



**COUNCIL OF
THE EUROPEAN UNION**

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"I/A" ITEM NOTE

from : Secretariat

to : Permanent Representatives Committee/COUNCIL

prev. docs : 7089/00 and 14003/02

Subject : EU Special Representatives: Guidelines on appointment, mandate and financing
COMMON GUIDELINES
Consultation deadline: 7.11.2003

Delegations will find attached a suggestion jointly tabled by the Presidency, High Representative and Commission for revised Guidelines on appointing procedure, mandate and financing for EU Special Representatives. These Guidelines will replace the Guidelines adopted by the Council on 30.3.2000 (doc. 7089/00).

Against the background set out below, the Committee is invited to:

- confirm agreement on the draft guidelines on appointment, mandate and financing concerning EU Special Representatives (EUSR) set out at Annex;
- recommend that the Council adopt them.

BACKGROUND

1. Following the entry into force of the Treaty of Amsterdam, on 30 March 2000 the Council adopted Guidelines on appointing procedure and administrative arrangements concerning the EU Special Representatives¹ (EUSRs) in particular in order to ensure political accountability between EUSR and the Council. As a result, the EUSRs were placed under a contractual obligation to the Council and given the status of "Special Advisor" to the Council under the Staff Regulations. The contract of EUSR as "Special Advisor" to the Council involved a change in the budgetary responsibility for the financing of EUSR administrative expenditure (notably salaries and travel expenses). Such administrative expenditure was charged to line 1113 of the Council section of the EU budget as from 1 January 2001.
2. In order to ensure a more effective functioning of the instrument of an EUSR, *inter alia* so as to allow financial margin to extend its use where necessary, the Council, the Commission and the Secretary General/High Representative issued a Joint Statement on 10 December 2002². In this Joint Statement it was agreed i.a. that options to ensure that arrangements for financing EUSR work satisfactorily or develop alternatives, such as to move to the integral financing of the EUSR from the CFSP budget, should be considered as a matter of priority.
3. On 20 June 2003 the Secretary General/High Representative and the Commissioner for Foreign Relations issued a joint letter announcing an agreement in particular to move to the integral funding of EUSRs from the CFSP budget. The objective of this agreement is to create a solid basis for funding while allowing optimal flexibility and a high degree of responsiveness to evolving needs on the ground.

¹ Doc 7089/00.

² Doc 14003/02, p. 5.

4. At its meeting on 23 October 2003, the Foreign Relations Counsellors Working Group reached agreement on the draft Guidelines set out at Annex. The draft foresees the integral financing of costs related to the EUSR mandates from the CFSP budget, in accordance with the agreement referred to in paragraph 3, and contains the standard wording for EUSR mandates and the procedure for extending EUSR mandates as agreed by the PSC on 5 November 2002¹ and endorsed by the Council on 10 December 2002².
5. To ensure that EUSRs have political access at the necessary level, highly qualified and experienced candidates should be sought. The level of appointment of EUSRs should reflect this and therefore be maintained at A1/4 level.

¹ Doc 13725/02.

² Doc 14003/02.

EU SPECIAL REPRESENTATIVES: GUIDELINES ON APPOINTMENT, MANDATE AND FINANCING

A. PRINCIPLES AND SCOPE OF THESE GUIDELINES

In order to ensure a link with the European Union structures, political appointments of persons representing the Union may not be made outside the single institutional framework and the limits of Article 18 of the TEU. Article 18 paragraph 5 TEU provides for the principal legal/administrative relationship, namely that the Council may decide to appoint an EU Special Representative (EUSR) with a mandate in relation to particular policy issues. The actual title of the appointee (e.g. envoy, coordinator) has no bearing on this nomination.¹

The following rules cover the appointment of EUSRs (in accordance with Articles 18(5) and 23(2) TEU). They will be followed in any circumstances, regardless of whether or not the appointment entails financial implications.

The arrangements concerning financing will apply from 1 January 2004.

B. PREPARATORY PHASE

Where, in accordance with Section A, the Council agrees on the advisability of appointing an EUSR, it may call for candidates from the Member States of the EU. The Political and Security Committee (PSC), will examine the candidatures and, where appropriate, give an opinion to the Council concerning the appointment.

¹ Any person whose nomination is not based on Article 18(5) TUE will be deemed to be a representative of the Presidency (falling under Article 18(2) TUE), the High Representative or of the Commission. It will be recalled that the appointment of the representatives or personal envoys of the Presidency, High Representative or the Commission is on their own responsibility.

Non-political or technical representation tasks (e.g. persons charged with the implementation of a specific programme) may be entrusted either to the Council Secretariat or, with its agreement, to the Commission.

The Presidency and the High Representative will, to the extent possible, inform Member States on the progress in the selection process.

C. COUNCIL DECISION(S)

1. The Council will decide on:

- the appointment of the Special Representative;
- the various aspects of his or her mandate.

Those two decisions should as a general rule be taken in the same legal act. The appropriate form is that of a joint action.

2. The Foreign Relations Counsellors Working Party will, in conjunction with the relevant Working Party, finalise a joint action concerning the appointment and mandate of the EUSR (see Annex to ANNEX) on the basis of a draft submitted by the High Representative and of PSC political orientation as appropriate.

The enacting terms for the joint action should include the following points:

- the appointment of the person designated
- the policy objectives of the EU
- the detailed mandate of the EUSR
- the operational direction of the High Representative
- the privileged link of the PSC with the EUSR
- the duration of the mandate (in principle 6 months)
- the criteria and modalities for the constitution of his/her team, where appropriate
- the criteria and modalities for reporting to the relevant EU institutions
- coordination and liaison in Brussels and in the field
- evaluation and review of the implementation of the mandate
- financial accountability to the Commission
- the arrangements concerning the immunities and privileges necessary for the EUSR and his team to carry out the mission.

3. In exceptional circumstances it may be necessary to carry out the act of appointment at a different time from the rest of the joint action, two legal acts will be required, taking account of the effects of the decision to appoint a EUSR. On the one hand the decision entails obligations for the Council with regard to the EUSR, irrespective of the outcome of the rest of the action: diplomatic obligations (mission accreditation) and legal obligations (protection and immunities and perhaps privileges), as well as financial and material obligations. On the other hand, the EUSR will act on behalf of the Union from the date of his/her appointment and must therefore have a mandate from the Council.

In those circumstances, two cases may arise:

- (a) either the Council is obliged to adopt the joint action without being able to appoint an EUSR immediately. In that case, the joint action will specify in advance, in accordance with Article 14(1) of the TEU, the EUSR's mandate and its duration and the means (in particular diplomatic, material and financial), procedures and conditions for its implementation;
- (b) or the Council is obliged to appoint the EUSR urgently or in anticipation of preparatory acts necessary for adopting the joint action providing the framework for his action. From this stage, the act of appointment should precisely detail the mandate and the limits of the financial resources available. Appointment under these circumstances should be bound by a series of limits reflecting its urgent and/or temporary character. A date for the expiry of its validity should be set, unless it is explicitly confirmed by the Council, which should normally be the case in the joint action.

In case (b), the form of the act of appointment could also be that of a joint action, to be supplemented at a later stage in accordance with point 2. Alternatively, the appointment could take the form of a decision *sui generis* of the Council (legal basis: Article 13 of the TEU) to be adopted by the usual procedures, following referral to the Permanent Representatives Committee, preceded where appropriate by an opinion adopted by the Political and Security Committee. Such a decision will have the same value and the same legal effects as a joint action.

It has been agreed that every effort must be made to ensure that the appointment and the joint action are simultaneous.

D. OPERATIONAL PRINCIPLES

1. Direction:

The EUSR shall be responsible for the implementation of the mandate acting under the authority and operational direction of the High Representative. The EUSR shall be accountable to the Commission for all expenditure.

2. PSC role:

The PSC shall maintain a privileged link with the EUSR and shall be the primary point of contact with the Council. The PSC shall provide strategic guidance and political input to the EUSR within the framework of the mandate.

3. Reporting:

As a rule, the EUSR will report in person to the High Representative and to the PSC and may report also to Working Groups. Regular written reports will be circulated to the High Representative, Council and Commission. The EUSR may report to the GAERC on the recommendation of the High Representative and the PSC.

4. Coordination/liaison:

To ensure the coherence of EU external action, the activities of the EUSR shall be coordinated with those of the High Representative, Presidency and the Commission. EUSRs will provide regular briefings to Member States' missions and Commission's delegations. In the field, close liaison shall be maintained with Presidency, Commission and Heads of Mission who shall make best efforts to assist the EUSR in the implementation of the mandate. The EUSR shall also liaise with other international and regional actors in the field.

5. Evaluation/Review:

The implementation of the Joint Action and its consistency with other EU contributions to the region shall be kept under regular review on the basis of the guidelines agreed by the Council¹. The EUSR shall present a comprehensive written report on the implementation of the mandate to the High Representative, Council and Commission two months before the mandate expires, which shall form a basis for evaluation of the Joint Action in the relevant Working Groups and by the PSC. In the context of overall priorities for deployment, the High Representative shall make recommendations to the PSC concerning the Council's decision on renewal, amendment or termination of the mandate.

6. Contract with the Commission

The management of the expenditure will be subject to a contract between the EUSR and the Commission.

7. Constitution of team²

Within the limits of his/her mandate and the corresponding financial means made available, the EUSR is responsible for constituting his/her team in consultation with the Presidency, assisted by the Secretary General/High Representative, and in full association with the Commission.

Member States and institutions of the European Union may propose the secondment of staff to work with the EUSR.

All A-type posts which are not covered by secondment will be advertised as appropriate by the General Secretariat of the Council and also notified to Member States and EU institutions in order to recruit the best-qualified applicants.

Member States shall be informed of the final composition of the EUSR's teams.

¹ Review of mandates of EUSRs of 14 February 2003 (doc. 6436/03).

² where appropriate, i.e. for "heavy model" EUSR such as resident EUSR.

8. Access to information

Member States, the Commission and the Council Secretariat will ensure that EUSRs are given access to any relevant information to assist them in carrying out their tasks. Such access will be subject to the appropriate security clearance.

9. Logistical support

EUSRs and Commission delegations will work closely together. The Commission will provide all possible support to EUSRs in the field¹. Resident EUSRs should where feasible be accommodated in Commission Delegations and adequate provision for this purpose should be included in the budget of the EUSR's mandate.

The Presidency, the Member States and the Commission will provide appropriate and reasonable support to the mandate of the EUSRs from their own resources.

E. FINANCIAL PRINCIPLES

- 1.** All expenditure will be charged to the EU budget (CFSP chapter, 1903) unless the Council decides otherwise, in accordance with Article 28 TEU.

The EUSR will be accountable to the Commission for all expenditure charged to the CFSP budget.

- 2.** The financial commitments set out in the joint action or Council decision will be detailed in a financial statement drawn up on the basis of a draft prepared by the Commission.
- 3.** The EUSR shall be appointed at the level of A1/4. The remuneration of that of his/her staff not seconded will be established on the basis of the salary scales for representatives or officials of the European Communities.

¹ As appropriate, the Commission and GSC will also provide logistical support to the EUSR in fulfilling his/her duties in Brussels.

The remuneration of personnel who might be seconded by a Member State or an institution of the European Union to the EUSR shall be covered by the Member State or the institution of the European Union concerned respectively.

4. In cases where insufficient funds are available under the CFSP budget and the Council decides that Member States financing is appropriate, the financial statement will be drawn up by the Member State which proposed the action, taking account of the requirements notified by the prospective or appointed EUSR. That draft will take account of the need to avoid creating administrative structures supplementary to those already available to the Council, the Member States and the Commission.

F. EXTENSION OF MANDATES

To ensure evaluation and prioritisation¹ when considering the extension of EUSR mandates, the following procedure will be followed:

mid May, mid October:

Evaluation report by the EUSR to High Representative².

The report is passed to the PSC and relevant Working Group

Working Groups begin a critical evaluation of the mandate

end May/early June, end October:

Working Groups make recommendations to PSC³ on extending, amending⁴ or terminating existing mandates or on the creation of new mandates

The Foreign Relations Counsellors working party prepares legal acts and studies budgetary implications

¹ See doc 7438/03 on procedures for improving the effectiveness of the CFSP budget. These procedures are aimed at enhancing the PSC's role in providing political guidance on geographic or thematic priority-setting for expenditure under the CFSP budget.

² in accordance with guidance set out in doc 6436/03.

³ in accordance with guidance set out in doc 6436/03.

⁴ Amendments may include the use of a “leaner” model.

early June, early/mid November:

The High Representative makes recommendations on extending, amending or terminating existing mandates or on the creation of new mandates

High Representative debates recommendations with PSC.

PSC sets priorities for the following period

Legal acts are finalised by the Foreign Relations Counsellors working party and sent via Coreper to Council

June/ December:

Council takes decisions on Joint Actions

Proposals for new mandates or on the termination or alteration of existing ones may be made at any time during the year by a working group, the PSC or the High Representative.

**COUNCIL JOINT ACTION 2003/ /CFSP
of...**

appointing the Special Representative of the European Union
for.....

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and, in particular, Articles 14, 18(5) and 23(2) thereof,

Whereas

[....]

HAS ADOPTED THIS JOINT ACTION:

Article 1

Mr/Msis appointed EU Special Representative (EUSR) for

Article 2

The mandate of the EUSR will be based on the policy objectives of the EU in These objectives include:

[...]

Article 3

In order to achieve the policy objectives, the mandate of the EUSR shall be to:

[...]

Article 4

1. The EUSR shall be responsible for the implementation of the mandate acting under the authority and operational direction of the High Representative. The EUSR shall be accountable to the Commission for all expenditure.

2. The Political and Security Committee shall maintain a privileged link with the EUSR and shall be the primary point of contact with the Council. The PSC shall provide strategic guidance and political input to the EUSR within the framework of the mandate.

Article 5

1. The financial reference amount intended to cover the expenditure related to the mandate of the EUSR shall be EUR.....

2. The expenditure financed by the amount stipulated in paragraph 1 shall be managed in accordance with the European Community procedures and rules applicable to the budget with the exception that any pre-financing shall not remain the property of the Community.

3. The management of the expenditure shall be subject to a contract between the EUSR and the Commission.

4. The Presidency, Commission, and/or Member States, as appropriate, will provide logistical support in the region.

Article 6¹

1. Within the limits of his/her mandate and the corresponding financial means made available, the EUSR is responsible for constituting his/her team in consultation with the Presidency, assisted by the Secretary General/High Representative, and in full association with the Commission.

¹ paragraphs 1, 2 and 3 relating to the constitution of the team apply only in the case of a "heavy model" EUSR.

2. Member States and institutions of the European Union may propose the secondment of staff to work with the EUSR. The remuneration of personnel who might be seconded by a Member State or an institution of the European Union to the EUSR shall be covered by the Member State or the institution of the European Union concerned respectively.

3. All A-type posts which are not covered by secondment will be advertised as appropriate by the General Secretariat of the Council and also notified to Member States and institutions in order to recruit the best-qualified applicants.

4. The privileges, immunities and further guarantees necessary for the completion and smooth functioning of the mission of the EUSR and the members of his staff shall be defined with the parties. Member States and the Commission shall grant all necessary support to such effect.

Article 7

As a rule, the EUSR will report in person to the High Representative and to the PSC and may report also to the relevant Working Group. Regular written reports will be circulated to the High Representative, Council and Commission. The EUSR may report to the General Affairs and External Relations Council on the recommendation of the High Representative and the PSC.

Article 8

To ensure the consistency of the external action of the European Union, the activities of the EUSR shall be coordinated with those of the High Representative, the Presidency and the Commission. EUSRs will provide regular briefings to Member States' missions and Commission's delegations. In the field, close liaison shall be maintained with the Presidency, the Commission and Heads of Mission who shall make best efforts to assist the EUSR in the implementation of the mandate. The EUSR shall also liaise with other international and regional actors in the field.

Article 9

The implementation of this Joint Action and its consistency with other contributions from the European Union to the region shall be kept under regular review. The EUSR shall present a comprehensive written report on the implementation of the mandate to the High Representative, Council and Commission two months before the mandate expires, which shall form a basis for evaluation of the Joint Action in the relevant Working Groups and by the PSC. In the context of overall priorities for deployment, the High Representative shall make recommendations to the PSC concerning the Council's decision on renewal, amendment or termination of the mandate.

Article 10

This Joint Action shall enter into force on

It shall apply until

Article 11

This Joint Action shall be published in the Official Journal.

Done at,

For the Council

The President
