar month following that in which he reached the pensionable age, the persons entitled under the deceased former contract staff member, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to a survivor's pension as provided for in that Annex.';

(b) paragraph 3 is replaced by the following:

'3. Where the whereabouts of a contract staff member or of a former contract staff member in receipt of an invalidity allowance or retirement pension, or of a former contract staff member who leaves the service before reaching pensionable age and requests that his retirement pension be deferred until the first day of the calendar month following that in which he reaches pensionable age, are unknown for more than one year, the provisions of Chapters 5 and 6 of Annex VIII to the Staff Regulations dealing with provisional pensions shall apply by analogy to his spouse and to persons recognised as his dependants.';

(38) In Article 106(4), the words '63 years of age' are replaced by 'the pensionable age';

(39) In Article 120, the words 'each institution' are replaced by 'the authority referred to in the first paragraph of Article 6';

(40) The following Article is inserted:

'Article 132a

In accordance with the implementing measures referred to in Article 125(1) and upon express request of the respective Member or Members whom they support, accredited parliamentary assistants may be paid only once either an installation allowance or a resettlement allowance paid out from the respective Member's parliamentary assistance allowance based on evidence that a change of the place of residence was required. The amount of the allowance shall not exceed one month's basic salary of the assistant.';

(41) Article 139 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

'(b) at the end of the month in which the accredited parliamentary assistant reaches the age of 66 years or, on an exceptional basis, at the date fixed in accordance with the second and third paragraphs of Article 52 of the Staff Regulations';

(ii) point (d) is replaced by the following:

'(d) taking into account the fact that trust is the basis of the working relationship between the Member and his accredited parliamentary assistant, at the end of the period of notice specified in the contract, which shall give the accredited parliamentary assistant or the European Parliament, acting at the request of the Member or Members of the European Parliament whom the accredited parliamentary assistant was taken on to assist, the right to terminate the contract before its expiry. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months. The period of notice shall not, however, start to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to these limits';

(b) the following paragraph is inserted:

'3a. The implementing measures referred to in Article 125(1) shall provide for a conciliation procedure which shall apply before the contract of an accredited parliamentary assistant is terminated, at the request of the Member or Members of the European Parliament whom he was taken on to assist or the parliamentary assistant concerned, pursuant to point (d) of paragraph 1 and to paragraph 3.';

(42) In Article 141, the words 'each institution' are replaced by 'the authority referred to in the first paragraph of Article 6';

(43) The following Article is added:

'Article 142a

The Commission shall, by 31 December 2020, submit a report to the European Parliament and to the Council assessing the functioning of these Conditions of Employment of Other Servants.';

(44) The Annex is amended as follows:

(a) the following sentences are added to Article 1(1):

'Article 21, Article 22, with the exception of paragraph 4, Article 23, Article 24a and Article 31(6) and (7) of that Annex shall apply by analogy to other servants employed on 31 December 2013. Article 30 and Article 31(1), (2), (3) and (5) of that Annex shall apply by analogy to temporary staff employed on 31 December 2013. For agents in service before 1 January 2014, the words "age of 66" in the second subparagraph of Article 33(1), in point (a) of Article 47, in the second subparagraph of Article 101(1) and in point (b) of Article 139(1) of the Conditions of Employment of other Servants shall be read as "age of 65".';

(b) the following Article is added:

'Article 6

With effect from 1 January 2014, contracts of temporary staff to whom Article 2(a) of the Conditions of Employment of Other Servants applies and who are in service on 31 December 2013 in an agency shall be transformed, without selection procedure, into contracts under point (f) of Article 2 of these Conditions of Employment. The conditions of the contract shall remain unchanged for the rest. This Article does not apply to contracts of temporary staff engaged as heads of agencies or deputy heads of agencies as referred to in the Union act establishing the agency or to officials seconded in the interests of the service to an agency.'.

Article 3

1. This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.
2. It shall apply as from 1 January 2014 except for Article 1, point 44, and Article 1, point 73(d) which shall apply as from the date of entry into force of this Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

'They can't have it both ways'

Report to the Centre for Brexit Studies on the U.K.'s obligations to pay future pensions liabilities for E.U. Commission officials upon Brexit, and as provided for under the U.K.'s proposed December 2018 Withdrawal Agreement

by John Clancy

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20th November 2018

Summary

Why Article 142 of the proposed Withdrawal Treaty is fatally flawed, and should be withdrawn or voted down, unless the legal advice is clear and accepted.

Has there been any formal legal advice given on the position of whether there is, or is not, any liability at all owed by the U.K. to the E.U. in respect of EU pensions on BREXIT?

The formal Legal Advice as to which treaties, articles and regulations now cause a crystallised liability to occur from the U.K. to the E.U. upon BREXIT in respect of future E.U. Pensions for the next 50 years needs to be published.

If not, then the payment of possibly over €10 Billion from the U.K. to the E.U. is a choice in the proposed Treaty: it is not a necessity.

BCU's Centre for Brexit Studies (CBS) asked in July and August 2018 that the government should check over the provisions of what would be a Withdrawal Treaty to ensure that the E.U. Pensions Provisions in (then) Article 135 (now 142) were actually necessary.

CBS pointed out to the Department for Exiting the E.U. that the government needed to provide its reasoning as to why the **final** standard payment (of around €230 Million) into the Pension scheme should not be the date of leaving the EU, or (at the latest) the end of the transition period, without any further sums being due.

Under the presently-drafted Withdrawal Agreement the UK is now proposing to commit by treaty to pay as much as €10-12 Billion after it leaves the EU, including £750 Million over the next 3 years, even after the U.K. has left, when there is no clear obligation to pay it, even as a member state now.

When the other 27 member states scrutinise this proposed treaty, they too will have to accept that for the first time they are committing to acceptance of an immediate crystallised pension fund liability, annually updated, which they would not have had prior to the signing of the U.K. – E.U. Withdrawal Treaty.

This would apply across all 27 current remaining EU Member States. They may not be fully aware of this yet as they consider it now.

The doubtful legal position which could and should have been tested before now in the E.U.'s or U.K.'s courts will instead be blocked and superseded by a full-blown treaty obligation. Any attempt by the EU to enforce a financial liability under the treaty would come to be determined under the provisions of the treaty, which gives a considerable legal advantage to the E.U.

More significantly, though, under Article 174 of the agreement the U.K. cedes all authority to the CJEU in determining all matters relating to the interpretation of EU law in so far as they affect the provisions or implementation of the treaty. ***It outranks the U.K.'s Supreme Court in these matters, and (it would seem) without time limit.***

There are no provisions in the proposed Withdrawal Treaty or before parliament as to what the liability figure will actually be. The UK government is proposing to ask parliament to agree to pay by

Treaty a sum which is completely unknown. This sum will be determined entirely by the E.U. commission at a future date.

The discount rate and other calculations used by the E.U. are contradictory and confused. They have not been tested by anyone as to their validity. Whilst there is a formula suggested in the proposed Treaty, there are no provisions in the draft Treaty as to which figures will be applied in the formula.

The monthly payments out of the pension scheme are by EU treaty and regulations treated as a charge to the revenue budget of the E.U. and have been since the 1950s and 1960s. There is no pension fund and no liabilities arise from the fund, because Member States by treaty guarantee all future payments from the scheme - which creates an "in balance" scheme.

The fact of a member state leaving should not give rise to any future liabilities at all. Indeed, should the size of the E.U.'s commission shrink because the U.K. has left (as it should), then neither should there be any higher future guaranteed annual payments in relation to E.U. pensions for remaining member states.

If the fund is being treated as a fund, rather than a scheme (which it should not be) then all of the UK's payments into the scheme to pay for the pensions of retired EU officials who did not work for their entire service since 1973 needs to be refunded at today's values to the U.K. upon leaving the E.U. Payments into the administration for that service of EU officials prior to accession should be refunded at today's values. E.U. Assets should have been placed against any 'unfunded' future liabilities.

The payments by way of deductions from E.U. officials' salaries for the pension scheme need also to be deducted from any gross EU purported liability, before any U.K. share is calculated.