

ASPECTS OF LEGAL REGIME APPLICABLE TO THE SECONDMENT NATIONAL EXPERTS TO THE EU INSTITUTIONS AND BODIES REGULATED BY THE LAW NO. 105/2012

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Abstract

Law no. 105/2012, without comprehensive claims, establishes special rules applicable to national experts on secondment to the European Union institutions and bodies. Based on regulations adopted in the field of EU officials and national experts on secondment normative act adopted domestically presents some new issues, innovative and, although different from those in the law, meet European requirements applicable in this matter.

Keywords: national experts, employer, detachment applicable EU rules.

JEL Classification: K23, K31

I. Within the European Union (EU) legal regime applicable to national experts is governed primarily by the provisions of Regulation no. 734/2008 regarding the Statute of the European Union officials.

As a result of the difficulties arise in practice, both at the national and at the European level, regarding the conduct of the business of national experts engaged in EU Member States under an employment relationship or under a service relationship, in the EU institutions and bodies the Commission Decision no. 6866 was adopted on 12.11.2008 laying down rules regarding national experts and national experts in professional training.

Under this Decision, on July 2012, Romania adopted, as an EU Member State, the Law no. 105/2012 regarding the detachment of national experts to the EU institutions and bodies.

As shown in the explanatory memorandum accompanying the legal act, regulation of this form of "detachment" was absolutely necessary because there is a difference between principles established by national legislation and regulations specific to EU institutions and bodies.

In consequence, Law no. 105/2012 represents a special regulation in derogation of the common rules contained in the Labor Code, in the Statute of public servants and in the Statute of militaries.

However, the legislative act has no comprehensive claims representing, in fact, an addition and a clarification of applicable EU rules.

II. Commission Decision no. 6866 from 12.11.2008 (C.2008) laying down rules on the secondment to the Commission of national experts and national experts in professional training sets up the legal regime applicable to this particular personnel.

In essence, it is about the following:

- conditions for a person to be seconded to the European institutions and bodies:
 - come from a national government, regional or local government or from an intergovernmental organization or to come from a university or independent research organization whose goal is not profits for redistribution or within the public sector by cumulative performance criteria:

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- be attached to a government administration or to have been created by legislation or regulation;
- its resources come mostly from public funding;
- any activities that would compete in the market with other private or public entities it represents less than half of its activities.
- have a minimum work experience of 3 years in the field of administrative, legal, scientific, technical, advisory or supervisory;
- be employed by their employer at least 12 months before their secondment and remain in the service of the employer during the period of secondment.
- settlement period of secondment may not be less than six months or more than two years, renewable once or several times, up to a total period that will not exceed four years;
- establishing the duties and the rights and obligations of the posted (seconded national experts assisting the Commission officials or temporary staff, without being able to perform intermediate or upper management positions, inclusive as a replacement supervisor; participate in missions or external meetings only part of a delegation to an official or temporary agent of the Commission or, where the individual participates only as an observer or for information service, in no way represent the Commission on its own motion; seconded national experts are paid for their duties and shall behave solely with the interests of the EU; they do not seek or receive instructions from any government, any authority, organization or person outside the Commission and act with objectivity, impartiality and compliance with debt loyalty to EU; seconded national experts should refrain from any action which might reflect negatively on their function; they must refrain from unauthorized disclosure of information received in the course of their duties, unless have been made public or is accessible to the public; seconded experts have the right to freedom of expression, in strict compliance with the principles of loyalty and impartiality)
- regulation of suspension of secondment, as a result of Commission approval at the written request of the detached or his employer;
- regulation of the termination of the period of secondment by posting a notice at the request of the Commission or the employer, notified 3 months in advance or without notice, the employer of the seconded motivated by the interests of the service, the Commission and the employer acting jointly at the request of national experts for interest personal or professional, the Commission for non-compliance by national experts and/or the employer of their obligations;
- regulation of working conditions, working hours, holidays (medical, recreation, special maternity granted under an express provision under the Statue of public servants);
- payment of transfer emolument and a monthly subsistence allowance; the allowance shall be granted on the same criteria as expatriation allowance for officials governed by the same Statue; benefits are not considered under any circumstances as remuneration paid by the Commission;
- only the seconded national experts coming from public administration can take this quality without payment; seconded national experts to carry out an internship training (between 3 months and 5 months) are all without payment;
- remuneration and other social rights (mainly social security and pension) national experts are due solely to employers who post them.

III. In line with the above the Law no. 105/2012, states:

a) Seconded of national experts is done on the initiative of EU institution or body and the person concerned to become a national expert seconded by the employer in which the person concerned carries out its activity for a period of time as required by the EU institution or body.

b) Can not be removed as national experts, people in apprenticeship or probationary period or those sent on permanent missions abroad.

c) From a procedural perspective, people who intend to participate in a contest for a position seconded national expert are required to request the employer in which they operate, prior to the time of participation in the selection procedure, the request is accompanied by documentation for the procedure selection in which they intend to participate.

The employer must respond to this request within 10 working days from the time of its submission by the person concerned expressly stating whether he agrees or not with detachment, and if the answer why the heart is not with the detachment.

Where the employer is requesting person to post as national expert, he is obliged to inform the Ministry of Foreign Affairs (MFA) a statement of posting at least 30 days before the start date of posting. The notice will be sent by M.F.A. to the Permanent Representation of Romania to U.E.

In the case of termination before the original deadline at the initiative of national experts or agency or body of the EU, the national expert is required to notify the employer that posted this within 10 days (calendar) to initiate steps to end posting.

Seconded national expert employer is required to notify the expert and EU institution or body, throughout the deployment, changes in law or fact situations underlying the posting concerning him.

In terms of the national experts seconded employee rights - is about the rights they have against their employer - legal act expressly states that they retain their service or labor relations, where appropriate, with the employer from which they were posted. Their jobs are temporary vacancies can be filled, as provided by law, the period determined by others (art. 7 par. 1 and 2). Moreover, previous positions posting can not be abolished or transformed during deployment, except reorganization or insolvency proceedings onset (art. 7 par. 4). However, if the job abolition or reorganization following initiation of insolvency proceedings can handle seconded national experts, with their consent, equivalent positions in terms of duties and pay (Article 7 para. 5).

Military personnel in active Ministry of Defence (MAN), deployed for a period of more than 1 year, may be called in other functions than those who worked before posting (Article 6 para. 3).

Seconded national expert benefit the country, monthly, salary/result/indemnity corresponding to the position they are now employed/updated according to regulations or as a result of promotion, advancement or professional degree or advance in the military, where appropriate, made according to applicable statutes (Art. 11 para. 1). Salary/balance/compensation and compulsory social contributions (both employer and employee) is made by the employer from which was seconded national expert (Art. 11 para. 2).

In addition, national experts seconded to EU institution or body not provide any allowance or other financial benefit from the rights granted under Romanian law for personnel sent abroad to meet some temporary missions (Article 12).

Professional performance evaluation results conducted by national experts EU institution or body during deployment are equated annual professional performance evaluation results made by the employer from which they were posted (Art. 15 para. 2).

The period in which a person operates as a national expert is seniority in service and specialty of study, as appropriate (art. 14).

In terms of compliance, seconded national experts operate only in the interest of EU institution or body in which / whom are seconded, must comply with EU regulations.

IV. From the pooled analysis of the texts listed in section II and III above, compared with those contained in the Labour Code, the status of civil servants and military status, results the following:

a) Secondment of national experts is an institution derogating from the rules of common law, the strict application and interpretation. Without comprehensive claims, this materialize internally complete and EU rules in civil matters U.E. and national experts.

b) In accordance with European regulations contained in Commission Decision no. 6866, Law no. 105/2012 falls within the definition of "employees": civil servants, military personnel and private sector employees. But on the latter, according to Decision posting to be approved as a national expert, national employer must:

- Be a university or independent research organization whose goal is not profits for redistribution;

Or within the public sector by fulfilling the next criteria cumulative:

- be attached to a government or have been created by legislation or regulation;
- its resources come mostly from public funding;
- any activities that would compete in the market with other private or public entities it represents less than half of its activities.

c) Unlike the rules contained in the Labour Code concerning the posting of workers, according to which:

- his first period in which the (no longer than 1 year), it has the unilateral act of the employer in which people detached dsfășoară their work if national experts, the initiative belongs jointly EU institution or body and people interested in becoming a national expert, the employer has only to express agreement or disagreement in this regard. Thus, a unilateral act of will of the employer secondment of national experts is an agreement of wills, belonging initiative, this time, the employee must request permission before when his employer participation in selection procedures.

- Posting may be ordered for a period of one year and extended by consent of 6 in 6 months, when national experts, the period is determined according to EU institution or body requirements, which can not be less than 6 months or more 2 years, but with the possibility of its renewal once or several times up to a total period not exceeding four years.

- posted employee is granted rights due usually by ordering the employer to the deployment, since it requires a suspension of the individual employment contract of the employer that post and its takeover by the employer to the employee is posted if salary is paid secondment of national experts in the country by the seconding employer, which bears the obligation to retain and transfer the state budget all social contributions; Therefore, unlike common law rules but agreement with the European salary (remuneration) and other social rights (especially social security and pension) is made by the employer from which the national expert is seconded EU authority or institution reserves and a financial point of view, only the payment by national experts a day and a subsistence allowance. In addition, under Law no. 105/2012 when the EU institution or body not provide any compensation or seconded national experts emoluments, the benefit of the rights granted under Romanian law for personnel sent abroad to meet some temporary missions.

- During deployment employee holds his position and all other rights stipulated in the employment contract, if national experts if there triggering reorganization or insolvency proceedings they can be switched, with their consent, the equivalent positions in terms of employment conditions, the duties and pay.

d) Military detachment as national military experts to the Secretariat General of the Council, to be placed on the European Union Military Staff is an initiative of the employer's unilateral act only public institution in Romania in which they work, thus respecting national rules applicable to the posting staff military contained in Law no. 80/1995 (as opposed to employees to request the employer must obtain the prior approval EU institution or body). In addition, however, active military personnel from the Ministry of Defence (MAN), deployed for a period of more than 1 year, may be called in other functions than those who worked before posting, if employees or unenforceable provision civil servants.

e) Secondment of public servants as national experts have basically the same features as the employees, the legal regime applicable to them according to Law no. 188/1999 are similar. So initially unilateral nature of the employer that posting presents, for the first time when it can be arranged, is properly modified in the case of public servants by requiring the employer agreeing prior to the time of posting, for the public servant who intends to participate in a contest for a position as a seconded national expert.

In conclusion, it should be noted that the regulation of national experts on secondment or organisemelor EU institutions presents a number of new issues and innovative, although different from those in the law, meet European requirements applicable in this matter.

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