

EUROPEAN COMMISSION
 DIRECTORATE-GENERAL
 HUMAN RESOURCES AND SECURITY

Director-General

Brussels, **17 OCT. 2012**
 DG HR DDG D4/SD D(2012)

Dossier: U:\0-2009\PER20.35 DS\PER20.35.05
 CdP+OSP\PER20.35.05.05 CdP\
 PER20.35.05.05_43_CdP_LUX\Remplacement
 de membres\Delgado-Saez

Suivi par M. Demirdjiev, tél. 69098

NOTE TO THE ATTENTION OF ROBERT KLAR,

PRESIDENT OF THE LUXEMBOURG LOCAL STAFF COMMITTEE (LSC-LUX)

Subject: Revocation by the LSC-LUX of an elected member of the Central Staff Committee (CSC)

In an e-mail sent on 25 September 2012 you informed DG HR about the replacement of Mr Delgado-Saez as a member of the CSC with another elected member of the LSC-LUX. For his part, Mr Delgado-Saez contests his replacement claiming that he has not resigned and that he is still in service at the Commission.

In a second e-mail of 1 October 2012 you explain the LSC-LUX interpretation of the legal provisions which served as a basis for the replacement. You point out that the combined reading of Articles 22 and 27 of the LSC-LUX Internal Rules makes such a decision possible. You also state that the replacement is in line with the election results since the overall representation continues to reflect the outcome of the elections in proportional terms. Finally you claim that if the LSC-LUX were deprived of its powers to replace its representatives to the CSC, this would constitute a serious limitation of its democratic prerogatives.

Allow me first to refer to the provisions which lay down how the members of the CSC are appointed and the events which put an end to the mandate of a member of the Staff Committee:

1. Article 9(2) of the Staff Regulations ("SR") provides:

"The composition and procedure of [the staff committees] shall be determined by each institution in accordance with the provisions of Annex II.

U:\0-2009\PER20.35 DS\PER20.35.05 CdP+OSP\PER20.35.05.05 CdP\PER20.35.05.05_43_CdP_LUX\Remplacement de membres\Delgado-Saez

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11. Office: SC11. Telephone: direct line (32-2) 2969098. e-mail: stanislav.demirdjiev@ec.europa.eu

2. Article 1, Annex II SR state:

“(1) The Staff Committee shall comprise the members thereof, together with their alternates if any, whose term of office shall be three years. (...)”

“(3) If the Staff Committee is organised in local sections, the manner in which the members of the Central Committee are appointed for each place of employment shall be laid down by the general meeting of officials of the institution in service at the relevant place of employment. Only members of the local section concerned may be appointed members of the Central Committee.”

3. Pursuant to Article 9(2) SR, the Commission has adopted a Decision on the Rules Laying down the Composition and the Operation of the Staff Committee of 23.12.1997 ("the Commission Decision"), Article 8(3) of which contains an exhaustive list of events which put an end to the member's term in office:

“A member’s term in office expires in the event of:

- 1. Death;*
- 2. Resignation;*
- 3. Termination of service at the Commission.”*

4. On the basis of these provisions the general meeting of officials in Luxembourg adopted on 15 June 2009 the *Statuts du Comité Local du Luxembourg*. However, the *Statuts* do not provide for specific rules regarding the manner in which the members of the CSC are appointed or replaced. As is further explained below, the gap has to be filled by other relevant texts, in this case the Commission Decision, which does contain such rules, and which therefore governs this question.

5. On the basis of these provisions the LSC-LUX adopted on 05.06.2012 its Rules of Procedure, Articles 22 and 27 of which state:

"Article 22

Le comité désigne les personnes chargées de le représenter au sein des organes statutaires et officiels, en qualité de titulaire ou de suppléant. Il peut également être fait appel à des non élus au Comité du personnel

Article 27

Le comité se réserve le droit de retirer les mandats conférés visés à l'article 22.":

6. These provisions may be analysed thus: the first sentence of Article 22 of the Rules of Procedure appears to be in conformity with Article 1(3) of Annex II SR. On the other hand, the second sentence is questionable, since the last sentence of Article 1(3) of Annex II limits appointments to members of the local committee. Moreover, concerning the termination of the mandate, the normal rule of interpretation that power to do includes power to undo cannot automatically be applied in interpreting Article 1(3). The fact that that provision refers to appointment of members cannot automatically be considered to mean that it also leaves it to the local committee to determine when the mandate can be terminated – different considerations apply to the appointment of a member and to the termination of his mandate. Indeed, that is precisely why the Commission Decision limits the circumstances in which the mandate can be terminated.

7. In fact, the Rules of Procedure contain no provisions concerning the circumstances in which the mandate can be terminated, although Article 27 appears to assume (wrongly) that the LSC-LUX can do what it likes when it likes). On the other hand, the Commission Decision does contain such rules – and the Commission Decision is of higher rank. The legislature made the institutions responsible for determining the composition of the central staff committee precisely because it is the central committee: thus the circumstances in which a member's mandate could be terminated should be the same for all members, whichever local committee appointed them. It cannot be left to a local committee to determine unilaterally how the central committee is to be composed at any given moment, by deciding itself when a member's mandate can be terminated. It follows that Article 27 can only be regarded as valid if it is interpreted in conformity with the abovementioned provisions of higher rank; this means that the LSC-LUX can only terminate a mandate in the circumstances laid down in the Commission Decision.

Turning to the facts of the present case, it appears that Mr Delgado-Saez, an elected member of the LSC-LUX, was lawfully appointed as a member of the CSC during the inaugural meeting of the new local committee:

Minutes of the LSC-LUX meeting of 30.11.2010

“Désignations des représentants au Comité central du personnel

Membres titulaires :

Membres suppléants :

Propositions US :

Rogers Delgado-Saez

Ramona Asandi

Robert Klar

Jean Cacault-Boulin

Philippe Marchetto

Dhikra Chaouch

Nicolas Mavraganis

Alain Fabisiak

Klaus Resch

Arcangelo Milella

Miguel Vicente-Núñez

Yves Orville

Proposition SE :

Roland Schintgen

Monika Wrzesinska

Constatant qu'il n'y a pas d'opposition à ces désignations, le Président les félicite et passe au point suivant qui avait été annoncé précédemment par M. Vicente Núñez :...”.

Concerning the termination of the mandate of Mr Delgado-Saez, the draft minutes of the LSC-LUX meeting of 25.09.2012 state:

Draft Minutes of the LSC-LUX meeting of 25.09.2012

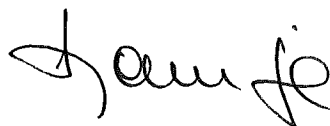
“Reconstitution partielle de la délégation du CLP au CCP: En remplacement de R. Delgado comme titulaire de la délégation du CLP au CCP, R. Klar propose la désignation d'I. Adovica. A la question de D. Heer si la personne à remplacer ne

doit pas démissionner, être décédée ou avoir quitté l'institution, M. Vicente Núñez répond que c'est effectivement le cas pour les mandats d'élus mais pas pour des désignations ce qui est le cas présent. Après vérification des personnes ayant le droit de vote, 14 en tout, cette désignation est approuvée avec 11 voix pour, aucune voix contre et 3 abstentions."

The above decision must be based on the assumption that only the Rules of Procedure applied, in particular the last sentence of Article 22, and Article 27. The LSC-LUX thus assumed that it could put an end to a mandate when it liked, and replace the person with someone who had not been elected.

These assumptions are both wrong, for the reasons indicated above. The last sentence of Article 1(3) of Annex II SR clearly prohibits the appointment to the Central Committee of anyone who has not him/herself been elected to a local committee. It is self-evident that the local committee cannot terminate the mandate of an existing appointee (who was elected) for the sole purpose of facilitating an illegal appointment. Moreover, the termination was itself decided in circumstances not permitted by the relevant rule, namely Article 8(3) of the Commission Decision.

In the light of the foregoing, in my capacity of Appointing Authority entrusted with the powers of control over the legality of the acts adopted by the statutory bodies, I invite the LSC-LUX to annul the revocation of Mr Delgado-Saez as a member of the CSC and to confirm his appointment as a full member of CSC in the LSC-LUX delegation to the CSC.



Irene SOUKA

Copy: F. FRUTUOSO DE MELO; B. JANSEN; D. DOTTO; Cr. ROQUES HR (DG HR)

R. DELGADO-SAEZ