

LEGAL PROTECTION OF THE STAFF COMMITTEE, ITS MEMBERS AND ACTIVITIES

*By Dr Niels Bracke
Chairman of the Staff Committee
of the Council of the European Union*

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1. Introduction

The legal protection of staff representatives is a relatively complicated issue. Not only does one have to look at the law, but also the implementing rules agreed with the administration play an important role.

A third element to be taken into account is the attitude of the administration towards the activities of the staff representatives, that is to say the application of the law in practice. Finally, the day-to-day practice needs to be explained in more detail.

I will start with summarising the legal provisions in place regulating the activities of the staff representation.

Subsequently, I outline the agreements reached with the administration regulating the work of the staff representation.

Thirdly, I try to shed some light on the way the administration of the Council is dealing with the staff representation.

And finally, I highlight a number of practical questions encountered in our day-to-day work.

But first a number of limitations and explanations.

- I will only deal with the official staff representation and not touch upon the role of the trade unions.
- The staff representation in the Council is called Staff Committee.
- Administration means the directorate-general responsible for administration as well as the Deputy Secretary General, who holds the legal powers as regards staff policy is concerned.

2. Legal provisions

The Staff Regulations of the European Community, which cover all institutions of the European Union (Commission, Council, Parliament, Court of Justice) as well as all bodies and agencies, contain several articles dealing with the representation of the staff.

Article 9 provides that for each institution a Staff Committee is set up, one or more Joint Committees as well as one or more disciplinary boards. Furthermore a advisory committee for professional incompetence, and a reports committee are created.

Note: this implies that all aforementioned institutions have their own Staff Committee. The Commission even has several Staff Committees.

Furthermore a single invalidity committee is created for all institutions.

Article 9 continues by underlining that the Staff Committee represents the interests of the staff in relation to their institution, providing a channel through which the staff can express itself.

The Staff Committee shall bring to the attention of the administration of the respective institution any problem related to the implementation of the Staff Regulations and can be consulted regarding these questions.

The Staff Committee shall also make suggestions as regards organisation and operation of the service as well as the working conditions and general living conditions.

It may furthermore be involved in the running of social welfare bodies.

Finally the tasks of the Joint Committee and the reports committee are regulated.

In *Article 10* a common staff regulations committee is created for all institutions, tasked with advising the administration as regards amendment of the Staff Regulations or its general implementing rules.

Article 10a states that the Staff Committee has at least 15 working days to deliver an opinion.

Note: *Articles 10b and 10c*, in conjunction with *Article 21b* guarantee the freedom of association to a trade union as well as highlight the tasks of the trade unions. The articles allow the administration to negotiate agreements with the trade union, without prejudice however to the tasks of the staff committees.

As stated before, I will not further discuss the position of the trade unions. Just three remarks:

- the trade unions play an important role in the election of the staff committees by putting forward lists of candidates;
- the trade unions negotiate agreements with the administration and defend individual cases, the staff committees discuss more general questions; and
- by and large the trade unions and the staff committees work closely together and regularly adopt common positions.

Important rules regarding the Staff Committee are contained in Annex II to the Staff Regulations.

Article 1 notes that the Staff Committee is elected by all staff members and its members serve for 1 to 3 years. The rules for the election are adopted by a general assembly of the staff.

The last paragraph of *Article 1* is of crucial importance. It reads:

"The duties undertaken by members of the Staff Committee and by officials appointed by the Committee to organs set up under the Staff Regulations or by the institution shall be deemed to be part of their normal service in their institution. The fact of performing such duties shall in no way be prejudicial to the person concerned."

Annex II furthermore regulates the activities of the Joint Committee, the invalidity committee, the reports committee as well as the committee for professional incompetence. Note: apart for the invalidity committee (which is a medical body), all other committees are joint bodies, that is to say half of their members are appointed by the administration, half by the Staff Committee.

Annex III is also worth mentioning: competitions organised to select new officials are supervised by specific juries. *Article 3* provides that half of the members of juries are appointed by the administration and half by the Staff Committee.

Annex IX contains a procedure for disciplinary measures. Again, the members of the disciplinary board are half appointed by the administration, half by the Staff Committee.

Conclusion: the legal position of the Staff Committee is quite strong. It is elected by the staff of the institution, its members are legally protected. The Staff Committee has a very broad remit and is responsible for the appointment of half of the members of numerous joint bodies.

3. Agreements reached with the administration

Additional joint bodies

Apart from the joint bodies referred to above, the Council has also created a mobility committee. It is an advisory body involved in all internal staff movements and composed of members appointed by the Staff Committee and an equal number of members appointed by the administration.

Similarly a joint committee on staff training and a joint committee on equal opportunities are set up, as well as a joint committee on the improvement of health and safety at work (dealing with more technical questions).

Equally a number of additional interinstitutional joint committees were created, composed again of a number of members appointed by the various staff committees and an equal number of members appointed by the administrations: the management committee for the sickness insurance, the building loans committee, the committee on the management of the early childhood centre and a common Joint Committee.

Finally the Staff Committee appoints half of the members of the promotion boards, that decide on the promotion of members of the staff of the Council.

Rules on consultation

The administration has agreed that in case it wishes to deviate from an opinion of a joint body, it shall inform the joint body as well as the Staff Committee of its plans and give the Staff Committee 5 working days to react, before taking a decision.

The administration has furthermore committed itself to consult the Staff Committee on various proposals and plans, such as the draft budget, amendments of the organigramme, etc.

Staff of the Staff Committee

The Staff Committee is supported by a number of Council officials, working full time for the Staff Committee. These officials are selected by the Staff Committee and are hierarchically subordinated to the (chairperson of) the Staff Committee.

Seconded members of the Staff Committee

The Staff Committee elects each term a presidency (one chairperson and several deputies) as well as a treasurer, a secretary and other members of the presidency.

It has been agreed that the chairperson as well as a number of his/her deputies are on a full time basis seconded to the Staff Committee. This implies that during their secondment they can work exclusively for the Staff Committee and are no longer subject to the hierarchical control of their former departments.

Work and meeting places

The Council has made available a permanent meeting room to the Staff Committee.

The staff working for the Staff Committee as well its seconded members have their work places next to the meeting room.

Needless to say that the aforementioned persons can use the full administrative support of the Council (telephones, mission cost reimbursement, etc).

Budget

The Staff Committee of the Council receives each year a not unimportant amount of money to fund its activities. This money is mainly used for the organisation of the annual staff party / children's party, holiday camps subsidies and the staff library.

A small part is used for the running of the Staff Committee (coffee, team, water).

Other social activities

Financed by the Staff Committee, the competent directorate-general runs a staff library. While the Staff Committee pays for the purchase of books and DVDs, the Council makes available staff to run the library.

Furthermore the Staff Committee is involved in the running of the sports centre. This centre is by and large financed by its users (the administration makes available the room) and the Staff Committee has the general oversight.

Conclusion: The Staff Committee has, apart from the rights provided for in the Staff Regulations, concluded several working arrangements with the administration laying down additional safeguards for its functioning. Also a number of additional joint bodies were created.

The Staff Committee has furthermore own staff and members seconded to the Staff Committee. Combined with an own budget, the Staff Committee is in a position to effectively play its role, without undue interference by the administration.

4. The attitude of the administration towards the Staff Committee

Legal and practical independence are one thing, the attitude of the administration towards the members of the Staff Committee (and those appointed by it in joint bodies) is equally a determining factor as regards its position.

It should not be forgotten that the Staff Committee, with all its independence and rights, is just a consultative body. Its opinions are not binding and can be ignored by the administration. So the administration has not direct interest to unduly influence the Staff Committee or the election process.

Whether the opinions of the Staff Committee are taken into account depends on the file. In certain dossiers the administration is very open to follow the suggestions by the Staff Committee, certain dossiers are more complicated and quite often the administration can not be moved. Instead of trying to influence the Staff Committee, the administration regularly ignores the Staff Committee (not replying to its opinions) or simply rejects the opinions.

The relations with the administration also depend on the persons involved. It can not be denied that certain persons related better to each other compared to others. This sometimes leads to "outbursts", but so far these incidents never resulted in concrete measures.

Conclusion: The administration is respecting the independence of the Staff Committee, its members and those appointed by the Staff Committee in joint bodies. I do not remember concrete measures taken against staff representatives.

This does not mean that the administration is always happy with activities of the Staff Committee, but instead of attacking staff representatives, it ignores or rejects the opinions of the Staff Committee.

5. Practical questions

Independence in law not necessary means impence in practice. Below a few practical examples of this general rule.

Budget and library

While the Staff Committee on the one hand has an independent budget, it is quite difficult (if not impossible) to implement it independently. The financial regulations of the EU are simply too complicated for a small body.

So in practice more and more projects (like the staff party) are implemented in cooperation with the administration, instead of running "an own show".

Members and those appointed by the Staff Committee

Legally speaking work for the Staff Committee is regarded part of the normal work of a Council official. However, in daily practice, members of joint bodies appointed by the Staff Committee are not partially relieved of their normal tasks in order to compensate for the extra work (the extra workload can be considerable). So, as a consequence, it is often quite difficult to find candidates for joint bodies.

Also the membership of the Staff Committee is not always compensated. Especially in operational departments, a member of the Staff Committee has to do his/her work for the Staff Committee alongside the normal activities. Consequence: the members of the Staff Committee do not always represent all departments.

Members seconded to the Staff Committee

While members seconded to the Staff Committee are normally well protected, they are also outside the normal organigramme of the Council. This creates difficulties for instance for their evaluation and promotion.

6. Overall conclusion

In law the Staff Committee, its members and the members of joint bodies are well protected and their status is recognised by the administration.

The Staff Committee has also a broad remit and administrative support, as well as seconded members, allowing it to function independently.

The rights of the Staff Committee are enshrined in the Staff Regulations and several agreements with the administration, allowing it to play an active role in defence of the staff of the Council.

I have not encountered cases that can be regarded a clear infringement of the independence of staff representatives.

So all seems well.

But, the Staff Committee, with all its independence, is just an advisory body, that can be ignored by the administration. The Staff Committee never has to agreed with a plan of the administration, it can only give advice or adopt an opinion.

So, instead of seeking a head-on conflict with the Staff Committee or its members, the administration simply pursues its plans, ignoring or rejecting the ideas of the Staff Committee.

Finally it has prove difficult to be really independent. Not only is the Staff Committee too small to run its own budget completely independent of the administration, the members of the Staff Committee and those appointed by the Staff Committee often combine their function as staff representative with their normal workload, making it difficult to compete with the administration. This is of course partially offset by the own staff of the Staff Committee and those fulltime seconded to the Staff Committee.

So all in all the Staff Committee is functioning (rather) independently, without undue influence by the administration, and staff representatives are well protected in the Council.