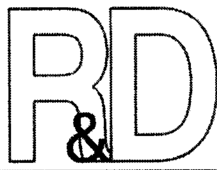
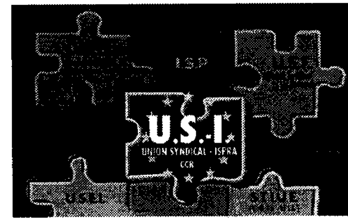




To our Colleagues Temporary Agents, Auxiliary Agents and Contract Agents

Ispra, 5th April 2007

Dear Colleagues,

Union Syndicale – Ispra and R&D Ispra would like to draw your attention on the court judgement of 26th October 2006 (Landgren/European Training Foundation - ETF)* in which the new EU Civil Service Tribunal took a decision that might be very important for the agents engaged with a temporary contract.

In this sentence, the Civil Service Tribunal recalls the main principles concerning employer-employee relationships, and reminds that **permanent contract are «the general form of work relationship between the employer and the employee, characterized by work stability,** whereas, only in few cases does a temporary work relationship mutually satisfies both the needs of employer and employee».

At present, the JRC consists of about 40% of employees with a temporary contract and this is the reason why US-I and R&D Ispra, by means of a juridical – and not political - action, would like to launch a common union action, aiming at claiming the stability of your contract relationship with the JRC and therefore with the Commission.

Considering the principles quoted in the above-said sentence, there are some possibilities to engage in a legal action aiming at regularising some of these temporary contracts according to the right, and to transform them into open-ended contracts. As to be able to verify these conditions, we suggest you to:

a) **collect ALL the documents concerning your recruitment: contract, renewals and/or related clauses, job descriptions, CDR – if you have it - and/or notation reports, etc...;**

b) **fill in the form here enclosed;**

c) **send your dossier to our union secretariats using the ENVELOPE and the ADDRESS already enclosed (FERMO POSTA Segreterie US-I e R&D Ispra, TP 630, CCR Ispra-21020 ISPRA Varese) by 27th April 2007.**

PLEASE, DO NOT CALL THE SECRETARIATS. You can address your questions to the following mailbox: working.group.agenti@gmail.com.

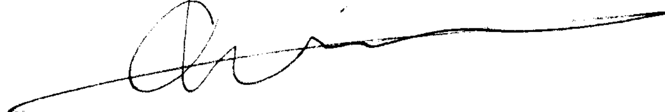
* See attachment.

Attention: your individual position will be evaluated by our legal advisors. We will then propose, depending on circumstances, the collective actions to undertake in order to try to regularise your contracts by means of Article 90 §1 and § 2 of Staff Regulations*.
For deadline reasons, THOSE AGENTS WHOSE CONTRACT HAS JUST BEEN OR IS GOING TO BE RENEWED, ARE WARMLY REQUESTED TO SEND THEIR DOCUMENTS AS SOON AS POSSIBLE.

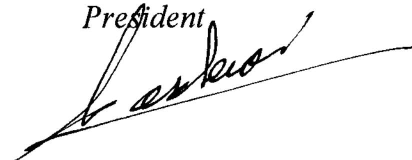
The idea of launching such an important union action comes from the brilliant insight of some lawyers who are expert in European laws (they come regularly to JRC Ispra, on behalf of Union Syndacale-Ispra, to give a juridical and administrative support to all colleagues requesting such a help). They have actually identified the basic elements on which it would be possible to found the petitions in the appropriate cases.

Nota bene: Our two unions will assume in the beginning the expenses needed to launch petitions. This action, that is exclusively juridical, will be closely followed by the two unions. Moved by a natural sense of social responsibility, they engage themselves to defend the personnel on this occasion too, especially as it concerns the staff working precariousness. In such moments, although they keep faith to their own opinions ad political/union actions, their objectives become voluntary common.

R&D
Chris Van der Aat
President



USI
Luigi Mascheroni
President



*** APPEALS - *Article 90***

1. Any person to whom these Staff Regulations apply may submit to the appointing authority, a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against ►C2 an act adversely affecting him ◄, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

— on the date of publication of the act if it is a measure of a general nature;

— on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;

— on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided in paragraph 1.

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.

A LEGAL CONSIDERATION

The new European Union Civil Service Tribunal in its decision of Oct. 26, 2006 (Landgren/European Training Foundation) examined the legality of a court judgement that led to the termination of a temporary agent contract which had been stipulated as "permanent". The evolution of right aimed at protecting staff from unfair dismissal and from abusive contract extension, or any wrongdoing regarding temporary contracts, was taken into consideration by the Tribunal.

Point 66 of the decision recalls that permanent contracts constitute «the general form of work relationship between the employer and the employee and are characterised by work stability; whereas, only in few cases does a temporary work relationship mutually satisfies both the needs of employer and employee». It was also pointed out that the Court of Justice had emphasised work stability as a fundamental aspect of staff safeguard (CJCE Jul.4, 2006, Adeneler, C-212/04, yet to be published on RecFP, point 62).

The Tribunal felt the obligation to bring up international standards that set minimum conditions necessary to protect workers, in a constitutional state, from being unfairly dismissed. By referring to art. 4 of Convention 158 of the International Labour Organisation (ILO), the Tribunal stressed that "any staff is not to be dismissed unless a valid reason exists connected to any wrongdoing or unacceptable conduct on his/her part or in the frame of an economic strategy adopted by the enterprise, institution or service."

Court of Justice jurisprudence was also referred to (see point 54 of the above mentioned Adelener judgement), in that all rules for the protection of workers against unfair dismissal and against illegal temporary contract extension or wrongdoing are to be applied to temporary contracts stipulated with any administration or any other public entity as well.

Therefore, the legality of all norms set forth by the Rules Applicable to all other Agents of the European Communities (RAA) is to be examined in light of the principles recalled by the Court of Justice and by the European Union Civil Service Tribunal .

Several agents have been serving the Commission for a number of years with a series of temporary contracts of various types (temps, temporary agents, auxiliary agents, contract agents).
This scenario goes against some general principles, as recalled by the Community Judge, stating that permanent contracts constitute a general form of the relationship between the community institutions and their agents.

Also, the RAA allows the institutions to terminate a permanent work contract by simply sending a written prior notice, the duration of which is determined in a contract clause within the limits contained in art. 47 of the RAA.

This situation, fully acknowledged by the European Union Civil Service Tribunal in the above mentioned report, seems to ignore the very nature of permanent contracts which grant a certain working stability.

The RAA also ignores art.4 of convention 158 of the (ILO) since it grants authorisation for dismissal even without a valid reason connected either to any wrongdoing or unacceptable conduct on the part of the employee or grounded on institution necessities.

The current situation of most agents serving the European Commission, and mainly those assigned to the JRC, is therefore to be considered **illegal in relation to the principles referred to both by the Court of Justice and by the European Union Civil Service Tribunal.**

In particular, the extension of temporary contracts in a systematic way is not only a violation of those principles, but also a violation of the law.