Office for Harmonisation in the Internal Market: term of office of the President

2005/0077(NLE) - 13/05/2005 - Legislative proposal

PURPOSE : to amend Regulation 40/94/EC as regards the term of office of the President of the Office for Harmonisation in the Internal Market.

PROPOSED ACT : Council Regulation.

CONTENT : in the European Union there are now 20 decentralised bodies which can be categorised as Community agencies on account of their common features: establishment on a legal basis, legal personality, administrative and financial autonomy, clearlydefined sphere of responsibility and action, etc.

The head of each Community agency usually has the title director and in some cases is assisted by one or more deputies. The director's term of office is generally 45 years. Most of the basic Regulations nevertheless provide for the director's term of office and, where applicable, that of the deputies, to be extended for one or more further periods. The conditions governing appointment and term of office are laid down in each basic Regulation for each agency.

Until recently, the body responsible for appointment simply adopted a decision extending an incumbent director's term of office. Having examined the basic Regulations in more detail, however, the Commission has concluded that this practice poses a legal problem.

According to the Commission, the fact that the term of office is renewable must be interpreted as meaning that, when the term of office ends, the incumbent has to apply for a new term. Applied to the agencies, this interpretation leads to the conclusion that the possibility of renewing the director's term of office does not exempt the incumbent from following the appointment procedure laid down in the basic Regulation. Moreover, agency directors and their deputies are not only officeholders but also agency staff members employed under temporary contracts and subject to the Conditions of employment of other servants of the European Communities. The appointment procedure must therefore include publication of the post in all Member States and a selection process in compliance with the rules deriving from the basic Regulations and the Conditions of employment of other servants.

As these procedures are generally lengthy and relatively expensive and given the agencies' special needs and the practice in past years, the Commission proposes to avoid a full selection procedure each time that the first term of office for a director's or other relevant person's post comes to an end by either extending the current term of office or launching a new selection procedure in order to ensure continuity in the agency's administrative management. A decision to extend an incumbent director's term of office must be based on a prior assessment of their performance and of the agency's needs, conducted by the authority proposing candidates to the appointing authority, and extension may be authorised only once and for a limited period not exceeding that stipulated for the initial term of office.

In total, amendment of the articles relating to appointment is proposed in respect of 18 agencies – resulting in the presentation of 18 proposals for Regulations amending the basic Regulation for each agency.

The main aim of this proposal is to harmonise the rules on the conditions and procedures applicable to extending the term of office of the Director, Deputy Director or President, as appropriate, of certain Community agencies.

Provision should be made to extend this term of office once, after adequate evaluation.

It is proposed that the term of office of the President shall not exceed five years. On a proposal from the board of management and after a Commission evaluation and opinion, it may be extended once for a period of not more than five years.

In the evaluation the board of management shall assess in particular:

- the results achieved in the first term of office and the way in which they were achieved;

- the Office’s duties and requirements in the coming years.

Lastly, regarding the two agencies in respect of which a proposal for a Regulation has already been presented and is being examined or is in the process of being adopted (the European Chemicals Agency and the Community Fisheries Control Agency), the Commission will as necessary present proposals for amendments with a view to harmonising the texts for all the Community agencies.

Similarly, no proposals have been presented for amendment of the acts setting up agencies and other bodies under the second and third pillars.