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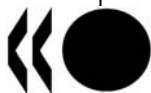
**AMENDMENTS TO REGULATION 22 AND ANNEX III TO THE STAFF REGULATIONS AND
RULES APPLICABLE TO OFFICIALS OF THE ORGANISATION**

(Note by the Secretary-General)

This document is submitted to Council for approval under the written procedure.

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Background

1. The settlement of disputes mechanism between officials and the Organisation is laid down in Regulation 22 of the Staff Regulations applicable to officials (Disputes). This mechanism provides in particular that an official who challenges a decision taken by the Secretary-General (or under his authority) may refer the matter to the Joint Advisory Board (hereinafter “the JAB”) and/or the Administrative Tribunal of the Organisation (hereinafter “the Administrative Tribunal”).

2. A recent judgment of the Administrative Tribunal highlighted the need to complement the provisions of such Regulation 22 in two respects:

- first, the text lays down no time limit for referral to the JAB. In the absence of any such time limit, administrative decisions and the ensuing legal situations can be challenged indefinitely before the JAB and, consequently, before the Administrative Tribunal;
- secondly, the text contains no provisions about the conditions of an action for redress of a damage resulting from a wrongful action of the Organisation.

3. The purpose of the proposed amendments is therefore to establish the general conditions for referrals to the JAB and the conditions of an action for redress of a damage resulting from a wrongful action of the Organisation.

Conditions for referrals to the JAB

4. The JAB is an advisory body half of whose members are nominated by the Secretary-General and half by the Staff Association. The Board, which is chaired by someone from outside the Organisation, is required to give an opinion to the Secretary-General on any individual dispute arising from a decision taken by him or under his authority. Further to the JAB’s opinion, the Secretary-General takes a new decision which, if it confirms the decision that was referred to the JAB’s opinion, may be submitted to the Administrative Tribunal. Referral to the JAB is not a precondition for filing an application with the Administrative Tribunal. However, once a dispute has been referred to the JAB, no application can be filed with the Administrative Tribunal before the official has received notification of the new decision taken by the Secretary-General after the JAB’s opinion. The time limits for filing an application with the Administrative Tribunal begin to run from the date of notification of this decision.

5. The primary objective of the proposed amendments is to ensure that a decision of the Secretary-General cannot be challenged indefinitely.

Indeed, at present, the absence of any time limit for referrals to the JAB has a double consequence:

- disputes pertaining to decisions of the Secretary-General relating to the administrative situation of officials can be referred to the JAB at any time, which means that such administrative situations can be challenged months or years after they were notified;
- the absence of a time limit for referrals to the JAB also means that time limits for filing an application with the Administrative Tribunal may turn out to be ineffective. Since the Secretary-General is obliged to take a decision following the JAB’s opinion, and there being no time limit on referral to the JAB, any such referral re-opens the time limit for filing an application with the Administrative Tribunal. The time limits laid down in the Resolution of the Council on the Statute and Operation of the Administrative Tribunal (Annex III to the

Staff Regulations applicable to officials), which are mandatory, are then unable to play their role of guaranteeing the stability of legal relations, i.e. ensuring that after a certain time limit, administrative decisions are definitive and can no longer be challenged.

6. Furthermore, the current provisions of the Staff Regulations allow officials to refer a decision of the Administration to the JAB even before the Secretary-General has been called upon to review the situation of the official and thus had the opportunity to agree to the official's request and modify or withdraw the challenged decision. It is proposed to remedy this situation with a view to reducing the number of cases referred to the JAB and, *a fortiori*, to the Administrative Tribunal.

7. The proposed amendment to Regulation 22 a) therefore introduces a time limit of two months, as from the notification of the decision, for referrals to the JAB. It is also proposed to amend Article 3 of Annex III to the Staff Regulations applicable to officials in order to make a prior written request to the Secretary-General for withdrawal or modification of the contested decision a precondition for any referral to the JAB.

Conditions for an action for redress of a damage resulting from a wrongful action of the Organisation

8. At present, no provision of the Staff Regulations applicable to officials provides for a specific procedure for bringing an action for redress of a damage allegedly resulting from a wrongful action of the Organisation. In order to fill this legal vacuum and in the interests of clarification, it is proposed to establish precise time limits for such action. The procedural processes and time limits proposed were established with reference to those already in existence.

Consultation of the Staff Association

9. In accordance with the procedure laid down in Instruction 123/2 of the Staff Regulations applicable to officials, the Staff Association was consulted on these proposed amendments.

10. The Staff Association made no objection to these changes, and its comments were taken into consideration.

Amendments to the Staff Regulations and Rules applicable to officials

11. The proposed amendments to the Staff Regulations and Rules applicable to officials are marked in bold in the Appendix to this document.

Amendments to the Regulations, Rules and Instructions for Council Experts and Consultants, and to the Regulations, Rules and Instructions for Auxiliaries

12. Inasmuch as the provisions of Regulation 22 and of Annex III to the Staff Regulations applicable to officials apply *mutatis mutandis* to Council experts, consultants and auxiliaries, the above-mentioned proposed amendments will apply to them, and the Regulations and Rules applicable to them will have to be amended accordingly, in particular Regulation 16 and Annex I to the Regulations, Rules and Instructions for Council Experts and Consultants, and Regulation 18 and Annex I to the Regulations, Rules and Instructions for Auxiliaries.

Amendments to the Administrative Tribunal's Rules of Procedure

13. Having regard to the proposed amendments referred to above, certain changes should be made to Article 2 of the Administrative Tribunal's Rules of Procedure set out in Annex III to the Staff Regulations

applicable to officials. However, these purely procedural changes can only be suggested to the Tribunal since it is the Administrative Tribunal itself which adopts its Rules of Procedure, pursuant to Article 2 of Annex III to the Staff Regulations applicable to officials. That is why the changes set out in the Appendix to the present document are submitted to the Council solely for information.

Proposed Action

14. In the light of the preceding, the Secretary-General invites the Council to adopt the following draft conclusions:

THE COUNCIL

- a) noted document C(2010)101;
- b) approved the proposed amendments to the Staff Regulations and Rules applicable to officials as set out in Appendix to document C(2010)101;
- c) noted that inasmuch as the same provisions apply mutatis mutandis to Council experts, consultants and auxiliaries, the Regulations and Rules for Council Experts and Consultants, and the Regulations and Rules for Auxiliaries shall be amended accordingly.

APPENDIX

PROPOSED AMENDMENTS TO STAFF REGULATION 22

DISPUTES

Current Regulations and Rules	Proposed Amendments
<p>REGULATION 22</p> <p><u>Advisory Bodies</u></p> <p>a) The Secretary-General shall establish an Advisory Board comprising a Chairman from outside the Organisation, and six other members, three of whom shall be nominated by the Staff Association. Unless, under a specific provision, another body is responsible for giving its opinion in a particular field, this Board shall advise the Secretary-General, at the request of the official concerned, on any individual dispute arising from a decision of the Secretary-General and which an official, former official or the duly qualified claimants to their rights consider inequitable to themselves or contrary to the terms of the appointment or to the provisions of these Regulations or of applicable Rules.</p> <p>b) The Secretary-General shall establish a Re-evaluation Commission comprising a Chairman and two members nominated by him. This Commission shall advise the Secretary-General, at the request of an official, on any individual dispute arising from a decision of the Secretary-General relating to the official's performance evaluation, periodic advancement or post classification and which the official considers contrary to the terms of the appointment or to the provisions of these Regulations or of applicable Rules. Prior referral to this Commission is a precondition for filing an application with the Administrative Tribunal mentioned in paragraph c) of this Regulation.</p>	<p>REGULATION 22</p> <p><u>Advisory Bodies</u></p> <p>a) The Secretary-General shall establish an Advisory Board comprising a Chairman from outside the Organisation, and six other members, three of whom shall be nominated by the Staff Association. Unless, under a specific provision, another body is responsible for giving its opinion in a particular field, this Board shall advise the Secretary-General, at the request of the official concerned, on any individual dispute arising from a decision of the Secretary-General and which an official, former official or the duly qualified claimants to their rights consider inequitable to themselves or contrary to the terms of the appointment or to the provisions of these Regulations or of applicable Rules. The referral to this Board may only be made within two months of the notification of the Secretary-General's decision in response to a prior written request within the meaning of Article 3 a) of the Resolution of the Council on the statute and operation of the Administrative Tribunal annexed to these Regulations¹. Prior referral to this Board is not a precondition for filing an application with the Administrative Tribunal mentioned in paragraph c) of this Regulation.</p> <p>b) The Secretary-General shall establish a Re-evaluation Commission comprising a Chairman and two members nominated by him. This Commission shall advise the Secretary-General, at the request of an official, on any individual dispute arising from a decision of the Secretary-General relating to the official's performance evaluation, periodic advancement or post classification and which the official considers contrary to the terms of the appointment or to the provisions of these Regulations or of applicable Rules. The referral to this Commission may only be made within two months of the notification of this decision. Prior referral to this Commission is a precondition for filing an application with the Administrative Tribunal mentioned in paragraph c) of this Regulation.</p>

¹ This Council Resolution is the Annex III to these Regulations.

Current Regulations and Rules	Proposed Amendments
<p data-bbox="65 465 368 499"><u>Administrative Tribunal</u></p> <p data-bbox="65 533 754 1104">c) There shall be established an Administrative Tribunal which shall decide individual disputes arising from a decision of the Secretary-General, which he has taken on his own authority or in application of a decision of the Council and which officials, former officials or the duly qualified claimants to their rights consider as prejudicial to themselves. The Tribunal shall have jurisdiction to resolve, with due regard to vested rights, all questions regarding the interpretation and application of these Regulations, of any applicable Rules and of the terms of appointment. The Tribunal may annul such decisions of the Secretary-General as are contrary to the terms of appointment of the official concerned or the provisions of these Regulations or to any applicable Rule. It may also order the Organisation to redress the damage resulting from any irregularity committed by the Secretary-General.</p> <p data-bbox="65 1339 754 1776">d) The Tribunal shall be composed of three judges and three deputies, who shall not be members of the staff of the Organisation and shall be appointed by the Council for a period of three years from among persons of proven impartiality and who are jurists or otherwise highly qualified in labour law or civil service law or in the field of labour relations at the national or international level. The Council shall appoint the Chairman from among the judges, having regard to their judicial experience. The members of the Tribunal shall be of different nationalities and, overall, their selection shall ensure that the main legal systems of the Member countries of the Organisation are represented.</p> <p data-bbox="65 1809 754 1910">e) The other provisions relating to the Statute and operation of the Administrative Tribunal are set out in a Council Resolution annexed to these Regulations.</p>	<p data-bbox="783 465 1086 499"><u>Administrative Tribunal</u></p> <p data-bbox="783 533 1493 902">c) There shall be established an Administrative Tribunal which shall decide individual disputes arising from a decision of the Secretary-General, which he has taken on his own authority or in application of a decision of the Council and which officials, former officials or the duly qualified claimants to their rights consider as prejudicial to themselves. The Tribunal shall have jurisdiction to resolve, with due regard to vested rights, all questions regarding the interpretation and application of these Regulations, of any applicable Rules and of the terms of appointment. To this end, the Tribunal may:</p> <p data-bbox="783 936 1493 1070">i) annul a decision of the Secretary-General as is contrary to the terms of appointment of the official concerned or the provisions of these Regulations or to any applicable Rule;</p> <p data-bbox="783 1104 1493 1305">ii) order the Organisation to redress the damage resulting from a decision of the Secretary-General as contrary to the terms of appointment of the official concerned or the provisions of these Regulations or to any applicable Rule, or resulting from a wrongful action of the Organisation.</p> <p data-bbox="783 1339 1493 1776">d) The Tribunal shall be composed of three judges and three deputies, who shall not be members of the staff of the Organisation and shall be appointed by the Council for a period of three years from among persons of proven impartiality and who are jurists or otherwise highly qualified in labour law or civil service law or in the field of labour relations at the national or international level. The Council shall appoint the Chairman from among the judges, having regard to their judicial experience. The members of the Tribunal shall be of different nationalities and, overall, their selection shall ensure that the main legal systems of the Member countries of the Organisation are represented.</p> <p data-bbox="783 1809 1493 1910">e) The other provisions relating to the statute and operation of the Administrative Tribunal are set out in the Council Resolution mentioned in paragraph a).</p>

Current Regulations and Rules	Proposed Amendments
<p>No rule under Regulation 22</p>	<p>Rule</p> <p>22/1 An official, a former official or the duly qualified claimant to their rights, who considers that a wrongful action of the Organisation caused him a damage may only be compensated if he has addressed a written request to the Secretary-General aimed at obtaining a compensation. This written request shall be addressed within two months of the damage's occurrence, in the case of an official, or within four months of the damage's occurrence, in the case of a former official or a duly qualified claimant to their rights. The reply or the absence of reply within one month of receipt of this request is a decision within the meaning of Regulation 22 c). If the official, former official or the duly qualified claimant to their rights, wishes to obtain the withdrawal or modification of this decision, he shall address a prior written request to the Secretary-General in accordance with Article 3 a) of the Resolution of the Council on the statute and operation of the Administrative Tribunal.</p>

PROPOSED AMENDMENTS TO ANNEX III TO THE STAFF REGULATIONS

RESOLUTION OF THE COUNCIL

ON THE STATUTE AND OPERATION OF THE ADMINISTRATIVE TRIBUNAL

Current Regulations and Rules	Proposed Amendments
<p>Annex III to the Staff Regulations Resolution of the Council on the statute and operation of the Administrative Tribunal</p> <p>Article 3 Written Request prior to the filing of Applications</p> <p>a) Subject to the provisions of Article 4 b) below, applications to the Administrative Tribunal shall not be admissible unless the applicant has given the Secretary-General a prior written request for withdrawal or modification of the contested decision, and the Secretary-General has rejected such request or has not replied within a period of one month. Such prior request shall be given to the Secretary-General within two months from the date of notification of the contested decision in the case of members of staff, the Staff Association or trade unions or professional organisations, or within four months from the date of such notification in the case of former members of staff or duly qualified claimants to the rights of members of staff or former members of staff.</p>	<p>Annex III to the Staff Regulations Resolution of the Council on the statute and operation of the Administrative Tribunal</p> <p>Article 3 Written Request prior to the filing of Applications</p> <p>a) Subject to the provisions of Article 4 b) below, Applications to the Administrative Tribunal shall not be admissible unless the applicant has given the Secretary-General a prior written request for withdrawal or modification of the contested decision, and the Secretary-General has rejected such request or has not replied within a period of one month. Such prior request shall be given to the Secretary-General within two months from the date of notification of the contested decision in the case of members of staff, the Staff Association or trade unions or professional organisations, or within four months from the date of such notification in the case of former members of staff or duly qualified claimants to the rights of members of staff or former members of staff.</p>

AMENDMENTS TO BE PROPOSED TO THE ADMINISTRATIVE TRIBUNAL

RULES OF PROCEDURE OF THE TRIBUNAL

Current Rules	Proposed Amendments
<p>Rules of Procedure of the Tribunal</p> <p>Rule 2 Filing of Applications</p> <p>.../...</p> <p>b) Documentary evidence in support of the application shall in all cases include the contested decision together, in cases other than those referred to in Article 4 b) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal (hereinafter referred to as the "Resolution"), with the written request addressed to the Secretary-General and, except where no reply has been received from him, the communication notifying the applicant that his request has been rejected. If the original documents are not available, the applicant shall produce certified copies thereof.</p>	<p>Rules of Procedure of the Tribunal</p> <p>Rule 2 Filing of Applications</p> <p>.../...</p> <p>b) Documentary evidence in support of the application shall in all cases include the contested decision together, in cases other than those referred to in Article 4 b) of the Resolution of the Council on the Statute and Operation of the Administrative Tribunal (hereinafter referred to as the "Resolution"), with the prior written request addressed to the Secretary-General and, except where no reply has been received from him, the communication notifying the applicant that his request has been rejected. If the original documents are not available, the applicant shall produce certified copies thereof.</p>