

RULES ON SPECIAL ADVISERS TO THE COMMISSION

1. INTRODUCTION

Special advisers to the Commission are subject to the Conditions of Employment of Other Servants of the European Communities (CEOS)¹. These rules repeal and replace all previous decisions in this matter² and are intended primarily to update, in the interests of transparency, the procedure for appointing special advisers and to specify the way in which the Budgetary Authority is to be informed of their appointment, as provided for in the Conditions of Employment.

2. DEFINITION OF SPECIAL ADVISERS

Article 5 of the Conditions of Employment defines “special adviser” as “a person who, by reason of his special qualifications and notwithstanding gainful employment in some other capacity, is engaged to assist one of the institutions of the Communities, either regularly or for a specified period”.

Special advisers provide direct assistance to Members of the Commission. Special advisers who provide assistance to institutional bodies³ are answerable to the President or the Vice-President responsible for Personnel and Administration.

The added value of appointing special advisers to the Commission derives from their exceptional qualifications and/or the relevance, quality and level of the professional experience and expertise acquired prior to or while performing the duties of special adviser.

Their qualifications, assessed in the light of the quality and level of their professional experience, determine the level of remuneration applicable (see below: “Remuneration of special advisers”). Throughout the period of their appointment, they may not have direct or indirect contractual links with the Commission other than those arising from their appointment as special advisers.

In view of the varied nature of the advice that Members of the Commission may require, special advisers are divided into two categories:

¹ Staff Regulations of Officials of the European Communities, II: Conditions of Employment of Other Servants of the European Communities, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, and in particular Articles 5, 123 and 124 thereof (OJ L 56 of 4 March 1968), as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ L 124 of 27 April 2004, p. 1) and as last amended by Council Regulation (EC, Euratom) No 1066/2006 of 27 June 2006 (OJ L 194 of 14 July 2006, p. 1).

² COM (79) PV 539, item VII.E, SEC(79) 1886; COM (79) PV 637, item VI.B.3; COM (79) PV 499, item VII.D.2; COM (87) PV 499, 1 January 1987; SEC(2000) 456; PV (2000) 1470, item 9.4.; SEC(2000) 855, PV(2000)1480; SEC(2002) 1044, PV(2002)1583 of 2 October 2002; C(2004)1318 PV(2004)1653, 7 April 2004.

³ Following appointment by the Commission to senior posts in the interests of the institution, such as Chairman of the Financial Irregularities Panel, Chairman of the Disciplinary Board or external member of the Audit Progress Committee.

- **Paid special advisers:** These are independent external experts whose views are sought on matters covered by various policies or on general principles; their assistance is of a short-term nature and they provide skills which Commission departments do not normally possess.
- **Unpaid special advisers:** These are normally former Commission officials. Use of this category of special adviser ensures a degree of continuity in the service and makes the high-level experience which they gained during their work at the Commission available to the Members of the Commission. In exceptional circumstances, this category may also include independent external experts paid from other sources. Unpaid special advisers are entitled to reimbursement of their mission expenses.

These rules do not apply to special advisers covered by other specific Commission decisions and remunerated from appropriations specifically intended for that purpose⁴.

3. ALLOCATION OF APPROPRIATIONS FOR PAID AND UNPAID SPECIAL ADVISERS TO MEMBERS OF THE COMMISSION

At the beginning of each financial year, the Personnel and Administration DG (DG ADMIN) informs the Members of the Commission of the total appropriations in the specific budget heading for special advisers and sets an amount for each Member for the year. The number of days actually available will depend on the level of remuneration decided in the light of the special adviser's qualifications. A shared reserve of about 15% is established to meet additional needs in terms of days to be worked and mission appropriations⁵ for special advisers already appointed at the beginning of the year and, in exceptional circumstances, in the event of unforeseen and duly justified needs, further appointments of special advisers. During the second half of the year DG ADMIN allocates the reserve, including reallocation of days not used; it keeps the Members informed of their remaining funding.

4. PRIOR NOTIFICATION OF THE BUDGETARY AUTHORITY

As part of the budget procedure, the budgetary authority is notified of the total amount earmarked for special advisers for the following year. To its request for appropriations, submitted during preparation of the preliminary draft budget, the Commission attaches general information in the form of an estimate of expenditure⁶ relating to the number of days of work required and the missions budget. The estimate is prepared by the Office for the administration and payment of individual entitlements (PMO), which is responsible for managing the budget heading for special advisers, and by DG ADMIN. Advance management of appropriations takes account of the cost of fees and missions in the case of paid special advisers and of the cost of missions in the case of unpaid special advisers.

On the basis of requests it has received for the appointment of special advisers and after the selection procedure described below has been completed, DG ADMIN submits to the budgetary

⁴ Cf. Commission Decision C(2004) 1318 of 29 June 2004. At present, these include the Special Coordinator of the Stability Pact for South-Eastern Europe, appointed by Council Decision 2006/921/EC of 11 December 2006 (OJ L 351 of 13 December 2006), electoral observers appointed on the basis of the Communication from the Commission on EU election assistance and observation (COM(2000) 191 final of 11 April 2000) (a list of observers selected for each mission is published on the Commission's special website: http://ec.europa.eu/europeaid/observer/index_en.htm) and CFSP Special Advisers appointed on the basis of the Communication from the Commission on specific rules for Special Advisers of the Commission entrusted with the implementation of operational CFSP actions (C(2004)2984 of 6 August 2004). See also Commission Decision C(2007) 4670 of 15 October 2007 on the recruitment of the Secretary-General of the Scientific Council of the European Research Council as a special adviser.

⁵ Based on the average daily cost of a mission.

⁶ Prepared by the Office for the administration and payment of individual entitlements (PMO), which is responsible for managing the budget heading for special advisers, and by DG ADMIN.

authority by the end of February each year the list of intended appointments of special advisers to the Commission for that year, specifying the amounts proposed in remuneration, in accordance with Article 123(2) of the CEOS.

5. SELECTION AND DESIGNATION OF SPECIAL ADVISERS

Each Member of the Commission who wishes to engage a special adviser must notify DG ADMIN in writing by the deadline set (January of each year), with an indication of the tasks to be carried out, the expected number of days' work and an estimate of mission appropriations, as well as the proposed rate of remuneration, where appropriate, in accordance with the scale setting the amount of the fees per day of service at three separate levels (as described in point 7 of these rules), with the aid of the form attached in annex, accompanied by an up-to-date CV for the special adviser. Furthermore, when appointing an adviser, each Member of the Commission must ensure that there is no conflict of interest between the future duties of his or her special adviser and any outside activities they may have. Each request for the appointment of a special adviser made to DG ADMIN must therefore be accompanied by the following three documents:

- sworn statements and declarations of activities by the special adviser (forms attached in annex): prospective special advisers must sign a declaration on their honour (sworn statement) stating that they are aware of the relevant articles of the Staff Regulations (Articles 11 and 11a) and that there is no conflict of interest with the duties they are about to undertake. They must also fill in and sign a declaration of activities, which DG ADMIN will check on behalf of the authority empowered to conclude contracts of employment (AECC), before they take up their duties, in order to ensure that there is no conflict of interest;
- statement of assurance by the Member of the Commission (model attached in annex): on the basis of the declarations received, the Members of the Commission responsible must establish that there is no conflict of interest regarding the special advisers they have chosen and must confirm their appointment requests.

DG ADMIN then checks that there is no conflict of interest between the special adviser's future duties and any outside activities on the basis of the documents provided by the Members of the Commission. The special advisers may be asked to provide further information for this purpose. This information is passed to the Members of the Commission concerned to assist them in making a final decision on their appointment request. DG ADMIN notifies the Member of the Commission with responsibility for Personnel and Administration of the outcome of this check.

The proportionality principle is observed when checking that there is no conflict of interest on the basis of Articles 11 and 11a of the Staff Regulations, which apply by analogy to special advisers. Account is also taken of the particular status of special advisers and the nature of their duties, given that they are appointed by Members of the Commission specifically because of their expertise and their outside activities.

6. DESIGNATION AND APPOINTMENT OF SPECIAL ADVISERS

Having consulted the Legal Service and DG BUDG, and having duly informed the budgetary authority, the Commission, on a proposal from the Vice-President responsible for Personnel and Administration, in agreement with the President, appoints at the beginning of each year (at the end of March) paid and unpaid special advisers by oral procedure (Administrative and Budgetary Matters) and instructs DG ADMIN to proceed with their appointment. The allocation of the reserve during the second half of the year is also adopted by oral procedure and according to the same arrangements.

Between the appointment exercise at the beginning of the year and the distribution of the reserve in the second half of the year, there is also provision, in the event of duly justified, unforeseen and urgent need and subject to the availability of sufficient funds, for the adoption by oral procedure of: (1) amendments to existing contracts and (2) following prior notification of the budgetary authority, further appointments of special advisers.

Once the special advisers have been designated, DG ADMIN draws up a draft contract (standard contract) for each special adviser subject to the condition that, for paid special advisers, the request falls within the budget allocated to the Member of the Commission concerned. Performance of the contracts cannot begin until they have been signed by the AECC.

Once their appointment has been approved, a list of the special advisers, together with their sworn statements and curriculum vitae (which must not contain information of a private nature, such as family situation, private address, etc.), are posted on the Commission's Europa website.

7. REMUNERATION OF SPECIAL ADVISERS

Special advisers are remunerated from a specific budget heading in the Commission's administrative appropriations which includes a "Remunerations" subheading for paid special advisers only and a "mission expenses" subheading for mission expenses incurred by paid and unpaid special advisers. The heading also covers insurance against accidents for all special advisers in the course of their work.

Paid special advisers receive a fee for each day worked. In accordance with Article 2 of Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968, the fees are subject to Community tax but are exempt from national taxes or levies.

In order to provide remuneration that is consistent with the level and quality of the services expected from a special adviser and to keep their level of remuneration under constant review, it has been decided:

- to set the amount of the fees per day of service at three separate levels: $\frac{1}{22}^7$ of the basic salary of an official on the first step in grade AD9, AD10 or AD12 in February of the current year. However, the Commission may depart from these levels in duly substantiated exceptional cases. The level at which advisers are placed is to be determined by the Member of the Commission in the light of the duties they are expected to perform and their professional experience.
- to adjust the remuneration in line with the salaries of officials in the grades on the basis of which the three amounts were determined.

8. MANAGEMENT OF SPECIAL ADVISERS

The PMO is responsible for paying fees and mission expenses. Payment is made on receipt of a summary of the days of work carried out and invoices or supporting documents duly certified by the Member or an authorised member of his or her private office (Cabinet). Applications for payment must be sent to the PMO at all events before 20 December of the current year (fee appropriations cannot be carried over). The relevant administrative forms are attached to this Decision.

DG ADMIN is responsible for handling the process leading to the employment of special advisers, including checking, on the basis of the documents provided by the Members of the Commission, that there is no conflict of interest between the special adviser's future duties and any outside activities. In the performance of these tasks, it ensures that the collecting and processing of personal data relating to special advisers, particularly in connection with the checks on conflict of interest and the publication of their curriculum vitae on the Commission's website, is proportional to the nature of the duties of the special advisers and is carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data⁸.

⁷ 22 being the average number of working days in a month.

⁸ Notification to the European Data Protection Supervisor (No DPO-1732 version 3).

To facilitate the selection and designation process and subsequent procedures, the private office of the Member of the Commission should give an official contact point in the private office for DG ADMIN.

Annexes:

- Form: Designation of a special adviser
- Certificate for the payment of fees to special advisers
- Annex 1: Sworn statement declaring that there is no conflict of interest between the activity of special adviser to the Commission and the adviser's other activities
- Annex 2: Declaration of activities for a prospective special adviser to the European Commission
- Annex 3: Statutory Information Note on the protection of individuals with regard to the processing of personal data – Special Advisers: verification that no conflict of interest exists and publication on the Europa website
- Annex 4: Model statement of assurance from a Member of the Commission of non-conflict of interest with a view to the appointment of (name of person) as a Special Adviser to the European Commission.