



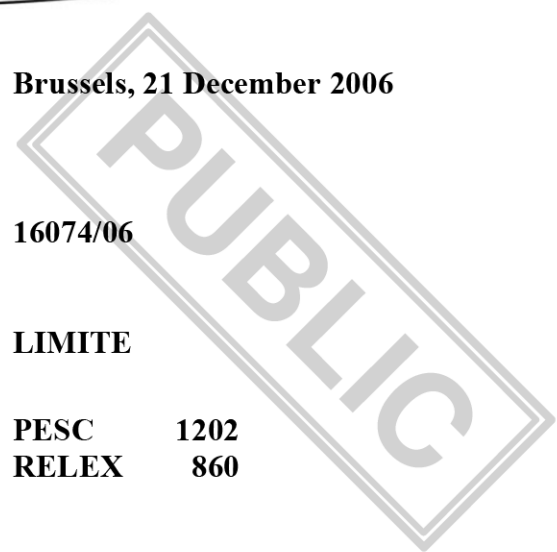
**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 21 December 2006**

**16074/06**

**LIMITE**

**PESC 1202  
RELEX 860**



**NOTE**

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From : Secretariat  
To : Delegations  
Subject : "CFSP Guide" - Draft compilation of relevant texts

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1. Following requests by delegations, especially future Presidencies, the Secretariat has streamlined and updated the "CFSP Guide" which was first compiled following the entry into force of the Maastricht Treaty. The last printed edition of the Guide was issued in 1998. Subsequent updates have been made available through the DG E website which is accessible to Delegations with a password.
  
2. The current compilation, as set out in the annex, includes documents on the following topics:
  - Presidency
  - Council Working Methods
  - Committees and Working Parties
  - Operation of the Council Secretariat
  - EU Special Representatives (EUSRs)
  - Financing the CFSP
  - Relations with the European Parliament
  - Cooperation in third countries and international organisations

- EU Guidelines on human rights and related subjects
- Diplomatic and consular protection.

It does not cover the following areas:

- Security-related rules and practices, which are part of a separate compilation by the Secretariat<sup>1</sup>;
- ESDP, for which the Institute for Security Studies regularly compiles and updates all public documents<sup>2</sup>;
- Political dialogue, for which the Secretariat is preparing a separate compilation of rules and commitments<sup>3</sup>.

3. The following criteria were followed when citing relevant documents:

- Every citation to the **Political Committee** in documents predating the Nice Treaty carries a footnote indicating that the current name is **Political and Security Committee**;
- Citations of Treaty articles predating the re-numbering carried out through the Amsterdam Treaty carry a footnote specifying that they refer to the Maastricht Treaty<sup>4</sup>;
- Only declassified COREU messages are cited. This is intended to simplify handling of the Guide. No classified COREU messages have been identified that would be relevant to the Guide.

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<sup>1</sup> "Guide on the security of information" and "Guide on protective security" in October 2006.

<sup>2</sup> "EU Security and Defence - Core documents 2005", Vol. VI, Chaillot Paper no. 87 and previous compilations available from the Institute for Security Studies and accessible through the Institute's website [www.iss.eu.org](http://www.iss.eu.org).

<sup>3</sup> Will be available before the end of 2006.

<sup>4</sup> The Secretariat felt that it would have been arbitrary to try to convert articles of the Maastricht Treaty which were no longer in use at the time of the renumbering operated via the Amsterdam Treaty into current Treaty articles. This applies to those articles of the Maastricht Treaty which were amended or repealed by the Amsterdam Treaty and for which there was therefore no need to convert them into the new numbering system.

4. The Secretariat:

- a. recalls that the "CFSP Guide" is only a compilation with no legal value aimed at guiding CFSP practitioners through the texts elaborated since the entry into force of the Maastricht Treaty;
  - b. will keep the Guide up-to-date and issue it as a new Council documents whenever appropriate.
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**CFSP HANDBOOK**

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**Compilation of selected texts applicable in CFSP**

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003.

◇ N.B.: Maastricht Treaty

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\* "Political and Security Committee" since entry into force of Nice Treaty



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| <b>Chapter 1. PRESIDENCY</b> |
|------------------------------|

**(a) Order in which the Presidency of the Council is held**

*(Draft Council Decision of ..., doc. 15304/06)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the second paragraph of Article 203 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular the second paragraph of Article 116 thereof,

Having regard to the Treaty on European Union, and in particular Articles 28(1) and 41(1) thereof,

Whereas:

- (1) By Decision 205/902/EC, Euratom<sup>6</sup>, the Council established the order in which the office of President of the Council was to be held for the Member States of the European Union at the date of 1 January 2006.
- (2) The European Union was enlarged on 1 January 2007 to include 2 new Member States.
- (3) The order in which the office of President of the Council shall be held should accordingly be determined taking into account the new Member States, and a new Decision should be adopted to replace that adopted on 12 December 2005..

HAS DECIDED AS FOLLOWS:

*Article 1*

1. The order in which the Member States shall hold the Presidency of the Council from 1 January 2007 is set out in the Annex hereto.

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<sup>6</sup> OJ L 328, 12.12.2005, p. 60.

2. The Council, acting unanimously on a proposal from the Member States concerned, may decide that a Member State may hold the Presidency during a period other than that resulting from the order established in the Annex hereto.

*Article 2*

This Decision shall take effect on 1 January 2007.

It shall replace Council Decision 2005/902/EC, Euratom of 12 December 2005 determining the order in which the office of the President of the Council shall be held.

*Article 3*

This Decision shall be published in the Official Journal of the European Union.

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**ANNEX**

|                |               |      |
|----------------|---------------|------|
| Germany        | January-June  | 2007 |
| Portugal       | July-December | 2007 |
| Slovenia       | January-June  | 2008 |
| France         | July-December | 2008 |
| Czech Republic | January-June  | 2009 |
| Sweden         | July-December | 2009 |
| Spain          | January-June  | 2010 |
| Belgium        | July-December | 2010 |
| Hungary        | January-June  | 2011 |
| Poland         | July-December | 2011 |
| Denmark        | January-June  | 2012 |
| Cyprus         | July-December | 2012 |
| Ireland        | January-June  | 2013 |
| Lithuania      | July-December | 2013 |
| Greece         | January-June  | 2014 |
| Italy          | July-December | 2014 |
| Latvia         | January-June  | 2015 |
| Luxembourg     | July-December | 2015 |
| Netherlands    | January-June  | 2016 |
| Slovakia       | July-December | 2016 |
| Malta          | January-June  | 2017 |
| United Kingdom | July-December | 2017 |
| Estonia        | January-June  | 2018 |

|          |                |      |
|----------|----------------|------|
| Bulgaria | July-December  | 2018 |
| Austria  | January-June   | 2019 |
| Romania  | July- December | 2019 |
| Finland  | January-June   | 2020 |

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**(b) Council rules of procedure - 18-month programme of Council activities by the three EU presidencies due to hold office during that given period**

*(Council Decision of 15 September 2006 - OJ L 285, 16.10.2006, )*

...

Article 2

...

4. Every 18 months, the three Presidencies due to hold office shall prepare, in close cooperation with the Commission, and after appropriate consultations, a draft programme of Council activities for that period. The three Presidencies shall jointly submit the draft programme no later than one month before the relevant period, with a view to its endorsement by the General Affairs and External Relations Council, convened in a meeting as referred to in paragraph 2(a)<sup>6</sup>.

...

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<sup>6</sup> See statement (a) set out below:

(a) Concerning Article 2(4):

"The 18-month programme will include a general introductory section setting the programme in the context of the European Union's longer term strategic orientations. On this section, the three Presidencies in charge of preparing the draft 18-month programme will consult with the three subsequent Presidencies, as part of the "appropriate consultations" referred to in the first sentence of paragraph 4.

The draft 18-month programme should also have regard, inter alia, to relevant points arising from the dialogue on the political priorities for the year, conducted at the Commission's initiative."

**(c) Determining the representation of the Presidency in Third Countries**

*(Council Decision of 20 December 2006 - doc. 16568/06)*

1. On 11 October 1977 the Council established a system according to which Member States are to exercise the functions of the Presidency in third countries<sup>7</sup>. This text needs to be updated.
2. The Foreign Relations Counsellors Working Party (RELEX) discussed at its meetings on 26 September and 7 December 2006 and agreed the text of the arrangements set out in the Annex according to which Member States are to take on the functions of the Presidency in third countries and will replace the system established in 1977.
3. The arrangements set out in the Annex should apply generally to European Union activities within the framework of Titles V and VI of the Treaty on European Union and to Community activities in the framework of the Treaty establishing the European Community.
4. The arrangements are without prejudice to the special provisions governing Luxembourg's representation abroad by either Belgium or the Netherlands, depending on the case.
5. It should further be noted that the arrangements are based on the following three principles:
  - the Presidency of the Council should as a general rule be the same in Brussels and in third countries;
  - where this is impossible, the duties of the Presidency in a particular third country should be assumed by the Member State "next in line";
  - where the Member State "next in line" has no diplomatic representation in the relevant third country, the local Presidency is to be determined according to a system of rotation among the Member States represented on the spot.

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<sup>7</sup> Doc. S/1482/77

6. Prior to the beginning of each six-month Presidency term, the Council Secretariat coordinates and compiles an indicative list<sup>8</sup> on the basis of inputs from Member States, which sets out the arrangements for the representation in third countries of the incoming Presidency and for the subsequent semester. It also includes information on the Member States which, together with the Commission, where present, form the troika locally.
7. While each Presidency is free to organise its interaction with the Member States exercising Presidency responsibilities on its behalf in third countries as it sees fit, the guidelines set out in the Annex to the Annex, which constitute non-binding recommendations, could help ensure the efficient operation of the arrangements for representation of the Presidency in third countries in the field of CFSP.
8. In this context, the Coreper is invited to endorse and recommend that the Council take note of the arrangements set out in the Annex, which replace and update the system approved on 11 October 1977 concerning the diplomatic representation of the Presidency in third countries, as well as the guidelines concerning their practical application in the field of CFSP annexed thereto.

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<sup>8</sup> current version doc.10149/2/06, 9 November 2006.



**Arrangements establishing a system according to which Member States are to take on the functions of the Presidency in third countries**

In order to ensure a uniform procedure regarding the representation of the Presidency in third countries and to deal with the possibility of the MS holding the office of Presidency not being represented in a third country by a resident representative, the following arrangements will apply:

- (a) in third countries where the Member State providing the Presidency has an accredited resident representative, he/she will exercise the functions of the Presidency;
- (b) in third countries where the Presidency does not have an accredited representative, or where its accredited representative is resident in another capital and is not in a position to perform the functions of the Presidency on the spot, these functions will be performed by the representative of the Member State which will occupy the Presidency for the following six months;
- (c) where neither the Presidency nor the succeeding Presidency has a resident accredited representative, the European Union will be represented in rotation, for a period of six months, by another Member State represented in the country following the order in which Member States are to exercise the Presidency of the Council, as established by the Council<sup>9</sup>.

This rotation will continue until the arrangements set out in (a) or (b) above become applicable again. Once they are no longer applicable the same rotation will resume where it stopped;

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<sup>9</sup> The order from 1 January 2007 is set out in doc. 15304/06.

(d)where, in a given situation, it would be in the interest of the European Union or the European Community and the Member States represented in the country, to alter the arrangements set out above, either the Foreign Ministries or the resident representatives of those Member States could make a recommendation to this effect which would be communicated to all Member States by the Council Secretariat.<sup>10</sup>

(e)where, under the above arrangements, a Member State other than the Presidency exercises the functions of the Presidency, it will ensure that there is close liaison with the Presidency.



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<sup>10</sup> This would appear in the six-monthly list of local Presidencies compiled by the General Secretariat (see e.g. doc. 10149/1/06).

**Annex to the ANNEX**

**Guidelines for Presidency diplomatic representation  
by another Member State in third countries in the field of CFSP**

These guidelines are non-binding and are intended to be applied in the light of local circumstances.

**Pre-Presidency: Identification of local Presidency and establishment of contact**

1. In the last two months of each semester, the Council Secretariat will request information from Member States on any changes to their diplomatic representation in third countries since the compilation of the most recent list. Member States will provide information as requested.
2. On the basis of the information provided by Member States, the Council Secretariat will draw up an indicative list of the diplomatic representation in third countries of the incoming Presidency and during the subsequent semester, and circulate it to all partners.
3. The incoming Presidency will circulate to all partners a list of CFSP contact points in its MFA for the period of the Presidency. This list will identify contact persons for questions from other Member States regarding the exercise by them of Presidency responsibilities in third countries.
4. Member States identified to exercise Presidency responsibilities in third countries will forward to the incoming Presidency, in good time, contact details for their Heads of Mission and (where relevant) contact persons on CFSP matters in their Embassies in the countries concerned, as well as in the relevant departments of their Ministries of Foreign Affairs.

5. The incoming Presidency will provide to the Member States representing it in third countries appropriate information on its programme and priorities, for use by those Member States, *inter alia*, in contacts with the authorities of the host States and in the local public presentation of the Presidency. This may include material for distribution to the public.
6. The incoming Presidency may, at its discretion and subject to availability, provide Presidency stationery and other items for use by the Embassies of the Member States exercising Presidency responsibilities on its behalf. It may also provide electronic versions of the Presidency logo, together with any instructions considered necessary on its use by other Member States in the exercise of Presidency responsibilities in third countries.
7. There are some third countries in which no Member State maintains a permanent diplomatic representation. Arrangements for Presidency contacts with these third countries will be decided on by each successive Presidency as it sees fit. Other Member States will cooperate in ensuring such contacts if requested by the Presidency to do so.

#### **During Presidency: Interaction with local Presidency**

8. The primary channel of communication will be capital-to-capital. Contact between MFAs will in general take place in writing, and wherever possible via the Cortesy network (bilateral COREU).
9. Other channels of communication may be agreed upon between capitals for day-to-day matters, as well as in cases of emergency. The guiding principle in such cases should be to ensure that everyone who needs to be kept informed is so informed.

10. Instructions to the local Presidency, requests for reports, to carry out demarches etc., will in general issue from the Presidency MFA to the MFA of the relevant partner, which will be responsible for relaying same to the Embassy concerned. Similarly, reporting should come from the Embassy to its Ministry and be forwarded by the Ministry to the Presidency MFA.
11. In keeping with the general language regime for CFSP communications, all reporting by the local Presidency Embassy when acting as such (e.g. Heads of Mission reports, reports of demarches) should take place in either English or French. This will also facilitate further processing of the information.
12. MFAs of Member States holding the local Presidency will not, unless otherwise agreed, directly communicate to other partners reports received from their Embassies in exercise of their local Presidency responsibilities: such circulation will normally be done by the Presidency MFA.
13. Embassies of EU Member States in third countries have an important contribution to make to the formulation of the Union's Common Foreign and Security Policy. Member States exercising local Presidency responsibilities can make suggestions to the Presidency on possible CFSP action with regard to the countries concerned. The necessity and possible nature of such action will be the subject of discussion initially between the Presidency and the Member State exercising local Presidency responsibilities, and, if the Presidency deems coordinated action justified, it will raise the matter with all partners. Consideration should be given to the options available, including demarches where the main target audience is the government of the country in question, or public diplomacy instruments such as Declarations by the Presidency on behalf of the EU or Presidency Statements in situations where it is considered important to reach also the local or international media.

14. EU Heads of Mission have a particular role in the constant review of identifiers of designated persons or entities targeted by restrictive measures. Each incoming Presidency could invite the relevant local EU Presidencies to review, and where possible amend and/or complement, the identifying information of the designated persons or entities<sup>12</sup>.
15. Collective reports by the EU Heads of Mission in a particular country ("HoMs' reports") should be drawn up at the request of the Presidency or with its prior approval. Member States exercising local Presidency responsibilities should suggest to the Presidency topics for HoMs' reports whenever they consider such reporting useful.
16. As a general rule, HoMs' reports should be forwarded to the Presidency via the Cortesy network (bilateral COREU) at least four days before they are due to be discussed by the relevant Council instances.
17. The maintenance of local contact with the host State is a matter for the local Presidency. Should non-resident diplomats (including accredited Ambassadors) from the Member State holding the Presidency need to contact or visit local authorities on matters covered by CFSP, this should take place with the knowledge, and where possible in the presence, of the local Presidency. Such contacts should be carefully managed so as not to undermine the role of the local Presidency or to create confusion on the part of the host government as to who runs the Presidency.
18. Ambassadors (or their representatives) of the Member State holding the Presidency will not, in general, participate in Heads of Mission or other EU meetings in third countries where that Member State is not represented. They may, however, be invited to do so by the local Presidency.

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<sup>12</sup> See also doc. 15114/05: "Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU CFSP".

19. Embassies of other Member States, when exercising Presidency responsibilities, should always remember that they are not acting on behalf of their own countries, but on behalf of the Council Presidency. They should therefore not issue statements on behalf of the Presidency or the EU without instructions to do so from the Presidency, which will have coordinated with partners where appropriate. They should not take significant initiatives locally in the name of the EU without prior consultation with, and the approval of, the Presidency.
20. Every Member State exercising local Presidency responsibilities in a given third country should take all necessary steps to ensure that EU Presidency statements and declarations, as well as Council Conclusions, relating to that country, are brought to the attention of the country's authorities and, as appropriate, of the local media, civil society and diplomatic corps.
21. Embassies exercising local Presidency responsibilities should be aware of their duties with regard to facilitating visits by the Presidency, troika, SG/HR and EU Special Representatives. The costs of such visits are payable by the visitors, but the Embassies should be ready, where necessary and by agreement on a case-by-case basis with the Presidency (or other visitor, as relevant) to incur costs on behalf of the visitors on foot of a clear, and preferably written, undertaking that these will be reimbursed later.
22. All other costs (e.g. organising meetings and other events, representational expenditure, hiring of additional staff where deemed necessary) which are a result of representing the Council Presidency will be at the expense of the Member State exercising local Presidency responsibilities, unless otherwise agreed in advance.
23. Embassies exercising local Presidency responsibilities are free, subject to any views to the contrary which may be expressed by the Member State holding the Presidency, to organise events to mark the beginning and/or end of the Presidency, the national day of the Member State holding the Presidency, and so forth, but any such events will be organised at the Embassy's own expense unless otherwise agreed in advance.

24. The local Presidency should not hesitate to contact the Presidency to seek guidance or instructions, especially in the event of unexpected, urgent developments.
25. The Presidency should provide to MFAs of Member States exercising local Presidency responsibilities (for circulation by them to their relevant Embassies at their discretion) contact details for the Presidency MFA to be used in case of emergencies arising outside of the Presidency capital's working hours.

### **Cooperation with acceding, candidate and other countries**

26. Acceding countries are entitled to participate as active observers (speaking rights, but no decision-making rights) in HoMs' and other EU meetings.
27. Candidate countries are not entitled to participate in EU meetings. Local arrangements, possibly through specific or ad hoc meetings, will have been put in place to ensure that these countries are kept informed of the Union's activities. The nature of such arrangements may vary from one location to another. In principle, previous local practice should continue to be followed. Any specific questions in this regard should be addressed by the relevant capital to the Presidency MFA.
28. Where EU HoMs, in plenary or troika format, hold regular collective meetings with their counterparts from third countries other than the host State, no additional countries' representatives should be invited to such meetings without prior consultation with the Presidency.



|                                           |
|-------------------------------------------|
| <b>Chapter 2. COUNCIL WORKING METHODS</b> |
|-------------------------------------------|

**(a) Political and Security Committee**

*(Council Decision of 22 January 2001, OJ L 27, 30.1.2001, p.1)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 28(1),

Having regard to the Treaty establishing the European Community and in particular Article 207 thereof,

Recalling Article 25 of the Treaty on European Union,

Whereas:

- (1) The European Council in Helsinki agreed in principle to set up a Political and Security Committee and, on the basis of these conclusions, an interim Political and Security Committee was set up by Council Decision 2000/143/CFSP.
- (2) The European Council in Nice of 7 to 11 December 2000 reached agreement on the establishment of the permanent Political and Security Committee, setting out its role, modalities and functions.
- (3) Following the guidelines of the Nice European Council, this Committee should be made ready to start its work.
- (4) The principle of single representation of Member States to the Union should be fully respected,

HAS DECIDED AS FOLLOWS :

*Article 1*

A Political and Security Committee (PSC) (hereinafter the Committee) shall be established as the standing formation of the Committee referred to in Article 25 of the Treaty.

*Article 2*

The role, modalities and functions of the Committee are defined in the Annex, which reproduces Annex III to the Presidency's report approved by the Nice European Council.

*Article 3*

This Decision shall take effect from the date of its adoption.

*Article 4*

This Decision shall be published in the Official Journal.

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## **POLITICAL AND SECURITY COMMITTEE**

The approach adopted at Helsinki makes the PSC the linchpin of the European security and defence policy (ESDP) and of the common foreign and security policy (CFSP): ‘The PSC will deal with all aspects of the CFSP, including the CESDP...’.

Without prejudice to Article 207 of the Treaty establishing the European Community, the PSC has a central role to play in the definition of and follow-up to the EU's response to a crisis.

The PSC will deal with all the tasks defined in Article 25 of the Treaty on European Union (TEU). It may convene in Political Director formation.

After consulting the Presidency and without prejudice to Article 18 of the TEU, the Secretary-General/High Representative for the CFSP may chair the PSC, especially in the event of a crisis.

1. In particular the PSC will:

(a) keep track of the international situation in the areas falling within the common foreign and security policy, help define policies by drawing up ‘opinions’ for the Council, either at the request of the Council or on its own initiative, and monitor implementation of agreed policies, all of this without prejudice to Article 207 of the Treaty establishing the European Community and to the powers of the Presidency and of the Commission;

(b) examine the areas of GAC draft conclusions in which it is involved;

(c) provide guidelines for other Committees on matters falling within the CFSP;

(d) maintain a privileged link with the Secretary-General/High Representative (SG/HR) and the special representatives;

(e) send guidelines to the Military Committee; receive the opinions and recommendations of the Military Committee.

The Chairman of the Military Committee (EUMC), who liaises with the European Union Military Staff (EUMS), takes part, where necessary, in PSC meetings;

(f) receive information, recommendations and opinions from the Committee for Civilian Aspects of Crisis Management and send it guidelines on matters falling within the CFSP;

(g) coordinate, supervise and monitor discussions on CFSP issues in various Working Parties, to which it may send guidelines and whose reports it must examine;

(h) lead the political dialogue in its own capacity and in the forms laid down in the Treaty;

(i) provide a privileged forum for dialogue on the ESDP with the fifteen and the six as well as with NATO in accordance with arrangements set out in the relevant documents;

(j) under the auspices of the Council, take responsibility for the political direction of the development of military capabilities, taking into account the type of crisis to which the Union wishes to respond. As part of the development of military capabilities, the PSC will receive the opinion of the Military Committee assisted by the European Military Staff.

2. Furthermore, in the event of a crisis the PSC is the Council body which deals with crisis situations and examines all the options that might be considered as the Union's response within the single institutional framework and without prejudice to the decision-making and implementation procedures of each pillar. Thus the Council, whose preparatory work is carried out by Coreper, and the Commission alone have powers, each within their own areas of competence and in accordance with procedures laid down by the Treaties, to take legally-binding decisions. The Commission exercises its responsibility, including its power of initiative under the Treaties. Coreper exercises the role conferred on it by Article 207 of the Treaty establishing the European Community and by Article 19 of the Council's Rules of Procedure. To that end, it will be informed in good time by the PSC. In a crisis situation, close coordination between these bodies is especially necessary and will be ensured in particular by:

- (a) the participation, where necessary, of the Chairman of the PSC in Coreper meetings;
- (b) the role of the Foreign Relations Counsellors whose task it is to maintain effective permanent coordination between CFSP discussions and those conducted in other pillars (Annex to the Council conclusions of 11 May 1992).

To prepare the EU's response to a crisis, it is for the PSC to propose to the Council the political objectives to be pursued by the Union and to recommend a cohesive set of options aimed at contributing to the settlement of the crisis. In particular it may draw up an opinion recommending to the Council that it adopt a joint action. Without prejudice to the role of the Commission, it supervises the implementation of the measures adopted and assesses their effects. The Commission informs the PSC of the measures it has adopted or is envisaging. The Member States inform the PSC of the measures they have adopted or are envisaging at the national level.

The PSC exercises 'political control and strategic direction' of the EU's military response to the crisis. To that end, on the basis of the opinions and recommendations of the Military Committee, it evaluates in particular the essential elements (strategic military options including the chain of command, operation concept, operation plan) to be submitted to the Council.

The PSC plays a major role in enhancing consultations, in particular with NATO and the third States involved. On the basis of the proceedings of the PSC, the Secretary-General/High Representative directs the activities of the Situation Centre. The latter supports the PSC and provides it with intelligence in conditions appropriate to crisis management.

The following arrangements will be put in place to enable the PSC to ensure full 'political control and strategic direction' of a military crisis-management operation:

- (a) with a view to launching an operation the PSC sends the Council a recommendation based on the opinions of the Military Committee in accordance with the usual Council preparation procedures. On that basis the Council decides to launch the operation within the framework of a joint action;
- (b) in accordance with Articles 18 and 26 of the TEU, the joint action will determine, in particular, the role of the Secretary-General/High Representative in the implementation of the measures falling within the 'political control and strategic direction' exercised by the PSC. For such measures the Secretary-General/High Representative acts with the PSC's assent. Should a new Council decision be deemed appropriate, the simplified written procedure could be used (Article 12(4) of the Council's Rules of Procedure);
- (c) during the operation, the Council will be kept informed through PSC reports presented by the Secretary-General/ High Representative in his capacity as Chairman of the PSC.

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**(b) Common positions, Joint actions, COREU network, Working groups**

*(adopted by the Council on 12 June 1995 - doc. 7896/95)*

The report on the functioning of the Treaty, approved by the Council on 10 April 1995<sup>13</sup>, identifies certain practical difficulties which should be remedied so that the Decisions already taken by the Council concerning the organization of the Union's external relations can be applied more effectively. It states, inter alia, that *"the single institutional framework will not play its full part unless all steps are taken to ensure its smooth operation"* (paragraph 4 of the above report).

The Permanent Representatives Committee is accordingly submitting two documents of a practical nature based on the Treaty and the Council's Rules of Procedure. These proposals are without prejudice to the role assigned by Article J.8(5)<sup>♦</sup> of the Treaty to the Political Committee<sup>♣</sup> which, as the abovementioned Council report indicates, *"plays an essential role in planning and formulating the Union's foreign policy"* (paragraph 60 of the above document). They are without prejudice to any further improvements which might be deemed desirable.

The first document annexed hereto contains proposals for a better use of the provisions of Title V of the Treaty on common positions and joint actions.

The second document annexed proposes practical measures to bring about an actual merger of working parties, in accordance with the decisions already taken by the Council, and to ensure that the use of the COREU network remains completely compatible with the proven procedures for preparing for the Council's deliberations.

These improvements are indispensable to prevent procedures for the parallel handling of files from developing, to the detriment of consistency and efficiency in the European Union's external activities.

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<sup>13</sup> Doc. 5082/1/95.

<sup>♦</sup> N.B.: Maastricht Treaty

<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

It is essential to allow Ministers, through the intermediary of a single preparatory body, the Permanent Representatives Committee, to have available to them all the necessary information to make decisions on all aspects of files submitted to them, whether for the purposes of adoption, they fall within Community rules and procedures or those established by Title V of the Treaty. The purpose of improving the Council's functioning on this point is to make it better able to ensure the consistency of the Union's external activities, in accordance with Article C of the Treaty.

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**Annex I to the ANNEX****COMMON POSITIONS – JOINT ACTIONS – STATEMENTS****Use and detailed procedures for adoption**

1. The implementation of the objectives of the CFSP brings into play the array of diplomatic instruments to which the Political Committee<sup>♣</sup> or, more rarely, the Council may decide by common agreement to have recourse on behalf of the European Union. As a basis for European Union activities beyond these forms of cooperation, the Treaty provides for two specific legal bases (Articles J.2 and J.3 (*Arts. 12 and 13 since entry into force of Amsterdam Treaty*)) which allow the Council to adopt texts which must be upheld. As was shown by the analysis carried out in the preparation of the report on the functioning of the Treaty, it is necessary to clarify the respective functions of common positions and joint actions, to make the best use of Treaty provisions the purposes and scope of which are not identical. Experience gained since the entry into force of the Treaty also shows the value of distinguishing these acts from statements. The characteristics of common positions and joint actions are the subject of section I below. The detailed procedures for the adoption of formal acts and statements are the subject of sections II and III. The approach adopted meets the concern to make best use, in full knowledge of their effects, of the legal bases provided for by the Treaty. The political commitment connected with the adoption of these texts by the Council is not the subject of the developments which follow, any more than their political impact.

**I. COMMON POSITIONS AND JOINT ACTIONS: SIMILARITIES AND DIFFERENCES**

2. Practice shows that the choice between common positions and joint actions has sometimes been made on the basis of the importance subjectively attributed to each of these instruments in the months following the entry into force of the Treaty. However, it is first and foremost necessary to opt for the most appropriate legal base for achieving the desired aim.

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♣ "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

## A. Common characteristics

3. Common positions and joint actions are acts having legal bases, which allow the European Union to define its foreign policy and security objectives and to organize its activities accordingly. They involve a commitment by the Union as a whole.
4. The value of defining a common position or adopting a joint action is to agree on common principles and provide as far as possible for operational provisions to implement them: the respective roles of the Council, the Commission, the Member States, the Presidency or agents authorized by the Union, financial aspects which it may be necessary to provide for in the case of both common positions and joint actions, approaches to be followed with respect to third parties, detailed procedures for decision-making and follow-up, timetabling.
5. For the Union to be able to implement a common position or a joint action rapidly and efficiently, these texts must be drawn up with a sufficient degree of precision and detail to make them operational. For Council acts with Treaty legal bases, the mode of expression and the forms of words of political declarations are not therefore appropriate, nor is the use of declaratory recitals.
6. By contrast with statements, it will be noted that the concern for efficiency and legal precision which characterizes common positions and joint actions is not necessarily reconcilable with the aims of communication and information to third parties. In addition, the publication of common positions and joint actions in the Official Journal remains optional, to be decided on case by case. It may therefore be necessary, when adopting a common position or a joint action, to publish a press release or to precede or follow the adoption of a common position or a joint action by a statement. A statement is an informal text intended to be made public, presenting the European Union as a single entity, without distinguishing its components, whether legal (European Communities, Member States) or institutional (Council, Commission, etc).

7. Statements express the attitude of the European Union vis-à-vis an event or a situation and, if necessary, declare the Union's objectives and intentions. The political impact of these texts may be very significant; some statements have more political weight than formal texts. Beyond the adoption of a position, statements may also, in certain cases, contain guidelines for measures to be adopted later in respect of a third state or with reference to a multilateral question: in that case they amount to Council conclusions and could be described as such in future. But it is not the function of statements to fix an operational framework, unlike the new legal provisions laid down by the Treaty. To ensure efficient organization of the Union's external activities on the basis of guidelines contained in statements, it is therefore sometimes necessary to have recourse to a common position or a joint action.

## **B. Specific characteristics of common positions and joint actions**

### 8. (i) Common positions

Common positions give the various components of the European Union the necessary framework to act in a convergent manner. On 6 March 1995 the Council enacted an operational guide for the use of this instrument (see doc. 5194/95).

After examining in detail the common interests of the Union in respect of a third country or a multilateral question, common positions may define medium-term strategies giving valid guidelines over a relatively long period. They may also give shorter-term guidelines and lay down immediately operational provisions.

To distinguish a common position from a joint action, it is worth mentioning that common positions define principles common to the whole of the Union but that they are implemented, where appropriate, by measures for which the Member States and the Commission are responsible. The means of action of the Member States and the Community are not administered jointly.

A common position therefore restricts itself to noting, where appropriate, measures taken by the Community, or which the Commission intends to propose, to implement specific decisions by the Community arising out of the common position. Similarly, a common position may note the initiatives taken by the Member States to implement it.

(ii) Joint actions

Adopted on the basis of general guidelines from the European Council in areas where Member States have important interests in common, joint actions are characterized, in the single institutional framework provided for by the Treaty, by the pooling of means available to the European Union to carry out specific actions.

Joint actions set forth, where appropriate, the relevant Community measures as proposed by the Commission in support of joint actions. These measures are taken with due respect for the powers of each Institution, the procedures governing the exercise of those powers and the rules laid down for the adoption of decisions in the different parts of the Treaty.

## **II. PRESENTATION AND DETAILED PROCEDURES FOR THE ADOPTION OF COMMON POSITIONS AND JOINT ACTIONS**

9. Common positions and joint actions, in accordance with the Council's Rules of Procedure, bear one of the following headings, as appropriate:

- "Common position of .... defined by the Council on the basis of Article J.2<sup>◇</sup> of the Treaty on European Union, on ...";

- "Joint action of ... adopted by the Council on the basis of Article J.3<sup>◇</sup> of the Treaty on European Union, relating to ...".

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<sup>◇</sup> N.B.: Maastricht Treaty

10. In terms of procedure, where a common position or a joint action is on the provisional agenda for a Council meeting, these items will be examined beforehand by the Permanent Representatives Committee, unless the latter decides otherwise and, if the Political Committee\* so decides, it will issue an opinion on that subject, in accordance with Article J.8(5)♦ of the Treaty. In particular, the examination by the Permanent Representatives Committee is carried out when the Council's provisional agenda is being drawn up. The time-table for preparations for the General Affairs Council requires the draft texts to be available not later than two weeks before the Council meeting, so that the Permanent Representatives Committee can examine them at least twice under the conditions laid down in paragraph 9 of Annex II.
11. For the adoption of legal texts by the Council, the ordinary procedures apply, in particular, in the case of urgency, the written procedure for approval by the Council, provided for in Article 8(1) of the Council's Rules of Procedure and applicable to all Council acts in the single institutional framework established by the Treaty. For institutional, legal and language reasons, it has been agreed that the provisions of Article 8(4) of the Council's Rules of Procedure do not have to be used for the adoption of Council legal acts relating to the CFSP.

### III. PRESENTATION AND DETAILED PROCEDURES FOR ADOPTING STATEMENTS

12. Where informal texts contain guidelines for measures to be taken subsequently in respect of a third country or with reference to a multilateral question, they take the form of Council conclusions and would be more appropriately thus designated.
13. Statements approved by cooperation between the Foreign Ministers of the Member States, in full association with the Commission, have the following heading: "Statement by the Presidency, on behalf of the European Union, on ...".

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003  
♦ N.B.: Maastricht Treaty

They may be approved by the Political Committee<sup>\*</sup> or, outwith meetings of that Committee, through the COREU network.

They are the subject of a press release issued by the Presidency spokesman and/or by the General Secretariat of the Council<sup>14</sup>.

14. Declarations approved by the European Council or by the Council are headed: "Declaration by the European Union on ...".

They are the subject of press releases issued by the General Secretariat of the Council.

- Declarations by the European Council are approved during meetings of the European Council;
- where an item entered in part "B" of the provisional agenda for the General Affairs Council calls for a statement, the Political Committee<sup>\*</sup> issues an opinion to that effect for the attention of the Council. The draft statement is annexed to that opinion, which is placed on the agenda for the Permanent Representatives Committee, so that it can be forwarded to the Council in good time. The draft statement may be amended by the Political Committee<sup>\*</sup> before being submitted to the Ministers, to take account of the latest developments in the political situation. These rules of good practice do not preclude the Council from asking the Political Committee<sup>\*</sup> to prepare, at the time when its agenda is adopted, a statement the need for which was not anticipated when the Council's provisional agenda was drawn up<sup>15</sup>.

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<sup>14</sup> Once statements have been adopted, the General Secretariat of the Council immediately issues them in French and English via COREU. It also ensures, in accordance with the language arrangements applicable to the CFSP, that all the texts to be published are translated immediately and simultaneously into all the official languages of the Community.

<sup>\*</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

<sup>15</sup> In exceptional cases, for example outside the Council's normal working periods, "Declarations by the European Union" may be approved via COREU.

**Annex II to the ANNEX**

**FUNCTIONING OF THE COUNCIL WORKING PARTIES**  
**in the area of the European Union's external relations**

1. The Council has several times confirmed the value of integrating all the working parties into a unified preparatory process, in accordance with the single institutional framework established by the Treaty, designed to ensure consistency in all the Union's external dealings. However, the report on the functioning of the Treaty, approved by the Council on 10 April 1995, emphasizes that *"the single institutional framework will not play its full part unless all steps are taken to ensure its smooth operation"*<sup>16</sup>. The Council points out *"the importance of genuine merging of working parties, which is still far from complete* (para. 63 of the abovementioned document). It also states that *"the use of the COREU procedure should be further defined. COREU is very useful as a means of exchanging information, but the preparation and adoption of legal texts by COREU causes difficulties"* (para. 64).

The following practical proposals aim to remedy these difficulties. They deal with the working methods of the Council working parties (section I), the use of the COREU network (section II) and the processing and summarizing of information (section III).

**I. WORKING METHODS OF COUNCIL WORKING PARTIES**

- 2 The attendance of delegates of the Permanent Representations at meetings of working parties for all agenda items, which is already frequently the custom, must be encouraged for the continuity of the Union's external activities.

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<sup>16</sup> Doc. 5082/95

3. It is naturally up to the Presidency to organize its representation in working parties. It is recommended that there should be only a single chairman for merged working parties, the office being held by an official with enough time to attend the meetings of the Permanent Representatives Committee which examines the files submitted by the working party and to maintain the necessary working relations with the Commission, the General Secretariat of the Council and the delegations of the other Member States. If this is not possible, even closer internal coordination is required in exercising the chairmanship of the Working Party.
4. When officials from the capitals attend meetings, Working Parties must try to reach agreement on:
  - joint analyses of a third country situation or multilateral question, and the joint position which might be adopted by the European Union, especially by its Member States;
  - proposals which might be the subject of approval by the Political Committee\* as part of the practical measures for implementing the CFSP: approaches, requests to be addressed to the representations in the third countries and other preparatory measures, statements by the Presidency on behalf of the European Union;
  - substantive recommendations for further Council initiatives in the area of the CFSP which, if so decided by the Political Committee\*, may be the subject of an opinion by that Committee to the Council, and for the political follow-up to such initiatives.
5. For each working party meeting, the Presidency must be assisted by officials from the General Secretariat of the Council competent in Community subjects and CFSP areas. The Presidency ensures that the General Secretariat of the Council prepares a single report in good time for each relevant item on the Permanent Representatives Committee's agenda.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003



6. Merged working parties must deal with all files concerned with external relations. For the continuity of the Union's foreign policy, the agenda for each of the meetings of merged working parties should allow for the entry of one item relating to CFSP. Accordingly, the agendas for the various meetings of a merged working party should be drawn up by grouping together the items for which the attendance of officials from the capitals would be desirable and those which may be dealt with by instructions to the Permanent Representations, such as, inter alia, the regular follow-up of CFSP initiatives and the preparation of texts for the Council. The other Council working parties, which meet less frequently, may between meetings forward a file to the Working Party of CFSP counsellors to be followed up.
7. Where geographic or thematic working parties deal with issues falling within the provisions of Title V of the Treaty relating to the CFSP, the records of the meeting are drawn up by the General Secretariat of the Council to ensure the continuity of policies and working methods from one Presidency to the next. They are generally available 24 hours after the meeting of the working party and are in principle forwarded via COREU. They do not commit the Member States except for their operational conclusions, which, after being checked with the Presidency, are the subject of approval by the simplified written procedure expiring four working days after COREU transmission by the General Secretariat of the Council.
8. Any matter not resolved by one or more working parties is also the subject of a specific report drawn up by the General Secretariat of the Council, in the form of a single working document, with presentation of the whole file. The Presidency is responsible for the choice of items to be dealt with and the treatment of the file by the Council bodies.
9. For the purposes of submitting their file to the Permanent Representatives Committee and the Council, the working parties must take account of certain timetabling restrictions<sup>17</sup>:
  - the Council's provisional agenda is drawn up at least a fortnight before the start of the meeting (Article 2 of the Council's Rules of Procedure);

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<sup>17</sup> The guidelines below comply with the provisions of the Council's Rules of Procedure, notably the statement re Article 2 which states that the rules under Article 2 do not prevent common foreign and security policy matters from being dealt with quickly and effectively.

- unless it is a matter of urgency, a proposal to adopt a Council act (common position, joint action, Decision taken in implementation of a common position or a joint action) must be on the provisional agenda for the Council meeting;
- such proposals are in any case examined in advance by the Permanent Representatives Committee, unless the Council decides otherwise (Article 19.1 of the Council's Rules of Procedure);
- the Presidency must organize the meetings of working parties so that their reports are available for examination by the Permanent Representatives Committee when the provisional agenda is drawn up for the relevant Council meeting (Article 20 of the Council's Rules of Procedure).

These practices for satisfactorily preparing for the work of the Council involve all draft texts for the Council being available at least two weeks before the Council meeting, so that the Permanent Representatives Committee can examine them at least twice.

10. Improving the operation of working parties also entails reviewing the organization of the General Secretariat of the Council, with particular reference to the value of a structure according to geographical zones whereby officials responsible for Community aspects and those competent to deal with questions relating to the CFSP would work alongside each other, which would enable the Secretariat to help the Council more efficiently to ensure consistency in the Union's external activities.

## II. USE OF THE COREU/CORTESY NETWORK

11. The COREU/CORTESY network is very useful for exchanging information between Member States' Foreign Ministries and the Commission, and consultation on political analyses relating to multilateral questions or third country situations.
12. The COREU network remains reserved for questions covered only by the provisions of Title V, which covers neither institutional questions nor questions relating to the use of the Community budget to which other Treaty titles also apply. Beyond useful references to related questions, the COREU network must not therefore be used to set out or deal with Community subjects nor, consequently, for matters relating to the Community's external relations.
13. The COREU network supplements the proceedings of the working parties but cannot replace them. On the Presidency's initiative or at the request of a Member State or the Commission, merged working parties must be able at each meeting, under the possible CFSP item on the agenda, to discuss one question which would be the subject of exchanges via COREU.
14. It may be useful to prepare and adopt via COREU approaches, statements by the Presidency on behalf of the European Union and everything coming under the sole responsibility of the Political Committee\*, for example the opinions which it delivers for the attention of the Council which are forwarded through the intermediary of the Permanent Representatives Committee. It may also be useful to consult via COREU, before a working party meeting, on substantive questions which could be the subject of a subsequent initiative by the Council in the area of the CFSP.
15. Beyond such exchanges, which allow in particular the day-to-day management of the CFSP, the preparation of documents by COREU is to be discouraged so that working parties can fulfil their functions.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

16. Texts intended for the Council must be prepared by working parties, if necessary by those with general powers (Working Party of CFSP counsellors or Working Party on External Relations, for example).

These working methods allow the Council Legal Service in particular to play its proper role within the Council. Therefore, beyond the stage of initiative and prior reactions, the COREU network must be used only for the records of working party discussions, in order to avoid a parallel channel developing for dealing with files, in addition to working party meetings. The Presidency must pay particular attention to abiding by the Council's working methods and ensure that COREU exchanges cease once a working party has begun its work of negotiating a text.

17. The following procedures accordingly apply to the transmission and preparation of documents and proposals going beyond the day-to-day management of the CFSP:
  - the Presidency shall ensure that the opinion of the Council Legal Service is sought on proposals for Council acts having their legal basis in the Treaty. All draft texts are to be circulated by the General Secretariat of the Council in the form of Council documents;
  - these drafts are also to be transmitted via COREU. COREU should indicate that this is a transmission for information purposes and that any comments by the Member States and the Commission will be examined by the competent working parties at meetings whose dates should be specified.

### **III. PROCESSING AND SUMMARIZING INFORMATION**

18. The merging of working parties should allow each Member State and the Commission to have available full information on the way in which the European Union conducts its relations with a third country or defines its attitude on a multilateral question.

19. More effort should be made to summarize exchanges of views between officials from the capitals and the information relating to the CFSP circulated via COREU between the Foreign Ministries and the Commission. Information and political analyses proposed by the Member States or the Commission should be conceived as contributions to a debate which should become a joint affair.

In order to develop working methods already successfully practised by certain working parties, it would be conceivable for the General Secretariat of the Council, at the instigation of the Presidency, to establish draft summary documents for the working party on the basis of information transmitted in particular via COREU and comments gathered from the other Member States and the Commission.

20. To make the best use of the availability of officials from the capitals, the aim of the working party meetings devoted to political analysis would be to succeed, on the basis of such draft notes, in adopting a common point of view and, if appropriate, defining options. These joint contributions, having become working party documents, would also serve to inform the diplomatic representations and in return to elicit further material from the representations of the Member States or the Commission in third countries.
21. To summarize, the General Secretariat of the Council, in close liaison with the Presidency, should therefore prepare and update joint analysis documents and options for the attention of the working parties, on the basis of the information transmitted in particular via COREU and comments gathered from the other Member States and the Commission. To this end, the General Secretariat of the Council should be provided with as much information as possible.

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**(c) Implementation of the Treaty on European Union**

*(Council conclusions on legal and practical arrangements for implementing the Treaty, approved by the European Council on 29 October 1993 - doc. 9252/1/93, Chapter IV)*

The entry into force of the Treaty on European Union will mark the beginning of a new stage in the process of developing the identity of the European Union in the field of Foreign and Security Policy.

This new stage will build on the practical experience which has been acquired and the *acquis* in foreign policy terms which has been developed in the framework of European political co-operation. However, the political ambition of Title V of the Treaty on European Union is to create a Common Foreign and Security Policy (CFSP) which marks a qualitative leap forward, and equip the Union - englobing the Community and its Member States - to rise to the challenges and seize the opportunities of the post-cold war world.

Six aspects of the CFSP are of particular importance in the pursuit of the objectives of the Union as set out in the Treaty on European Union:

- (i) development of an active policy in the pursuit of the interest of the Union;
- (ii) unity and consistency in its external action;
- (iii) inclusion of all matters related to the security of the Union;
- (iv) decisions of the Union committing Member States;
- (v) unity in the presentation of the Union's policy to the outside world and visibility of the Union as an actor on the international scene;
- (vi) efficiency in the decision-making procedure.

Two elements are essential in the pursuit of these objectives:

- the "single institutional framework";
- the effective mobilization of the resources of the Member States and the Community in a joint effort to promote the objectives of the Union.

### **An active foreign policy**

The report from Foreign Ministers to the European Council in Lisbon on the Common Foreign and Security Policy stressed that the CFSP should contribute to ensuring that the Union's external action is less reactive to events in the outside world, and more active in the pursuit of the objectives of the Union.

A process of forward planning and systematic appraisal of the Union's objectives in key areas (as well as evaluation of means necessary to achieve these objectives) will be set in motion under the CFSP.

The development of an active Foreign Policy is a basic feature with regard to the development of "joint actions" which will be introduced in areas where Member States have important interests in common. But the approach is not restricted to subjects under joint action. It has general application for the CFSP.

Nor is such an emphasis in contradiction to the need to react swiftly to events. On the contrary: a pre-established consensus among Member States on objectives in a particular area will facilitate rapid and coherent reaction to events when they occur.

Given the experience acquired over the years and the central role which political directors have in shaping national foreign policy, the Political Committee\* will play an essential role in developing this new approach to the Union's foreign policy formation.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

In general, national experience in this field will have to be mobilized. The Presidency supported by the Council Secretariat will be well placed to bring the various contributions to policy shaping together. The Commission will also have an important role to play in the development of this approach.

### **Unity and coherence**

The need for developing a global approach in the Union's external action has been a prime motivation for Treaty changes. The Union, in pursuing its objectives in the external field, will often have to combine diplomatic action with action in trade and development policy areas as well as actions falling within the framework of co-operation on Justice and Home Affairs (asylum, immigration, drugs). Security policy in all its aspects will form part of it (see below). The global approach will be present from the early stage of policy shaping, particularly in implementing joint action, which will form the main instrument for developing the CFSP in fields in which Member States have essential interests in common.

The "single institutional framework" which unifies the preparatory process through the work of Coreper and the overall responsibility for the conduct of the Union's external policy given to the General Affairs Council are intended to ensure that the objectives set out in the Treaty with regard to unity and consistency are achieved, while respecting the different legal nature of decisions taken under the various parts of the Treaty.

### **Security aspects of the CFSP**

- (a) The Common Foreign and Security Policy of the European Union covers all areas of security and will aim to achieve the objectives of the Union referred to in Article J.1<sup>◇</sup> of the Treaty. Common Security Policy will be based on a global concept of security. European security includes political, economic and military aspects, under the conditions laid down in Article J.4<sup>◇</sup>. It will be primarily aimed at reducing the risks and uncertainties likely to pose a threat to the territorial integrity and political independence of the Union and its Member States, to its democratic character, its economic stability and the stability of its neighbouring regions.

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<sup>◇</sup> N.B.: Maastricht Treaty



- (b) The Union has means at its disposal, backed up by contributions from the Member States and the "acquis" of political co-operation, to achieve its security objectives, particularly in the areas of crisis management, the promotion of UN and CSCE principles, disarmament, non-proliferation and the economic aspects of security.

In some cases, measures may be taken by the Union itself. The Union can also take action with regard to security through multilateral diplomacy within international organizations such as the United Nations, the CSCE and the Council of Europe.

- (c) A common defence policy, which might in time lead to a common defence, must eventually be framed by the Union on the basis of its security interests. CFSP proceedings conducted with a view to the 1996 Intergovernmental Conference will benefit from the development of the activities of the WEU, which forms an integral part of the development of the Union.

The links between the Union and the WEU established by Article J.4<sup>♦</sup> of the Treaty are such that the Union can now give concrete form to the global approach to security meeting the Treaty's objectives. These links will be of a developing nature and must be reviewed in the light of the report to be submitted in 1996.

The Union notes that the WEU is continuing to develop its own line of activity autonomously on the basis of the guidelines established in the Petersburg Declaration and that, in the dynamics of the process of European Union, it is destined to become its defence component.

### **Decisions of the Union committing the Member States**

The Treaty on European Union establishes that decisions of the Union shall commit Member States.

This is the case with regard to the "day-to-day" decisions of the Union in the form of common positions. (The Treaty on European Union provides that "Member States shall ensure that their national policies conform to the common positions" while under the Single Act "common positions" are described as "a point of reference for the policies" of Member States).

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♦ N.B.: Maastricht Treaty

It is even more pronounced for "joint actions" (they "commit Member States in the positions they adopt and in the conduct of their activity") and the commitment is underpinned by an elaborate set of rules which Member States have to follow in pursuit of foreign policy in the area covered by joint action (e.g. information and prior consultation).

The direct involvement of the European Council is also essential. The fact that the European Council has set out general guidelines for "joint action" in a specific area adds political weight and commits the highest political authorities in Member States in the pursuit of the Union's objectives in the policy area in question.

A decision to conduct the Union's external policy in a particular area where Member States have important interests in common in the form of joint action should be taken in full consciousness of the discipline and obligations which this involves for Member States. The authors of the Treaty envisaged a gradual approach starting with few joint actions and enlarging the scope over time in the light of experience. This approach is still valid.

Decisions which are formally committing Member States require precision with regard to the formulation of the Union's policy. Formalization and precision of decision texts under CFSP is therefore important in ensuring that Member States' policies and actions fully support the Union's objectives.

### **Unity in presentation to the outside world and greater visibility**

A recurrent difficulty in promoting the identity of the Union in the international sphere is the multitude of spokesmen (Presidency/Commission/several or all Member States) with whom third countries are often faced when the Union addresses the outside world, e.g. in international conferences and meetings.

The Treaty on European Union reinforces the role of the Presidency in presenting and defending the Union's positions and policies under CFSP to the outside world, including in international organizations and conferences. The Presidency will whenever appropriate be assisted by the Troika in this respect, and the Commission fully associated.

Efforts are needed to ensure that third countries fully appreciate this role of the Presidency.

The new Treaty also calls for a stepping up of the process which has been developed over the last decade by the diplomatic and consular missions of the Member States and the Commission Delegations in third countries of exchanging information, carrying out joint assessment and assuring that common positions and joint actions adopted by the Council are complied with. The Member States which are permanent members of the UN Security Council will co-operate more closely than in the past in order to defend the positions and interests of the Union without prejudice to their responsibilities by virtue of the UN Charter. Increased co-operation between the diplomatic missions in third countries is also relevant to the Treaty's provisions on "Union citizenship" and in relation to co-operation on Justice and Home Affairs (e.g. joint assessment of third countries' situations in relation to granting of asylum).

The unity in presentation and pursuit of action vis-à-vis the outside world will promote greater visibility of the Union as an actor on the international stage. Visibility is also essential vis-à-vis the citizens of the Member States. Increased transparency and greater clarity on objectives and means will be promoted under the CFSP, taking into account the need to preserve confidentiality on certain aspects dealt with.

### **Improved efficiency in the decision-making procedure**

The Treaty on European Union - while distinguishing the particular legal characters of co-operation on Foreign and Security Policy from that of Community action - opts for unity in the decision-making process, through the single institutional framework.

This implies that the Council's ways of working - to the extent possible - will be applied to CFSP while maintaining the flexibility necessary in the conduct of a foreign policy. Whenever possible, the decision-making procedure under CFSP should be based upon precise "proposals" as in the Community sphere, originating from the Presidency, Member States and the Commission.

The Treaty opens up the possibility for qualified majority decisions in the framework of joint actions.

It is also important to note that Member States declared - when signing the Treaty on European Union - that with regard to CFSP decisions requiring unanimity Member States will, to the extent possible, avoid preventing a unanimous decision where a qualified majority exists in favour of that decision. The use in practice of these new possibilities could greatly facilitate the decision-making procedure. Much will depend on the Presidency's initiatives and choosing the right subjects for initiating the experience of living with majority voting in this particular area.

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Annexes I to IV to this note set out a number of practical steps that will be implemented from the entry into force of the Treaty on European Union. The Council will in due time re-examine these arrangements in the light of experience.

**ANNEX I**

THE INSTRUMENTS OF THE CFSP

**JOINT ACTION**

1. The European Council will decide at regular intervals whether to issue new "general guidelines" (Article J.3(1)<sup>◇</sup>) which will form the framework for the joint action. Thus, at its first meeting after ratification of the Treaty on European Union the European Council would:
  - (a) recapitulate and formally confirm the general guidelines which it adopted at its meetings in Maastricht (December 1991), Lisbon (June 1992), Edinburgh (December 1992) and Copenhagen (June 1993), taking account of what has been achieved in political co-operation;
  - (b) indicate which matters should be given priority for being the subject of joint action and would set the general guidelines for them;
  - (c) instruct the Council to examine regularly henceforward whether the existing general guidelines have to be supplemented or adapted in the light of new developments, and to prepare its discussions in this respect.
2. The Council will decide on the basis of "general guidelines from the European Council" that a "matter should be the subject of joint action" (Article J.3(1)<sup>◇</sup>).
  - (a) Whenever the Council thus decides on "the principle of joint action", it will define, acting on a proposal from the Presidency, the Member States or the Commission, the main political and operational features constituting it. Thus, it will:
    - lay down the essential features as provided for in the second subparagraph of Article J.3(1)<sup>◇</sup> (precise scope, general and specific objectives, means, procedures, conditions and possibly its duration);

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<sup>◇</sup> N.B.: Maastricht Treaty

- define as appropriate those matters on which it will have recourse to a qualified majority (Article J.3(2)<sup>♦</sup>);
  - specify whether the action would be financed, which would be done jointly in accordance with Article J.11(2)<sup>◇</sup>.
- (b) To ensure at the same time the overall effectiveness of action by the Union,
- the Council will consider the Community proposals for a decision which the Commission deems necessary for the implementation of the joint action;
  - Member States will indicate what positions or action they intend to adopt pursuant to the joint action (Article J.3(4) to (7)<sup>◇</sup>);
  - the Council will also consider whether the Member States should be invited to place national means at the disposal of the joint action, and
  - whether the joint action will be pursued in concert with third countries and/or international organizations.
  - On the same occasion the Council will examine issues having defence implications with regard to which decisions should be taken on the basis of Article J.4<sup>◇</sup>, and in particular paragraph 3 thereof.

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♦ N.B.: Maastricht Treaty

3. Whenever the Council decides thus that a matter should be the subject of joint action, that action will have to be specific and - subject to any essential requirements as to confidentiality - visible. It will therefore be organized in an articulated manner.

(a) In addition to any explanatory preamble, a decision on joint action will comprise enacting terms, setting forth, *inter alia*, in each individual case:

- the purpose of the action (precise scope, general and specific objectives, conditions, possibly duration);
- the means for the action (procedures, possible recourse to a qualified majority, funding arrangements, co-operation with third parties).

(b) A decision on joint action:

will be entitled "joint action decided upon by the Council on the basis of Article J.3<sup>♦</sup> of the Treaty on European Union";

will be signed by the President and the Secretary-General of the Council;

may be published in the Official Journal.

To enable the Council to take the necessary decisions at short notice, the Permanent Representatives Committee will examine what precise provisions will accordingly have to be incorporated in the Council's Rules of Procedure.

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♦ N.B.: Maastricht Treaty

4. Where joint action involves operational expenditure, it will be funded jointly in accordance with Article J.11(2)<sup>◇</sup>. The decision on joint action will indicate whether the operational expenditure is to be charged to the budget of the Communities or to the Member States according to a distribution scale to be specified in the decision. If funding is to be charged to the budget of the Communities, the Commission will submit appropriate proposals to the budget authority.

To enable the Council to choose in due course the appropriate method of funding, the Permanent Representatives Committee will draw up for the Council a general report on the arrangements for funding joint action.

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<sup>◇</sup> N.B.: Maastricht Treaty



## DECLARATIONS

5. If a position adopted by the Union, in particular a joint action or a common position, would gain by being made public, recourse would be had to:

- (a) declarations approved by the European Council, the Council or by recourse to the COREU network. Such declarations should be limited in number;
- (b) press releases circulated by the Presidency's spokesman and/or by the Council Secretariat.

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**ANNEX II**

**THE BODIES OF THE CFSP**

**CO-OPERATION BETWEEN COREPER AND THE POLITICAL COMMITTEE\***

1. When approached by the Council (General Affairs):

- (a) in principle the Political Committee\* will meet at the Council headquarters on the Monday afternoon and the Tuesday of the week preceding the Council meeting.
  - Its meeting will be prepared for (late morning/early afternoon) by the European Correspondents, who will also examine those working party reports which do not require discussion by the Political Committee\*.
  - The Presidency will inform the Political Committee\* of the preliminary draft agenda for the Council which it intends to submit to the Permanent Representatives Committee on the Wednesday.
- (b) With due regard for the special responsibilities of the Political Committee\* in the area of the CFSP, the Presidency will ensure that the opinions intended for the Council are forwarded efficiently. The opinions of the Political Committee\* (setting out, inter alia, its conclusions or recommendations) intended for the Council will appear on the agenda for the Permanent Representatives Committee to ensure that they are forwarded to the Council in good time (pursuant to Article J.8(5)<sup>◇</sup>. The Permanent Representatives Committee will attach to them comments and recommendations which it deems necessary and (under Article 151 of the EC Treaty) will endeavour, as need be, to reach an agreement at its level to be submitted to the Council for approval.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003  
◇ N.B.: Maastricht Treaty

- (c) The Council will request the Political Committee<sup>♣</sup> meeting alongside the Council to give opinions where appropriate, which take into account the latest developments on the current political scene.

2. Between (General Affairs) Council meetings:

- (a) preparation and implementation of positions and decisions concerning the CFSP could in particular be carried out at meetings of the Political Committee<sup>♣</sup> or by the COREU network;
- (b) Council decisions may be taken by means of the simplified written procedure using the COREU network.

### INTEGRATION OF THE SECRETARIAT

- 3. The integration of the Political Secretariat into the General Secretariat of the Council, which has been under way since the Council decisions of 11 May 1992, will in due course require the necessary decisions concerning the Staff Regulations and the budget. The Council will be kept informed of the progress of this integration.

Under the Declaration on practical arrangements in the field of the CFSP and under Article 162 of the EC Treaty, the Council and the Commission will agree on the practical arrangements for co-operation between the General Secretariat of the Council and the Commission's departments. The Presidency, assisted by the Secretary-General of the Council, is instructed to open discussions on this matter with the Commission.

- 4. The General Secretariat of the Council will work out the arrangements needed to ensure any required confidentiality of proceedings within the framework of the CFSP.

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<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

**CLOSER LINKS BETWEEN WORKING PARTIES**

5. As from the entry into force of the Treaty, all working parties will be Council working parties. The merging of working parties will be carried out pragmatically, making a distinction between three categories.

(a) The corresponding working parties will be unified and have a single title. Efficient management of their agendas will make it possible to arrange in distinct groups matters coming under the CFSP, Community matters and matters concerning both. This could be the case in particular with the following working parties:

|                                                     |   |                                   |
|-----------------------------------------------------|---|-----------------------------------|
| ad hoc Yugoslavia (EPC)                             | : | + ad hoc Yugoslavia (EC)          |
| Latin America (EPC)                                 | : | + Latin America (EC)              |
| Asia (EPC)                                          | : | + Asia (EC)                       |
| CSCE (EPC)                                          | : | + ad hoc CSCE (EC)                |
| Middle East-Maghreb/Middle East Co-ordination (EPC) | : | + Mediterranean (EC)              |
| Euro-Arab Dialogue (EPC)                            | : | + Euro-Arab Dialogue (EC)         |
| Eastern Europe (EPC)                                | : | + Eastern Europe/former USSR (EC) |

(b) The other working parties will continue to exist separately, but the cohesion of their activities will be ensured by the organization of joint meetings whenever "mixed" subjects are to be discussed. This will often be the case for, inter alia:

|                        |   |                         |
|------------------------|---|-------------------------|
| Africa (EPC)           | : | ACP (EC)                |
| Latin America (MERGED) | : | "                       |
| Asia (MERGED)          | : | "                       |
| Human Rights (EPC)     | : | Development (EC)        |
| United Nations (EPC)   | : | External Relations (EC) |

(c) Certain working parties will also report to the Committee provided for in Article K.4:

- Drugs
- Terrorism

On the other hand, the activities of the Working Party on Judicial Co-operation will henceforth be pursued under Title VI of the Treaty on European Union relating to co-operation in the fields of justice and home affairs.

To carry out the foregoing and in the event of any further changes, the Permanent Representatives Committee will, in accordance with Article 16(2) of the Council's Rules of Procedure, draw up a list of the Council working parties. The Permanent Representatives Committee will ask the Political Committee\* for its opinion in advance.

Pending this decision, use would be made of the possibility of organizing joint meetings of the existing working parties whenever "mixed" subjects are to be discussed.

6. At working party level, matters coming under the CFSP would be dealt with in accordance with working practices, which should be similar to those of the Community working parties. Thus, with due regard for the confidentiality of some information,
  - (a) notices of meetings and working party reports will have the same material presentation, i.e. in the form of a document from the General Secretariat of the Council;
  - (b) notices will be forwarded directly via COREU to the capitals, the Permanent Representations of the Member States and the Commission (apart from their link to the COREU network, the latter will receive notices in the form of telegrams from the General Secretariat of the Council);

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

(c) the reports will be forwarded to the Political Committee<sup>♣</sup> via COREU and also to the Permanent Representatives Committee (pursuant to Article J.8(5)<sup>◇</sup>.

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♣ "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003  
◇ N.B.: Maastricht Treaty

**ANNEX III**

**CLOSER RELATIONS WITH THE EUROPEAN PARLIAMENT**

1. In addition to the existing arrangements the Presidency will attribute the utmost importance to the obligation to inform, in concert with the Commission, and consult Parliament, as provided for in Article J.7<sup>◇</sup>. The Presidency and the Commission will acquit themselves of these tasks as regularly as possible and in a manner compatible with the sensitive nature of some information and discussions.

(a) The Presidency will be in constant contact with Parliament in the areas covered by the CFSP:

- by attending, in addition to the two colloquia, whenever this is useful or necessary, the meetings of Parliament's Committee on Foreign Affairs and Security;
- by participating, if need be, in Parliament's debates in plenary session;
- by continuing the practice of the General Secretariat of the Council attending the start of each meeting of the Committee on Foreign Affairs and Security;
- by having recourse to the practice of written information.

(b) At each Council meeting, the Presidency will inform the Council of Parliament's reactions, communications, questions, recommendations or resolutions concerning the CFSP.

(c) The Presidency will organize consultation of Parliament on the major aspects and fundamental options of the CFSP:

- when there is any organized oral or written information as provided for above;
- during the annual debate provided for by the Treaty on European Union;
- when the European Council approves general guidelines for joint action .

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**ANNEX IV**

**RELATIONS BETWEEN THE UNION AND THE WEU**

1. The WEU is an integral part of the development of the Union: the establishment of a close cooperation between the two entities is therefore of fundamental importance to the development of a common foreign and security policy. The Union may, at the level of its Council, request the WEU to elaborate and implement decisions and actions which have defence implications in the following kind of situations. These, while normally implying the use of military personnel, may include the use of other means. The following examples should only be considered as indicative and non exhaustive:
  - the security interests of the Union are directly concerned;
  - the Union is politically and economically involved in a specific crisis or conflict and acknowledges that additional WEU support is necessary (military observers, cease fire, peace keeping, sanctions monitoring a peace enforcement);
  - the Union is asked by the UN/CSCE to make a contribution and it comes to the conclusion that WEU, in a cohesive division of labour, could make a specific contribution;
  - humanitarian efforts need logistical support.
2. Once the European Union has requested WEU to elaborate and implement its decisions and actions with defense implications, the WEU will take on the request in accordance with the decision-making procedures of that organisation, and will carry out all actions concerning such a request in a manner that is fully coherent with the overall policy established by the European Union.

Special attention will be required when the request to the WEU is part of a broader action which the Union itself will continue to conduct.

In this case mutual information and consultation procedures will ensure the coherence of the action as a whole, whilst ensuring that WEU take in an autonomous way the operational decisions, including military planning, rules of engagement, command structures, deployment and withdrawal.

3. In order to ensure close co-operation between the WEU and the European Union, the following measures will be implemented from the date of entry into force of the Maastricht Treaty:

- 3.1. Co-operation between presidencies and harmonisation of their duration:

The Presidency of the WEU will continuously inform CFSP bodies about ongoing work within WEU which is relevant to the Union. The Presidency of the Council will inform, on a regular basis, competent WEU bodies of the work undertaken by the Union which is relevant to WEU, in particular in areas where WEU could be invited to elaborate and implement decisions of the Union which have defence implications.

The two Presidencies will co-operate closely in order to ensure the consistency and the efficiency of the work relevant to both organisations.

To facilitate the envisaged harmonization of presidencies, the Union suggests that WEU reflect on the reduction of its Presidency's term of office to six months.

- 3.2. Co-operation between the General Secretariat of the Council and the General Secretariat of the Western European Union:

- the Secretary-General of the Council will ensure that the Secretary-General of the WEU is kept timely and fully informed on developments of the CFSP, in particular in areas where WEU could be invited to elaborate and implement decisions of the Union which have defence implications as well as in areas where complementary or similar activities are being carried out by the Union and by the WEU.

Similarly, the Secretary-General of the WEU will keep the Secretary General of the Council punctually and fully informed of any activities of the WEU which are relevant to the Union, including the development of contingency planning for implementing measures in areas where the Union might call for such action.

- The collaboration includes the exchange of written material in the relevant areas. This covers documents as well as exchanges over the WEUCOM and COREU networks. The two secretariats will establish the necessary practical arrangements in this regard and ensure that the security classifications and provisions of the two organisations are respected in the handling of such documents.
- The collaboration includes cross-participation of collaborators from the two secretariats in relevant meetings in the two organisations according to decisions taken on a case-by-case basis, after consultation of the two Presidencies at the appropriate level. This applies to meetings at working group level, as well as with regard to relevant agenda points in meetings at ambassadorial level and at ministerial level. The two secretariats will keep each other informed about the agendas for all relevant meetings. The collaborators in question will be seated in the delegation of the Presidency-in-office of the organisation they represent.

### 3.3. Arrangements for appropriate modalities to ensure that the Commission of the European Communities is regularly informed and, as appropriate, consulted on WEU activities.

The information and, as appropriate, the consultation of the Commission on WEU activities should take place through regular contacts between the Commission and the WEU Presidency, on the one side, and between the Commission and the Secretary General of WEU, on the other side.

The WEU Secretariat will forward WEU written material to the Commission, in which the Commission has an interest by virtue of its responsibilities in implementing policies of the European Union and whenever the WEU is dealing with matters relating to the Commission's responsibilities under the Treaty on European Union. Similarly, the Commission will forward documents to the WEU in all relevant areas.

The Presidency will represent the European Union at WEU meetings. It is understood that the Presidency will include representatives of the Commission in its delegation, whenever the WEU is dealing with matters relating to the Commission's responsibilities under the Treaty.

### 3.4. Synchronization of dates and venues of meetings

The two organisations, at the level of the Presidency and the Secretariats, will whenever possible consult each other before finalising plans for meetings at ministerial level or meetings of relevant working groups with a view to establishing the greatest possible synchronization of dates and venues of meetings. This applies in particular to situations where successive decisions of the Union and the WEU are called for.

The two Secretariats will make the necessary practical arrangements to provide appropriate meeting facilities whenever successive meetings of the two organisations on the same day and in the same place are called for practical or operational reasons.

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**(d) Conclusions of the Political Committee\* Meetings on 6 September 1994 and 28 April 1995**  
(COREU SEC 873/94 and SEC 411/95)

The Political Committee\* approved the following internal guidelines designed to enhance the functioning of the CFSP and to contribute to effective implementation of the relevant provisions of the Treaty, the decisions of the European Council on 29 October 1993 and the recommendations of the Political Committee\* of 4 July 1994 acknowledged by the Council on 18 July 1994.

**Political Committee\* internal guidelines to enhance the functioning of CFSP**

The objective of this paper is to present a set of ideas which will contribute to a more effective implementation of the relevant provisions of:

- the Treaty on the European Union on CFSP,
- the decisions of the European Council on 29 October 1993, and
- the recommendations of the political committee\* of 4 July 1994 acknowledged by the General Affairs Council of 18 July 1994

Agendas for CFSP discussions at Ministerial, Political Committee\* as well as working group levels should, as far as possible, indicate for each particular item whether the Presidency's intention is to have an analytical exchange of views or to reach an operational decision/make a recommendation to the Political Committee\* or to General Affairs Council.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

## **A Preparation of the General Affairs Council by the Political Committee\***

1. CFSP procedures must allow Ministers to have informed and focused orientation discussions and to take well prepared operational decisions. The Political Committee\* has to ensure that opinions delivered to the Council are well prepared and that ground is ready for Ministers to adopt operational decisions bearing in mind that legal and financial aspects need to have been properly addressed.
2. The Political Committee\* provides political analysis which the Council needs before it takes decisions on the implementation of the EU's external policies. It will prepare opinions for all CFSP agenda items of the GAC.
3. The Political Committee\* should, as necessary, meet at the beginning of each GAC to update the opinions referred to above in the light of changed circumstances.

## **B. Political Committee\***

4. CFSP procedures in general require more active oversight by the Political Committee\*. The work of the Political Committee\* should be focused on the main political issues in order to allow more time for in-depth discussions.

On the basis of its semi-annual debate on priorities in the areas covered by CFSP. The Political Committee\* will oversee and direct the activities of the relevant working groups, taking into account their work on first pillar issues, thereby contributing to the necessary continuity and consistency from one Presidency to the next.

5. It may therefore be useful for the Political Committee\* to meet more frequently on an ad hoc basis, in order to provide sufficient time for political directors to carry out those tasks. Additional meetings would also give political directors the opportunity for more in-depth discussions.

### C. Working Groups

6. In order to produce better comprehensive analyses and draft decisions, a greater effort is necessary to ensure that relevant Working Groups are merged in practice as well as in name.

To avoid waste of time and travel, especially of experts from capitals, agendas need to be well managed. They should clearly distinguish between the different categories of agenda points, i.e. Community issues - CFSP issues - mixed issues.

As far as possible and practicable, discussion of CFSP items in merged Working Groups should be confined to designated monthly meetings of the group. This would facilitate the attendance of experts from capitals, which is an important factor in ensuring the coherence of the Union's external policies, particularly as regards action taken by the Member States in support of these policies. Such an arrangement would be without prejudice to the convening of more frequent meetings or merged Working Groups to deal with CFSP, community or mixed competence matters when these require more intensive or continuous treatment.

7. Meetings of Working Groups, especially when dealing with CFSP issues that will also be put before Ministers, should be held at a time that would allow proposals to be examined, including by CFSP Counsellors if deemed useful by the Presidency, with regard to legal and financial implications before they are discussed in the Political Committee\* and COREPER.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

8. Working Groups can submit to the Political Committee\* specific operational points. Oral reports will appear on the agenda of the political committee\* if asked so expressly by a partner (silent procedure four working days after COREU-circulation or oral report). In this case the partner will specify the issue and describe the objective(s) of the intended discussion beforehand.
9. Working Groups should agree suggested priorities in the CFSP area for the coming year taking into account the overall priorities for CFSP agreed by political directors. In order to give the Political Committee\* more coherent control of their activities, Working Groups should submit their suggestions to the Political Committee\*.

There should then be a rolling programme of progress reports on their priority areas. Working groups should always consider which of their CFSP issues should proceed to Political Committee\* and Council discussions and prepare these discussions with appropriate drafts etc.

10. In order to make the most effective use of the expertise of the Working Groups dealing with specific aspects of security, the Security Working Group should exercise a role of horizontal coordination and initiative in this area of work consistent with the political committee's\* overall authority for and continued supervision of the specialised Working Groups concerned.
11. The number of Working Groups should be kept under strict control.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003



#### **D. COREU network**

12. Better and more efficient use should be made of the COREU network.

The COREU network could be used more broadly for an exchange of papers, analyses between partners and thus enhance the exchange of information necessary for the better functioning of CFSP. It is also important that the decision taken by Ministers in May 1992 (paragraph 1.4 of doc. 6252/92) concerning the linkage of all permanent representations to the COREU network should be rapidly implemented.

#### **E. Council Secretariat**

13. The Council Secretariat for its part will have particular responsibility for consistency in CFSP procedures, including legal aspects.
14. The Council Secretariat should also encourage the development of common analyses within CFSP, which should contribute to the development of consistent positions throughout the European Union.
15. The Council should take advantage of the enlarged Secretariat, both to ensure compliance with procedural requirements and to take over some of the routine tasks presently filled by the Presidency. The analytical capacity of the Secretariat should gradually be expanded to this end.
16. Close and frequent contact between Chairmen of Working Groups and Members of the Secretariat is necessary to ensure the smooth functioning of CFSP.

17. The Council Secretariat should be responsible for consistency between the reports of Council discussions circulated by COREU and those distributed to the press or included in the compte-rendu of the Council.
18. The Secretariat should assist the Presidency in developing consistent procedures for actions commonly taken under CFSP, e.g. election observation.

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**Political Committee\* internal guidelines for improving follow-up to CFSP decisions**

*(approved by the Political Committee meeting on 27 and 28 April 1995, COREU SEC 411/95)*

**1. Pooling of human resources and information**

- 1.1 Where appropriate, the Presidency could call upon experts from other Member States and the Commission to assist the Troika in implementing CFSP decisions. The choice of experts will need to be approved by the Political Committee\*. They would be answerable to the Presidency.
- 1.2 Without prejudice to the provisions of the Treaty relating to the Commission's involvement the Presidency, acting of its own motion and with the Council's approval, seek the help of one or more Member States, in addition to the Troika, for assisting it in the implementation of certain well-defined aspects of CFSP actions on an ad hoc basis and for a specific goal. Such assistance will be organised under the Presidency's authority and information will be provided on it. It will last for a period to be determined which, unless extended, will not exceed the Presidency's term of office.
- 1.3 Member States are fully to implement the provisions of Title V of the TEU relating to the exchange of information and prior consultation. The transmission of information by Member States to the General Secretariat of the Council, agreed in principle, should form part of that exchange of information.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

## 2. Continuity

- 2.1 At the Presidency's request the Council could, where appropriate, decide to appoint a senior diplomat for ensuring, under the Presidency's authority, continuity in implementing decisions adopted. In carrying out his mission, he would be provided the necessary administrative support by the General Secretariat of the Council.
- 2.2 Article J.8(5)<sup>◇</sup> requires the Political Committee<sup>♣</sup> to monitor the implementation of agreed policies. Accordingly, the agenda for the Political Committee's<sup>♣</sup> meetings should periodically include an item called "implementation of CFSP decisions".

## 3. Visibility

Information activities by the Press Department of the General Secretariat of the Council could be intensified in order to contribute to ensuring maximum visibility in regard to the Union's CFSP-related activities. Working together with the CFSP Unit, that department is already publishing public Union declarations and positions. It could hold regular or ad hoc briefings for the international press, thereby acting as a readily available contact in Brussels for answering questions.

## 4. Third countries

Study of procedures enabling the European Union, where appropriate, to enter into formal or informal arrangements with third countries in the context of CFSP will be actively pursued.

## 5. Consistency

Cooperation between the General Secretariat of the Council and the Commission's departments should be further developed so that the Council and the Commission can ensure consistency in implementing CFSP and EC decisions and actions.

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<sup>◇</sup> N.B.: Maastricht Treaty

<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

**(e) Political Committee<sup>\*</sup> recommendations of 12 July 1994 noted by the Council on 18 July 1994**

*(Establishing CFSP priorities - doc. 8390/94)*

1. Political Directors met on 1 and 2 July 1994 and held an in-depth discussion on the functioning of the Common Foreign and Security Policy on the basis of the TEU and the Report of the Council of 26 October 1993 to the European Council.

The objective of the meeting was to identify ways of improving the effectiveness of CFSP, in particular by ensuring its internal consistency and establishing clear priorities. The meeting also considered how to contribute to the overall coherence of the external relations of the EU.

2. The Political Committee<sup>\*</sup> works in close cooperation with COREPER in the latter's role of preparing Council discussions and decisions within the Union's single institutional framework. This is a prerequisite for assuring the overall coherence and vigour of the European Union's external relations.
3. At Council discussions, Ministers should normally have available one or a combination of the following:
  - annotated agenda;
  - analytical paper with options and/or recommendations;
  - draft for a common position or joint action and, if appropriate, declaration.

Such documents should be prepared by the Political Committee<sup>\*</sup>. CFSP issues should normally be discussed in formal Council sessions. Discussions over lunch should be reserved for particularly sensitive issues. The conclusions should be agreed in formal session. Where appropriate or necessary, restricted sessions could be envisaged. All CFSP issues should preferably be dealt with in the afternoon session of the first day of the Council.

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<sup>\*</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

4. In order to fulfil its role effectively, the Political Committee\* decided to take the following steps:
- the setting of priorities in the areas covered by the Common Foreign and Security Policy on a regular basis, holding a debate each January and July. The planners Working Group should be involved in the preparation of these debates. Working Groups will report on their work and their proposed priorities and the Political Committee\* will give directions as appropriate;
  - provide political analysis which the Council needs before it takes decisions on the implementation of the European Union's external policies. The Political Committee\* will direct the Working Groups closely to this end;
  - identify options and make recommendations to the Council on policy decisions and specific actions in areas covered by the Common Foreign and Security Policy.
5. "CFSP Counsellors" in Brussels, including Commission representatives and, where appropriate, legal and/or budgetary experts might be called upon to assist the Political Committee\* and COREPER in the proper consideration of juridical, institutional or financial issues in CFSP activities. This applies especially to the preparation of joint actions and of common positions before they are discussed by the Political Committee\*. They could also assist in the monitoring in these fields of the implementation of joint actions or other activities already decided by the Council of Ministers.
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**(f) Common positions defined on the basis of article J.2<sup>◇</sup> TEU**

*(Operational guide noted by the Council on 6 March 1995 - doc. 5194/95)*

1. In accordance with the instructions it received from the Council on 31 October 1994, Coreper examined the question of the scope and content of common positions defined on the basis of Article J.2<sup>◇</sup>. At its meeting on 23 February 1995, the Committee recorded agreement on an "operational guide" for the preparation of common positions on the basis of Article J.2<sup>◇</sup> of the Treaty (see Annex I hereto).
2. Recording agreement on the text, the German delegation asked for the statement set out in Annex II to be entered in the Council minutes.
3. The Committee accordingly suggests that, as an "A" item on the agenda for a future meeting, the Council:
  - take note of the "Operational guide" set out in Annex I;
  - enter in its minutes the statement from the German delegation set out in Annex II.

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<sup>◇</sup> N.B.: Maastricht Treaty

**ANNEX I**

**Operational guide**

1. Whenever it deems it necessary, the Council shall define a common position on the basis of Article J.2<sup>♦</sup> of the Treaty on European Union.

Member States are required to ensure that their national policies conform to the common positions (Art. J.2(2)<sup>♦</sup>). The common positions commit the Union as a whole.

These common positions shall enable the Union to define a position vis-à-vis a third country, an event or an international question of general impact. They shall respect the consistency of the Union's external activities as a whole in accordance with Article C of the Treaty on European Union.

The common positions may refer to the Union's external activities as a whole. They may define the objectives, priorities and guidelines for actions of the Union arising from the common position and, where appropriate, a timetable for implementation.

The powers specific to each institution, the procedures governing the exercise of such powers and the rules laid down for adopting decisions in the various parts of the Treaty shall be preserved at every stage. To that end, care shall be taken to ensure that the power of initiative held by the Commission under the Treaties is preserved.

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♦ N.B.: Maastricht Treaty



2. Common positions on the basis of Article J.2<sup>♦</sup> are not decisions within the meaning of Article 189 of the EC Treaty or the corresponding provisions in the ECSC and Euratom Treaties.

It is proposed that the common positions be presented as follows:

- they shall bear the title "common position defined by the Council on the basis of Article J.2<sup>♦</sup> of the Treaty on European Union" (Rules of procedure of the Council, Article 17(1));
- they shall not as a rule be preceded by recitals;
- they shall note, where appropriate, the measures which have been taken by the Community or which the Commission intends to propose for the implementation of specific Community decisions arising out of the common position.

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♦ N.B.: Maastricht Treaty

**ANNEX II**

**Statement by the German delegation for entry in the Council minutes**

"Germany agrees to the Presidency proposal. Germany considers that the Presidency proposal is in keeping with the rules of the Treaty and, in particular, takes account not only of the consistency principle laid down in Article C of the Treaty on European Union but also of the autonomy of the various powers and decision-making procedures. The actual framing of the common positions in individual cases will ensure that, in practice also, one area of policy is not jeopardized by another."

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**(g) Sanctions****Guidelines on implementation and evaluation of restrictive measures***(agreed by RELEX Counsellors on 1 December 2005 - doc. 15114/05)*Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy**I. Introduction**

6. The European Union's extensive experience in designing, implementing, enforcing and monitoring restrictive measures (sanctions) in the framework of the CFSP<sup>18</sup> has shown that it is desirable to standardise implementation and to strengthen methods of implementation. These guidelines<sup>19</sup> address a number of general issues and present standard wording and common definitions that may be used in the legal instruments implementing restrictive measures. However, they do not address the political process leading to the decision to impose or repeal such restrictive measures<sup>20</sup>.

Moreover, the EU has developed Best Practices on Effective Implementation of Financial Restrictive Measures<sup>21</sup>, where recommendations are given for an effective implementation of restrictive measures in accordance with applicable legislation.

**II. Principles****A. Objectives**

7. Within the framework of the Common Foreign and Security Policy, the Council may decide to impose restrictive measures against third countries, entities or individuals. These measures must be consistent with CFSP objectives, as set out in Article 11 of the Treaty on European Union (TEU).

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<sup>18</sup> See Commission website, list of restrictive measures in force  
[[http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/measures.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm)]

<sup>19</sup> First version of the guidelines was adopted by the Council on 8 December 2003 (doc. 15579/03); an updated version was adopted on 16 March 2005 (doc. 6749/05).

<sup>20</sup> As regards policy aspects, it is recalled that the Council on 14 July 2004 adopted basic principles on the use of restrictive measures (sanctions) (doc. 10198/1/04).

<sup>21</sup> Doc. 15115/05

3. Certain restrictive measures are imposed by the Council in implementation of Resolutions adopted by the UN Security Council under Chapter VII of the UN Charter. In the case of measures implementing UN SC Resolutions, the EU legal instruments will need to adhere to those Resolutions. However, it is understood that the EU may decide to apply measures that are more restrictive.
4. In general terms, restrictive measures are imposed by the EU to bring about a change in policy or activity by the target country, part of country, government, entities or individuals, in line with the objectives set out in the Common Position. Accordingly, the EU will repeal/adapt the restrictive measures as a function of positive developments in light of its objectives. Where possible and consistent with the European Union's overall strategy towards the third country concerned, the legal instruments imposing restrictive measures may refer to incentives to encourage the required change in policy or activity. It will be important to ensure that such incentives do not reward non-compliance.
5. The objective of each measure should be clearly stated and consistent with the Union's overall strategy in the area concerned. Both the overall strategy and the specific objective should be recalled in the introductory paragraphs of the Council legal instrument through which the measure is imposed. The restrictive measures do not have an economic motivation.
6. The legal instruments will be subject to regular review in order to assess the efficiency of the adopted restrictive measures with regard to the objectives stated. The review will be conducted by the relevant Council working parties and committees, on the basis of EU Heads of Mission reports where relevant.

**B. Legal issues**

7. As indicated above, the Council imposes restrictive measures within the framework of the CFSP. The Council first adopts a Common Position under Article 15 of the TEU. The measures foreseen in that Common Position are either implemented at EC or at national level. Measures such as arms embargoes or restrictions on admission are implemented directly by the Member States, who are legally bound to act in conformity with EU Common Positions. Other measures interrupting or reducing, in part or completely, economic relations with a third country, including measures freezing funds and economic resources, are implemented by means of an EC Regulation, adopted by the Council on a proposal from the Commission and based on the provisions of the Treaty establishing the European Community (TEC)<sup>22</sup>. Such Regulations are binding and directly applicable throughout the EC, and they are subject to judicial review by the Court of Justice and Court of First Instance of the EC in Luxembourg.
8. When imposing restrictive measures, the legal context of the measures should be set out. In addition to relevant provisions of the Treaty on European Union and Treaty establishing the European Community, this may include references to any relevant UN Security Council resolution, or other applicable provisions of international law.
9. The introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective.
10. As indicated above, the restrictive measures should, in particular, be drafted in light of the obligation under Article 6(2) TEU for the EU to respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, as general principles of Community law.
11. The restrictive measures should also respect the international obligations of the European Community and its Member States, in particular the WTO Agreements.

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<sup>22</sup> Article 301 in conjunction with Article 60 TEC. In some cases, Article 308 TEC may also be necessary as a legal basis.

The General Agreement on Tariffs and Trade (GATT) and on Trade in Services (GATS) apply when restrictive measures affect trade in goods or services with third countries. Article XXI of GATT allows for import and export restrictions which are either applicable to arms and military equipment, or imposed in pursuance of obligations under the United Nations Charter for the maintenance of international peace and security. Article XIV bis of GATS provides for a similar exception. Measures restricting trade which do not fall under these categories, have to meet the conditions laid down in Article XX of GATT and Article XIV of GATS, respectively, and, in some cases, could be incompatible with WTO rules.

12. If EU measures are in conflict with the international obligations of the EC or its Member States, a common approach for dealing with such conflicts may have to be developed.
13. When deciding on restrictive measures it is important to consider which measure or package of measures is most appropriate.

### C. **Targeted measures**

14. The measures taken should target those identified as responsible for the policies or actions that have prompted the EU decision to impose restrictive measures. Such targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible for such policies and actions.
15. The measures used against a particular regime will vary depending on the objectives of the restrictive measures and their likely effectiveness. They include, *inter alia*, freezing of funds and economic resources, restrictions on admission, arms embargoes, embargoes on equipment that might be used for internal repression, other export restrictions, import restrictions, and flight bans. On one occasion, a ban on the provision of financial services has also been used <sup>23</sup>.

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<sup>23</sup> Council Regulation (EC) No 2580/01 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

16. In designing and implementing its legal instruments, the EU can draw on its own experience in designing and implementing restrictive measures regimes and on the work carried forward in other fora, e.g. the Interlaken, Bonn – Berlin and Stockholm processes, as well as the experiences of the UN in this field.

**D. Lists of targeted persons and entities**

17. The need to respect fundamental rights implies, in particular, that proper attention is given to the protection and observance of the due process rights of the persons to be listed.
18. The decision to subject a person or entity to targeted restrictive measures requires clear criteria, tailored to each specific case, for determining which persons and entities may be listed, which should also be applied for the purpose of removal from the list. These clear criteria will be set out in the CFSP legal instrument. This applies in particular with regard to measures freezing funds and economic resources, both where persons are listed in the framework of measures against one or more third states, as well as where measures target individuals and entities in their own right.
19. In cases where Common Positions provide for restrictive measures targeting not only those responsible for certain policies or actions, but also members of their families, their children under 18 should not, in principle, be targeted. Furthermore, in principle adult children over 18 should not be targeted as offspring of their father or mother, but on the basis of their own responsibility for relevant policies or actions.
20. Identifying information is crucial to ensure that targeted restrictive measures do not impact on non-targeted persons and entities, in particular to assist the private sector to implement such measures. It cannot be excluded that in some cases the funds of a person will be frozen or admission will be refused, where this was not intended, due to identifiers that match with those of a designated persons.

Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent. The EU Best Practices on Effective Implementation of Financial Restrictive Measures<sup>24</sup> give some recommendations to that end.

21. In order to improve the effectiveness of restrictive measures, as many specific identifiers as possible should be available at the moment of identification and published at the moment of adoption of the restrictive measures. Identifying information for individuals and entities should be standardised as far as possible. With regard to natural persons listed the information should aim to include in particular surname, first name, alias, sex, date and place of birth, nationality and address, identification or passport number. With regard to groups, legal persons or entities the information should aim to include in particular the full name, principal place of business, place of registration of office, date and number of registration. A model template is attached to these Guidelines.
22. The EU should strive in all cases to ensure that the identifying information provided at the time of the inclusion of a person on a list should be sufficiently precise to allow for an unambiguous identification of the targeted person. After designation of a person or entity, a constant review of identifiers should take place in order to specify and extend them, involving all those who can contribute to this effort, in particular the EU Heads of Mission in the third country concerned, Member States' competent authorities and agencies and financial institutions. Updates of the lists with additional identifying information will be adopted as provided for in the basic act.
23. In order to assist the private sector to implement financial restrictions the Commission launched in June 2004 a website which provides, *inter alia*, a consolidated list of persons and entities subject to financial sanctions<sup>25</sup> and an overview of the restrictive measures in force<sup>26</sup>.

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<sup>24</sup> Doc. 15115/05.

<sup>25</sup> [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/list/consol-list.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/list/consol-list.htm)

<sup>26</sup> [http://europa.eu.int/comm/external\\_relations/cfsp/sanctions/measures.htm](http://europa.eu.int/comm/external_relations/cfsp/sanctions/measures.htm)



**E. Exemptions**

24. It is important that the legal instruments on financial restrictions, restrictions on admission and other restrictive measures make provision for appropriate exemptions to take account of humanitarian needs of targeted persons and, where applicable, international obligations, including as host nations of international organisations or the OSCE, with regard to the various restrictive measures taken.
25. The competent authorities should grant exemptions on a case by case basis, which will allow them to assess all interests concerned and to impose conditions to ensure that the exemptions do not frustrate or circumvent the objective of the restrictive measure. The exemptions should be granted on the basis of the relevant legislative instruments. If there are grounds to grant an exemption from one restrictive measure (e.g. financial restrictions) this does not by default justify granting an exemption from another measure (e.g. restrictions on admission) which affects the person or entity concerned (cf. section III: A, D and E).

**F. Exchange of information and reporting requirements**

26. The competent authorities of the Member States and the Commission each have specific tasks as regards the implementation and application of the restrictive measures. In order to ensure that such measures are applied in a coherent manner, exchange of relevant information between all concerned, in accordance with the provisions of each Common Position and Regulation, is essential. The EU legal instruments should make provision for such exchange.

**G. Expiration or review of restrictive measures**

27. Taking the specific objective of each measure and all other relevant considerations into account, the Council should keep the situation under review and schedule a specific review whenever the political context has changed.
28. Where it is considered appropriate, specific criteria that have to be met for repeal of the restrictive measures can be set out in the legal instrument, but normally proper definition of the specific objective of the measure will be sufficient.

29. When the criteria or specific objectives of the measure have not been met the restrictive measures should continue, except in cases where the Council decides otherwise. The CFSP legal instrument should therefore either have an expiration date or a review clause, as decided by the Council, so as to ensure that the need for renewal of restrictive measures is discussed within an appropriate period of time. The expiration or review date could be decided taking into account relevant facts and considerations (e.g. dates of future elections or peace negotiations which might bring about a change in the political context).
30. If the CFSP legal instrument sets out an expiration date for restrictive measures the Council should develop an understanding about their renewal. To be effective restrictive measures should be lifted according to their objectives, not according to time limits. The time limit therefore would be an occasion to revisit the restrictive measures regime and to assess whether the objectives have been met.
31. In cases where the CFSP legal instrument contains an expiration date, the need for an expiration date in Regulations implementing the CFSP legal instrument is nonetheless not self-evident;
- since the Regulations implement the CFSP act, they have to be repealed, if the CFSP legal instrument ceases to be applicable<sup>27</sup>. In such a situation, the Regulations can be repealed with retroactive effect, but it is desirable that this period is kept as short as possible.
  - if a subsequent CFSP legal instrument renews the measures, amending the expiration date of the Regulation or adopting a new one containing the same legal provisions constitutes a mere administrative burden which should be avoided. Especially where last minute decisions on renewal are made, there may be a period during which the measures are not applicable pending amendment or adoption of a Regulation<sup>28</sup>.

It is, therefore, preferable to have the Regulation continue in force, until it is repealed.

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<sup>27</sup> See Articles 60 and 301 of the EC Treaty.

<sup>28</sup> The implementation of UN restrictive measures in relation to Liberia constitutes an example. See Regulations (EC) No 1030/2003 (OJ L 150, 18.6.2003, p. 1) and (EC) No 1318/2002 (OJ L 194, 23.7.2002, p. 1).

32. For the sake of clarity and transparency, the publication of a consolidated text should be considered in cases where Common Positions or Regulations have been amended at least three times.

## **H. Implementation of UN Security Council Resolutions**

### *New measures*

33. The UN Charter grants the Security Council powers to decide in a manner binding for all UN members<sup>29</sup> which restrictive measures have to be taken in order to maintain or restore international peace and security, if there is a threat to the peace, a breach of the peace, or an act of aggression. It is important that the EU implement such UN restrictive measures as quickly as possible. Speed is particularly important in the case of asset freezes where funds can move quickly. In such cases, each Member State could consider the possibility of interim national measures with regard to financial measures (see Art. 60(2) TEC). The EU should aim to have the necessary implementing legislation in place without delay and within 30 days of the adoption of the UNSC Resolution at the latest. In cases in which the Commission has received a mandate to update lists of targeted persons or entities annexed to Council Regulations, it should aim to adopt the respective Commission Regulations within three working days after the adoption of the updated UN lists.
34. EU members of the UN Security Council will seek to ensure that, to the greatest extent possible, and without prejudice to their responsibilities under the UN Charter, EU concerns and implementation needs are taken into consideration when negotiating the UNSCR in question, in accordance with Article 19 TEU.
35. The current legislative procedure requires the adoption of a CFSP legal instrument and an implementing Council Regulation based on the EC Treaty, based on a Commission proposal.
36. The Commission has in several cases presented a proposal for a Council Regulation immediately after adoption of the Security Council Resolution, but before adoption of the CFSP legal instrument.

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<sup>29</sup> See Article 25 and Chapter VII of the UN Charter.

This approach enables the Council to adopt the CFSP legal instrument and the Regulation at the same time, but it should be noted that it requires that the Commission receives all relevant information on the draft Resolution prior to adoption of the Security Council Resolution so as to give it sufficient time to assess to what extent and subject to which terms and conditions the measures should be implemented by means of a Council Regulation. Similar arguments will apply to the drafting of the CFSP legal instruments.

37. Standard wording for legislative texts will be conducive to more rapid implementation of UN restrictive measures. When the EU implements UN restrictive measures the use of standard wording and common definitions must be adapted to the UNSC Resolution.
38. In order to provide EU missions in New York with regular information on the issues encountered in the implementation of UN restrictive measures in the EU, feedback notes will be brought to the attention of EU missions meeting in the framework of the Article 19 coordination in New York.
39. In view of the binding nature of UN Security Council Resolutions, the use of an expiration date is not appropriate when restrictive measures are imposed in application of a Security Council Resolution.

#### *Renewal of temporary measures*

40. A specific situation exists when the Security Council decides on measures which expire by a particular date. In such a situation, correct implementation of the UN measures requires immediate legislative action, if the measures are renewed just before the expiration date. In order to prevent expiration of the restrictive measures in cases where renewal is called for, the Council should not copy the expiration date in the implementing Regulation.

*Expiration or repeal of measures*

41. It is equally important to repeal restrictive measures swiftly in response to UN decisions on this point. Where the EU applies restrictive measures in implementation of Security Council Resolutions only, it is not proper for the implementing legal instruments to remain in place when the Security Council has decided the measures should be lifted.

Where necessary, the legislative instruments can be repealed with retroactive effect; it is desirable that this period is kept as short as possible.

*Exemptions*

42. Chapter VII UNSC Resolutions are mandatory under international law. In the case of EU implementation of restrictive measures decided by the Security Council through a resolution, it will therefore only be possible to include exemptions if they are in line with the Resolution. In this respect, paragraph 34 is relevant, including with regard to humanitarian exemptions for the purpose of satisfying basic needs of targeted persons.

*Reporting*

43. In cases where UN Security Council Resolutions provide for a reporting obligation, a common EU report to the UN could also be submitted on the measures taken at EU level. In such cases, national and common reporting would be complementary.

**I. Competences**

44. The purpose of the CFSP legal instrument is to state which restrictive measures are considered necessary to meet its objectives and provide the basis for an action by the Community to interrupt or to reduce economic or financial relations with the third country in question. The European Community can adopt legislative implementation measures through a Regulation based on Articles 60 and 301 of the EC Treaty.

In some cases, the Regulation has been based on Articles 60, 301 and 308<sup>30</sup>. Where the Community has no competence it is up to each of the Member States to adopt the necessary legislation or implementing measures.

45. Where restrictive measures are being considered, a case by case assessment needs to be made of Community competence, taking the EC Treaty's attribution of powers to the Community into account. The current practice is that the Council indicates in the CFSP instrument that "action by the Community is needed to implement certain measures" to enable the Commission to propose a Regulation implementing the measures falling within the remit of the Community. Where precision is needed to ensure that all measures are implemented in time, the CFSP instrument should indicate expressly how each measure or part of measure will be implemented.
46. Where the Community has the necessary competences to adopt a Regulation implementing the restrictive measures, it provides that Member States must lay down rules on penalties applicable to infringements of the provisions of the Regulation and take all measures necessary to ensure that they are implemented.

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<sup>30</sup> Council Regulation (EC) No 2580/2001, of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ L 344, 28.12.2001, p. 70).

Other examples are

- Council Regulation (EC) No 881/2002, of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ L 139, 29.5.2002, p. 9).
- Council Regulation (EC) No 1763/2004 of 11 October 2004 imposing certain restrictive measures in support of effective implementation of the mandate of the International Criminal Tribunal for the former Yugoslavia (ICTY) (OJ L 315, 14.10.2004, p. 14).
- Council Regulation (EC) No 174/05 of 31 January 2005 imposing restrictions on the supply of assistance related to military activities to Côte d'Ivoire (OJ L 29, 2.2.2005, p. 5),
- Council Regulations (EC) No 889/2005 of 13 June 2005 and 1183/2005 of 18 July 2005 imposing an arms embargo and a freeze of assets against the DRC (OJ L 152, 15.6.2005, p.1 and OJ L 193, 23.7.2005, p. 1),
- and Council Regulation (EC) No 1184/2005 of 18 July 2005 imposing certain specific restrictive measures directed against certain persons impeding the peace process and breaking international law in the conflict in the Darfur region in Sudan (OJ L 193, 2.7.2005, p. 9.)

**J. Jurisdiction**

47. The EU has condemned the extra-territorial application of third country's legislation imposing restrictive measures which purports to regulate the activities of natural and legal persons under the jurisdiction of the Member States of the European Union, as being in violation of international law<sup>31</sup>. Accordingly, it will refrain from adopting legislative instruments having extra-territorial application in breach of international law.

**III. Standard wording for legal instruments**

The standard wording set out in this Chapter should be used for all relevant legal instruments concerning EU restrictive measures, except if it is necessary to use different wording in order to implement a UN Security Council Resolution correctly.

The standard provisions on exemptions should be adapted, where appropriate.

**A. Definitions**

For the purposes of EU restrictive measures, the following definitions will apply. Further definitions will be worked out as necessary.

48. The term "*technical assistance*" shall mean<sup>32</sup>:

*"any technical support related to repairs, development, manufacture, assembly, testing, maintenance, or any other technical service, and may take forms such as instruction, advice, training, transmission of working knowledge or skills or consulting services; technical assistance includes verbal forms of assistance".*

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<sup>31</sup> Regulation (EC) No 2271/96 and Joint Action 96/668/CFSP of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (OJ L 309, 29.11.1996, pp. 1 and 7).

<sup>32</sup> Joint Action 2000/401/CFSP (OJ L 159, 30.6.2000, p. 216).

49. Over the years freezing of funds has been ordered, and bans on making funds available to listed persons and entities have been imposed, based on the following definitions:

*"funds" means financial assets and benefits of every kind, including but not limited to:*

*(a) cash, cheques, claims on money, drafts, money orders and other payment instruments;*

*(b) deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;*

*(c) publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;*

*(d) interest, dividends or other income on or value accruing from or generated by assets;*

*(e) credit, right of set-off, guarantees, performance bonds or other financial commitments;*

*(f) letters of credit, bills of lading, bills of sale;*

*(g) documents evidencing an interest in funds or financial resources.*

*"freezing of funds" means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.*

50. The following definitions have been used by the Council regarding the freezing of economic resources and could continue to be used in EU legal instruments, as appropriate.

*"economic resources" means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services.*

*"freezing of economic resources" means preventing their use to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them."*



51. The term "*dual use good*" shall mean:

*"items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses, and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices"*<sup>33</sup>

## **B. Arms embargoes**

### *Equipment covered by the embargo*

52. Currently, CFSP legal instruments imposing arms embargoes refer to different lists of equipment. Therefore, different regimes apply to different countries. There is a need for a uniform EU regime when imposing an arms embargo. The *EU Code of Conduct on Arms Exports*<sup>34</sup>, adopted on 8 June 1998, defines the criteria Member States apply for their exports control policy concerning arms. For this purpose a common list of military equipment was agreed in 2000<sup>35</sup>. Unless otherwise specified, arms embargoes should be interpreted as covering at least all goods and technology on the EU Common List of Military Equipment.

53. The common list of military equipment does not include items which can be used for both civil and military purposes. Exports of such dual-use items are controlled in accordance with Council Regulation (EC) No 1334/2000<sup>36</sup>. This Regulation foresees that, in deciding whether or not to grant an export authorisation, the Member States shall take into account, *inter alia*, their obligations under sanctions imposed by a legal instrument adopted by the Council or by a decision of the OSCE or by a binding resolution of the Security Council of the United Nations.

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<sup>33</sup> Art 2.a of Council Regulation (EC) No 1334/2000 of 22 June 2000 (OJ L159 of 30.6.2000).

<sup>34</sup> Doc. 8675/2/98 REV 2.

<sup>35</sup> List attached to Council Declaration of 13 June 2000, issued on the occasion of the adoption of the common list of military equipment covered by the European Union code of conduct on arms export, OJ C 191, 8 July 2000. An updated version of the list, adopted by the Council on 25.4.2005, has been published in OJ C 127, 25.5.2005, p.1.

<sup>36</sup> OJ L 159, 30 June 2000, p. 1. Last amended by Council Regulation (EC) No 1504/2004 of 19 July 2004 (OJ L 281, 31.8.2004, p. 1).

By its very nature (dual-use) a number of the goods listed have entirely legitimate applications e.g. cryptographic products used in banking, equipment that can be used in hospitals, factories, universities, offshore oil fields. An outright ban might thus have implications that go well beyond the initial objective and be wholly inappropriate. In most cases, a ban on exports of dual-use items, including when they would be used for civil purposes, is, therefore, likely to be disproportionate unless applied with qualifications and scope for appropriate exemptions (evidence of legitimate purpose). If an embargo on such items is nevertheless considered appropriate, the legal instrument should refer to the common list of dual-use items attached to Regulation (EC) No 1334/2000.

54. Standard wording for a provision imposing an arms embargo could read:

*“The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, to (country) by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft, shall be prohibited whether originating or not in their territories.”*

*Technical assistance and other services relating to military activities*

55. When imposing an autonomous EU embargo on arms, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, a prohibition on providing technical assistance relating to such equipment should normally also be provided. In addition, a ban on financing of or providing financial assistance for arms exports could strengthen the arms embargo.

56. Wording of a standard article could be as follows:

*"It shall be prohibited:*

*(a) to provide technical assistance, brokering services<sup>37</sup> and other services related to military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, directly or indirectly to any natural or legal person, entity or body in, or for use in (country);*

*(b) to provide financing or financial assistance related to military activities, including in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of arms and related materiel, or for the provision of related technical assistance, brokering services and other services directly or indirectly to any person, entity or body in, or for use in (country).*

*(c) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to at points (a) or (b)."*

#### *Exemptions*

57. It may be appropriate to allow exemptions to the ban on exports of arms and related equipment for humanitarian purposes as, in post-conflict areas, certain types of controlled equipment can make important contributions to the safety of the civilian population and to economic reconstruction.

These exemptions should normally be limited to non-lethal military equipment and to exports of protective clothing for personal use. They may include de-mining equipment and materiel intended for institution building, as appropriate.

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<sup>37</sup> Council Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering (OJ L 156 of 25.6.2003, p. 79).

58. It is desirable that exemptions on exports of non-lethal military equipment, like all others, be dealt with on a case-by-case basis, taking full account of the criteria set out in the Code of Conduct and other EU texts and legal instruments. Member States will require adequate safeguards against misuse of such exports and, where appropriate, provisions for repatriation of the equipment.

59. Standard wording for a provision on exemptions to bans on exports of arms and related equipment could read:

*"1. Article ... shall not apply to:*

*a) the sale, supply, transfer or export of non-lethal military equipment intended solely for humanitarian or protective use, or for institution building programmes of the UN, the EU and the Community, or for EU and UN crisis management operations;*

*b) the sale, supply, transfer or export of demining equipment and materiel for use in demining operations;*

*c) the provision of financing and financial assistance related to such equipment or to such programmes and operations,*

*d) the provision of technical assistance related to such equipment or to such programmes and operations,*

*on condition that such exports have been approved in advance by (competent authority)."*

60. In cases where there is a UN, EU or Community institution building programme or an EU or UN crisis management operation which would also require the export of lethal equipment, the above provision would need to be complemented with the addition of "*and materiel intended for...*" in indent a).

As appropriate, institution building programmes and crisis management operations conducted by regional and sub-regional organisations may be added to the exemption in indent a).

In the case of UN institution building programmes, the sale, supply, transfer or export of such materiel could be subject to approval by the relevant UN Sanctions Committee.

61. Standard wording for a provision on protective clothing could read as follows:

*"Article ... shall not apply to protective clothing, including flak jackets and military helmets, temporarily exported to (country) by United Nations personnel, personnel of the EU, the Community or its Member States, representatives of the media and humanitarian and development workers and associated personnel for their personal use only."*

**C. Restrictions on equipment used for internal repression and other specific imports or exports**

62. If a policy of internal repression is at the basis of the imposition of restrictive measures, a ban on exports and related services, such as maintenance and repair, of certain equipment is appropriate. EU legal instruments could refer to or use an agreed list when deciding an embargo on exports of items that could be used for internal repression. A list is annexed which, if the Council so decides, defines the scope of the specific export restriction for equipment which might be used for internal repression<sup>38</sup>.

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<sup>38</sup> The list focuses on items which might be used for internal repression and which are very close to items listed in the EU Common Military List; it does not cover items listed in the EU Common Military List; it does not cover items controlled by Regulation (EC) No 1236/2005 (the "Anti-Torture-Regulation"). With respect to problems in defining an adequate borderline between controlled equipment and equipment typical for consumer or leisure type activities, the list contains no entries for goods which may belong to standard consumer and leisure time activities.

63. Standard wording for restrictions on equipment used for internal repression could read:

*"It shall be prohibited:*

- a) to sell, supply, transfer or export, directly or indirectly, equipment which might be used for internal repression as listed in Annex I, whether or not originating in the Community, to any natural or legal person, entity or body in, or for use in [name of state];*
- b) to provide technical assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- c) to provide financing or financial assistance related to the equipment referred to at point (a), directly or indirectly to any natural or legal person, entity or body in, or for use in [name of state];*
- d) to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the prohibitions referred to in points (a), (b) or (c).*

64. Other lists such as a list of petroleum and petroleum products have been developed within the EU framework<sup>39</sup>. Future lists defining the scope of specific export or import control regimes may constitute a useful reference for specific export or import bans, if it is considered necessary to ban all trade of the specific, controlled category in relation to a particular country, in order to achieve the objectives of the CFSP.

65. The exemptions from such measures should be sufficient to allow humanitarian action where appropriate and to take full account of the objective of the restrictive measures.

#### **D. Restrictions on admission (visa or travel ban)**

66. Several CFSP Common Positions foresee a ban on admission of specific nationals of third countries that are listed in an annex to the legal instrument.

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<sup>39</sup> See Annex I to Regulation (EC) No 1705/1998 (OJ L 215, 1.8.1998, p. 1)

67. Regulation (EC) No 539/2001 lists the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement<sup>40</sup>. Third country nationals specified in CFSP Common Positions as subject to a travel ban and who need a visa to enter the EU will not be granted a visa if they apply for one. They must in any event be denied entry if they present themselves at an external border. Where no visa requirement exists, or a long term visa or residence permit has been issued, restrictions on admission may require national action<sup>41</sup>.

68. Standard wording for an article regarding a visa/travel ban and exemptions there from could read as follows:

1. *"Member States shall take the necessary measures to prevent the entry into, or transit through, their territories of the persons listed in the Annex, (indication of criteria/categories, if not already specified in the text);*
2. *Paragraph 1 will not oblige a Member State to refuse its own nationals entry into its territory.*
3. *Paragraph 1 shall be without prejudice to the cases where a Member State is bound by an obligation of international law, namely:*
  - (i) as a host country of an international intergovernmental organisation;*
  - (ii) as a host country to an international conference convened by, or under the auspices of, the United Nations; or*
  - (iii) under a multilateral agreement conferring privileges and immunities; or*
  - (iv) under the 1929 Treaty of Conciliation (Lateran pact) concluded by the Holy See (State of the Vatican City) and Italy.*

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<sup>40</sup> OJ L 81, 21.3.2001, p. 1. The list was last amended in 2003; see Regulation (EC) No 453/2003, OJ L 69, 13.3.2003, p. 10.

<sup>41</sup> Discussions are currently ongoing regarding the creation of an electronic consolidated list of persons subject to a EU travel ban.

4. *Paragraph 3 shall be considered as applying also in cases where a Member State is host country of the Organisation for Security and Cooperation in Europe (OSCE).*
  5. *The Council shall be duly informed in all cases where a Member State grants an exemption pursuant to paragraphs 3 or 4.*
  6. *Member States may grant exemptions from the measures imposed in paragraph 1 where travel is justified on the grounds of urgent humanitarian need, or on grounds of attending intergovernmental meetings, including those promoted by the European Union, or hosted by a Member State holding the Chairmanship in office of the OSCE, where a political dialogue is conducted that directly promotes democracy, human rights and the rule of law in (country).*
  7. *A Member State wishing to grant exemptions referred to in paragraph 6 shall notify the Council in writing. The exemption will be deemed to be granted unless one or more of the Council Members raises an objection in writing within two working days of receiving notification of the proposed exemption. In the event that one or more of the Council members raises an objection, the Council, acting by a qualified majority, may decide to grant the proposed exemption.*
  8. *In cases where pursuant to paragraphs 3, 4, 6 and 7, a Member State authorizes the entry into, or transit through, its territory of persons listed in the Annex, the authorization shall be limited to the purpose for which it is given and to the persons concerned thereby."*
69. It is understood that where a person who is subject both to an asset freeze and to a travel ban receives an authorisation granted by a Member State pursuant to paragraphs 3, 4, 6 and 7 of the above standard Article, Member States are not obliged to seize funds carried by that person and which that person may reasonably require for the purpose of the visit for which he has received that authorisation.



**E. Financial restrictions**

70. Standard wording for freezing of funds through legal text based on Articles 60 and 301 (and Article 308, where appropriate) of the TEC could read:

*"1. All funds and economic resources belonging to, owned, held or controlled by [individual members of the Government of (country) and] any natural or legal person, entity or body [associated with them]<sup>42</sup> as listed in Annex (X) shall be frozen.*

*2. No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural or legal persons, entities or bodies listed in Annex (X)."*

*Exemptions*

71. Standard wording for an article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available could read:

*"1. The competent authority may authorise the release of certain frozen funds or economic resources or the making available of certain funds or economic resources, under such conditions as it deems appropriate, after having determined that the funds or economic resources concerned are:*

- (a) Necessary to satisfy the basic needs of persons listed in Annex (X) and their dependent family members, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges,*
- (b) intended exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services,*
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources,*

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<sup>42</sup> These parts of the text may, in some cases, not be applicable (e.g. in the case of measures targeting terrorists).

*(d) necessary for extraordinary expenses, provided that (competent authority) has notified the grounds on which it considers that a specific authorisation should be granted, to (the other competent authorities and the Commission) at least two weeks prior to the authorisation."*

*The competent authority shall inform the competent authorities of the other Member States and the Commission of any authorisation granted under this article.*

*2. Article .. (the prohibition against making funds or economic resources available) shall not apply to the addition to frozen accounts of:*

*(a) interest or other earnings on those accounts; or*

*(b) payments due under contracts, agreements or obligations that were concluded or arose prior to the date on which those accounts became subject to the provisions of this Common Position/Regulation and*

*provided that any such interest, other earnings and payments continue to be subject to Article .. (freezing of funds and economic resources of listed persons and entities)."*

72. Standard wording for an article on the crediting of frozen accounts could be the following:

*"Article ...(Reference to Article prohibiting making funds or economic resources available to listed natural or legal persons, entities or bodies) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties to the account of the listed person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the competent authorities about such transactions without delay."*

73. Standard wording for a specific article containing exemptions from the freezing of funds and the prohibition of making funds or economic resources available when these funds or economic resources are subject to a prior judicial, administrative or arbitral lien could read:

*“By way of derogation from Article ... (the requirement to freeze funds and economic resources), the competent authorities of the Member States, as listed in Annex (Y) , may authorise the release of certain frozen funds or economic resources, if the following conditions are met:*

*(a) the funds or economic resources are subject of a judicial, administrative or arbitral lien established prior to ... (date of entry into force of the Regulation) or of a judicial, administrative or arbitral judgment rendered prior to that date;*

*(b) the funds or economic resources will be used exclusively to satisfy claims secured by such a lien or recognised as valid in such a judgment, within the limits set by applicable laws and regulations governing the rights of persons having such claims;*

*(c) the lien or judgment is not for the benefit of a person, entity or body listed in Annex (X);*

*(d) recognising the lien or judgement is not contrary to public policy in the Member State concerned.*

*The competent authority will inform the competent authorities of the other Member States and the Commission of any authorisation granted under this Article.”*

**F. Jurisdiction**

74. The standard clause setting out to what extent the restrictive measures should apply in situations where links exist with the EU as well as with other members of the international community could read:

*"This Regulation shall apply:*

- within the territory of the Community, including its airspace;*
- on board any aircraft or any vessel under the jurisdiction of a Member State;*
- to any person inside or outside the territory of the Community who is a national of a Member State;*
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State;*
- to any legal person, entity or body in respect of any business done in whole or in part within the Community."*

**G. Infringements**

75. The Regulations imposing restrictive measures contain provisions regarding penalties to be taken in case of infringement. Standard wording for this issue:

*"1. The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.*

*2. The Member States shall notify these rules to the Commission without delay after entry into force of the Regulation and shall notify it of any subsequent amendment."*

76. It is desirable that the restrictive measures are implemented as soon as possible. To that end, Member States shall aim at having in place the rules referred to in the paragraph above within 30 days, following their respective national procedures. The Member States could also consider adopting national rules which set sanctions for infringement of Regulations imposing restrictive measures which will apply by default.

**H. Expiry/Review**<sup>43</sup>

77. Standard wording for an expiration clause could read:

*“This Common Position shall apply for a ... period. It shall be kept under constant review. It shall be renewed, or amended as appropriate, if the Council deems that its objectives have not been met.”*

78. Standard wording for a review clause could read:

*“This Common position shall be reviewed ... after its adoption and every ... thereafter. It shall be repealed if the Council deems that its objectives have been met.”*

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<sup>43</sup> At present, most EU sanctions texts imposing visa bans and freezing of funds have expiration dates, whereas arms embargoes tend to have review clauses.

#### IV. Monitoring and evaluation of restrictive measures

79. The effectiveness of EU restrictive measures – and also the EU's credibility – hinges to a large degree on restrictive measures being implemented and enforced promptly and without exceptions in all Member States. In order to ensure adequate follow-up to EU decisions to impose restrictive measures, a specific Council body has been set up dedicated to exchanging experience and developing best practice in the implementation and application of restrictive measures. Thus the Foreign Relations Counsellors Working Party meets regularly in its specific 'Sanctions formation' (RELEX/Sanctions), reinforced as necessary including with experts from capitals. The mandate of the Relex/Sanctions formation is the following<sup>44</sup>:

- Exchanging information and experiences on the implementation of specific restrictive measures regimes imposed by the EU;
- Contributing to developing best practices among Member States in implementation of restrictive measures;
- Collecting all information available on alleged circumvention of EU restrictive measures and other international sanctions regimes of interest to the EU by targeted states, persons and entities;
- Exchanging information and experience, including with third states and international organisations as appropriate, on the implementation of international sanctions regimes of interest to the EU;
- Assisting in evaluating the results and difficulties in the implementation of restrictive measures regimes;
- Exchanging views on ways and means to ensure the efficiency of management of restrictive measures regimes, including of their humanitarian provisions;
- Examining all relevant technical issues relating to the implementation of EU restrictive measures.
- The Relex/Sanctions formation has notably identified EU best practices for effective implementation of financial restrictive measures<sup>45</sup>.

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<sup>44</sup> Mandate of RELEX/Sanctions is set out in doc. 5603/04.

<sup>45</sup> Doc. 15115/05.

80. *Both the CFSP legal instruments and the EC Regulations should provide for regular reporting on the implementing measures and enforcement actions taken by Member States to give effect to the restrictive measures. Monitoring at EU level should enable a more consistent assessment as to whether the restrictive measures are having the impact they need to be effective. This is crucial where autonomous measures are at issue, since it provides the basis for decisions on the need for improvement of legal texts and, to some extent, for those on the usefulness of maintaining the measures.*

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**ANNEX I**

**List of equipment which might be used for internal repression**

Equipment for internal repression envisaged by Article (X)

1. Fire-arms, ammunition and related accessories therefor, as follows:
  - 1.1 Firearms not controlled by ML 1 and ML 2 of the EU Common Military List;
  - 1.2 Ammunition specially designed for the firearms listed in 1.1 and specially designed components therefor;
  - 1.3 Weapon-sights not controlled by the EU Common Military List.
2. Bombs and grenades not controlled by the EU Common Military List.
3. Vehicles as follows:
  - 3.1 Vehicles equipped with a water cannon, specially designed or modified for the purpose of riot control;
  - 3.2 Vehicles specially designed or modified to be electrified to repel borders;
  - 3.3 Vehicles specially designed or modified to remove barricades, including construction equipment with ballistic protection;
  - 3.4 Vehicles specially designed for the transport or transfer of prisoners and/or detainees;
  - 3.5 Vehicles specially designed to deploy mobile barriers;



- 3.6 Components for the vehicles specified in 3.1 to 3.5 specially designed for the purposes of riot control.

Note 1 This item does not control vehicles specially designed for the purposes of fire-fighting.

Note 2 For the purposes of item 3.5 the term "vehicles" includes trailers.

4. Explosive substances and related equipment as follows:

- 4.1 Equipment and devices specially designed to initiate explosions by electrical or non-electrical means, including firing sets, detonators, igniters, boosters and detonating cord, and specially designed components therefor; except those specially designed for a specific commercial use consisting of the actuation or operation by explosive means of other equipment or devices the function of which is not the creation of explosions (e.g., car air-bag inflaters, electric-surge arresters of fire sprinkler actuators);
- 4.2 Linear cutting explosive charges not controlled by the EU Common Military List;
- 4.3 Other explosives not controlled by the EU Common Military List and related substances as follows:
- a. amatol;
  - b. nitrocellulose (containing more than 12,5 % nitrogen);
  - c. nitroglycol;
  - d. pentaerythritol tetranitrate (PETN);
  - e. picryl chloride;
  - f. 2,4,6-trinitrotoluene (TNT).

5. Protective equipment not controlled by ML 13 of the EU Common Military List as follows:

5.1 Body armour providing ballistic and/or stabbing protection;

5.2 Helmets providing ballistic and/or fragmentation protection, anti-riot helmets, anti-riot shields and ballistic shields.

Note *This item does not control:*

- *equipment specially designed for sports activities;*
- *equipment specially designed for safety of work requirements.*

6. Simulators, other than those controlled by ML 14 of the EU Common Military List, for training in the use of firearms, and specially designed software therefor.

7. Night vision, thermal imaging equipment and image intensifier tubes, other than those controlled by the EU Common Military List.

8. Razor barbed wire.

9. Military knives, combat knives and bayonets with blade lengths in excess of 10cms.

10. Production equipment specially designed for the items specified in this list.

11. Specific technology for the development, production or use of the items specified in this list.

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**ANNEX II**

Templates to be used as a model for listing persons, groups and entities subject to restrictive measures

List referred to in Article(s) ..., ..

A. Template to be used as a model for listing persons subject to restrictive measures <sup>46</sup>

**Surname, First Name:**

**Alias:**

**Sex:**

**Title, Function:**

**Address (No, street, postal code, town, country)**

**Date of birth:**

**Place of birth (town, country):**

**Passport or ID Number (including country that issued and date and place of issue)**

**Nationality:**

**Other information (e.g. name of father and mother, fiscal number, telephone or fax number):**

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<sup>46</sup> Some of these headings may have more than one entry.

B. Template to be used as a model for listing groups and entities subject to restrictive measures <sup>47</sup>

**Name**

**Place of registration**

**Date of registration**

**Registration number**

**Principal place of business**

**Other information**

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<sup>47</sup> Some of these headings may have more than one entry.

- **EU Best Practices for the effective implementation and evaluation of restrictive measures**

*(noted by COREPER on 22 June 2006 - doc. 10533/06)*

EU Best Practices for the effective implementation of restrictive measures

**Introduction**

1. On 8 December 2003, the Council adopted Guidelines on implementation and evaluation of restrictive measures in the framework of the CFSP<sup>48</sup>. These Guidelines suggested that a specific Council body be dedicated to the monitoring and follow up of such restrictive measures. Subsequently, on 26 February 2004 COREPER mandated the Foreign Relations Counsellors Working Party, in addition to its existing mandate, to carry out the monitoring and evaluation of EU restrictive measures, while meeting periodically in a specific Sanctions formation, reinforced as necessary including with experts from capitals. The mandate for this formation includes the development of best practices among Member States in implementation of restrictive measures.
2. On 8 December 2004, the Committee of Permanent Representatives took note of a Presidency working document containing EU Best Practices for an effective implementation of financial restrictive measures<sup>49</sup>. That paper focussed on financial restrictive measures targeting terrorist persons, groups or entities.
3. In the meantime, work has been taken forward on developing best practices for the implementation of financial restrictive measures in general. The present Best Practices paper, agreed by the RELEX/Sanctions formation and confirmed by the Foreign Relations Counsellors Working Party on 28 November 2005, addresses this wider subject.
4. The intention is to keep this paper under constant review, notably with a view to adding best practices with regard to the implementation of other restrictive measures.

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<sup>48</sup> Doc. 15579/03, last updated by doc. 15114/05.

<sup>49</sup> Doc. 13851/4/04 REV 4.

5. The Best Practices are to be considered non exhaustive *recommendations* of a general nature for effective implementation of restrictive measures in accordance with applicable Community/Union law and national legislation. They are not legally binding and should not be read as recommending any action which would be incompatible with applicable Community/Union or national laws, including those concerning data protection.
6. *The intention of the paper is not to duplicate existing work but to identify key elements in the implementation of sanctions taking into account*
- *the specific situation within the European Union's legal system,*
  - *the review of the current state of implementation of sanctions conducted by RELEX/Sanctions formation,*
  - *the importance of emphasising some already existing best practices that reflect current priorities of Member States.*

**A. Targeted restrictive measures: designation and identification**

**I. Identification of designated persons or entities**

7. In order to improve the effectiveness of administrative freezing measures and restrictions on admission, and to avoid unnecessary problems caused by homonyms or near-identical names (possibility of “mistaken identity”), as many specific identifiers as possible, including in particular surname, first name, alias, sex, date and place of birth, nationality, address, identification or passport number, should be available at the moment of identification and published at the moment of adoption of the restrictive measure. For entities, the information should aim to include in particular the full name, principal place of business, place of registration of office, date and number of registration.

8. After designation of a (natural or legal) person or entity, a constant review of identifiers should take place in order to specify and extend them, involving all those who can contribute to this effort.

Procedures should be in place to ensure this constant review, involving all those who can contribute to this effort, in particular the EU Heads of Mission in the third country concerned, Member States' competent authorities and agencies, and financial institutions. With regard to measures targeting foreign regimes, each incoming Presidency could invite the relevant local EU Presidencies to review, and where possible amend and/or complement, the identifying information of the designated persons or entities. Updates of the lists with additional identifying information will be adopted as provided for in the basic act.

9. The formats of the listing of persons or entities and their identifiers should be harmonised.

## **II. Claims concerning mistaken identity**

10. If the information on a designated person or entity is limited to that person's/entity's name, implementation of designation may in practice prove to be problematic due to the potentially lengthy list of possible positive targets. This highlights the urgency of further identifiers. However, even if additional identifiers are provided, distinguishing between designated and non-designated persons or entities may still be difficult. It cannot be excluded that in some cases the funds of a person/entity who was not the intended target of the restrictive measures will be frozen, or a person excluded from the territory of the Member States of the EU, due to identifiers that match with those of a designated person/entity. Member States and the Commission should have procedures in place that ensure that their findings on claims concerning alleged mistaken identity are consistent in this regard.

*a) investigation by the competent authorities*

11. If a person/entity whose funds or economic resources are frozen claims that he or she is not the intended target of the restrictive measures, he or she should contact the competent authority. If a credit or financial institution, or another economic operator, queries whether a customer is in fact a designated person/entity, they should use all sources available to them to establish that customer's identity. If they cannot solve the query, the economic operator should inform the competent authorities of the relevant Member State.
12. If a person seeking entry to the EU claims not to be designated pursuant to restrictive measures, and/or when the border/immigration authorities, after having used all sources available to them to establish the identity of that person, query whether this person is in fact the person designated, the border/immigration authorities should inform the competent authorities of the relevant Member State of the claim or query<sup>50</sup>.
13. In both cases the competent authorities should examine the claim or query<sup>51</sup>.

*b) affirmative conclusion with regard to mistaken identity*

14. Where the competent authorities conclude after examination of the matter that, taking all relevant facts and circumstances into account, the person/entity concerned is *not* the designated person/entity, they should inform the person/entity of the finding and/or the economic operators or border/immigration authorities involved. Where appropriate, they should also inform other Member States and the Commission in particular in light of the possibility that the person/entity concerned will be confronted with similar problems in other Member States.

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<sup>50</sup> Sometimes the immigration authorities will be the competent authorities.

<sup>51</sup> In cases of designation pursuant to UNSCRs it may be difficult for the competent authorities to conclude such an examination alone; in such cases the procedure set out in (c) (ii) should be followed.



15. Where the competent authorities conclude after examination of the matter that, taking all relevant facts and circumstances into account, the person/entity concerned *is* the designated person/entity, they should inform, as appropriate, the person/entity of the finding and/or the economic operators or border/immigration authorities involved.

*c) uncertainty regarding claims*

**(i) cases concerning EU autonomous restrictive measures**

16. In case the competent authorities are *not* able to establish the correctness of the claim of mistaken identity, and the claim is not manifestly unfounded, Member States and the Commission should, when relevant, be informed of that claim and the matter should be discussed in Council, possibly on the basis of further information to be provided by the State that made the proposal for designation of the person, or by the EU Heads of Mission in the third country concerned, as appropriate, with a view to determining whether this is indeed a case of mistaken identity.

**(ii) cases concerning restrictive measures imposed pursuant to UN Security Council Resolutions**

17. In case the competent authorities are *not* able to establish the correctness of the claim of mistaken identity, and the claim is not manifestly unfounded, Member States and the Commission should be informed of that claim, when relevant. The UN Sanctions Committee established by the relevant UNSC Resolution, and where possible, through that Committee, the State that made the proposal for designation, should be consulted by the Member State that investigated the claim or by the Commission. Where appropriate, the matter could be referred to that Committee for an authoritative finding. Any such authoritative finding should be communicated to Member States and the Commission.

*d) judicial findings*

18. If a court or tribunal of a Member State has made a decision on any claims regarding mistaken identity, it could be communicated by the competent authorities of that State to all other Member States and the Commission.

**III. De-listing**

19. A transparent and effective de-listing procedure is essential to the credibility and legitimacy of restrictive measures. Such a procedure could also improve the quality of listing decisions. De-listing could be appropriate in various cases, including evidence of mistaken listing, a relevant subsequent change in facts<sup>52</sup>, emergence of further evidence, the death of a listed person or the liquidation of a listed entity. Essentially de-listing is appropriate wherever the criteria for listing are no longer met.

When considering a request for de-listing, all relevant information should be taken into account. Apart from submission of requests for de-listing, a regular review, as provided for in the relevant legal act, involving all Member States, shall take place in order to examine whether there remain grounds for keeping a person or entity on the list.

While preparing such regular reviews, the State that proposed the listing should be asked for its opinion on the need to maintain the designation and all Member States should consider if they have additional relevant information to put forward. Any decision to de-list should be implemented as swiftly as possible.

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<sup>52</sup> E.g. de-listing could be appropriate in the case of law enforcement measures, such as the inclusion of persons in Witness Protection Schemes.

**B. Freezing measures****Laws and regulations**

20. In addition to legislation adopted by the Community, Member States should have in place the necessary legislative framework, laws or regulations to freeze funds (financial assets) and economic resources of persons and entities subject to restrictive measures, including terrorist persons and entities, and to prohibit the making available of funds and economic resources to or for the benefit of such persons and entities, in particular by way of administrative freezing measures and/or through the use of judicial freezing orders having equivalent effects.

This should be in line with relevant FATF standards, particularly Special Recommendation III on Terrorist Financing<sup>53</sup>.

21. Such measures should enable the national authorities to order and obtain the freezing without delay of all funds (financial assets) and economic resources belonging to, or owned, controlled or held by, the designated person or entity located in the Member State concerned and could also target persons and entities having their roots, main activities and objectives within the European Union. They should also provide a basis for freezing measures pending decision-making on EU measures implementing UNSC resolutions<sup>54</sup>.
22. Section C sets out best practices for implementation of Community measures and can also provide relevant guidance on implementation of national freezing measures.

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<sup>53</sup> FATF standards comprise the Forty Recommendations on Money Laundering and the Nine Special Recommendations on Terrorist Financing, available at <http://www.fatf-gafi.org>

<sup>54</sup> See Article 60 (2) of the Treaty establishing the European Community.

## Administrative and judicial freezing, seizure and confiscation

23. In general terms, administrative freezing could be considered as primarily an act providing the basis for comprehensively preventing all uses made of frozen funds and economic resources and of all transactions by a person, group or entity, designated by a competent authority.
24. Judicial freezing<sup>55</sup>, however, could be considered primarily as an action preparatory to confiscation, which is part of a criminal law procedure in the Member State concerned<sup>56</sup> or, in case of requests for assistance in criminal matters, in another Member State or a third country. A judicial freezing order can be made with respect to property subject to an administrative freezing and may rely on evidence which has been obtained in the administrative process. In other cases, a judicial freezing order will however be made without previous administrative freezing (See Framework Decision 2003/577/JHA on the Execution of Orders Freezing Property and Evidence<sup>57</sup>).
25. In the specific case of terrorism, Member States should also take the necessary measures to seize and/or confiscate terrorist assets. To that end, they should implement Framework Decision 2005/212/JHA on the Execution of Confiscation Orders<sup>58</sup> in a timely fashion. Member States should also implement the 1999 UN Convention for the Suppression of the Financing of Terrorism.

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<sup>55</sup> Several delegations pointed out the differences in terminology in national legislation. For example, the German terminology for an action preparatory to confiscation, which is part of a criminal law procedure, is “seizure”.

<sup>56</sup> A preventive system of judicial seizing and confiscation of assets can also be applied outside the specific case of criminal proceedings in certain Member States.

<sup>57</sup> OJ L 196, 2.8.2003, p. 45.

<sup>58</sup> OJ L 68, 15.3.05, p. 49.

**C. Modalities of administrative freezing of funds and economic resources**

**I. Scope of administrative freezing**

26. Administrative freezing measures, in the context of EC Regulations, consist of:
- a freeze of funds and economic resources of designated persons and entities, and
  - a prohibition on making funds and economic resources available to such persons and entities.
27. The terms ‘freezing of funds’, ‘freezing of economic resources’, ‘funds’ and ‘economic resources’ are defined and exceptions and exemptions to the measures are provided in each Regulation. Some standard wording for this purpose is set out in the Guidelines on implementation and evaluation of restrictive measures in the framework of the CFSP<sup>59</sup>.
28. In this paper, the term ‘exception’ refers to uses which are not prohibited by the Regulations, whilst ‘exemption’ refers to uses which are prohibited unless authorised by a competent authority. In this paper, the words ‘shall’, ‘must’ and ‘is obliged to’ refer to legal obligations whether imposed by freezing Regulations or other international, Community or national law; the word ‘should’ refers to best practice; and the words ‘might’ and ‘may’ refer to suggestions which could be appropriate, depending on the circumstances and other relevant laws and procedures.
29. Administrative freezing measures do not involve a change in ownership of the frozen funds and economic resources. Once in force, the Regulations imposing such measures override all incompatible contractual arrangements. Any person or entity complying with the obligations under the Regulations shall not be held liable vis-à-vis a designated person or entity for any damage that may be suffered by the latter as a result.

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<sup>59</sup> Doc. 15114/05.

No person or entity carrying out a freeze, while acting without negligence and in good faith that such action is in accordance with a Regulation, shall be held liable vis-à-vis the affected person or entity<sup>60</sup>.

30. The freeze covers all funds and economic resources belonging to or owned by designated persons and entities, and also to those held or controlled by the latter. Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, *inter alia*, if he or she:
- (a) has banknotes or debt certificates issued to bearer,
  - (b) has movable goods on his or her premises which he or she owns jointly with a non-designated person or entity,
  - (c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or
  - (d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law.

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<sup>60</sup> Nearly all Regulations include specific provisions to this effect with the exception of Regulation (EC) No 2488/2000 maintaining a freeze of funds in relation to Mr Milosevic and those persons associated with him, and Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

31. In principle, the freeze should not affect funds and economic resources which are neither owned by or belonging to, nor held or controlled by designated persons and entities. Thus, for example, the funds and economic resources of the non-designated employer of a designated person are not covered, unless they are controlled or held by that person. In the same vein, the funds and economic resources of a non-designated entity having separate legal personality from a designated person or entity are not covered, unless they are controlled or held by the designated person or entity. However, even so, funds and economic resources jointly owned by a designated person or entity and a non-designated one are in practice covered in their entirety. The non-designated person or entity may subsequently request an authorisation to use such funds and economic resources, which may include severing the joint ownership so that person's share can be unfrozen.

## II. Role of economic operators and citizens

32. Regulations imposing freezing measures apply, *inter alia*, to EU legal entities and other economic operators doing business in the EU, including financial and credit institutions, and EU nationals.
33. Anti-money laundering legislation and other legislation impose certain requirements on certain businesses and professions to verify the identity of customers and to refrain from anonymous transactions in certain circumstances. The Regulations imposing freezing measures do not create any additional obligations on economic operators to 'know their customers'.

34. All persons and entities subject to the Community's jurisdiction are obliged to inform the competent authorities of any information at their disposal which would facilitate the application of the freezing measures. This includes details of any accounts frozen (account holder, number, value of funds frozen), and other details which may be useful e.g., data on the identity of designated persons or entities and, where appropriate, details of incoming transfers resulting in the crediting of a frozen account in accordance with the specific arrangements for financial and credit institutions, attempts by customers or other persons to make funds or economic resources available to a designated person or entity without authorisation, and information that suggests the freezing measures are being circumvented. They are also obliged to co-operate with competent authorities in verification of information. Where appropriate, they could also provide details concerning persons and entities having names that are very similar or identical to designated parties.

### **III. Use of information by competent authorities**

35. The Regulations provide that competent authorities may use the information they receive only for the purposes for which it was provided.

These purposes include ensuring the effective implementation of the measures and law enforcement and, where provided in the Regulation, co-operation with the relevant UN sanctions committee. Thus competent authorities are permitted to exchange the information with, *inter alia*:

- the Commission and the competent authorities of other Member States,
- law enforcement authorities, relevant courts and tribunals in charge of enforcement of the Regulations imposing freezing measures and anti-money laundering legislation,
- other investigating and prosecuting authorities,
- the competent UN sanctions committee, and,
- to the extent necessary for the application of the freezing measures or to prevent money laundering, credit and financial institutions.



36. The Regulations provide that the competent authorities and the Commission are to share relevant information with each other.

#### **IV. Funds**

##### **a) Freezing of funds belonging to, owned, held or controlled by a designated person or entity**

37. The freezing of funds, unlike confiscation, does not affect the ownership of the funds concerned. Persons that hold or control funds owned by a designated person or entity (e.g. if the funds have been handed over to a credit institution as collateral) are not required to cease such holding or control, or to obtain an authorisation to continue it.
38. All uses of, and dealings with, funds, including transfers of ownership, moving and alterations such as portfolio management, and whether by the designated person or another person holding or controlling such funds, require prior authorisation. Joint ownership of the funds does not negate this requirement, even though third party property as such is not frozen by the Regulations.
39. Creditors of a designated person or entity may, without authorisation, transfer to any non-designated person their financial claims (i.e. claims that represent a financial benefit) against the designated person or entity. The designated person or entity, however, needs an authorisation to transfer his or her financial claim against any other person or entity to any other person.
40. The exercise of a right of set-off by a designated person or entity, or by a non-designated person or entity in respect of a claim against a designated person or entity, is prohibited unless there is prior authorisation.

41. The Regulations do not authorise confiscation of cash and funds carried by a designated person; such confiscation may be appropriate in certain circumstances as a matter of national law. However, the authorities are obliged to prevent those funds from being moved, transferred, altered, used, accessed or dealt with in a way prohibited by the Regulations. When authorities are aware that a designated person is carrying cash or other funds, they may well have powers within the existing legal framework, such as anti-terrorism and anti-money laundering laws. Member States may be obliged to respect privileges and immunities conferred as a matter of international law on a designated person, which may limit possible actions<sup>61</sup>.

b) Making funds available to a designated person or entity

42. Making funds available to a designated person or entity, be it by way of payment for goods and services, as a donation, in order to return funds previously held under a contractual arrangement, or otherwise, is generally prohibited in the absence of an authorisation granted by the competent authority pursuant to the relevant Regulation (see also paragraphs 54 to 61 on humanitarian exemptions).
43. However, interest accruing to a frozen account and payments already due under prior contracts, agreements or obligations can be added to that account without prior authorisation<sup>62</sup>.

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<sup>61</sup> For example, if the designated person is travelling to the headquarters of an international organisation and specific provisions of the relevant headquarters agreement apply.

<sup>62</sup> Regulation (EC) No 2488/2000 is not explicit on this point.

44. A third party initiating the transfer of funds to a designated person needs prior authorisation. A financial or credit institution in the EU that receives funds transferred by a third party to a frozen account is permitted to credit such funds to it without prior authorisation. If a person transfers funds to a frozen account without prior authorisation, but claims it was an error, he or she will have to seek an authorisation for the return of the funds, allowing the competent authority to verify his or her version. However, a financial institution can, without authorisation, rectify in its accounting systems its own accidental transfer of funds to a frozen account.

## V. Economic resources

### a) Freezing of economic resources belonging to, owned, held or controlled by a designated person or entity

45. Economic resources are frozen so as to prevent their use as a parallel or surrogate currency, and avoid circumvention of the freezing of funds. Competent authorities should therefore concentrate on preventing targeted persons and entities from obtaining financial or economic benefits (i.e. funds, goods or services) from economic resources. Preventing consumptive, personal use of economic resources is neither desirable nor intended.
46. Personal use of frozen economic resources (e.g. living in one's own house or driving one's own car) by a designated person is not prohibited by the Regulations and does not require an authorisation. Assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, do not fall within the definition of 'economic resources'. Therefore they are not covered by the Regulations and no authorisation is required to make them available to a designated person.

47. However, if use of frozen economic resources amounts to an economic activity which could result in the designated person obtaining funds, goods or services (e.g. if the designated person seeks to let his or her house or to operate his or her car as a taxi), it will require prior authorisation.
48. All uses of economic resources providing funds, goods or services to the designated person, whether such use is by the designated person or another person holding or controlling such funds, require prior authorisation. Joint ownership of the economic resource does not negate this requirement, even though third party property as such is not frozen by the Regulations.

b) Making economic resources available

49. Making economic resources available to a designated person or entity, including by gift, sale, barter, or returning economic resources held or controlled by a third party to a designated owner, is prohibited in the absence of an authorisation granted by the competent authority pursuant to the relevant Regulation. Making available assets which are only suitable for personal use or consumption, and therefore cannot be used by a designated person to obtain funds, goods or services, does not amount to 'making economic resources available' in the sense of the Regulations and therefore does not require an authorisation (see also paragraphs 54 to 61 on humanitarian exemptions).
50. The freezing measures do not require persons that hold or control economic resources owned by a designated person or entity (e.g. if a lease on movable property has been granted or movable goods have been handed over as collateral) to return such economic resources to their owner, and no authorisation is required to continue such holding or controlling. However, since such economic resources are frozen, any new contractual arrangement concerning their use or any dealing with them requires prior authorisation.

51. Domestic supplies of utilities such as gas, electricity, water and telephone lines are not prohibited by the Regulations, owing to their consumptive nature and consequent lack of transferability.

## **VI. Designated legal entities**

52. Where a legal entity is designated and freezing measures have to be applied, its continued existence as such is not prohibited. In the case of a business, freezing its assets will affect its operation and have direct consequences for third parties such as employees, creditors and others who may have nothing to do with the reason that the entity was listed. Business conducted with such an entity will generally involve either making funds or economic resources available to it, or a change in the form of its funds or economic resources, both of which are prohibited and require prior authorization by the competent authorities.
53. If the activities of a designated legal entity are to continue and in order to prevent abuse for funding of terrorist activities, appropriate conditions, that need to be elaborated, have to be imposed. These conditions may include measures which ensure that the entity is administered in a way which will not undermine the freeze of funds and economic resources and the prohibition to make funds and economic resources available<sup>63</sup>. It remains open to MS to study further how to put this into practice. In order to again operate freely without any restrictions, de-listing is required.

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<sup>63</sup> See Fourth report of the Analytical Support and Sanctions Monitoring Team, Para 59. Doc. S/2006/154

## VII. Humanitarian exemptions

54. This section addresses only the application of the so-called humanitarian exemption, which should help to ensure that the basic needs of designated persons can be satisfied, and does not consider other exemptions (e.g. for legal expenses or extraordinary expenses)<sup>64</sup>.
55. While acting consistently with the letter and spirit of the Regulations, the competent authority shall take into account fundamental rights when granting exemptions to cover basic needs.
56. Freezing measures do not affect a designated person's freedom to engage in work. However, payment for that work requires an authorisation. The competent authority should make appropriate investigations (e.g. confirming the employment) and include appropriate conditions to prevent circumvention. Authorisation in such circumstances should normally require payments to be made to a frozen account. Any payment in cash should be authorised explicitly. Any authorisation should also permit normal deductions for social security and taxes. An authorisation is also required to make welfare benefits available to a designated person.

## VIII. Guidance when considering requests for exemptions

57. Designated persons and entities can request an authorisation to use their frozen funds or economic resources, for example to satisfy a creditor. However, designated persons and entities cannot invoke the freezing measures as an excuse for defaulting, if they have not sought an authorisation.

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<sup>64</sup> There are no such exemptions in Regulation (EC) No 1210/2003 concerning certain specific restrictions on economic and financial relations with Iraq.

58. Interested parties can also request authorisations for access to frozen funds or economic resources in accordance with national procedures. The designated person should, to the extent possible, be informed of such requests. The authorisation procedure does not remove the need for ordinary procedures to determine the validity of claims against a designated person or entity<sup>65</sup> and an authorisation does not confer title. In considering such requests, the competent authorities should, *inter alia*, take into account evidence provided by the creditor and the designated person or entity as to whether there is a legal obligation (contractual or statutory) to provide the funds or economic resources, and consider if there is any risk of circumvention (e.g. if creditor's links with the designated person or entity are such as to raise suspicions).
59. A person or entity wishing to make funds or economic resources available to a designated person or entity must request authorisation. In considering such requests, the competent authorities should, *inter alia*, take into account any evidence provided on the justification for the request, and whether the applicant's links with the designated person or entity are such as to suggest that both of them might work together to circumvent the freezing measures.
60. When considering requests for authorisation to use frozen funds or economic resources or to make available funds or economic resources, competent authorities should make whatever further investigation they deem appropriate in the circumstances, which may include consulting any other Member States with an interest. Also, competent authorities should consider conditions or safeguards in order to avoid released funds or economic resources being used for any purposes incompatible with the purpose of the exemption. Thus, for example, direct bank transfers may be preferable to cash payments.

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<sup>65</sup> i.e. by a national Court or other competent body.

Appropriate conditions or limits should also be considered where necessary (e.g. on the quantity or the re-sale value of funds or economic resources that may be made available each month) when granting an authorisation, taking into account the criteria set out in the Regulations. All authorisations should be granted in writing and prior to use of or making available of the funds or economic resources concerned.

61. Regulations oblige competent authorities to inform the person making the request and other Member States whether the request has been granted<sup>66</sup>. This information sharing allows Member States to co-ordinate the granting of exemptions in situations where a designated person has frozen funds or economic resources in more than one Member State.

#### **D. Co-ordination and co-operation**

62. Member States should ensure efficient national co-ordination and communication mechanisms between all relevant government agencies, bodies and services with competence in the field of sanctions or in the fight against the financing of terrorism, such as ministries, financial intelligence units, financial supervisors, intelligence and security services, judicial authorities, the office of the public prosecutor and other law enforcement bodies, as appropriate.
63. The coordination should allow for expeditious input of intelligence, and follow up to this input by other actors involved. Further to this, investigations should focus, where possible, on identified high risk situations. Such *intelligence-driven and risk-based approach* could improve effectiveness.

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<sup>66</sup> Regulation (EC) No 2580/2001 also requires this information to be provided to any other person, body or entity known to be directly concerned. This may represent best practice even where not required by the Regulations.



64. Member States should also exchange information with, *inter alia*, other Member States, the Commission, Europol, Eurojust, FATF, Sanctions Committees established by the UN Security Council (including the Committee established pursuant to Resolution 1267 (1999) concerning Al-Qaida and the Taliban) and the UNSC Counter-Terrorism Committee, as appropriate.
65. Co-ordination and information sharing procedures should be arranged to ensure that information which could provide the basis for a proposal for listing or de-listing is passed on without unnecessary delay. Such procedures should be established on the national level within Member States as well as between Member States and, where appropriate, between the EU, third states, the UN and other relevant international organisations."

#### *Expertise Groups*

66. In relation to the fight against terrorist financing, Member States could consider the establishment of special expertise groups composed of supervisory authorities, law enforcement agencies and other relevant actors. Such expert groups could conduct general in-depth analysis of relevant facets of terrorism financing and of patterns of terrorist financing in order to enhance the efficiency and effectiveness of the fight against terrorist financing.

Subjects could include possible abuse of non-profit organisations and use of front organisations or alternative remittance systems. These are in line with FATF Special Recommendations VIII and VI respectively. Member States will subsequently seek to develop procedures to share findings gathered by such expert groups with each other and other relevant partners.

*Analysis of financial accounts*

67. Member States should ensure that financial transactions linked to the accounts of designated persons, groups or entities are analysed by the appropriate agencies or services. The results of these analyses should, to the extent legally possible, be shared with other states, international organisations, and relevant EU bodies such as Europol concerning terrorist financing. For this, Member States should have procedures in place.

*Interaction and dialogue with the financial sector on freezing measures*

68. Member States should develop structured dialogue and co-operation with relevant private organisations within their jurisdiction, such as credit and financial institutions, on the implementation of freezing measures, in order to ensure effective implementation, optimise the instrument of restrictive measures, and seek to ease the administrative burden for these organisations to the extent possible.
69. The Commission and, as appropriate, the Council, will also pursue a dialogue at the EU level with relevant financial organisations on implementation issues as well as legislative issues. In cases of terrorist financing, Member States will also endeavour to provide the financial sector with adequate (and timely) input and feedback, where possible also of an intelligence nature, and up-to-date information on patterns of terrorist financing.
70. Member States could consider channels for providing directions and advice to the financial regulators as well as credit and financial institutions.

*Dissemination of information on freezing measures to other persons*

71. Member States should make organisations of economic operators other than those in the financial sector and the public aware of the existence of financial restrictive measures, in particular in view of the prohibition on making funds and economic resources available to those designated, and explain the modalities of these measures.

*Application tools*

72. The Commission should continue to ensure access for the public (in particular credit and financial institutions) to the “electronic-Consolidated Targeted Financial Sanctions List (e-CTFSL)” as established by the Commission and the European credit sector.
73. The Commission should ensure that the list is kept up to date.
74. Member States should, as appropriate, ensure access for the public (in particular credit and financial institutions and other relevant economic operators) to relevant information concerning national measures, including designations and judicial orders, e.g. with regard to so-called internal terrorists.

*Evaluation*

75. Evaluation of the effectiveness of EU restrictive measures is important and should take into account feed-back from, for example, Member States, the Commission, EU Heads of Mission, customs authorities, the private sector, the UN and other relevant institutions.

76. Member States should endeavour to have in place appropriate national procedures to evaluate, in particular, the effectiveness of national performance regarding the fight against the financing of terrorism, taking into account, *inter alia*, results from dialogue with the private sector.
77. Results of such evaluations should be exchanged in the RELEX/Sanctions formation, when relevant<sup>67</sup>.
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<sup>67</sup> See also paragraph 34 of the Guidelines on Implementation and Evaluation of Restrictive Measures.

- **Procedures for examining Common Positions or Joint Actions as a prerequisite for the adoption of Community Acts based on Article 228A or on Articles 228A and 73G of the EC Treaty and the corresponding Community Acts**

*(approved by the Council on 10 April 1995 - doc. 6384/95)*

1. The Working Party of CFSP Counsellors will be responsible for examining:
  - common positions or joint actions designed to suspend or curtail, in whole or in part, economic relations with one or more third countries;
  - proposals for Community acts based on Article 228a or on Articles 228a and 73g.

In carrying out these tasks the Working Party shall seek any appropriate expert assistance that may be necessary.

2. The Secretariat will ensure that any proposal for a common position or joint action is forthwith transmitted to the members of the Working Party in the form of a Council document, and that there is simultaneous dissemination by COREU.
3. COREU will indicate that any comments by the Member States and the Commission will be examined at the Working Party meeting. The Working Party will generally meet twenty-four hours after the Secretariat has transmitted the proposal for a common position or joint action.
4. The Commission stated that it would continue to be pragmatic and flexible to enable the Working Party to discuss its proposals for Community measures at the earliest opportunity.

5. The Secretariat will ensure that the Secretary of the Monetary Committee is informed as soon as a common position or a joint action providing for sanctions with regard to capital movements and payments is adopted and as soon as Commission proposals implementing those sanctions are received. The Secretariat will invite the Secretary of the Monetary Committee to participate in the Working Party's discussions on these questions as an observer.

The Article 113 Committee will also be kept informed on questions for which it is competent.

6. At the end of its proceedings the Working Party will forward the draft common position or joint action to:
  - the Political Committee<sup>♣</sup>;
  - and COREPER, together with proposals for Community measures, with a view to their adoption by the Council.
7. In urgent cases it may be decided to apply the written procedure provided for in Article 8(1) of the Council's Rules of Procedure in order to adopt the common position or joint action and/or the Community measures. The written procedure provided for in Article 8(4) of the Council's Rules of Procedure is not to be used for approval of the common position or joint action.
8. The Secretariat will ensure that acts are published (in the logical order) at the earliest opportunity. The Secretariat will inform the Member States and the Commission by COREU that the acts in question have been adopted.

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<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

**ANNEX II**

**Statement by the Commission**

For the scrutiny of Community acts, the Commission assumes that the Presidency will ensure that the financial and trade experts are duly involved in the discussions of the Working Party of CFSP Counsellors.

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**(h) Common Strategies and other strategies**

*Common Strategies*

- Russia, 4 June 1999, OJ L 157, 24.6.1999, p. 1, prolongation OJ L 157, 26.6.2003, p. 68, expired 24.6.2004.
- Ukraine, 11 December 1999, OJ L 331, 23.12.1999, p. 1, prolongation OJ L 333, 20.12.2003, p. 96, expired 23.12.2004
- Mediterranean region, 19 June 2000, OJ L 183, 22.7.2000, p. 5, expired 22.7.2004

*Other strategies*

- European Security Strategy - A secure Europe in a better world (adopted by the European Council on 12/13 December 2003 - doc. 15895/03)
  - EU Strategy against proliferation of Weapons of Mass Destruction (adopted by the European Council on 12/13 December 2003 - doc.15708/03)
  - EU Strategy to combat illicit accumulation and trafficking of Small Arms and Light Weapons and their ammunition (adopted by the European Council on 15/16 December 2005 - doc. 13066/05)
  - EU Strategy: "The EU and Africa: Towards a Strategic Partnership" (adopted by the European Council on 15/16 December 2005 - doc. 5702/1/05 REV 1)
  - EU Strategy on Counter-Terrorism (adopted by the European Council on 15/16 December 2005 - doc. 14469/4/05 REV 4)
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### Chapter 3. COMMITTEES AND WORKING PARTIES IN EXTERNAL RELATIONS

**N.B. Committees and working parties in external relations are regularly listed in "List of Council preparatory bodies" (*doc. 8605/06 of 24 April 2006 updated regularly*)**

**(a) Committee and Working Group mandates:**

- **Ad Hoc Middle East Peace Process (COMEP)**

*(Decision of Coreper meeting on 2 February 1994 - doc. 4531/94)*

- the ad hoc Working Party on the Middle East Peace Process will deal with all issues relating to the peace process, and will replace the Special Coordinating Group on the Middle East Peace Process (EPC);

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- **Africa (COAFR)**

*(Decision of Coreper Meeting on 12 September 1996 - doc. 9846/96)*

The Committee agreed to extend the mandate of the Africa Working Party to include first pillar issues, absorbing the competences of the Southern Africa Working Party<sup>68</sup>, but without affecting the competences of the Mashraq/Maghreb and ACP Working Parties.

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<sup>68</sup> Doc. 4531/94

- **Asia-Oceania (COASI)**

*(Decision of Coreper Meeting on 15 February 1996 - doc. 5035/96)*

The Permanent Representative Committee agreed to change the name of the Working Party on Asia to "Working Party on Asia and Oceania"

(Decision of Coreper Meeting on 2 February 1994 - doc. 4531/94)

- the Working Party on Asia: this Working Party will take over the activities of the Asia Group (EPC) and the Working Party on Asia (EC). It goes without saying (section 5(b) of Annex II to 9252/1/93 REV1 - Council conclusions on legal and practical arrangements for implementing the Treaty) that joint meetings within the ACP Working Party could be called for matters concerning ACP countries.

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- **CFSP Administrative Affairs and Protocol**

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- **Committee for Civilian Aspects of Crisis Management (CIVCOM)**

*(Council Decision of 22 May 2000, OJ L 127, 27.5.2000)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union and in particular Article 28(1) thereof,

Having regard to the Treaty establishing the European Community and in particular Article 207 thereof,

Whereas:

- (1) In the framework of the strengthening of the Common Foreign and Security Policy, and in particular of the Common European Security and Defence Policy provided for in Article 17 of the Treaty on European Union, the European Council, meeting in Helsinki on 10 and 11 December 1999 asked the Presidency, together with the Secretary-General/High Representative to carry forward work in the General Affairs Council on all aspects of the Presidency report, including on a committee for civilian crisis management.
- (2) The European Council meeting in Lisbon on 23 and 24 March 2000 invited the Council to establish by or at the European Council meeting in Feira a committee for civilian crisis management.
- (3) Decisions regarding the tools for civilian crisis management under the EC Treaty will be taken according to the procedures provided for by that Treaty.
- (4) The European Council meeting in Helsinki highlighted the need to strengthen the responsiveness and efficiency of the Union's resources and tools, as well as their synergy.

- (5) The exchange of information and coordination of tools for civilian crisis management will, *inter alia*, facilitate the work of the Coordinating Mechanism in the General Secretariat of the Council, the establishment of which was approved by the European Council in Helsinki,

HAS DECIDED AS FOLLOWS:

*Article 1*

A Committee for civilian aspects of crisis management consisting of representatives of Member States is hereby set up.

*Article 2*

The Committee shall operate as a Council working party and report to the Permanent Representatives Committee. It will provide information, formulate recommendations and give advice on civilian aspects of crisis management to the interim Political and Security Committee and to the other appropriate Council bodies in accordance with their respective competencies.

*Article 3*

This Decision shall take effect on the date of its adoption.

*Article 4*

This Decision shall be published in the *Official Journal of the European Communities*.

*(Guidelines for the work of the Committee, noted by the Council on 20 March 2000 - doc. 8598/00)*

1. The Committee for Civilian Aspects of Crisis Management (hereinafter "the Committee") would cover the following tasks:
  - a) The Committee would operate as a Council working group and report to COREPER. It would assist the interim Political and Security Committee, as well as the other appropriate Council bodies in accordance with their respective competencies, in acquiring a comprehensive view of the means available to the EU and to Member States to respond to a crisis.
  - b) It would improve the EU's crisis management capability by:
    - helping to ensure a higher degree of inter-pillar coherence in the EU's civilian crisis management;
    - identifying opportunities for pooling resources (e.g. logistics);
    - ensuring joint application of lessons learned from earlier missions;
    - helping to disseminate common standards and best practices;
    - helping to consider the possibilities of developing common methods, procedures and routines;
    - facilitating co-operation between State actors and NGOs;
    - promoting improvements in the crisis response capabilities of the EU available both for EU-led operations and those led by international organisations including the UN and OSCE;
    - improving co-ordination of resources of the Community, the Union and the Member States through the exchange of information.

c) To that end, it would also facilitate the work of the "Co-ordinating Mechanism" set up by the Helsinki European Council, by contributing to:

- the inventory and evaluation of available capabilities and resources;
- the creation of databases on existing capabilities;
- the identification of measures aimed at increasing the effectiveness and the visibility of the means deployed by Member States and the Communities;
- the elaboration of the "concrete targets" referred to in the Action Plan agreed in Helsinki;
- the effectiveness of the Situation Centre/Crisis cell at the General Secretariat of the Council;
- the process of setting up mechanisms for the exchange of information, co-ordination, and rapid reaction between the Union and the Member States.

2. The Committee should be able to convene at a very short notice. Experts from capitals would, as appropriate, participate in the meetings, in order to provide specialist advice.
3. The Committee will use the information provided by the Commission on the relevant activities it carries out under its authority.

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- **Consular Affairs (COCON)**

*(Decision of Coreper Meeting on 7 And 8 June 1995)*

The Committee decided to set up an ad hoc Working Party on Consular Protection, initially to take stock of the current situation and to consider ways of realizing consular protection as provided for in Article 8c of the Treaty.

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- **Conventional Arms Exports (COARM)**

*(Adopted by silent procedure, 29 December 1994 - doc. SN 1230/95)*

The Group should :

- work for increased transparency, especially by comparing national procedures on the authorization and the denial of licences and identifying common elements and differences in national regulations insofar as there is room for this on the basis of the work done so far; and
- propose appropriate measures to attune national export controls of military goods where the differences would constitute a possible obstacle to a harmonisation of arms export policy and identify other steps to address similar obstacles;
- propose appropriate further measures to facilitate the handling of the transfer of arms between Member States and to eliminate as far as possible obstacles in the field of industrial cooperation;
- examine and suggest elements relevant for the Common Foreign and Security Policy of the European Union with regard to the export of conventional arms. Wherever such elements would relate to third countries or regions, the Group should work in close coordination with and on the basis of the approved findings of the relevant geographical groups.

In the area of export of conventional arms, the Group could:

- as appropriate, prepare and suggest common positions, joint actions, taking into account the general guideline of the European Council which identifies the control of arms exports and of the transfer of military technology as areas which could be the subject of joint action;

- continue the comparison of national policies with a view to identifying possible further criteria on which national policies on arms exports are based, of the nature of the criteria approved by the European Councils of 29 June 1991 and of 26/27 June 1992, for approval by the European Council;
- identify further steps which could make possible a common approach by Member States leading to a harmonization of national policies on arms exports, in accordance with the conclusions of the European Council of 29 June 1991, where appropriate in cooperation with and on the basis of approved findings of the relevant geographical groups;
- assess the contribution of the European Union to multilateral initiatives aiming for transparency, responsibility or restraint in exports of conventional arms, exchange views on and, where appropriate, coordinate activities in relevant multilateral fora;
- exchange information on matters of common interest concerning exports of conventional arms in international organizations or conferences where not all the Member States participate, ensure the coherence of the various orientations taken by the European Union or the Member States concerning exports of conventional arms.

The Group should take account of the effect any suggestion it might make would have on the objectives set out by the European Council in its above-mentioned conclusions and on the European Union's military industrial base.

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- **Dual-Use Goods**

*(Decision by Internal Market Council, 25 February 1992 - doc. 4880/92)*

Le Conseil des Affaires Générales est appelé à exercer un rôle directeur étant donné la prépondérance d'éléments politiques par rapport aux éléments techniques mais le Conseil Marché Intérieur sera tenu informé de l'évolution des travaux qui sont au point d'être entamés dans un Groupe du travail ad hoc à haut niveau.

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- **Eastern Europe and Central Asia (COEST)**

*(Decision of Coreper Meeting on 14 September 1994)*

The Committee agreed to the new titles proposed by the Political Committee\* for the CIS and Central and Eastern Europe working parties, which will henceforth be the Working Party on Eastern Europe and Central Asia (COEST) and the Working Party on Central Europe (COCEN) respectively, with no changes to the geographical areas covered by each Working Party.

*(Decision of Coreper Meeting on 2 February 1994 - doc. 4531/94)*

- the Working Party on the CIS will take over part of the activities of the former Eastern Europe Working Group (EPC) and the Working Party on the former USSR (EC). It will deal with relations with the following countries: Belarus, Ukraine, Moldova, Russia, Armenia, Azerbaijan, Georgia, Kazakhstan, Turkmenistan, Uzbekistan, Tajikistan and Kyrgyzstan;

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

- **Enlargement and Countries Negotiating Accession to the EU (COELA)**

*(Decision of Coreper Meeting on 8 June 2006 - doc. 10249/06 "I" Item Note)*

1. At the meeting of the Permanent Representatives' Committee on 26 April 2006 (see doc. 8701/06), delegations supported reinforcing the political dialogue and monitoring of the political criteria as an essential element of the pre-accession process. Delegations also supported the idea of merging the Working Party on Enlargement with the Working Party on Central and Southeast Europe, and for the merged group to be responsible for all negotiating candidate countries.
2. With regard to reinforcing the political dialogue and monitoring of the political criteria, the Presidency proposes that the merged working party be informed in advance and debriefed by the Presidency and the Commission about their respective meetings on issues relating to the Copenhagen political criteria. This would allow the preparation of accession negotiations to be more closely informed of progress on the ground by involving Member States in the preparation of the political dialogue and in the area of the Copenhagen political criteria.
3. The proposed remit for the new Working Party on Enlargement and Countries Negotiating Accession to the EU is set out in Annex. It provides for those responsibilities currently under the remit of the Working Party on Central and Southeast Europe to be transferred to the new Working Party. As a result, the Working Party on Central and Southeast Europe would be removed from the List of Council Preparatory Bodies and the Working Party on Enlargement would be replaced by the new Working Party.

Furthermore, those aspects regarding bilateral relations with Croatia (in particular under the Stabilisation and Association Agreements) currently under the remit of the Working Party on the Western Balkans Region would equally be transferred to the new Working Party on Enlargement and Countries Negotiating Accession to the EU. The remit of the Working Party on the Western Balkans Region is amended accordingly.

**REMIT FOR THE WORKING PARTY ON ENLARGEMENT AND COUNTRIES  
NEGOTIATING ACCESSION TO THE EU**

1. The Working Party on Enlargement and Countries Negotiating Accession to the EU is a working party under the heading "General Affairs" in the List of Council Preparatory Bodies and reports to the Permanent Representatives' Committee (part 2).
2. From July 2006, the Working Party on Enlargement and Countries Negotiating Accession to the EU will be responsible for:
  - all horizontal issues concerning enlargement, including pre-accession strategies for candidate countries (in particular financial assistance and the establishment of Accession Partnerships with those countries), as well as monitoring of preparations for accession by acceding countries;
  - the preparation of accession negotiations with candidate countries, in line with the relevant European Council decisions and the respective internal arrangements agreed by the Council;

- close and regular monitoring of preparations for accession by the candidate countries negotiating accession including their progress towards meeting the Copenhagen criteria; close and regular monitoring of respect for the Copenhagen political criteria by the candidate countries negotiating accession, including the timely preparation and follow-up of political dialogue meetings<sup>59</sup>. For this purpose, and for the purpose of preparing meetings with third countries<sup>60</sup>, the Working Party on Enlargement and Countries Negotiating Accession to the EU may also meet in the special composition of a "capitals format"<sup>61</sup>;
  - bilateral relations with the candidate countries negotiating accession, including under the respective Association Agreements and in particular preparation of meetings and decisions of the relevant Association Agreement bodies.
3. It is understood that any candidate country from the Western Balkans region negotiating accession remains part of the Stabilisation and Association Process.

Items related to such candidate country's role in regional issues, initiatives and regional cooperation will remain the responsibility of the Working Party on the Western Balkans Region (COWEB), with a view to the Union maintaining a consistent and fully coordinated policy in the region.

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<sup>59</sup> The Working Party will be informed in advance and debriefed by the Presidency on troika meetings held at Ministerial and political director level with the candidate countries negotiating accession, and by the Commission on scheduled meetings, developments and the results of its regular contacts with these countries.

<sup>60</sup> It is understood that the subjects discussed in third country meetings will remain limited to those pertaining to external and CFSP matters.

<sup>61</sup> Summaries of "capitals format" as well as troika format meetings at political directors' and ministerial level will continue to be distributed via COREU, as appropriate.

- **EU Military Committee (EUMC)**

*(Council Decision of 22 January 2001, OJ L 27, 30.1.2001)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 28(1) thereof,

Having regard to the Treaty establishing the European Community, in particular Article 207 thereof,

Recalling Article 25 of the Treaty on European Union,

Whereas:

- (1) In the framework of the strengthening of the common foreign and Security Policy (CFSP) and in particular of the common European policy on security and defence provided for in Article 17 of the Treaty on European Union, the European Council meeting in Nice on 7 to 11 December 2000 reached agreement on the establishment of the Military Committee of the European Union, setting out its mission and functions including those of its chairman.
- (2) Following the guidelines of the European Council this Committee should be made ready to start its work,

HAS DECIDED AS FOLLOWS:

*Article 1*

A Military Committee of the European Union (EUMC) (hereinafter the Committee) composed of the Member States' Chiefs of Defence, represented by their military representatives, is set up. It will meet at the level of Chiefs of Defence as and when necessary.

*Article 2*

The mission and functions of the Committee are defined in Annex IV to the Presidency's report approved by the Nice European Council, which is reproduced in the Annex to this Decision.

*Article 3*

1. The Chairman of the Committee (hereinafter the Chairman) shall be appointed by the Council on the recommendation of the Committee meeting at the level of the Chiefs of Defence.

2. The term of office of the Chairman is three years, unless the Council decides otherwise. His mission and functions are also defined in the above mentioned annex.

*Article 4*

This Decision shall take effect from the date of its adoption.

*Article 5*

1. Without prejudice to the provisions of Article 3(1), this Decision shall apply from the date on which the first Chairman is appointed, not later than the date of application of the Decision on the establishment of the Military Staff of the European Union and in principle before the end of June 2001.

2. The Interim Military Body set up by Decision 2000/144/ CFSP will continue to carry out its tasks until the date at which this Decision applies.

*Article 6*

This Decision shall be published in the Official Journal.

## **EUROPEAN UNION MILITARY COMMITTEE (EUMC)**

### **1. Introduction**

At Helsinki, the European Council decided to establish within the Council, new permanent political and military bodies enabling the EU to assume its responsibilities for the full range of conflict prevention and crisis management tasks defined in the EU Treaty, the Petersberg tasks.

As provided in the Helsinki report, the European Union Military Committee (EUMC), ‘established within the Council’, is composed of the Chiefs of Defence (CHODs) represented by their military representatives (Milreps). The EUMC meets at the level of CHODs as and when necessary. This Committee gives military advice and makes recommendations to the Political and Security Committee (PSC), as well as provides military direction to the European Union Military Staff (EUMS). The Chairman of the EUMC (CEUMC) attends meetings of the Council when decisions with defence implications are to be taken.

The EUMC is the highest military body established within the Council.

For this purpose, the terms of reference of the EUMC are outlined as follows:

### **2. Mission**

The EUMC is responsible for providing the PSC with military advice and recommendations on all military matters within the EU. It exercises military direction of all military activities within the EU framework.

### **3. Functions**

It is the source of military advice based on consensus.

It is the forum for military consultation and cooperation between the EU Member States in the field of conflict prevention and crisis management.

It provides military advice and makes recommendations to the PSC, at the latter's request or on its own initiative, acting within guidelines forwarded by the PSC, particularly with regard to:

- the development of the overall concept of crisis management in its military aspects,
- the military aspects relating to the political control and strategic direction of crisis management operations and situations,
- the risk assessment of potential crises,
- the military dimension of a crisis situation and its implications, in particular during its subsequent management; for this purpose, it receives the output from the Situation Centre,
- the elaboration, the assessment and the review of capability objectives according to agreed procedures,
- the EU's military relationship with non-EU European NATO Members, the other candidates for accession to the EU, other States and other organisations, including NATO,
- the financial estimation for operations and exercises.

(a) In crisis management situations

Upon the PSC's request, it issues an Initiating Directive to the Director General of the EUMS (DGEUMS) to draw up and present strategic military options.

It evaluates the strategic military options developed by the EUMS and forwards them to the PSC together with its evaluation and military advice.

On the basis of the military option selected by the Council, it authorises an Initial Planning Directive for the Operation Commander.

Based upon the EUMS evaluation, it provides advice and recommendation to the PSC:

- on the Concept of Operations (CONOPS) developed by the Operation Commander,
- on the draft Operation Plan (OPLAN) drawn up by the Operation Commander.

It gives advice to the PSC on the termination option for an operation.



(b) During an operation

The EUMC monitors the proper execution of military operations conducted under the responsibility of the Operation Commander.

The EUMC members sit or are represented in the Committee of Contributors.

**4. Chairman of the EUMC (CEUMC)**

The EUMC has a permanent Chairman whose responsibilities are described hereafter.

The CEUMC is a Four-star flag officer on appointment, preferably a former Chief of Defence of an EU Member State.

He is selected by the CHODs of the Member States according to approved procedures and is appointed by the Council on the recommendation of the EUMC meeting at CHODs level.

His term of office is in principle three years, except in exceptional circumstances.

His authority is derived from the EUMC to which he is responsible. Acting in an international capacity, the CEUMC represents the EUMC at the PSC and the Council, as appropriate.

As the Chairman of the EUMC, he:

- chairs the EUMC meetings at Milreps and CHODs levels,
- is the spokesman of the EUMC and, as such:
- participates as appropriate in the PSC with the right to contribute to discussions and attends the Council meetings when decisions with defence implications are to be taken, and
- performs the function of military adviser to the SG/HR on all military matters, in particular, to ensure consistency within the EU Crisis Management Structure,
- conducts the works of the EUMC impartially and in order to reflect consensus,
- acts on behalf of the EUMC in issuing directives and guidance to the DGEUMS,
- acts as the primary point of contact (POC) with the Operation Commander during the EU's military operations,
- liaises with the Presidency in the development and implementation of its work programme.

The CEUMC is supported by his personal staff and assisted by the EUMS, especially regarding the administrative support within the General Secretariat of the Council.

When absent the CEUMC is replaced by one of the following:

- the permanent DCEUMC, if it is so decided to create and fill the post,
- the Presidency representative, or
- the dean.

## 5. Miscellaneous

The relations to be established between the EUMC and NATO military authorities are defined in the document on the EU/NATO permanent arrangements. The relations between the EUMC and the non-EU European NATO members and other countries, which are candidates for accession to the EU are defined in the document on the relations of the EU with third countries.

The EUMC is supported by a military working group (EUMCWG), by the EUMS and by other departments and services, as appropriate.

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- **European Armaments Policy (POLARM)**

*(Decision of Coreper Meeting on 26 July 1995 - doc. 9458/95)*

The Committee decided to create an ad hoc Working Party on European Armaments Policy, responsible for:

- analysing the report drawn up by the informal Group of Experts responsible for studying the options for a European armaments policy;
- identifying the points in the report which warrant further examination within the European Union framework;
- making recommendations for further action with the Community framework or within the framework of Title V of the TEU and, if appropriate, listing suggestions for specific measures, without prejudice to the Commission's competence under the Treaty on the European Community.

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- **Foreign Relations (RELEX) Counsellors / CFSP Counsellors**

*(Decision of Coreper Meeting on 24 November 1999 - doc. 13174/99)*

...

- "- transfer the task of the RELEX Working Party should be transferred to the CFSP Counsellors Working Party, which would be renamed the Foreign Relations Counsellors Working Party..."

*(Decision of Coreper Meeting on 26 July 1994)*

The Permanent Representatives Committee has decided to create a CFSP working party responsible for examining, in particular, horizontal (legal, institutional, financial) problems concerning CFSP and to coordinate the agendas of Coreper and the Political Committee\*. The Working Party will be convened by the Presidency as necessary.

#### ROLE OF CFSP COUNSELLOR

(Summary of discussions at the Political Committee's\* meeting in Berlin on 12 July 1994 - BON 853/94)

1. The exchange of views showed strong support for asking CFSP Counsellors at the Permanent Representations in Brussels to assist the Political Committee\* and Coreper in their respective roles in the implementation of CFSP. It should be left to each Member State whom to denominate.
2. The Counsellors might be called upon, where appropriate, reinforced by legal and/or budgetary experts to assist the Political Committee\* and Coreper in the proper consideration of juridical, institutional or financial issues in CFSP activities. This applies especially to the preparation of joint actions and of common positions before they are discussed by the Political Committee\* and Coreper in order to assure compliance, continuity and consistency within CFSP procedures.
3. The Presidency should convene meetings of CFSP counsellors as necessary on an informal and ad hoc basis with a view to carrying out these tasks.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

## **(A) Sanctions**

*(Decision by Coreper on 29 January 2004 - doc. 5603/04, "I" Item Note, Annex)*

In accordance with Part IV of the Guidelines on implementation and evaluation of restrictive measures (sanctions) as adopted by the Council on 8 December 2003 (doc. 15579/03 of 3 December 2003), the Council body to be designated for this purpose shall have the following mandate:

- Exchanging information and experiences on the implementation of specific restrictive measures regimes imposed by the EU;
- Contributing to developing best practices among Member States in implementation of restrictive measures;
- Collecting all information available on alleged circumvention of EU restrictive measures and other international sanctions regimes of interest to the EU by targeted states, persons and entities;
- Exchanging information and experience, including with third states and international organisations as appropriate, on the implementation of international sanctions regimes of interest to the EU;
- Assisting in evaluating the results and difficulties in the implementation of restrictive measures regimes;
- Exchanging views on ways and means to ensure the efficiency of management of restrictive measures regimes, including of their humanitarian provisions;
- Examining all relevant technical issues relating to the implementation of EU restrictive measures.

The activities of this Council body as set out above shall be conducted without prejudice to the competencies of the Member States and the Commission.

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- **Global Disarmament and Arms Control (CODUN)**

*(Decision of Coreper Meeting on 21 December 1995 - doc. 10939/95)*

The present areas of competence of the CONOC (non-proliferation of chemical and biological weapons) and CONUC (non-proliferation of nuclear weapons) Working Groups would be entrusted to a "merged" group, to be called the "Non-Proliferation Working Group", with the acronym CONOP. Its agenda would be so structured as to distinguish between items pertaining to the non-proliferation of nuclear weapons and those pertaining to the non-proliferation of chemical and biological weapons.

The area of competence of the CODUN Working Group (negotiation of international standards in multilateral fora) would remain unchanged, but it would meet more frequently so that all items on its agenda, including those relating to chemical and biological weapons, could be dealt with exhaustively.

The Presidency and the Secretariat would endeavour to organize meetings of the CODUN Working Group back-to-back with those of the Non-Proliferation Working Group.

This reorganization would come into effect at the end of the first half of 1996.

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- **Human Rights (COHOM)**

*(16082/03, approved by Coreper meeting on 18 December 2003 - doc. 16316/03)*

Without prejudice to the existing competencies of the CFSP geographical working groups, the Committee agreed to extend the mandate of the Human Rights Working Group to include first pillar issues so as to have under purview all human rights aspects of the external relations of the EU. First pillar issues may be addressed only within the limits of the powers conferred upon the European Community by the EC Treaty and of the objectives assigned to it therein.

*(Decision of Coreper meeting on 24 February 1999, 6252/99)*

## 12. HUMAN RIGHTS: FOLLOW-UP TO THE EUROPEAN COUNCIL IN VIENNA

Sur la base d'un rapport de la Présidence, le Comité charge le Groupe "Droits de l'homme" du suivi de l'ensemble des points opérationnels contenus dans la déclaration faite par l'Union à Vienne le 10 décembre 1998 à l'occasion du 50ème anniversaire de la Déclaration universelle des droits de l'Homme. Il autorise le Groupe à faire appel, sur une base ad hoc, à des experts en questions communautaires ou JAI pour l'assister dans cette tâche.

*"OPERATIONAL POINTS EXTRACTED FROM THE DECLARATION OF THE EU ON THE OCCASION OF THE 50TH ANNIVERSARY OF THE UNIVERSAL DECLARATION ON HUMAN RIGHTS, VIENNA, 10 DECEMBER 1998:*

.....

IV. These policies must be continued and, where necessary, strengthened and improved. In this regard, it is important that the Union reinforce its capacity to achieve its objectives on the protection and promotion of human rights and fundamental freedoms. In this context, the Union is determined to ensure respect for human rights in all its actions. In particular the Union will consider concrete measures such as:

1. enhance the capacity to jointly assess the human rights situation in the world by closer co-ordination and otherwise ensure that all pertinent means for action are available within the framework of the Union, including through the possible publication of an annual EU human rights report;

2. further develop cooperation in the field of human rights, such as education and training activities, in coordination with other relevant organisations, and ensure the continuation of the Human Rights Masters Programme organised by fifteen European universities;
3. reflect on the usefulness of convening a periodic human rights discussion forum with the participation of EU institutions as well as representatives of academic institutions and NGOs;
4. strengthen the capacities to respond to international operational requirements in the field of human rights and democratisation, such as through the possible establishment of a common roster of European human rights and democracy experts, for human rights field operations and electoral assistance and monitoring;
5. foster the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms in third countries, in particular through working towards the earliest possible adoption of the draft regulations, currently under consideration in the EU framework, on the implementation of co-operation operations;
6. ensure all means to achieve the coherent realisation of these goals, including through the consideration of strengthening relevant EU structures."

*1987 COHOM MANDATE FOR THE EPC - WORKING GROUP ON HUMAN RIGHTS*

The Twelve wish to underline the importance they attach to the promotion of human rights. They are determined to ensure that human rights concerns continue to receive appropriate attention at all levels of activity within the EPC framework. It is against this background that a new working group specifically devoted to human rights issues has been created. In this context, it is noted that the regional working groups would continue to be best suited to deal with specific human rights cases within their geographical regions, and that the OSCE working group should continue to deal with both human rights policy and cases within the OSCE process.



The human rights working group is tasked with:

1. Discussion and submission of recommendations to the Political Committee\* on general guidelines for common reactions to actual or predictable violations of human rights, including options and modalities for reactions of the Twelve;
2. Co-ordination of positions of the Twelve on human rights issues likely to arise within all relevant international fora;
3. The working group should meet at least twice a year (once before the session of the UN Human Rights Commission and once before the General Assembly). Additional meetings could be called when required. Time schedules for meetings of the UN working group and the human rights working group should be related.
4. Collection and evaluation of information on current violations of human rights in various parts of the world and actions undertaken by the Twelve in cases of such violations.
5. Discussion and, where appropriate, submission of recommendations to the Political Committee\* on i.a. the general aspects of human rights questions as well as on the general aspects of the implementation of the Twelve's human rights policy, including examination of the general balance of the interventions of the Twelve in the field of human rights.

Reporting annually to the Political Committee\* on actions taken by the Twelve in the field of human rights.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

- **Latin America (COLAT)**

*(Decision of Coreper meeting on 2 February 1994 - doc. 4531/94)*

- the Working Party on Latin America: this Working Party will take over the tasks of the Latin America Group (EPC) and of the Working Party on Latin America (EC). It goes without saying (section 5(b)) of Annex II to 9252/1/93 REV1<sup>69</sup>) that joint meetings with the ACP Working Party could be called for matters concerning ACP countries;

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- **Mashraq/Maghreb (COMAG)**

*(Decision of Coreper meeting on 2 February 1994 - doc. 4531/94)*

- the Mashraq/Maghreb Working Party will deal with relations with the following countries: Algeria, Morocco, Tunisia, Libya, Mauritania, Egypt, Lebanon, Israel, Jordan and Syria. The new Working Party will take over the activities of the Mediterranean Working Party (EC), the Euro-Arab Dialogue Group (EPC) and the Working Party on Euro-Arab Dialogue (EC);

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- **Middle East/Gulf (COMEM)**

*(Decision of Coreper meeting on 2 February 1994 - doc. 4531/94)*

- the Middle East/Gulf Working Party will take over part of the activities of the Middle East/Maghreb Group (EPC), part of the activities of the Mediterranean Working Party (EC) and the activities of the Working Party on the Gulf States (EC). It will deal with Iran, Iraq, Yemen and the Gulf States (Saudi Arabia, Oman, the Emirates, Bahrain, Qatar and Kuwait);

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<sup>69</sup> Council conclusions on legal and practical arrangements for implementing the Treaty.

- **Military Committee Working Group (EUMCWG)**

*(Annex to Council Decision of 22 January 2001, OJ L 27, 30.1.2001)*

## 5. *Miscellaneous*

The relations to be established between the EUMC and NATO military authorities are defined in the document on the EU/NATO permanent arrangements. The relations between the EUMC and the non-EU European NATO members and other countries, which are candidates for accession to the EU are defined in the document on the relations of the EU with third countries.

*The EUMC is supported by a military working group (EUMCWG), by the EUMS and by other departments and services, as appropriate.*

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- **Nicolaidis Group**

*(8366/03 of 10 April 2003, approved by Coreper on 14 April 2003 - doc. 8420/03)*

The Political and Security Committee, which deals with all aspects of the CFSP including ESDP,<sup>70</sup> has an intensive working schedule (several meetings per week) in order to carry out its mandate. This work has increased as a result of the new challenges which the PSC faces in respect of crisis management operations, and since it has started to implement the provisions of Article 25 TEU. These provisions stipulate that : *"Without prejudice to Article 207 of the Treaty establishing the European Community, a Political and Security Committee shall monitor the international situation in the areas covered by the common foreign and security policy and contribute to the definition of policies by delivering opinions to the Council at the request of the Council or on its own initiative. It shall also monitor the implementation of agreed policies..."*.

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<sup>70</sup> Cf. the Conclusions of the European Councils in Helsinki and Nice, as well as Council Decision (2001/78/CFSP) setting up the PSC.

The PSC has therefore suggested, with a view to managing the agenda and facilitating the conduct of its meetings, that a special preparatory group be established for PSC. This special group would assist firstly with the organisation of PSC meetings, e.g. by going through the provisional agendas in advance, fixing the order in which the items for discussion would be taken and dealing if necessary with practical arrangements for the meeting.

Secondly, this preparatory group would allow delegations to flag up in advance what the main issues of concern are to them, thereby enabling the members of PSC to prepare more effectively for their discussions and possibly to dispose more easily of less important questions. The group could also identify points of special interest or concern in reports submitted to PSC by working parties. More generally, the preparatory group would provide a useful point of contact between delegations and with the General Secretariat, e.g. for the purpose of exchanging information with each other between meetings of the PSC.

Coreper has therefore approved, in accordance with Article 19(3) of the Council's Rules of Procedure, the establishment of a preparatory group for the PSC along the lines indicated above. It is to be called the 'Nicolaidis' Group, after the name of its first chairman.

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- **Non-Proliferation (CONOP)**

*(Decision of Coreper Meeting on 21 December 1995 - doc. 10939/95)*

1. The present areas of competence of the CONOC (non-proliferation of chemical and biological weapons) and CONUC (non-proliferation of nuclear weapons) Working Groups should be entrusted to a "merged" group, to be called the "Non-Proliferation Working Group", with the acronym CONOP. Its agenda would be so structured as to distinguish between items pertaining to the non-proliferation of nuclear weapons and those pertaining to the non-proliferation of chemical and biological weapons.

2. The area of competence of the CODUN Working Group (negotiation of international standards in multilateral fora) would remain unchanged, but it would meet more frequently so that all items on its agenda, including those relating to chemical and biological weapons, could be dealt with exhaustively.

The Presidency and the Secretariat would endeavour to organize meetings of the CODUN Working Group back-to-back with those of the Non-Proliferation Working Group.

3. This reorganization would come into effect at the end of the first half of 1996.

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- **OSCE and the Council of Europe (COSCE)**

*(8767/02 and SN 2350/02 approved by Coreper Decision of 15 May 2002 - doc. 9346/02)*

1. The Working Party on the Organisation for Security and Co-operation in Europe will be renamed Working Party on the Organisation for Security and Co-operation in Europe and the Council of Europe.
2. The Working Party will deal with matters related to the Organisation for Security and Co-operation in Europe, as well as with matter related to the Council of Europe, notably those pertaining to the Common Foreign and Security Policy, without prejudice to the competencies of the other Working Parties.
3. The acronym of the Working Party will remain unchanged (COSCE)

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- **Politico-Military (PMG)**

*(Decision of Coreper meeting on 25 April 2001 - doc. 8004/01, approved doc. 7992/01)*

COREPER DECISION of 25 April 2001 amending COREPER Decision of 5 July 2000 on the establishment of a Politico-Military Working Party

THE PERMANENT REPRESENTATIVES COMMITTEE (COREPER)

Having regard to the Council's Rules of Procedure, and in particular Article 19 (3) thereof ,

Having regard to its decision of 5 July 2000 on the establishment of a Politico-Military Working Party, whose brief was to assist the interim Political and Security Committee by carrying out preparatory work on the European Security and Defence Policy,

Having regard to the Council Decision of 22 January 2001 setting up the Political and Security Committee,

Hereby decides that the Politico-Military Working Party, established by COREPER Decision of 5 July 2000, shall assist the Political and Security Committee set up by Council decision of 22 January 2001 by carrying out preparatory work on the European Security and Defence Policy.

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- **Public International Law (COJUR)**

*(Decision of Political Committee\* on 20 March 1990 and 24 February 1998 SEC 898/97)*

*(Political and Security Committee, since entry into force of Amsterdam Treaty)*

Political Committee\* on 20 March 1990:

"The Political Committee\* recalls the decision taken at its 182nd meeting whereby public international law experts could meet as the need arises on an ad hoc basis"

Political Committee\* on 24 February 1998:

The Political Committee\* "took note of the recommendations of the Group and of its readiness to give operational impulses in the field of international law and will have recourse to it when it considers it necessary".

**(A) International Criminal Court**

*(Coreper decision of 17 July 2002 - doc. 11035/02, COJUR Report of 15 May 2002 SEC/1161/02 COR 1 and 3 September 2004 )*

The Presidency, on the basis of paragraph (ii) of the rules governing the list of Council preparatory bodies, proposed, for reasons of practical need, to list the ICC as a sub area of the Working Party on Public International Law. The sub area will gather the relevant ICC experts in each Member State and will meet as often as necessary, including, where appropriate, the day before or after a standard COJUR meeting.

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- **Terrorism (International Aspects) (COTER) (doc. 13096/02 RESTREINT UE)**

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

- **Transatlantic Relations (COTRA)**

*(Decision of COREPER meeting on 16 - 17 January 1996 - doc. 4293/96)*

Given the size of the Agenda and the Action Plan, it seems advisable to set up a structure within the Council which would facilitate a horizontal examination and approach in the context of Coreper preparations.

This structure should also be opened up, in due course, to the closer relations which the European Union is to establish with Canada.

It is accordingly proposed that the Permanent Representatives Committee decide to set up a Working Party on Transatlantic Relations. Without prejudice to the proceedings of other bodies and taking account of the requests for information which such bodies might wish to make, this Working Party would have the task of taking stock regularly of all the proceedings for implementing the New Transatlantic Agenda and the joint EU-US Action Plan and to report back to Coreper and make any appropriate suggestion to it for implementing the two documents.

The Working Party's tasks would be extended in due course to the European Union's relations with other Atlantic democracies, such as Canada, which share the objectives of the New Transatlantic Agenda.

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- **United Nations (CONUN)**

*(Approuvé par le Conseil le 10 avril 1995 - doc. 6470/95)*

### **Document d'orientation sur la coordination de l'Union européenne dans le cadre des Nations Unies**

- En raison du grand nombre de sujets dont traitent généralement les conférences des Nations Unies et, dès lors, de la diversité des groupes de travail et experts concernés par leur préparation, le groupe de travail Nations Unies assurera, sous l'autorité du Comité politique<sup>♣</sup>, une supervision constante et mieux structurée du déroulement de la coordination.
- Lorsqu'elle sera jugée nécessaire par les partenaires, l'évaluation à un niveau élevé de la préparation de la conférence sera de la responsabilité du Comité politique<sup>♣</sup>, sur saisine du groupe de travail Nations Unies.

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- **Western Balkans Region (COWEB)**

*(Decision of Coreper meeting on 26 November 1997 - doc. 12627/97)*

The ad hoc Working Party on the Former Yugoslavia will be renamed the Working Party on the West Balkans Region.

The new Working Party will deal with questions concerning the countries of Southeast Europe which do not have an Association Agreement with the EU, viz. Bosnia and Herzegovina, Croatia, FRY, FYROM and Albania.

The Working Party on Southeast Europe will continue to deal with relations with Cyprus, Turkey, Malta, Andorra and San Marino

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<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

**(b) Fusion des Groupes de Travail du Conseil/Merger of Working Groups***(Conclusions du Coreper du 2 février 1994,)*

## GROUPES PERMANENTS :

- le Groupe "**Amérique Latine**": ce groupe reprendra les activités du groupe Amérique latine (CPE) et du groupe Amérique Latine (CE). Il va de soi (point 5b de l'annexe II du doc. 9252/1/93 REV 1) que pour certaines questions touchant à des pays ACP, des sessions conjointes avec le groupe ACP pourront être convoquées.
- le Groupe "**Asie**": ce groupe reprendra des activités du groupe Asie (CPE) et du groupe Asie (CE). Il va de soi (point 5b de l'annexe II du doc. 9252/1/93 REV 1) que pour certaines questions touchant à des pays ACP, des sessions conjointes avec le groupe ACP pourront être convoquées.
- le Groupe "**CSCE**" réunira les anciens groupes CSCE (CPE) et ad hoc (CE).
- le Groupe "**Pays de la CEI**" reprendra une partie des activités de l'ancien Groupe Europe de l'Est (CPE) et le Groupe ex-URSS (CE). Il traitera les relations avec les pays suivants: Biélorussie, Ukraine, Moldavie, Russie, Arménie, Azerbaïdjan, Géorgie, Kazakhstan, Turkménistan, Ouzbékistan, Tadjikistan, Kirghizstan.
- le Groupe "**Europe centre-est**" traitera des relations avec les pays suivants: Pologne, Hongrie, République tchèque, Slovaquie, Roumanie, Bulgarie, Estonie, Lettonie, Lituanie ainsi que la Slovénie en reprenant ainsi une partie des activités de l'ancien Groupe Europe de l'Est (CPE), et du Groupe Europe de l'Est (CE).
- le Groupe "**Europe sud-est**" traitera des relations avec les pays suivants: Albanie, Chypre, Turquie, Malte, Andorre, et San Marino.
- le Groupe "**Mashrek/Maghreb**" traitera des relations avec les pays suivants: Algérie, Maroc, Tunisie, Libye, Mauritanie, Egypte, Liban, Israël, Jordanie, Syrie. A ce titre, le nouveau groupe reprendra les travaux du Groupe Méditerranée (CE), ainsi que ceux des Groupes Dialogue euro-arabe (CPE) et Dialogue euro-arabe (CE).

- le Groupe "**Moyen-Orient/Golfe**" reprendra une partie des travaux du Groupe Moyen-Orient/Maghreb (CPE), une partie du Groupe Méditerranée (CE) et les travaux du Groupe Etats du Golfe (CE). Il s'occupera de l'Iran, l'Irak, le Yémen ainsi que les Etats du Golfe (Arabie Saoudite, Oman, les Emirats, Bahreïn, Qatar et Koweït).

La Présidence et le Secrétariat veilleront à ce que les travaux du Groupe Mashrek/Maghreb et du Groupe Moyen-Orient/Golfe soient en principe voisins dans le temps, et de manière à ce que les travaux PESC des deux groupes aient lieu en continuité. Cette gestion de l'ordre du Jour des deux groupes ne doit évidemment pas empêcher la convocation de réunions spéciales en fonction de l'actualité.

GROUPES AD HOC :

- le Groupe ad hoc "**Processus de Paix au Moyen-Orient**" traitera de l'ensemble des questions relatives au processus de paix et se substituera au Groupe spécial de coordination processus de Paix au Moyen-Orient (CPE°;
- le Groupe ad hoc "**ex-Yougoslavie**" continuera à s'occuper des questions résultants de l'actuel conflit dans la région. La question de savoir quel Groupe traitera des relations avec les Etats issus de l'ancienne Yougoslavie, y compris la Slovénie, sera réexaminée lorsque ce conflit se terminera.
- le Groupe "**Afrique du Sud**", crée par le Conseil du 8 novembre 1993, est chargé des travaux concernant la mise en oeuvre de l'action commune. Il reprendra les travaux pertinents du Groupe Afrique et du Groupe Développement.

La compétence géographique des groupes sera réexaminée en fonction de l'évolution des travaux.

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| <b>Chapter 4. OPERATION OF THE COUNCIL SECRETARIAT</b> |
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**(a) Policy Planning and Early Warning Unit**

*(Declaration No. 6 annexed to the Final Act of the Amsterdam Treaty)*

The Conference agrees that:

1. A policy planning and early warning unit shall be established in the General Secretariat of the Council under the responsibility of the its Secretary-General, High Representative for the CFSP. Appropriate co-operation shall be established with the Commission in order to ensure full coherence with the Union's external economic and development policies.
2. The tasks of the unit shall include the following:
  - (a) Monitoring and analysing developments in areas relevant to the CFSP;
  - (b) Providing assessments of the Union's foreign and security policy interests and identifying areas where the CFSP could focus in future;
  - (c) Providing timely assessments and early warning of events or situations which may have significant repercussions for the Union's foreign and security policy, including potential political crises;
  - (d) Producing, at the request of either the Council or the Presidency or on its own initiative, argued policy option papers to be presented under the responsibility of the Presidency as a contribution to policy formulation in the Council, and which may contain analyses, recommendations and strategies for the CFSP;

3. The unit shall consist of personnel drawn from the General Secretariat, the Member States, the Commission and the WEU.
  4. Any Member State and the Commission may make suggestions to the unit for work to be undertaken.
  5. Member States and the Commission shall assist the policy planning process by providing, to the fullest extent possible, relevant information, including confidential information.
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**(b) European Union Military Staff**

*(Council Decision of 10 May 2005 amending Decision 2001/80/CFSP, OJ L 132, 26.5.2005, p. 17)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 28(1) thereof,

Having regard to the Treaty establishing the European Community, in particular Article 207(2) thereof,

Whereas:

- (1) The current organisation and structure of the Military Staff of the European Union (EUMS) do not take account of a number of its new tasks.
- (2) Furthermore, regarding the conduct of autonomous military operations, in certain circumstances the Council may decide, upon the advice of the EU Military Committee, to draw on the collective capacity of the EUMS, in particular where a joint civil-military response is required and where no national Headquarters is identified.
- (3) As a result, it is necessary to amend the terms of reference and organisation of the EUMS.
- (4) On 12 April 2005 the Political and Security Committee recommended that the terms of reference and organisation of the EUMS be amended.
- (5) Consequently, Decision 2001/80/CFSP <sup>(1)</sup> should be amended,

HAS DECIDED AS FOLLOWS:

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<sup>(1)</sup> OJ L 27, 30.1.2001, p. 7.

*Article 1*

Council Decision 2001/80/CFSP is hereby amended as follows:

1. Article 2 shall be replaced by the following:

*‘Article 2*

The terms of reference and organisation of the Military Staff of the European Union are defined in the Annex to this Decision.’;

2. Article 4 shall be replaced by the following:

*‘Article 4*

Members of the Military Staff of the European Union shall be subject to rules established in Council Decision 2003/479/EC of 16 June 2003 concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council <sup>(\*)</sup>;

3. The Annex to Decision 2001/80/CFSP shall be replaced by the Annex to this Decision.

*Article 2*

This Decision shall enter into force on the date of its adoption.

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<sup>(\*)</sup> OJ L 160, 28.6.2003, p. 72.

## **EUROPEAN UNION MILITARY STAFF (EUMS) TERMS OF REFERENCE AND ORGANISATION**

### **1. Introduction**

At Helsinki, the EU Member States decided to establish within the Council new permanent political and military bodies enabling the EU to assume its responsibilities for the full range of conflict prevention and crisis management tasks defined in the EU Treaty (TEU). As provided for in the Helsinki report, the EUMS, 'within the Council structures provides military expertise and support to the CESDP, including the conduct of EU-led military crisis management operations'.

At its meeting of 12 and 13 December 2003, the European Council welcomed the document entitled 'European Defence, NATO/EU consultation, planning and operations'. On 16 and 17 December 2004 the European Council endorsed the detailed proposals for the implementation of this document. The Terms of Reference of the EUMS are defined as follows:

### **2. Mission**

The Military Staff is to perform early warning, situation assessment and strategic planning for missions and tasks referred to in Article 17(2) of the TEU, including those identified in the European Security Strategy. This also encompasses the identification of European national and multinational forces and to implement policies and decisions as directed by the European Union Military Committee (EUMC).

### **3. Role**

- It is the source of the EU's military expertise;
- It assures the link between the EUMC on the one hand and the military resources available to the EU on the other, and it provides military expertise to EU bodies as directed by the EUMC;
- It performs three main operational functions: early warning, situation assessment and strategic planning;



- It provides an early warning capability. It plans, assesses and makes recommendations regarding the concept of
- crisis management and the general military strategy and implements the decisions and guidance of the EUMC;
- It supports the EUMC regarding situation assessment and military aspects of strategic planning<sup>(1)</sup>, over the full range of missions and tasks referred to in Article 17(2) of the TEU, including those identified in the European Security Strategy, for all cases of EU-led operations, whether or not the EU draws on NATO assets and capabilities;
- It supports (upon request of the SG/HR or the Political and Security Committee (PSC)) temporary missions to third countries or international organisations, in order to provide, as required, advice and assistance on military aspects of conflict prevention, crisis management and post-conflict stabilisation;
- It contributes to the process of elaboration, assessment and review of the capability goals, taking into account the need, for those Member States concerned, to ensure consistency with NATO's Defence Planning Process (DPP) and the Planning and Review Process (PARP) of the Partnership for Peace (PfP) in accordance with agreed procedures;
- It works in close coordination with the European Defence Agency;
- It has the responsibility of monitoring, assessing and making recommendations on training, exercises and interoperability
- in connection with the forces and capabilities made available to the EU by the Member States;
- It maintains the capacity to reinforce the national HQ designated to conduct an EU autonomous operation, primarily through the Civ/Mil Cell;

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<sup>(1)</sup> Preliminary definitions:

*Strategic planning*: planning activities that start as soon as a crisis emerges and end when the EU political authorities approve a military strategic option or a set of military strategic options. The strategic process encompasses military situation assessment, definition of a POL/MIL framework and development of military strategic options.

*Military strategic option:* a possible military action designed to achieve the POL/MIL objectives outlined in the POL/MIL framework. A military strategic option will describe the outline military solution, the required resource and constraints and recommendations on the choice of the operations commander and OHQ.

- It has the responsibility, through the Civ/Mil Cell, of generating the capacity to plan and run an autonomous EU military operation, and maintains the capacity within EUMS rapidly to set up an operations centre for a specific operation, in particular where a joint civil/military response is required and where no national HQ is identified,
- once a decision on such an operation has been taken by the Council, upon the advice of the EUMC.

#### 4. Tasks

- It provides military expertise to the Secretary-General/High Representative and to EU bodies, under the direction of the EUMC;
- It monitors potential crises by relying on appropriate national and multinational intelligence capabilities;
- It supplies the Situation Centre with military information and receives its output;
- It carries out the military aspects of strategic advance planning;
- It identifies and lists European national and multinational forces for EU-led operations coordinating with NATO;
- It contributes to the development and preparation (including training and exercises) of national and multinational forces made available by the Member States to the EU. The modalities of the relationship with NATO are defined in the relevant documents;
- It organises and coordinates the procedures with national and multinational HQs including those NATO HQs available to the EU, ensuring, as far as possible, compatibility with NATO procedures;

- It contributes to the military aspects of the ESDP dimension of the fight against terrorism;
- It contributes to the development of concepts, doctrine, plans and procedures for the use of military assets and capabilities for natural or man-made disaster consequence management operations;
- It programmes, plans, conducts and evaluates the military aspects of the EU's crisis management procedures, including the exercising of EU/NATO procedures;
- It participates in the financial estimation of operations and exercises;
- It liaises with the national HQs and the multinational HQs of the multinational forces;
- It establishes permanent relations with NATO according to 'EU/NATO Permanent arrangements';
- It hosts a NATO Liaison Team at the EUMS and it maintains an EU Cell at SHAPE in accordance with ESDP Presidency Report adopted by the Council on 13 December 2004;
- It establishes appropriate relations with identified correspondents within the UN as well as other international organisations, including the OSCE and the AU, subject to an agreement from these organisations;
- It contributes to the necessary comprehensive lessons learned process;
- Tasks undertaken through the Civ/Mil Cell:
  - It undertakes strategic contingency planning at the initiative of the SG/HR or the PSC;
  - It contributes to the development of a body of doctrine/concepts, learning lessons from civilian/military operations and exercises;
  - It prepares concepts and procedures for the EU Ops Centre and ensures the availability and readiness of the manpower, facilities and equipment of the operations centre for operations, exercises and training;
  - It maintains, updates and replaces the equipment of the EU Ops Centre and maintains the premises.

(a) Additional tasks in crisis management situations

- It requests and processes specific information from the intelligence organisations and other relevant information from all available sources;
- It supports the EUMC in its contributions to Initial Planning Guidance and Planning Directives of the PSC;
- It develops and prioritises military strategic options as the basis for the military advice given by the EUMC to the PSC by:
  - = defining initial broad options;
  - = drawing, as appropriate, on planning support from external sources which will analyse and further develop these options in more detail;
  - = evaluating the results of this more detailed work and commissioning any further work that might be necessary;
  - = presenting an overall assessment, with an indication of priorities and recommendations as appropriate, to the EUMC;
- It identifies in coordination with national planning staffs and, as appropriate, NATO, the forces that might participate in possible EU-led operations;
- It assists the operation commander in technical exchanges with third countries offering military contributions to an EU-led operation, and in the preparation of the force generation conference;
- It continues to monitor crisis situations;

- Tasks undertaken through the Civ/Mil Cell:
  - = Upon a request from DG E to DGEUMS, it provides assistance to crisis response political-military strategic planning carried out under the responsibility of DG E (preparation of CMC, joint action ...);
  - = It contributes to crisis response strategic planning for joint civil/military operations through the development of strategic options as foreseen in crisis management procedures. This planning falls under the direct responsibility of the DGEUMS and the DG E and the overall authority of the SG/HR;
  - = Upon a request of DG E to DGEUMS, it provides assistance to crisis response civilian strategic planning carried out under the responsibility of the DG E (preparation of PSO, CSO, etc.).

(b) Additional tasks during operations

- The EUMS, acting under the direction of the EUMC, continuously monitors all the military aspects of operations. It conducts strategic analysis in liaison with the designated operation commander to support the EUMC in its advisory role to the PSC in charge of the strategic direction;
- In the light of political and operational developments, it provides new options to the EUMC as a basis for EUMC's military advice to the PSC;
- It contributes to the key nucleus reinforced, and to further augmentation, as required, of the EU Ops Centre;
- Tasks undertaken through the Civ/Mil Cell:
  - = It provides the permanent key nucleus of the EU Ops Centre;
  - = It assists in coordinating civilian operations. Such operations are carried out under DG E authority. It assists with planning, support (including the possible use of military means) and conduct of civilian operations (strategic level remains with DG E).

## 5. Organisation

- The EUMS works under the military direction of the EUMC, to which it reports;
- It is a Council Secretariat department directly attached to the SG/HR and it works in close cooperation with other departments of the Council Secretariat;
- It is headed by the DGEUMS, a 3-star flag officer;
- It is composed of personnel seconded from the Member States acting in an international capacity, in accordance with the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council, as well as civil servants seconded from the GSC and the Commission. With the aim of improving the EUMS selection process, Member States are encouraged to present more than one candidate for each of the posts applied for;
- In order to cope with the full spectrum of missions and tasks the EUMS is organised as in Annex 'A';
- In crisis management situations or exercises, the EUMS may set up Crisis Action Teams (CAT), drawing upon its own expertise, manpower and infrastructure. In addition, it could, if necessary, request through the EUMC, manpower for temporary augmentation from the EU Member States;
- The mission, function and organisation of the Civ/Mil Cell, as well as the operations centre configuration were approved by the Council on 13 December and endorsed by the European Council on 16-17 December 2004. The EUMC will provide guidance, through DGEUMS, on the military activities undertaken by the Civ/Mil Cell. Contributions by the Cell for civilian aspects of crisis management remain under the functional responsibility of DG E. Reporting on these activities to the CIVCOM will be in accordance with established procedures on civilian aspects of crisis management.

## 6. Relations with third countries

The relations between the EUMS and the non-EU European NATO members, other third States, and candidates for accession to the EU are defined in the relevant documents on the relations of the EU with third countries.

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(Council Decision of 22 January 2001, OJ L 27, 30.1.2001)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, in particular Article 28(1) thereof,

Having regard to the Treaty establishing the European Community, in particular Article 207(2) thereof,

Whereas:

- (1) In the framework of the strengthening of the common foreign and security policy (CFSP) and in particular of the common European policy on security and defence provided for in Article 17 of the Treaty on European Union, the European Council meeting in Nice on 7-11 December 2000 reached agreement on the establishment of the Military Staff of the European Union, setting out its mission and functions.
- (2) Following the guidelines of the European Council the Military Staff should be made ready to start its work,

HAS DECIDED AS FOLLOWS :

*Article 1*

1. Military personnel will be seconded from Member States to the General Secretariat of the Council in order to form the Military Staff of the European Union (EUMS).
2. The Military Staff will be part of the General Secretariat of the Council.

*Article 2*

The mission and functions of the Military Staff are defined in Annex V of the Presidency's report approved by the Nice European Council, which is reproduced in the Annex to this Decision.

*Article 3*

All members of the Military Staff shall be nationals of Member States of the European Union.

*Article 4*

1. Members of the Military Staff shall be subject to rules which will be established in a Council Decision.

2. Until the entry into force of the Decision mentioned in paragraph 1, Council Decision 2000/178/CFSP of 28 February 2000 on the rules applicable to national experts in the military field on secondment to the General Secretariat of the Council during the interim period <sup>71</sup> shall remain in force.

*Article 5*

This Decision shall take effect from the date of its adoption. It shall apply as from a date established by the SG/HR upon consultation of the PSC and of the iMB/Military Committee and in principle before the end of June 2001. Until the date of application of this Decision, the Director General of the Military Staff (DGEUMS), who will take up its functions as from 1 March 2001 <sup>72</sup>, shall act as head of the military experts seconded from Member States to the Council Secretariat <sup>73</sup>.

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<sup>71</sup> OJ L 57, 2.3.2000, p. 1.

<sup>72</sup> Council Decision of 22 December 2000.

<sup>73</sup> Council Decision 2000/145/CFSP of 14 February 2000 on the secondment of national experts in the military field to the General Secretariat of the Council during an interim period (OJ L 49, 22.2.2000, p. 3).



## Chapter 5. EUSRs

**- Guidelines on appointment, mandate and financing***(agreed by Council on 10 April 2006 - doc. 7223/1/06)***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.<sup>74</sup>

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.

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<sup>74</sup> 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 to the Commission, with its agreement.

**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.

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 12 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 and bodies
  - 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 18.5 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 will be responsible for the implementation of the mandate acting under the authority and operational direction of the High Representative. The EUSR will be accountable to the Commission for all expenditure.

2. PSC role:

The PSC will maintain a privileged link with the EUSR and will be the primary point of contact with the Council. The PSC will 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 will 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 will be maintained with Presidency, Commission and Heads of Mission who will make best efforts to assist the EUSR in the implementation of the mandate.

The EUSR will 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 contributions from the European Union to the region will be kept under regular review on the basis of the guidelines agreed by the Council<sup>75</sup>. The EUSR will present to the High Representative, Council and Commission a progress report before the end of June and a comprehensive mandate implementation report by mid-November<sup>76</sup>. These reports will 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 will 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 team

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. The EUSR will inform the Presidency and the Commission of the composition of his/her team. The Presidency will inform Member States accordingly.

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

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<sup>75</sup> Review of mandates of EUSRs of 14 February 2003 (doc. 6436/03).

<sup>76</sup> Applicable for those EUSRs that are on a standard 12-month cycle.

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.

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 field<sup>77</sup>. 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 EC budget (CFSP chapter, 1903) unless the Council decides otherwise, in accordance with Article 28.3 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.

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<sup>77</sup> As appropriate, the Commission and GSC will also provide logistical support to the EUSR in fulfilling his/her duties in Brussels.

3. The EUSR will be appointed at the level of AD 16/1. 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.

The remuneration of personnel who might be seconded by a Member State or an institution of the European Union to the EUSR will 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 prioritisation<sup>78</sup> when considering the extension of EUSR mandates, the following procedure will be followed<sup>79</sup>:

*End June*

Progress report by the EUSR to High Representative, Council and Commission.

The report is passed to PSC and the relevant Working Group

If appropriate,

- Working Groups make recommendations to PSC on amending the existing mandate;
- Foreign Relations Counsellors working party prepares amendment to legal act and assesses budgetary implications.

*mid-November:*

Mandate implementation report by the EUSR to High Representative, Council and Commission<sup>80</sup>.

The report is passed to the PSC and relevant Working Group

Working Groups begin a critical evaluation of the mandate

*November - early December:*

Working Groups make recommendations to PSC<sup>81</sup> on extending, amending<sup>82</sup> or terminating existing mandates.

The EUSR submits financial estimates to the Commission in line with the Working Groups' recommendations on extending or amending of mandates.

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

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<sup>78</sup> 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.

<sup>79</sup> In cases where the mandate in question is of less than 12-month duration, the same steps will in principle be followed, though the timetable may vary.

<sup>80</sup> in accordance with guidance set out in doc. 6436/03.

<sup>81</sup> in accordance with guidance set out in doc. 6436/03.

<sup>82</sup> Amendments may include the use of a "leaner" model.

*early December - mid January:*

The High Representative makes recommendations on extending, amending or terminating mandates.

High Representative debates recommendations with PSC.

PSC sets priorities for the following period and, on this basis, gives political agreement on extending, amending or terminating mandates

Commission prepares financial statement on the basis of information from EUSRs and of recommendations of the Working Groups, the SG/HR and the PSC.

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

*end January:*

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.

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**Annex to ANNEX**

## COUNCIL JOINT ACTION 200\*/ /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

[....]

- (..) The EUSR is to implement his mandate in the context of a situation which may deteriorate and could harm the objectives of the Common Foreign and Security Policy, as set out in Article 11 of the Treaty<sup>83</sup>.

HAS ADOPTED THIS JOINT ACTION:

*Article 1*

Mr/Ms .....is appointed EU Special Representative (EUSR) for ..... as of .... until ....

*Article 2*

The mandate of the EUSR shall 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:

[...]

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<sup>83</sup> Crisis notion to be included if appropriate. In certain cases different wording could be considered, depending on circumstances.

*Article 4*

1. The EUSR shall be responsible for the implementation of the mandate acting under the authority and operational direction of the Secretary General/High Representative (SG/HR). The EUSR shall be accountable to the Commission for all expenditure.
2. The Political and Security Committee (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.

*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 procedures and rules applicable to the general budget of the European Communities 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. Expenditure shall be eligible as from ..
4. The Presidency, Commission, and/or Member States, as appropriate, shall provide logistical support in the region.

*Article 6*

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 SG/HR, and in full association with the Commission. The EUSR shall inform the Presidency and the Commission of the composition of his/her team.
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 shall 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 shall report in person to the SG/HR and to the PSC and may report also to the relevant Working Group. Regular written reports shall be circulated to the SG/HR, Council and Commission. The EUSR may report to the General Affairs and External Relations Council on the recommendation of the SG/HR 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 SG/HR, the Presidency and the Commission. EUSRs shall 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 to the SG/HR, Council and Commission a progress report before the end of June ... and a comprehensive mandate implementation report by mid-November ... These reports 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 SG/HR 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.

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| <b>Chapter 6. FINANCING THE CFSP</b> |
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**(a) Inter-Institutional Agreement on budgetary discipline and sound financial management**

**(see Chapter 6 Relations with the European Parliament)**

*(enters into force on 1 January 2007, OJ C 139, 14.6.2006, p. 1)*

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**(b) Guidelines for financing Civilian Crisis Management Operations**

*(approved by Coreper on 17 September 2003, noted by the Council on  
29 September 2003 - doc. 12582/03)*

**I. Introduction**

The Ministerial declaration adopted by the Civilian Crisis Management Capability Conference on 19 November 2002, annexed to the GAERC Conclusions of the same date (doc. 14184/02), states that:

*"(Ministers) stressed that a solution to the financing of civilian crisis management operations under title V of the Treaty on European Union would have to be found as a matter of priority in order to meet the EU's ambitions in the field"*

## **II. Operational requirements**

The effectiveness of a crisis management operation depends *inter alia* on the rapidity of deployment and on the capacity to maintain necessary standards of efficiency until the accomplishment of the mandate.

The operation should be adequately maintained until the mandate is achieved and brought to an end in accordance with the planned exit strategy. The operation needs not only to be efficiently run but also adapted to the current circumstances when new and unforeseen events occur.

These two aspects are strictly linked to the financing procedure and the overall financial resources available during the entire cycle of the operation. The financial instrument should therefore be flexible enough to enable the EU to adequately respond to the crisis in terms of comprehensive strategy and instruments employed.

## **III. Legal basis and current relevant financing procedures under CFSP**

The current provisions on financing CFSP actions are laid out in Article 28 of the TEU:

### *Article 28*

*1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.*

*2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.*

*3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.*



*In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.*

*4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.*

According to the Treaty, the general rule for financing EU civilian crisis management operations under CFSP is hence the regular Community budget (1903-CFSP). Ideally speaking, this budget line would cover the whole range of costs, from salaries to running costs. In case funds within this line are insufficient to finance operations, the two branches of the Budget Authority could, on a proposal of the Commission, decide to allocate additional means to the CFSP-budget<sup>84</sup>. Further to this, use can be made, as a last resort, of the emergency aid reserve.

Although financing under the Community budget is the general rule, the Treaty offers other possibilities to be decided unanimously:

- The first possibility is making use of the GNP-key.
- The second one is a decision otherwise, which could come down to national funding on a “costs lie where they fall” basis.

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<sup>84</sup> For future years, the additional means could already be part of the Preliminary Draft Budget as proposed by the Commission. For the current year, this is possible by means of a transfer of credits, or by making use of the margin in Category IV. The internal planning of the Commission foresees for 2005 a level of 55 MEURO for B8.

In the case of EUPM, the Council stated that *"In the event that financing of the costs referred to in paragraph 1(b)(ii) on the basis of the Community budget is not sufficient, the Council shall decide, in accordance with the provisions of the Treaty on European Union, how to cover any remaining gap, which shall consist of common costs"*<sup>85</sup>. Due to budgetary restrictions certain particularly expensive items were financed on a "costs lie where they fall" basis. It should be noted that certain costs – e.g. for communication, equipment, and travel in theatre – do not automatically lend themselves for financing on a that basis.

For as long as no financial regime is in place that would make exclusive funding from the Community Budget realistically possible, any solution necessarily will have an *ad hoc* character, based on either one of the possibilities provided by the Treaty, or a combination of them. In the case of the EU Police Mission in Bosnia and Herzegovina, this led to a combination of Community and national funding, while the Council reserved to itself the right to decide how to cover any remaining gap.

Until such time that exclusive financing through the Community Budget is realistically possible, and while noting that there is no "one fits all" solution, COREPER agreed that the annexed paper provides a guiding framework for the financing of specific CFSP civilian crisis management operations under Title V.

This does not take into account the contribution of third countries, which could be calculated on a case by case basis.

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<sup>85</sup> Art 9.2, Council Joint Action 2002/210/CFSP of 11 March 2002, OJ L 70/1, 13 March 2002.

#### IV. Financing procedure for civilian crisis management operations under Title V TEU

A pragmatic financing procedure for civilian crisis management operations could consist of costs funded in common through the Community budget and costs borne by the participating Member States. Appropriate arrangements with the Commission will be agreed.

These costs should be divided, in principle, in the three following categories:

- In light of the financial restrictions, salaries of the personnel seconded by Member States to the operation should be borne by the sending Member State. Costs that form part of the salaries need to be clearly distinguished in advance.
- All other costs related to the operation, including *per diems*, should be borne, as far as possible, by the CFSP budget – (1903-CFSP).
- Costs related to possible complementary Community measures, under the Commission's responsibility, which are supporting or complementing the civilian crisis management operation under title V, are eligible for financing through the relevant Community budget line.

Budgetary restrictions should be overcome by working towards allocating sufficient means to the CFSP budget line. Where EC funding is not available there will need to be, on an exceptional basis, Member States funding for common costs in accordance with the provisions of the TEU. Certain particularly expensive items will need to be financed on a costs lie where they fall basis.

These procedures will, subject to possible earlier modifications, be applied until 31.12.2005. They will be reviewed regularly, at the request of a Member State or after each new operation.

### Flexibility under CFSP financing

One of the main characteristics of the CFSP budget is its in-built flexibility as laid down in the Inter-institutional Agreement, which includes the possibility to shift credits from budget line to budget line and to set up an “emergency measures” budget line, which can represent up to 20% of the total CFSP budget<sup>86</sup>. This “emergency measures” budget line is used in order to ensure enough remaining appropriations to react immediately in times of crisis<sup>87</sup>. Any non-use in the current year of up to 20% of the CFSP budget should not result in calls for the reduction of the CFSP budget for coming years.

The CFSP budget is part of Heading IV – External Action – of the EC budget, which itself is limited by the ceiling of the Financial Perspective. As a consequence a *de facto* ceiling also exists for the CFSP budget title. However, in the annual budgetary procedure a margin is agreed for each Heading, which in the case of the margin under Heading IV can be used for any additional need in the field of external action including for CFSP.

### Potential use of the emergency aid reserve

The Commission has noted that the emergency aid reserve (B7-91) has already been tested in practice. “The preparation of the EU Interim Mission (EUM) in Bosnia-Herzegovina, devised in order to take over the IPTF in case the mandate for the latter mission would not be extended by the UNSC, demonstrated that recourse to the emergency reserve is a viable option”<sup>88</sup>.

It is to be noted that for 2003, “the Council, Parliament and the Commission also agreed in January 2003 on an emergency aid reserve (217 MEUROS in 2003) for use as humanitarian aid or for civilian crisis management”<sup>89</sup>.

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<sup>86</sup> Financing the Common Foreign and Security Policy, Note from the General Secretariat of the Council to COREPER/Council, doc. 7194/03, 11 March 2003, p. 1.

<sup>87</sup> European Commission, CFSP Budget Preliminary Food for Thought Paper, D(2003)104187, 18.2.03, p. 2

<sup>88</sup> *Ibid.* The Commission highlights that “although there was in the end no need to have recourse to the emergency reserve, this mechanism has been agreed in principle”.

<sup>89</sup> Doc. 7194/03, p. 2. See also the Joint Statement by Parliament, Council and Commission on CFSP and emergency aid reserves, Annex 2 to Annex 1 of doc. 11211/02.

### Additional Community measures

Additional Community measures, which could flank civilian crisis management activities undertaken in the framework of Title V could be:

- possibilities offered by the RRM (line B7-671);
- possible financing through the ECHO budget line of some civilian protection assets, if the humanitarian criteria set in the ECHO regulation are met and if the civilian protection mission is consistent with the EC overall humanitarian assistance<sup>90</sup>.
- rule of law and civilian administration components under specific EC geographic regulations (ex: CARDS, MEDA) or thematic regulations (European Initiative for Democracy and Human Rights, also including election monitoring<sup>91</sup>, rehabilitation regulation<sup>92</sup>, regulation covering UNMIK and OHR<sup>93</sup>, and which, in the near future, should cover the Stability Pact for South-eastern Europe).

With the aim of improving the overall effectiveness of the EU's external action, the Union will ensure full coherence of the activities undertaken in the framework of the EU and EC treaties.

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<sup>90</sup> *Civil protection in the framework of crisis management – draft concept*, Note from the Presidency doc. 10882/1/02, 16 September 2002, p. 11.

<sup>91</sup> Council Regulation (EC) No 975/1999 of 29 April 1999 laying down the requirements for the implementation of development co-operation operations which contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms (*OJ L120*, 8.05.1999, p 1-7), and Council Regulation (EC) No 976/1999 of 29 April laying down the requirements for the implementation of Community operations, other than those of development cooperation which, within the framework of Community cooperation policy, contribute to the general objective of developing and consolidating democracy and the rule of law and to that of respecting human rights and fundamental freedoms in third countries (*OJ L120*, 8.05.1999, p. 8-14).

<sup>92</sup> Council Regulation (EC) No 2258/96 of 22 November 1996 on rehabilitation and reconstruction operations in developing countries (*OJ L306*, 28.11.1996, p. 1-4).

<sup>93</sup> Council Regulation (EC) No 1080/2000 of 22 May 2000 on support for the United Nations Interim Mission in Kosovo (UNMIK) and the Office of the High Representative in Bosnia and Herzegovina (OHR) (*OJ L122*, 24.05.2000, P.27-28).

**(c) Financial Regulation**

*(Under review, due to enter into force on 1 January 2007)*

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**(d) CFSP budget - improving effectiveness**

*(endorsed by Coreper on 17 March 2003 - doc. 7438/03)*

1. The general criteria for the exercise of either Community powers or the European Union's powers under the CFSP were approved by COREPER on 30 November 1999 (doc 13314/99). The development of the CFSP, including the ESDP, has raised the question of how the CFSP budget could better reflect more clearly defined political priorities of the Union under the CFSP.
  
2. At its meeting on 11 March, the Political and Security Committee endorsed the procedures suggested by the Foreign Relations Counsellors Working Group as set out in doc 7203/03. These procedures are aimed at contributing effectively and in due time to the budgetary process in order to ensure adequate appropriations for the CFSP budget and to ensure the most efficient use of the CFSP budget in the running year. Concretely, and in line with the Union's capacity to undertake conflict prevention and conflict management, 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.

3. Consequently, the Committee is invited to

- endorse the procedure set out at Annex which replaces the procedure contained in Section III of doc. 13314/99 PESC 418 FIN 433.
- ask the Foreign Relations Counsellors Working Group to monitor the implementation of these procedures and suggest, as necessary, amendments to it, in particular in the light of the outcome of the European Convention and the Intergovernmental Conference.

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**ANNEX**Procedure replacing the procedure set out in Section III of doc. 13314/99

## 1. Political priorities for expenditure: a “top-down” procedure

In line with the Union’s capacity to undertake conflict prevention and conflict management, the Political and Security Committee will provide political guidance and priority-setting for expenditure under the CFSP budget as follows:

## a) budget for the year N:

The PSC will have a discussion on priorities by the autumn of N-2 on the basis of recommendations from the Secretary-General/High Representative and the Commission. Along with the annual operational programme of the Council and the annual debate on the effectiveness of the Union's external action, the outcome of the discussion on political priorities will then be taken into consideration by the Commission when establishing the PDB and will subsequently be fed into the Coreper debate by the budgetary authorities. A balance should be struck between priority-setting and the need to retain flexibility to cater for unforeseen events.

## b) budget for the current year:

Given the specificity of the CFSP budget, basically only the programmable elements of this budget can be discussed in the autumn of the year N-2. Hence the need to hold an additional discussion in PSC on the budget of the current year as follows:

- early in the year: priority debate in PSC in light of the Presidency’s annual programme and on the basis of a joint paper from the Policy Unit and the Commission. This debate will take into account PSC priorities in the field of early warning and conflict prevention with a view to subsequent tasking of relevant Working Groups



- monitor Joint Actions on a quarterly basis in PSC on the basis of a fact sheet<sup>94</sup> taking stock of action undertaken and foreseen.

2. Adopting, monitoring and assessing the political impact of Joint Actions: a “bottom-up” procedure

In order to increase the effectiveness of the Union’s external actions, coordination will be enhanced between the relevant Committees and Working Groups, the Commission and the Foreign Relations Counsellors Working Group, including with regard to other related external actions carried out by the Community under the first pillar (such as CARDS, MEDA, ALA, TACIS, Rapid Reaction Mechanism...). Increased coordination will also enable the Relex Group to issue an early warning to the PSC where budgetary difficulties are foreseen.

The procedure will be as follows<sup>95</sup>:

(a) On a regular basis:

- timely identification through regular reviews, in each Working Group, of forthcoming activities, e.g. in the context of the Presidency work-plan;
- regular information from the Commission on foreseen external Community activities in the Working Group's field;
- regular examination by the Foreign Relations Counsellors Working Group of the state of play of the CFSP Budget lines submitted by the Commission.

<sup>94</sup> For its information the PSC receives from the Commission the quarterly reports from the Commission to the budgetary authority on the implementation of CFSP actions.

<sup>95</sup> It is recalled that, when drafting operational conclusions of Working Groups and COREU messages, the Presidency and the Council Secretariat as well as Member States should see to it that the 1995 "Council Working Methods" (doc. 7896/95, adopted by the Council on 12 June 1995) are adhered to, in particular regarding the use of the COREU network. Annex II, point 12) of said document states: "The COREU network remains reserved for questions covered only by the provisions of Title V, which covers neither institutional questions nor questions related to the use of the Community budget..."

(b) When specific action is proposed:

- for each proposed action, information by the Commission at the earliest possible juncture, to the relevant Working Group, on possible support from the Community, as well as on the requisite time-frame for decisions within the Community;
- when identifying, designing and proposing a Joint Action, the Working Group concerned will draw up swiftly an Action Statement (see Annex) confirming the viability, preparedness and cost-effectiveness of the proposal in financial and budgetary terms which will be presented to the PSC for political endorsement;
- on the basis of the Action Statement, the Commission will draw up a detailed Financial Statement with an indicative amount allocated to the project in question which will then be examined by the Relex Group;
- the relevant Working Group will review and monitor the adopted Joint Action and will inform the PSC thereof.

(c) Role of the Foreign Relations Counsellors Working Group:

Where it is difficult to determine whether the proposed action should be financed from EC or CFSP sources, the Foreign Relations Counsellors Working Group will give advice to the relevant Working Group on the nature, sources of financing and type of legal act suitable for the proposed measures.

The Foreign Relations Counsellors Working Group will retain the horizontal control on the CFSP budget chapter as well as on the legal and institutional matters concerning the CFSP<sup>96</sup>.

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<sup>96</sup> COREPER Decision of 26.7.1994.

(d) Regular reviews of recurrent expenditure:

Regular reviews of recurrent expenditure (support to OHR, Special Representatives, etc.) should be undertaken by the relevant Working Groups in order to examine the scope for economies and to determine elements which could be shifted to financing from the first pillar, or vice versa.

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**(e) Financial Notes**

*(approved by the Council on 13 June 1994 - doc. 7622/94)*

**NOTE I****ADMINISTRATIVE EXPENDITURE**

1. Article J.11<sup>◇</sup> stipulates that administrative expenditure relating to the CFSP is to be charged to the budget of the European Communities, it being understood that such expenditure is to be borne by the Institution which incurred it.
2. As regards the Commission, administrative expenditure covers among other things salaries, travel expenses and other costs relating to Commission staff involved in the CFSP.
3. As regards the Council,
  - (a) the following expenditure, which forms part of the day-to-day management of the CFSP, is normally regarded as administrative expenditure:
    - (1) salaries and other costs relating to the permanent staff of the CFSP unit of the General Secretariat;
    - (2) costs relating to the engagement of experts on a temporary basis in specialist areas not covered by the permanent staff of the General Secretariat;
    - (3) travel and subsistence expenses incurred by the Presidency, the Troika, members of the Council or other duly authorized persons<sup>97</sup>.

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<sup>◇</sup> N.B.: Maastricht Treaty

<sup>97</sup> Such expenses should be kept to the minimum necessary for the efficient functioning of the CFSP.

(b) the following may be regarded as administrative expenditure, on a decision by the Council and depending on the circumstances:

- (1) costs preparatory to the implementation of an operational action (travel and subsistence expenses of the persons referred to above and temporary logistic support made available to them);
- (2) costs involved in the organization of international conferences convened by the Union under the CFSP at or away from the seats of the Institutions insofar as those costs exceed the costs usually borne by the host country;
- (3) costs involved in the administrative management and co-ordination of an operational action involving exclusively or almost exclusively resources in kind and in the form of staff.

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## NOTE II

### OPERATING EXPENDITURE

#### FINANCING FROM THE COMMUNITY BUDGET

##### – "Commission" Section<sup>98</sup>

#### A. Availability of funds - entry of appropriations in the budget

The budgetary procedure laid down in the EC Treaty applies<sup>99</sup>.

As regards the entry of appropriations in the budget, provision should be made:

- on the one hand, for a specific budget heading with the necessary appropriations for foreseeable expenditure;
- and, on the other hand, for a reserve fund created within the budget (Chapter B0 40), containing funds for CFSP expenditure.
- In this connection, it will be necessary to ensure coherence between the above expenditure and expenditure on Community support measures.

In the event of there being insufficient funds, either transfers of appropriations from other headings would have to be made or, as a last resort, a supplementary and amending budget would have to be adopted in the course of the financial year (in each instance within the limits laid down by the financial perspective).

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<sup>98</sup> The Council's position on this option is set out in paragraph 3(ii) of the introductory note.

<sup>99</sup> As non-compulsory expenditure is involved, the European Parliament will have the last say, both in the context of the annual budgetary procedure and as regards any transfers between chapters in the course of the financial year.

**B. Implementation of expenditure****(a) Decision on the apportionment of expenditure**

The decisions to be taken for the implementation of CFSP actions as regards the choice, desirability, nature and amount of expenditure are a matter for the Council and/or its Presidency, in a form selected at the time of the adoption of the joint action from among the following options:

- decision by the Presidency alone;
- decision by the Presidency, assisted by a working party;
- decision by the Council itself (prepared in the usual way);
- delegation of specific aspects of implementation to the Commission, on its own or assisted by a committee.

**(b) Financial management**

The "authorization", financial and physical implementation and monitoring of the expenditure thereon must comply with Community provisions (Financial Regulation, detailed procedures for the implementation of certain provisions of the Financial Regulation)<sup>100</sup>.

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<sup>100</sup> This does not give rise to technical problems in the case of financing from the "Commission" Section, as the necessary administrative structure exists.

**NOTE III****OPERATING EXPENDITURE****FINANCING FROM THE COMMUNITY BUDGET****– "Council" Section<sup>101</sup>****A. Availability of funds – entry of operational appropriations in the Council's budget**

Entry of the host structure, as of the funds, is carried out by means of the budgetary procedure: the Council establishes Section II of the budget (Council) in the draft budget and forwards it to the European Parliament. The European Parliament has the final word on all NCE. All or part of the funds may be entered in the budget heading or in a reserve; responsibility for transfers from the reserve to the budget heading lies with the Council as regards Section II.

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<sup>101</sup> Delegations' positions on this option are set out in paragraph 3(ii) of the introductory note, as follows:

The French and United Kingdom delegations regarded financing from the "Council" Section of the budget as still being a viable option. The other delegations confirmed their objections to such an approach, the added value of which seemed to them very limited compared with the disadvantages which would ensue from it, in particular the need to establish a new and possibly redundant administrative structure and the difficulty of finding a modus vivendi with Parliament. These delegations pointed out that Parliament might take the view that it was no longer bound by the gentlemen's agreement and that it had the same rights over the Council's operating expenditure as over that of the Commission once the Council budget also included operating expenditure.



**B. Implementation of expenditure****(a) Decision on the apportionment of expenditure**

The decisions to be taken for the implementation of CFSP actions as regards the choice, desirability, nature and amount of expenditure are a matter for the Council and/or its Presidency, in a form selected at the time of the adoption of the joint action from among the following options:

- decision by the Presidency alone;
- decision by the Presidency, assisted by a working party;
- decision by the Council itself (prepared in the usual way);
- delegation of specific aspects of implementation to the Commission, on its own or assisted by a committee.

**(b) Financial management**

The "operational expenditure from the Council's budget" option presupposes the appointment of one or more authorizing officers, a financial controller and staff responsible for monitoring implementation.

In addition to the establishment of a minimum nucleus of officials with the above responsibilities, the size of the definitive administrative unit to be set up will depend on:

- the nature and diversity of the types of action envisaged;
- the frequency and duration of actions, consecutive or simultaneous implementation.

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## NOTE IV

## OPERATING EXPENDITURE

FINANCING BY THE MEMBER STATES<sup>102</sup>

## A. Cost-sharing scale and availability of funds

1. Cost sharing among the Member States will be worked out on the GNP scale, it being understood that the Council will retain the possibility, acting unanimously, of setting an alternative scale in certain exceptional cases.
2. An account must be provided for the Union's use into which national contributions can be paid<sup>103</sup>.

B. Contributions in kind<sup>104</sup>

1. The Council may decide in certain specific cases to have recourse to contributions in kind. In such cases, the possibility of contributions in kind, the nature of such contributions and the date of reference for taking them into account must be expressly laid down in the enacting terms of the joint action.

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<sup>102</sup> The delegations' positions on this option are set out in paragraph 3(iii) of the introductory note, as follows:

The vast majority of delegations felt that this type of financing should be kept for a very limited number of cases. However, it was pointed out in this connection that use of the option of national financing was the only way of allowing for contributions in kind.

<sup>103</sup> Ten delegations were in favour of such an account being opened with the Commission. The French and United Kingdom delegations were in favour of an account with the Council.

<sup>104</sup> As a general rule, contributions in kind made prior to the decision to take joint action will not be taken into account.

2. Decisions on the identification and entry in the accounts of contributions in kind will be taken at the time of the decision on the apportionment of expenditure and in accordance with the procedure laid down when that decision is taken (see Note II(B)(a)). In this context it will be necessary to take account of the concepts of usefulness and proportionality when making allowance for contributions in kind.

## **C. Implementation of expenditure**

### **(a) Decision on the apportionment of expenditure**

The possibilities are the same as set out in Note II, point B(a).

### **(b) Financial management**

Since the framework of Community rules does not apply automatically where the Council has agreed on financing by the Member States (the same is true with regard to participation by the European Parliament and the European Court of Auditors), provision must be made for special rules to ensure the monitoring and efficient management of national contributions.

A working party of experts in financial management could be given the task of drawing up financial rules which will set in place an appropriate management and supervision structure. This working party could also base its discussions on the EDF rules and the COST rules, as well as on any other suggestions from the Member States.

## **D. Mobilization of national contributions**

Each Member State must ensure that its national contributions are paid at the appropriate time, in order to guarantee the efficiency and smooth operation of the joint action.

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**Chapter 7. RELATIONS WITH THE EUROPEAN PARLIAMENT****(a) Inter-Institutional Agreement on budgetary discipline and sound financial management***(enters into force on 1 January 2007, OJ C 139, 14.6.2006, p. 1)*

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

hereinafter referred to as the "institutions",

HAVE AGREED AS FOLLOWS:

1. The purpose of this Agreement is to implement budgetary discipline and to improve the functioning of the annual budgetary procedure and cooperation between the institutions on budgetary matters as well as to ensure sound financial management.
2. Budgetary discipline under this Agreement covers all expenditure. It is binding on all the institutions for as long as this Agreement is in force.
3. This Agreement does not alter the respective budgetary powers of the institutions, as laid down in the Treaties. Where reference is made to this Point, the Council will act by a qualified majority and the European Parliament by a majority of its members and three fifths of the votes cast, in compliance with the voting rules laid down in the fifth subparagraph of Article 272(9) of the Treaty establishing the European Community (hereinafter referred to as the "EC Treaty").

4. Should a Treaty revision with budgetary implications occur during the multi-annual financial framework 2007 to 2013 (hereinafter referred to as "the financial framework"), the necessary adjustments will be made accordingly.
5. Any amendment of this Agreement requires the consent of all the institutions. Changes to the financial framework must be made in accordance with the procedures laid down for that purpose in this Agreement.
6. This Agreement is in three parts:
  - Part I contains a definition and implementing provisions for the financial framework and applies for the duration of that financial framework.
  - Part II relates to improvement of inter-institutional collaboration during the budgetary procedure.
  - Part III contains provisions related to sound financial management of EU funds.
7. The Commission will, whenever it considers it necessary and in any event at the same time as it presents a proposal for a new financial framework pursuant to Point 30, submit a report on the application of this Agreement, accompanied where necessary by a proposal for amendments.

8. This Agreement enters into force on 1 January 2007 and replaces:
- the Inter-institutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure<sup>105</sup>,
  - the Inter-institutional Agreement of 7 November 2002 between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund supplementing the Inter-institutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure<sup>106</sup>.

## PART I – FINANCIAL FRAMEWORK: DEFINITION AND IMPLEMENTING PROVISIONS

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### E. Emergency Aid Reserve

25. The Emergency Aid Reserve is intended to allow a rapid response to the specific aid requirements of third countries following events which could not be foreseen when the budget was established, first and foremost for humanitarian operations, but also for civil crisis management and protection where circumstances so require. The annual amount of the Reserve is fixed at EUR 221 million for the duration of the financial framework, in constant prices.

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<sup>105</sup> OJ C 172, 18.6.1999, p. 1.

<sup>106</sup> OJ C 283, 20.11.2002, p. 1.

The Reserve is entered in the general budget of the European Union as a provision. The corresponding commitment appropriations will be entered in the budget, if necessary, over and above the ceilings laid down in Annex I.

When the Commission considers that the Reserve needs to be called on, it will present to the two arms of the budgetary authority a proposal for a transfer from the Reserve to the corresponding budgetary lines.

Any Commission proposal for a transfer to draw on the Reserve must, however, be preceded by an examination of the scope for reallocating appropriations.

At the same time as it presents its proposal for a transfer, the Commission will initiate a trilogue procedure, if necessary in a simplified form, to secure agreement of the two arms of the budgetary authority on the need to use the Reserve and on the amount required. The transfers will be made in accordance with Article 26 of the Financial Regulation.

#### F. European Union Solidarity Fund

26. The European Union Solidarity Fund is intended to allow rapid financial assistance in the event of major disasters occurring on the territory of a Member State or of a candidate country, as defined in the relevant basic act. There will be a ceiling on the annual amount available for the Fund of EUR 1 billion (current prices). On 1 October each year, at least one quarter of the annual amount will remain available in order to cover needs arising until the end of the year. The portion of the annual amount not entered in the budget may not be rolled over in the following years.



In exceptional cases and if the remaining financial resources available in the Fund in the year of occurrence of the disaster, as defined in the relevant basic act, are not sufficient to cover the amount of assistance considered necessary by the budgetary authority, the Commission may propose that the difference be financed through the annual amounts available for the following year. The annual amount of the Fund to be budgeted in each year may not, under any circumstances, exceed EUR 1 billion.

When the conditions for mobilising the Fund as set out in the relevant basic act are met, the Commission will make a proposal to deploy it. Where there is scope for reallocating appropriations under the heading requiring additional expenditure, the Commission shall take this into account when making the necessary proposal, in accordance with the Financial Regulation, by means of the appropriate budgetary instrument. The decision to deploy the Fund will be taken jointly by the two arms of the budgetary authority in accordance with Point 3.

The corresponding commitment appropriations will be entered in the budget, if necessary, over and above the ceilings of the relevant headings laid down in Annex I.

At the same time as it presents its proposal for a decision to deploy the Fund, the Commission will initiate a trialogue procedure, if necessary in a simplified form, to secure agreement of the two arms of the budgetary authority on the need to use the Fund and on the amount required.

## G. Flexibility Instrument

27. The Flexibility Instrument with an annual ceiling of EUR 200 million (current prices) is intended to allow the financing, for a given financial year and up to the amount indicated, of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more other headings.

The portion of the annual amount which is not used may be carried over up to year  $n+2$ . If the Flexibility Instrument is mobilised, any carryovers will be drawn on first, in order of age. The portion of the annual amount from year  $n$  which is not used in year  $n+2$  will lapse.

The Commission will make a proposal for the Flexibility Instrument to be used after it has examined all possibilities for re-allocating appropriations under the heading requiring additional expenditure.

The proposal will concern the principle of making use of the Flexibility Instrument and will identify the needs to be covered and the amount. It may be presented, for any given financial year, during the budgetary procedure. The Commission proposal will be included in the preliminary draft budget or accompanied, in accordance with the Financial Regulation, by the appropriate budgetary instrument.

The decision to deploy the Flexibility Instrument will be taken jointly by the two arms of the budgetary authority in accordance with Point 3. Agreement will be reached by means of the conciliation procedure provided for in Annex II, Part C.

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## PART II – IMPROVEMENT OF INTERINSTITUTIONAL COLLABORATION DURING THE BUDGETARY PROCEDURE

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### G. Financing of the common foreign and security policy (CFSP)

42. As regards CFSP expenditure which is charged to the general budget of the European Communities in accordance with Article 28 of the Treaty on European Union, the institutions will endeavour, in the conciliation procedure provided for in Annex II, Part C, and on the basis of the preliminary draft budget established by the Commission, to secure agreement each year on the amount of the operating expenditure to be charged to the Community budget and on the distribution of this amount between the articles of the CFSP budget chapter suggested in the fourth paragraph of this Point. In the absence of agreement, it is understood that the European Parliament and the Council will enter in the budget the amount contained in the previous budget or the amount proposed in the preliminary draft budget, whichever is the lower.

The total amount of operating CFSP expenditure will be entered entirely in one budget chapter (CFSP) and distributed between the articles of that chapter as suggested in the fourth paragraph of this Point. That amount is to cover the real predictable needs, assessed in the framework of the establishment of the preliminary draft budget, on the basis of forecasts drawn up annually by the Council, and a reasonable margin for unforeseen actions. No funds will be entered in a reserve. Each article will cover instruments already adopted, instruments which are foreseen but not yet adopted and all future – that is unforeseen – instruments to be adopted by the Council during the financial year concerned.

Since, under the Financial Regulation, the Commission has the authority to transfer appropriations autonomously between articles within the CFSP budget chapter, the flexibility deemed necessary for speedy implementation of CFSP actions will accordingly be assured. In the event of the amount of the CFSP budget chapter during the financial year being insufficient to cover the necessary expenses, the European Parliament and the Council will seek a solution as a matter of urgency, on a proposal from the Commission, taking into account Point 25.

Within the CFSP budget chapter, the articles into which the CFSP actions are to be entered could read along the following lines:

- crisis management operations, conflict prevention, resolution and stabilisation, monitoring and implementation of peace and security processes,
- non-proliferation and disarmament,
- emergency measures,
- preparatory and follow-up measures,
- European Union Special Representatives.

The institutions agree that at least EUR 1 740 million will be available for the CFSP over the period 2007-2013 and that the amount for measures entered under the article mentioned in the third indent may not exceed 20 % of the overall amount of the CFSP budget chapter.

43. Each year, the Council Presidency will consult the European Parliament on a forward-looking Council document, which will be transmitted by June 15 for the year in question, setting out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the European Union and an evaluation of the measures launched in the year n-1. Furthermore, the Council Presidency will keep the European Parliament informed by holding joint consultation meetings at least five times a year, in the framework of the regular political dialogue on the CFSP, to be agreed at the latest at the conciliation meeting to be held before the Council's second reading. Participation in these meetings shall be as follows:

- European Parliament: the bureaux of the two Committees concerned,
- Council: Ambassador (Chairman of the Political and Security Committee),
- The Commission will be associated and participate at these meetings.

Whenever it adopts a decision in the field of the CFSP entailing expenditure, the Council will immediately, and in any event no later than five working days following the final decision, send the European Parliament an estimate of the costs envisaged ("financial statement"), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.

Once a quarter the Commission will inform the budgetary authority about the implementation of CFSP actions and the financial forecasts for the remaining period of the year.

## PART III – SOUND FINANCIAL MANAGEMENT OF EU FUNDS

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#### 4. DECLARATION ON DEMOCRATIC SCRUTINY AND COHERENCE OF EXTERNAL ACTIONS

The European Parliament, the Council and the Commission acknowledge the need for rationalisation of the various instruments for external actions. They agree that such rationalisation of instruments, while enhancing the coherence and the responsiveness of European Union action, should not affect the powers of either the legislative authority – notably in its political control of strategic choices – or the budgetary authority. The text of the relevant regulations should reflect those principles and include where appropriate the necessary policy content and an indicative breakdown of resources and, where necessary, a review clause aiming at evaluating the implementation of the regulation, after three years at the latest.

Under the basic legislative acts adopted under the co-decision procedure, the Commission will systematically inform and consult the European Parliament and the Council by sending draft country, regional and thematic strategy papers.

Where the Council decides on the transition of potential candidates to pre-accession status during the period covered by the Inter-institutional Agreement, the Commission will revise and communicate to the European Parliament and the Council an indicative multi-annual framework according to Article 4 of the Regulation establishing an Instrument for Pre-Accession Assistance (IPA) to take account of the expenditure requirements resulting from such a transition.

The Commission will provide in the preliminary draft budget a nomenclature which ensures the prerogatives of the budgetary authority for external actions.

#### 5. DECLARATION OF THE COMMISSION ON THE DEMOCRATIC SCRUTINY AND COHERENCE OF EXTERNAL ACTIONS

The Commission undertakes to enter into a regular dialogue with the European Parliament on the content of the draft country, regional and thematic strategy papers and to take due account of the position of the European Parliament when implementing the strategies.

That dialogue will include a discussion on the transition of potential candidates to pre-accession status during the period covered by the Inter-institutional Agreement.

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**(b) Inter-institutional Agreement concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy**

*(OJ C 298, 30.11.2002, p. 1)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL,

Whereas:

- (1) Article 21 of the Treaty on European Union states that the Council Presidency shall consult the European Parliament on the main aspects and the basic choices of the common foreign and security policy and shall ensure that the views of the European Parliament are duly taken into consideration. That Article also stipulates that the European Parliament shall be kept regularly informed by the Council Presidency and the Commission of the development of the common foreign and security policy. A mechanism should be introduced to ensure that these principles are implemented in this field.
- (2) In view of the specific nature and the especially sensitive content of certain highly classified information in the field of security and defence policy, special arrangements should be introduced for the handling of documents containing such information.
- (3) In conformity with Article 9(7) of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>107</sup>, the Council is to inform the European Parliament regarding sensitive documents as defined in Article 9(1) of that Regulation in accordance with arrangements agreed between the institutions.

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<sup>107</sup> OJ L 145, 31.5.2001, p. 43.



- (4) In most Member States there are specific mechanisms for the transmission and handling of classified information between governments and national parliaments. This Inter-institutional Agreement should provide the European Parliament with treatment inspired by best practices in Member States,

HAVE CONCLUDED THIS INTERINSTITUTIONAL AGREEMENT:

## **1. Scope**

1.1 This Inter-institutional Agreement deals with access by the European Parliament to sensitive information, i.e. information classified as TRÈS SECRET/TOP SECRET, SECRET or CONFIDENTIEL, whatever its origin, medium or state of completion, held by the Council in the field of security and defence policy and the handling of documents so classified.

1.2 Information originating from a third State or international organisation shall be transmitted with the agreement of that State or organisation. Where information originating from a Member State is transmitted to the Council without explicit restriction on its dissemination to other institutions other than its classification, the rules in sections 2 and 3 of this Inter-institutional Agreement shall apply. Otherwise, such information shall be transmitted with the agreement of the Member State in question. In the case of a refusal of the transmission of information originating from a third State, an international organisation or a Member State, the Council shall give the reasons.

1.3. The provisions of this Inter-institutional Agreement shall apply in accordance with applicable law and without prejudice to Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry<sup>108</sup> and without prejudice to existing arrangements, especially the Inter-institutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure<sup>109</sup>.

## 2. General rules

2.1. The two institutions shall act in accordance with their mutual duties of sincere cooperation and in a spirit of mutual trust as well as in conformity with the relevant Treaty provisions.

Communication and handling of the information covered by this Inter-institutional Agreement must have due regard for the interests which classification is designed to protect, and in particular the public interest as regards the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management.

2.2. At the request of one of the persons referred to in point 3.1 below, the Presidency of the Council or the Secretary- General/High Representative shall inform them with all due despatch of the content of any sensitive information required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Inter-institutional Agreement, taking into account the public interest in matters relating to the security and defence of the European Union or of one or more of its Member States or military and non-military crisis management, in accordance with the arrangements laid down in section 3 below.

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<sup>108</sup> OJ L 113, 19.5.1995, p. 2.

<sup>109</sup> OJ C 172, 18.6.1999, p. 1.

### 3. Arrangements for access to and handling of sensitive information

3.1. In the context of this Inter-institutional Agreement, the President of the European Parliament or the Chairman of the European Parliament's Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy may request that the Presidency of the Council or the Secretary-General/High Representative convey information to this committee on developments in European security and defence policy, including sensitive information to which point 3.3 applies.

3.2. In the event of a crisis or at the request of the President of the European Parliament or of the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, such information shall be provided at the earliest opportunity.

3.3. In this framework, the President of the European Parliament and a special committee chaired by the Chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy and composed of four members designated by the Conference of Presidents shall be informed by the Presidency of the Council or the Secretary-General/High Representative of the content of the sensitive information where it is required for the exercise of the powers conferred on the European Parliament by the Treaty on European Union in the field covered by the present Inter-institutional Agreement. The President of the European Parliament and the special committee may ask to consult the documents in question on the premises of the Council. Where this is appropriate and possible in the light of the nature and content of the information or documents concerned, these shall be made available to the President of the European Parliament, who shall select one of the following options:

- (a) information intended for the chairman of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy;
- (b) access to information restricted to the members of the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy only;
- (c) discussion in the Committee on Foreign Affairs, Human Rights, Common Security and Defence Policy, meeting in camera, in accordance with arrangements which may vary by virtue of the degree of confidentiality involved;
- (d) communication of documents from which information has been expunged in the light of the degree of secrecy required.

These options are not applicable if sensitive information is classified as TRÈS SECRET/TOP SECRET.

As to information or documents classified as SECRET or CONFIDENTIEL, the selection by the President of the European Parliament of one of these options shall be previously agreed with the Council.

The information or documents in question shall not be published or forwarded to any other addressee.

#### 4. Final provisions

4.1. The European Parliament and the Council, each for its own part, shall take all necessary measures to ensure the implementation of this Inter-institutional Agreement, including the steps required for the security clearance of the persons involved.

4.2. The two institutions are willing to discuss comparable Inter-institutional Agreements covering classified information in other areas of the Council's activities, on the understanding that the provisions of this Inter-institutional Agreement do not constitute a precedent for the Union's or the Community's other areas of activity and shall not affect the substance of any other Inter-institutional Agreements.

4.3. This Inter-institutional Agreement shall be reviewed after two years at the request of either of the two institutions in the light of experience gained in implementing it.

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**ANNEX**

This Inter-institutional Agreement shall be implemented in conformity with the relevant applicable regulations and in particular with the principle according to which the consent of the originator is a necessary condition for the transmission of classified information as laid down in point 1.2.

Consultation of sensitive documents by the members of the Special Committee of the European Parliament shall take place in a secured room at the Council premises.

This Inter-institutional Agreement shall enter into force after the European Parliament has adopted internal security measures which are in accordance with the principles laid down in point 2.1 and comparable to those of the other institutions in order to guarantee an equivalent level of protection of the sensitive information concerned.

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**(c) Guidelines concerning relations between the European Parliament and the Council within the framework of Titles V and VI of the TEU**

*(Part A agreed by Coreper on 18 July 1994 - doc. SN 3258/94)*

**PART A: Provisions relating to a common foreign and security policy (CFSP)**

The provisions set out below are designed to determine the practical arrangements for implementing Article J.7<sup>◇</sup> of the Treaty on European Union.

**I. INFORMING THE EUROPEAN PARLIAMENT<sup>110</sup>**

1. The Presidency of the Council will keep the European Parliament regularly informed of developments in the foreign and security policy of the Union.

2. This information could take the following forms:

(a) a statement in the plenary session of Parliament in the context of:

- the presentation of the Presidency's general programme of work and the report on the outcome thereof;
- the Presidency's statement on the conclusions of each European Council;
- the annual debate held by Parliament on the progress made in implementing the CFSP;

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<sup>◇</sup> N.B.: Maastricht Treaty

<sup>110</sup> In accordance with Article J.7<sup>◇</sup> of the TEU and the Brussels European Council conclusions of 29 October 1993, the obligation to inform the European Parliament is to be fulfilled by the Presidency in conjunction with the Commission.

- participation by the Presidency in certain debates on CFSP issues, depending on the possibilities open to it;
- replies within a reasonable period to oral questions which Parliament puts to the Council;

(b) participation in meetings of the relevant European Parliament committee:

- holding of quarterly Presidency "colloquia";
- attendance by the Presidency at meetings of the relevant European Parliament committee whenever this is useful or necessary, depending on the possibilities open to it, or by the Secretary-General of the Council or a senior Council official, empowered to speak on the Presidency's behalf;
- representation of the General Secretariat of the Council at meetings of the relevant European Parliament committee;

(c) continuation of informal contacts between the Presidency and the rapporteurs appointed by Parliament on CFSP issues;



(d) forwarding of written information:

- statements which the Presidency or the Council adopts will be forwarded without delay to Parliament by all appropriate means;
- other documents which the Council decides to forward to Parliament will be sent to it as soon as possible;
- replies within a reasonable period to written questions which Parliament puts to the Council.

3. The Presidency will ensure that it is represented at the most appropriate level when participating in the debates or meetings mentioned under 2(a), (b) and (c) above<sup>111</sup>.

## II. CONSULTATION OF THE EUROPEAN PARLIAMENT

1. The Presidency will consult the European Parliament on the main aspects and fundamental choices in CFSP and will take care to obtain its views in good time:

- once the European Council has approved general guidelines for joint action;
- during the annual debate provided for in Article J.7<sup>◇</sup> of the Treaty on European Union;
- where written or oral information is supplied as described in I.2 above.

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<sup>111</sup> Such representation can take place in accordance with Article 25 of the Council's Rules of Procedure.

<sup>◇</sup> N.B.: Maastricht Treaty

In the context of such consultation, the Council will if necessary indicate to the European Parliament by what date it should make known its views to the Presidency.

2. The Presidency will take care to ensure that the views of the European Parliament (reactions, communications, questions, recommendations or resolutions) expressed during debates (point I above) or during a consultation (paragraph 1 above) are brought to the Council's attention and given due consideration.

The relevant European Parliament resolutions will thus be included with the documentation for the corresponding items discussed by the Council or its subordinate bodies.

3. As part of the information it gives to Parliament (see I above), the Presidency will take care to brief it on the action the Council is able to take on the positions adopted by Parliament.

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## **Chapter 8. COOPERATION IN THIRD COUNTRIES AND INTERNATIONAL ORGANISATIONS**

### **(a) Cooperation between Missions of Member States and Commission**

#### **Delegations in Third Countries and to International Organisations**

*(Guidelines approved by the Interim PSC on 6 October 2000 - doc. 12094/00)*

These guidelines are non-binding and are intended to be applied in the light of local circumstances, without prejudice to the provisions of Title V of the TEU.

#### **1. Enhancing the Union's visibility**

In order to reinforce the European Union's identity, Member States' missions and Commission delegations will cooperate to enhance the Union's image and visibility, *inter alia* by attending and organising ceremonies or other events.

#### **2. Exchange of political information and joint meetings**

Member States' missions and Commission delegations will step up the exchange of information received both on the spot and from external sources.

Other meetings should be organised around official visits by Members of the European Parliament or other representatives of European Union institutions. Wherever possible, a debriefing meeting should be organised - preferably by the visitor - at the end of the visit.

Contacts will be maintained between the European Union and the missions of the associate countries in third countries in accordance with the guidelines for enhanced political dialogue. The missions of the associate countries should take part in such meetings where appropriate.

### 3. Joint assessments

Member States' missions and Commission delegations will draw up joint reports assessing the political situation - or specific cases - in the country to which they are accredited, at the request of the Political Committee\* or a Working Group, or on the basis of local consensus that the situation requires that this be done.

The human rights situation in the country of accreditation will, if necessary, be the subject of more specific reports.

### 4. Information on CFSP legal acts and declarations

The Presidency's missions and Commission delegations will circulate in their host country, in the most appropriate and timely manner, the common strategies, common positions, joint actions and other CFSP decisions adopted by the Council.

The Presidency will circulate by any appropriate means and as soon as possible the declarations adopted by the European Union or by the Presidency on behalf of the European Union, with due regard for the Political Committee's\* directives of 28 November 1991.

### 5. Demarches

The Presidency or the members of the Troika will be responsible for undertaking the demarches approved by the Member States at an appropriate level, and will report back in due time.

The Presidency, in consultation with the Member States and the Commission, will decide whether the general public should be informed of the content of the demarches undertaken.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

6. Cooperation in the event of local crises

Member States' missions and Commission delegations will exchange information on their crisis plans with a view to their coordination.

In the event of local crises, Member States' missions and Commission delegations will keep one another informed and will coordinate and confer with one another.

Operations to evacuate nationals of Member States whose safety is endangered in a third country will be conducted in accordance with the Council Decision of 27 June 1996 if the use of military means is required.

7. Cooperation in the consular sphere

Member States' missions and Commission delegations will cooperate in implementing the Decision of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations. In particular, they will step up their cooperation in implementing the Decision of 19 December 1995 on measures implementing the above Decision. They will endeavour to share the resulting burden equitably. Due account will also be taken of the Guidelines for a common approach to cooperation between Member States' missions and contacts with third countries on consular matters of 14 January 2000.

## 8. Cooperation in the field of communications

The mission of the country representing the Presidency will ensure the appropriate and timely circulation of COREUs to those Member States' missions and Commission delegations which do not receive them directly from their capitals, paying special attention to their confidentiality.

Member States' missions and Commission delegations are encouraged to cooperate among themselves on an ad hoc and regular basis regarding the use of diplomatic bags and diplomatic mail.

In countries where VHF/UHF radio networks have been established, the mission acting as project leader will ensure that the network operates smoothly. Member States or the Commission may propose that these networks be set up in other countries.

## 9. Cooperation in the administrative sphere

Cooperation will be developed in the medical, educational, transport, housing or other spheres, with due regard for living conditions in the country concerned.

Exchanges of personnel between Member States' missions and Commission delegations may be considered.

Specific cooperation in the area of translation and interpretation could prove useful.

#### 10. Co-location of diplomatic missions

The Member States and Commission delegations concerned will cooperate closely in the context of co-location projects under way, in accordance with the common position of 6 October 1995 and the general memorandum of understanding on the co-location of diplomatic and consular missions of 21 February 1996.

The Member States or the Commission may propose further mission co-location projects in appropriate cases, in particular in the event of transfers between capitals or the establishment of new representations.

#### 11. Cooperation within international organisations

These guidelines apply to cooperation within international organisations, with due regard for the specific characteristics of such cooperation and in accordance with the other texts concerning EU cooperation (Policy document on European Union coordination in the United Nations' framework of 30 April 1995; Candidatures for Heads of UN Agencies of 30 March 1998; Guideline paper on the Union's policy concerning membership of the Western European and Others Group (WEOG) of 28 February 1995).

#### 12. Application

These guidelines apply to diplomatic as well as consular missions as far as CFSP matters are concerned.

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**(b) Cooperation between Missions on representation of the Presidency in Third Countries**

*(approved by the Political Committee\* meeting on 18 May 1994, COREU PAR 376/84, and "further details" approved on 15 May 1986)*

**Introduction**

A study of the reports received when cooperation between missions in third countries in 1984-1985 was reviewed reveals on the one hand a certain number of ways in which this cooperation could be improved and on the other hand certain impediments to its intensification. At the present stage this cooperation requires fresh impetus in order to avoid any risk of stagnation. For this reason the Political Committee\* has approved the following clarifications of its Directives of 17 May 1984, elucidating certain aspects of them and making suggestions on their implementation. The Directives concerned are quoted above each clarification.

Chapter II of the Ministers' Decision of 28 February 1986 concerning the practical application of certain aspects of the Single European Act (the chapter on cooperation between the missions of Member States and Commission delegations in third countries and to international organizations) lists the fields in which this cooperation is to be intensified, namely the fields identified by the Directives of the Political Committee\* of 17 May 1984 and implemented since that date, to which the field of education has now been added. In order not to alter the basic structure of the Directives of 17 May 1984, a provision relating to cooperation in the field of education between the missions of the Twelve has provisionally been inserted in the administrative section (Directives 5 and 6).

It goes without saying that these clarifications, like the Directives on which they are based, need to be implemented in a manner which takes into account the specific circumstances of each mission, although the existence of cooperation within a different framework is not a priori an acceptable reason for the Twelve not to cooperate. This implementation will be subject to the particular instructions which may be issued to an individual mission (e.g. in Eastern Europe: "Reactions of the Twelve to Gorbachev's overture").

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003



## **Directives from the Political Committee\* concerning cooperation between missions in third countries**

On 19 June 1983 in Stuttgart, Heads of State and of Government of the Member States of the European Communities adopted a Solemn Declaration on European Unity which notably provided for closer cooperation in the diplomatic and administrative fields between the representations of the Ten in third countries.

In accordance with this Declaration and in the light of the reports by missions on the cooperation already undertaken, the Political Committee\* approved seventeen Directives, the main objectives of which were as follows and were decided at its 128th meeting on 8 March 1983:

- to make the effect of European cooperation more homogeneous and improve its image;
- to exchange more political and economic information;
- to render administration more effective;
- to achieve savings on budgets;
- to improve living conditions in difficult circumstances.

### **I. Exchanges of political and economic information (Directives 1-4)**

- (1) The missions of the Ten will hold a meeting at head of mission level at least once a month. Meetings may also be arranged between their staff.
- (2) Furthermore, heads of mission will invite politicians and government officials to attend meetings or working meals where local circumstances are appropriate.
- (3) Heads of mission are reminded of the Council's Directives concerning commercial counsellors and information officers.
- (4) Missions are encouraged to intensify their exchanges of political and economic documents.

## Clarification

- (a) In order to underline the common European identity, heads of mission are invited to take suitable initiatives, for example:
- The representative of the Presidency will inform the Ministry of Foreign Affairs of its responsibilities in an appropriate manner – for example by note verbale – at the beginning of the six-monthly period of office.
  - When the representative of the Presidency or of the Troika makes demarches to the authorities in the country of accreditation, heads of mission should emphasize that they are being undertaken in the name of the Twelve, including partners not represented in the capital concerned.
  - The Presidency's representative, accompanied by the heads of mission of the other partners, may exchange political information with officials of the Ministry of Foreign Affairs of the country of accreditation.
  - Heads of mission may organize working meals to which representatives of the country of accreditation are invited.
- (b) Non-resident heads of mission are invited to announce systematically their plans for visiting their counterparts in the capitals of countries where they are co-accredited. The Presidency's representative will try to ensure that European Political Cooperation meetings coincide with these visits.
- (c) In countries where failure to respect human rights gives cause for concern, heads of mission may jointly review the situation in this respect with a view to reporting to the Presidency.
- (d) In order better to organize the continuation of cooperation between missions it is desirable for the representative of an outgoing Presidency to explain the results of the period of the Presidency to his successor.

## II. Shared information on administrative problems (Directives 5 and 6)

- (5) Missions' administrative staff will meet regularly to exchange information or to consult with a view to harmonizing the positions of their missions on problems of mutual interest.
- (6) Missions will inform one another of the information contained in their mission reports and, on this basis, will seek to draw up common documents containing practical information on local living conditions. They will, for example, exchange information on offers of accommodation, terms of employment of locally recruited staff, etc.

### Clarification

- (a) Heads of mission are invited to encourage their specialist staff to discuss administrative questions more systematically.
- (b) They are likewise invited to encourage cooperation on mission reports, for example by exchanging the information which they contain and by drawing up common documents containing practical information on living conditions.
- (c) As some missions say that they sent joint reports on local living conditions to Community institutions during the period covered by this review, it seems desirable that in future copies of such joint reports should be systematically forwarded to the Presidency in its capital, for its information, care of the European Correspondent.
- (d) Partners' missions which have schools in third countries are invited to give full support to requests for admission of children of members of other partners' missions to them, insofar as this is possible. Missions are invited to study the possibility of developing European educational cooperation in the capitals to which they are accredited. If they think this would be of practical use, they may make recommendations to the Presidency.

### III. Organizational infrastructure (Directives 7 and 8)

(7) Missions will seek to provide mutual assistance in material and practical matters.

(8) Missions which have secure rooms are encouraged to place them at the disposal of heads of mission who so request, in appropriate cases.

#### Clarification

- (a) Assistance in material and practical matters may include assistance with translations, for example by sharing the work and expense of translating public documents or by making shared use of local translating and interpreting services.
  - (b) Upon request, the Presidency's representative will help official delegations from the European Parliament to prepare their programmes for visits to the country of accreditation.
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**(c) Dissemination of Declarations in Third Countries**

*(Conclusions of the Political Committee<sup>\*</sup>, COREU MAD 225/89 and  
HAG 1613/91)*

1. The Presidency undertakes to announce declarations of the Twelve to the media in its capital, giving them extra information where necessary.
2. The publication of declarations in Brussels, Luxembourg and Strasbourg is very important in view of the presence of international media covering either EC or EPC matters. In Brussels it will continue to be done by the EPC Secretariat through the Council's Press Department. The Presidency will ensure that information is swift and complete.
3. The partners ensure that declarations by the Twelve are disseminated in their respective capitals. To facilitate this task, the Presidency will circulate the final English and French versions of declarations immediately over the COREU network.
4. The Presidency will ensure that its missions in third countries and international organizations disseminate declarations by the Twelve as soon as possible in their countries of residence, taking into account case by case the relevance of the subject at issue and free access to the local press. In some cases, systematic forwarding to the authorities could be envisaged.
5. The partner representing the Presidency in third countries will shoulder all the responsibilities listed in point 4.
6. The system described above may be applied to demarches which partners have agreed should be publicized and also to other texts of a public nature.

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<sup>\*</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

In order to reinforce the impact of EPC declarations, the Political Committee<sup>♣</sup> reiterated the desirability of the Presidency or its local representative ensuring their dissemination in the third countries concerned, particularly to the local press and the relevant departments of the Ministry of Foreign Affairs.

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<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

**(d) EU candidatures for Heads of UN agencies**

*(agreed by the Council on 30 March 1998 - doc. 6412/1/98 REV 1)*

**1. Field of application**

The following shall apply only to posts as head of United Nations Agencies and bodies. This procedure could be applied for other high level positions, on a case by case basis, but not to elections of chairmen or to candidacies for seats on the Security Council, ECOSOC and subsidiary organs and boards or committees of Specialised Agencies. In principle, the procedure applies both to elections and appointments, in the former case, however, subject to any procedural rules governing the elections.

These guidelines can apply to candidates from both EU and, if appropriate, non-EU member states.

Should the EU Council decide another procedure to be applied to some Organisations, that procedure will take precedence over the present procedure.

The present procedure does not prejudice the question of EU competence in United Nations Programmes and Agencies.

**2. Concerns**

The overriding concern of the EU is that candidates of appropriate professional, managerial and political standards are appointed as heads of UN agencies.

In order to arrive at a common understanding regarding which positions might be taken up by an EU national, the UN Working Group should consider elections coming up in the following two years at least once during each Presidency.

However, it is recognised as a legitimate concern of any individual member state of the United Nations that it would like to see its Nationals represented at the top management level of organisations of the UN system to an extent fairly reflecting their commitment to the United Nations.

Also, it should be taken into account whether a candidate is likely to attract the support of non-EU member states of the United Nations.

Furthermore adequate consideration should be given to UN rules and practice including full gender balance, as well as the rotation principle and equal geographical distribution in the United Nations.

For any position covered by these guidelines, member states may support a candidate for two consecutive terms only, or, alternatively, for consecutive periods not exceeding a total of twelve years.

### **3. Procedure**

- (A) Members of the UN Working Group shall be the focal point for coordination of candidatures to posts as head of UN organisations and agencies. In certain circumstances, the question could be raised to a higher level, thus involving the political directors in the selection procedure.
- (B) The Presidency, in cooperation with the Secretariat of the Council (CFSP), will compile a list of posts becoming vacant, to be distributed at each meeting of the UN Working group, with a view to completing the list with all information on vacant posts available to partners.



- (C) A Member State wishing to propose a candidate for a given post should inform partners at an early stage and before presenting the candidate officially to Third Countries, the Secretary General or other parties. The information, including a summary C.V., should be circulated by COREU. The same applies if a Member State wishes to express its official support of a candidate of a non-EU Member State of the United Nations.

Partners wishing to react or comment on the candidature, or to reserve their position, should do so as early as possible.

- (D) When one or more candidates have been proposed, the Presidency shall – in consultation with the Member States concerned – via COREU suggest time limits first for other Member States to propose candidates and then for applying the present concertation procedure, taking into account the time limits prevailing for the appointment or election in question.
- (E) The Presidency shall sound out partners' views. The Presidency will communicate via COREU, or at UN Working Group the results of the sounding out to partners, asking them, with a view to reaching consensus, to consider the said results and suggesting for the candidate, who attracts a wider support, to be the EU's common candidate. It will, nevertheless, remain the sovereign right of Member States concerned to draw their own conclusion in case that a general support of partners on a sole candidate has not been reached.
- (F) Should the Presidency itself be disqualified from undertaking the tasks foreseen because of a candidature of the Presidency's nationality, the next Presidency shall undertake the tasks foreseen for the Presidency.

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**(e) The Union's policy concerning membership of WEOG and other Western Groups**

*(Approved by the Political Committee\* meeting on 28 February 1995,  
COREU SEC 213/95)*

**Guideline paper on membership of WEOG and other western groups**

1. It is not in the interest of EU partners to modify the present system of regional groups by permitting temporary or permanent membership of UN members not belonging to WEOG (and other western groups) or developing other mechanisms of participation of such UN members in the work of WEOG and other groups:
  - The underlying principle of the present UN system of regional groups is equitable geographical representation in UN bodies;
  - The present system and composition of regional groups serve this principle. It is currently the most suitable form to safeguard partners' interests in elections to UN bodies. The inclusion of new members in western groups would mean a greater division of a finite number of seats between the members.
2. In the future a reform of the present system of regional groups might be necessary. Such a reform not being envisaged at the present time, the EU has to ensure that ad hoc efforts to accommodate interests of non-WEOG members does not create precedents that might be harmful to EU interests. Europe at present is collectively very well represented in UN fora. In some of them it is even over-represented.
3. This situation is resented by other regional groups and pressure for a reduction in the level of European representation is certain to increase if the current system is modified. At present it is not in the interest of European members to reform the current system of regional groups.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

4. All countries striving for participation in WEOG and other western groups should be treated equally. Any violation of this rule will inevitably lead to erosion of EU interests with the current system.
5. However, in the case of Israel, partners have agreed to accommodate it in the following way: support for Israeli candidatures can be given if there is no competition from a WEOG member for the seat in question and the seat in question does not belong to another regional group; Israeli candidatures are considered on a case by case basis. This accommodation of Israel is due to the very special situation that Israel is not a member of any regional group and at present not allowed access to the Asian group. Further accommodation of Israel will not be possible. It remains the final aim of EU partners that Israel find its place in the Asian group.

#### **Western groups as examining bodies on policy and substance**

The abovementioned principles are based on the fact that regional groups in the UN system serve electoral purposes. Some countries interested in WEOG participation or membership (or that of other western groups) have a motivation that is not primarily that of being elected to seats allocated to WEOG.

1. There is a legitimate and understandable desire by Central and Eastern European states to underline their European identity and have a western body within the UN system to discuss policy issues. This is often the case with specialized agencies of the UN system and in the field of disarmament.

2. This motivation can and should be accommodated outside the framework of WEOG participation or membership (or that of other western groups). Ways to serve these needs can vary and should be flexible according to practical requirements. Insofar as WEOG as a regional group is involved, any formalization of cooperation that accommodates such needs should be avoided.
3. Possible ways are informal consultations, inclusions in likeminded groupings, information by WEOG Presidency or EU Presidency on WEOG meetings.
4. Insofar as regional groups do not serve any electoral purpose but only discussion of policy, association with other UN members, especially those of Central and Eastern Europe, should be considered. In that case, however, relevant local groups should wherever possible be renamed in order to distinguish clearly between electoral and other groups. The EU might consider taking an initiative in that regard.

#### **Need for coordination**

1. Given the increasing interest in participation in WEOG and other western groups and the often intense lobbying by interested countries, coordination among EU members is vital to observe the abovementioned principles. Care should therefore be taken that expert groups and other fora dealing with international conferences are properly instructed on the WEOG policy. The subject should be a regular item in the framework of preparation of international conferences.
2. It is of importance that Union partners maintain discipline in maintaining the abovementioned principles and, in particular, that technical ministries are informed of these principles. It would seem useful to inform partners via COREU as soon as it appears that third countries are making efforts to participate in WEOG work and that of other western groups. Care should be taken that national expert bodies and other relevant fora are kept informed about the EU group policy.

3. The Presidency should have a general authorization exclusively in the case of electoral groups to react to such attempts and inform the country in question of the EU line without further consultation with partners. In so doing, it should stress the point that the present divisions between European groups exist for administrative convenience and have no political significance.

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**(f) EU coordination in the United Nations**

*(adopted by the Council on 10 April 1995, COREU PAR 483/95)*

**I. General comments**

1. The measures to improve European Union coordination set out in this policy document seek to reinforce the Union's internal cohesion and its effectiveness in promoting its thinking and interests within the United Nations, more particularly at United Nations international conferences.
2. This policy document first lists some very general principles to guide the Presidency and the partners with a view to improving their coordination between them under the United Nations framework.

Those principles are in the nature of a non-binding code of conduct and may be suitable for case-by-case application in the various United Nations bodies where European Union coordination is required (the General Assembly main committees, the Economic and Social Council, ECOSOC operational committees).

3. In view of the number of United Nations international conferences in preparation and the effectiveness which other countries or groups of countries have demonstrated at recent conferences, a case exists for making a special effort to improve European Union coordination both in the preparation and conduct of those conferences.

Thus, in addition to the general principles referred to in point 2, more detailed specific guidelines need to be framed for European Union coordination at the conferences.

4. The general principles and guidelines do not constitute new legal rules and apply without prejudice either to the relevant provisions of the Treaty on European Union or to the Presidency's responsibility for representation and the implementation of decisions in CFSP matters.

Their purpose is not to create new areas for European coordination within the United Nations context but to improve such coordination in the areas in which it is practised.

5. The general principles and guidelines are not a fixed set of rules. The United Nations Working Party will examine them at regular intervals, and may propose any appropriate adjustments to the Political Committee\*. In due course it may be decided, in the light of experience, to extend the international conference guidelines to coordination within other United Nations bodies.

## **II. General principles of European Union coordination within the United Nations framework**

1. Partners will endeavour to carry out as early as possible most of the work of framing common positions and drafting texts (Presidency statements, draft resolutions) to release the time necessary for contacts and negotiations with third countries in the course of the meeting.

The above preparatory work will be conducted via COREU both in Brussels and at the venue of the meeting, according to the case and the importance of the topic.

2. Partners will seek to identify sufficiently in advance the key questions requiring detailed agreement and also less important questions on which the Presidency may be afforded some discretion in conducting contacts and negotiations with third countries.
3. Without calling into question the responsibilities of the Presidency the latter will, in agreement with the partners, endeavour to delegate certain tasks, primarily to Troika members and where appropriate to the other partners, as regards both the preparation of draft statements and resolutions and contacts with third countries.

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\* "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003

### III. Guidelines for European Union coordination at international conferences

#### 1. Organization

- Coordination should commence several months – and in some cases several years – before a conference takes place. Agreement on a work programme should preferably be reached at the initial coordination meetings.
- Since the preparations for a conference may involve several successive presidency tenures, the Presidency will have to see to it within the Troika framework that the continuity of the coordination process is ensured.
- Given the large number of subjects generally addressed at United Nations conferences and, the resultant diversity of the working parties and experts involved in their preparation, the United Nations Working Party, acting under the Political Committee's<sup>♣</sup> authority, should ensure constant, better structured supervision of the coordination process.
- In addition to their technical input, expert working parties should be associated sufficiently early with the process of defining Union positions. The same principle should apply to experts from the permanent representations (particularly in New York, Geneva and Vienna) of partners involved in the preparation of conferences.
- From the start of coordination, the possibility of recourse to ad hoc coordination should be given particular consideration. That arrangement will prove particularly useful where the questions dealt with by a conference are not the exclusive domain of an existing working party.
- Wherever partners consider it necessary, the Political Committee<sup>♣</sup> will make a high-level evaluation of preparations for a conference upon a request from the United Nations Working Party.

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<sup>♣</sup> "Political and Security Committee" since entry into force of Nice Treaty on 1 February 2003



## 2. Framing of common positions

- The principal aim of prior coordination is to identify the goals pursued by the European Union at a conference. Coordination must therefore be targeted at the desired outcome of the conference and special attention given to examining draft final documents.
- The coordination process must enable questions of key importance to the Union to be distinguished from those which may be regarded as secondary. That distinction needs to be made in order to determine the Presidency's margin of manoeuvre at an early stage. Generally speaking, only key questions will require detailed coordination between partners
- (notably via COREU) and the establishment of precise instructions for the Presidency. The latter will have some discretion regarding any other questions.
- Questions on which partners have differences of view or interest should be resolved as quickly as possible in order to avoid placing the Union at a disadvantage during the conference.
- In some cases it may be necessary to devote adequate time, during the conference itself, to the search for a common position on questions important either to the Union or to one of the partners. However, the Presidency will have to ensure a balance between the time spent on seeking Union common positions and that which it must devote to dialogue and negotiation with other participants.

### 3. Relations between partners

- There is much to be said for taking early decisions on arrangements for delegating work to partners by looking ahead. Division of work may cover practical assistance by partners in drafting draft statements or resolutions as well as coordination and contacts with third countries or groups of third countries.
- Once the conference has started, partners must endeavour to abide by Union discipline. Before launching a national initiative or co-sponsoring texts submitted by third countries each partner must in particular conduct the appropriate consultations with the other partners.
- Each partner will have to see to it that delegations of technical experts (i.e. who do not belong to the Ministry of Foreign Affairs) are fully informed of the general policy objectives pursued by the Union at the conference, of the imperatives of Union discipline and of the coordination arrangements set out in this document.

### 4. Relations with NGOs and the media

- The importance of publicizing European Union positions should not be underestimated. Right at the phase of preparation for a conference, partners should define the strategy to adopt towards the press and, more generally, on public relations.
- Relations with non-governmental organizations should also be given particular attention at a sufficiently early stage. As a rule, the European Union should seek to keep itself informed of NGO viewpoints and, as far as possible, take them into account in formulating its positions. At conferences in particular, the Presidency and partners should intensify contacts with attending NGOs.

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| <b>Chapter 9. EU GUIDELINES ON HUMAN RIGHTS</b> |
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- (a) Guidelines on the promotion of International Humanitarian Law (IHL)  
*(adopted by the Council on 12-13 December 2005 - doc. 15246/05 + COR 1 (en, et) + COR 2)*
  
  - (b) EU guidelines on Human Rights Defenders  
*(adoption by the Council on 14-15 June 2004 - doc. 10056/1/04 REV 1)*
  
  - (c) EU guidelines on Children and Armed conflict  
*(adoption by the Council on 8-9 December 2003 - doc. 15634/03)*
  
  - (d) EU guidelines on Human Rights dialogues  
*(adoption by the Council on 10-11 December 2001 - doc. 14469/01)*
  
  - (e) Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment  
*(adoption by the Council on 4 April 2001 - doc. 7369/01 + COR 1 (en) + COR 2 (cz) + COR 3 (pl))*
  
  - (f) Guidelines to EU policy towards third countries on the death penalty  
*(adoption by the Council on 29 June 1998 - doc. 9199/98)*
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| <b>Chapter 10. DIPLOMATIC AND CONSULAR PROTECTION</b> |
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**(a) Protection for EU citizens by Diplomatic and Consular Representations**

*(Decision of the Representatives of the Governments of the Member States, meeting within the Council, of 19 December 1995, OJ L 314, 28.12.1995, p 73-76)*

DECISION OF THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES MEETING WITHIN THE COUNCIL of 19 December 1995 regarding protection for citizens of the European Union by diplomatic and consular representations (95/553/EC)

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

Resolved to continue building a Union ever closer to its citizens,

Taking into account the concept of citizenship of the Union as introduced by the Treaty on European Union, such concept being different from, and in no way a substitute for, the concept of national citizenship,

Desirous of performing the obligation laid down in Article 8c of the Treaty establishing the European Community,

Whereas such common protection arrangements will strengthen the identity of the Union as perceived in third countries;

Bearing in mind that the introduction of common protection arrangements for citizens of the Union in third countries will also strengthen the idea of European solidarity as perceived by the citizens in question,

HAVE DECIDED AS FOLLOWS:

*Article 1*

Every citizen of the European Union is entitled to the consular protection of any Member State's diplomatic or consular representation if, in the place in which he is located, his own Member State or another State representing it on a permanent basis has no:

- accessible permanent representation, or - accessible Honorary Consul competent for such matters.

*Article 2*

1. The diplomatic and consular representations approached shall respond to the request for protection by the person concerned provided that it is established that the latter is a national of a Member State of the Union by his producing a passport or identity card.

2. In the event of loss or theft of those documents, any other proof of nationality may be accepted, if necessary after verification with the central authorities of the Member State of which the person concerned claims to be a national, or with the nearest diplomatic or consular representation of that State.

*Article 3*

Diplomatic and consular representations which give protection shall treat a person seeking help as if he were a national of the Member State which they represent.

*Article 4*

Without prejudice to Article 1, diplomatic and consular representations may agree on practical arrangements for the effective management of applications for protection.

*Article 5*

1. The protection referred to in Article 1 shall comprise:

- (a) assistance in cases of death;
- (b) assistance in cases of serious accident or serious illness;
- (c) assistance in cases of arrest or detention;
- (d) assistance to victims of violent crime;
- (e) the relief and repatriation of distressed citizens of the Union.

2. In addition, Member States' diplomatic representations or consular agents serving in a non-member State may, in so far as it is within their powers, also come to the assistance of any citizen of the Union who so requests in other circumstances.

*Article 6*

1. Notwithstanding Article 3 and except in cases of extreme urgency, no financial advance or help may be given or expenditure incurred on behalf of a citizen of the Union without the permission of the competent authorities of the Member State of which that citizen is a national, given either by the Foreign Ministry or by the nearest diplomatic mission.

2. Unless the authorities of the Member State of the applicant's nationality expressly waive this requirement, the applicant must undertake to repay the full value of any financial advance or help and expenditure incurred plus, where applicable, a consular fee notified by the competent authorities.

3. The undertaking to repay shall take the form of a document requiring the distressed national to repay to the Government of the Member State of which he is a national any costs incurred on his behalf or money paid to him, plus any applicable fee.

4. The Government of the Member State of which the applicant is a national shall reimburse all costs, on request, to the Government of the assisting Member State.
5. The common formats for undertakings to repay are given in Annexes I and II.

*Article 7*

Five years after its entry into force, this Decision shall be reviewed in the light of experience acquired and the objective of Article 8c of the Treaty establishing the European Community.

*Article 8*

This Decision shall enter into force when all the Member States have notified the General Secretariat of the Council that the procedures required by their legal systems for the Decision to apply have been completed.

*Article 9*

This Decision shall be published in the Official Journal of the European Communities.

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**(b) Measures implementing protection for EU citizens by diplomatic and consular representations**

*(Doc. 11107/95 not published - Decision of the Representatives of the Governments of the Member States, meeting within the Council, of 19 December 1995)*

THE REPRESENTATIVES OF THE GOVERNMENTS OF THE MEMBER STATES OF THE EUROPEAN UNION, MEETING WITHIN THE COUNCIL,

Convinced that the Decision of the Representatives of the Governments of the Member States, meeting within the Council, regarding protection for citizens of the European Union by diplomatic and consular representations<sup>111</sup> must be implemented efficiently,

HAVE DECIDED AS FOLLOWS:

*Article 1*

Each Member State shall take the necessary steps to ensure that the guidelines in the Annex are issued as formal instructions to their diplomatic and consular representations.

*Article 2*

This Decision shall enter into force when all the Member States have notified the General Secretariat of the Council that the procedures required by their legal systems for the Decision to apply have been completed.

This Decision shall take effect on the same day as the Decision of the Representatives of the Governments of the Member States, meeting within the Council, regarding protection for citizens of the European Union by diplomatic and consular representations.

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<sup>111</sup> Doc. 11106/95 COCON 9.



**INTRODUCTION**

On ....., the Representatives of the Governments of the Member States, meeting within the Council, adopted a Decision<sup>112</sup>, pursuant to Article 8c of the Treaty establishing the European Community.

The text of that Decision is attached. Its purpose is to ensure that citizens of the European Union who are not represented in a third country are entitled to protection, as defined hereafter, by the diplomatic or consular representation of any Member State (see Article 1 for the exact conditions).

As specified in Article 2, you are required to respond to a request for protection (which meets the conditions of Article 1) provided that it is established that the applicant is a national of a Member State. If such is the case, you are required to treat the person seeking help as if he were a national of the Member State which you represent (Article 3).

The cases covered by the Decision (Article 5) are detailed below. However, your attention is drawn to Article 5(2), which stipulates that:

"... Member States' diplomatic representations or consular agents serving in a non-Member State may (.....) also come to the assistance of any citizen of the Union who so requests in other circumstances."

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<sup>112</sup> OJ No

A. ASSISTANCE IN CASES OF DEATH (Article 5(1)(a))

1. When the death of an unrepresented citizen of the European Union is reported to a Member State's diplomatic or consular mission, the following procedure to be followed is:
  - immediately inform the deceased's capital of the country of origin or nearest diplomatic or consular mission, which should then take responsibility for informing and maintaining contact with the next-of-kin,
  - depending on local regulations, the diplomatic or consular mission can, having established the wishes of the next-of-kin through the home country capital or relevant diplomatic or consular mission and with the consent of the next-of-kin, assist through appropriate channels in order for the body to be buried, cremated or repatriated to the home country. The diplomatic or consular mission should do all it can to enable the deceased's next-of-kin to obtain a death certificate.

B. ASSISTANCE IN CASES OF SERIOUS ACCIDENT OR ILLNESS (Article 5(1)(b) and Article 6)

2. An unrepresented citizen of the European Union who is seriously ill or who has been the victim of a serious accident should receive, by whatever means appropriate, all possible help. Such help could include notifying the family or employer through the individual's home country capital or nearest diplomatic or consular mission, a consular visit or visits, and advice on the provision of suitable medical treatment.

3. In the event of the need for medical evacuation, notification must be given to the individual's home country capital or nearest diplomatic or consular mission and, except in cases of extreme urgency, their authority to repatriate must be obtained.

Full details of any medical insurance held by the individual should be obtained. If possible, an undertaking to repay (UTR) must be signed before any expenses are incurred (see Article 6, and point F of these instructions).

4. As many as possible of the following should also be obtained:
  - (a) a certificate signed by a doctor certifying that repatriation is necessary in the interests of the patient's safety;
  - (b) name and address of next-of-kin;
  - (c) name and address of patient's doctor in his home country;
  - (d) relevant medical details;
  - (e) report on transport requirements, e.g. stretcher and escort required, including names of family travelling with patient, and any special equipment needed on arrival at destination;
  - (f) details of drugs/dosage required during journey.

5. In cases where medical evacuation is required, hospital reception arrangements, meeting aircraft, obtaining a UTR from the patient's next-of-kin, etc., are the responsibility of the patient's own national authorities.

#### C. ASSISTANCE IN CASES OF ARREST OR DETENTION

(Article 5(1)(c))

6. When a Member State's diplomatic or consular mission is informed of the arrest or detention of an unrepresented citizen of the European Union, it should inform the capital or nearest diplomatic or consular mission of the detainee's home country, without prejudice to Article 36 of the Vienna Convention of 24 April 1963 on Consular Relations. Full details should be given, and should include the following:

- (a) detainee's name;
- (b) nationality;
- (c) passport details;
- (d) place and date of birth;
- (e) home address;
- (f) name, address and telephone number of next-of-kin;
- (g) whether next-of-kin should be informed;
- (h) likely charge or charges;
- (i) place of detention;
- (j) permitted language of communication;
- (k) whether the prisoner has legal representation; if so, name and address of lawyer;
- (l) whether bail may be allowed and for how much;
- (m) possible sentence.

7. The diplomatic or consular mission's first responsibility should be to ensure that the treatment offered to the detainee does not fall below minimum accepted international standards, including those specified in the UN Standard Minimum Rules for the Treatment of Prisoners (1955) and the Basic Principles for the Treatment of Offenders (Havana, 1990). The diplomatic or consular mission should also ensure that the level of treatment accorded to the detainee is not worse than that accorded to nationals of the host State.

8. Further assistance to the detainee may be offered in several ways:

(a) Useful information

The diplomatic or consular mission should ensure that the detainee is aware of his rights under local law and of how to obtain legal assistance. This could be done by way of a leaflet, if possible in the detainee's language. The leaflet should also explain what the diplomatic or consular mission can do on the detainee's behalf, and provide any other relevant legal details. A list of local lawyers, including any who are able to correspond in the detainee's mother tongue, should also be provided.

(b) Visits

An initial visit should be made to the detainee as soon as possible after the receipt of news of the arrest; and thereafter according to local practice. Interpretation, if necessary, should be provided with the consent of and at the expense of the authorizing capital or nearest diplomatic or consular mission. Reports on the visit should be made and sent to the detainee's home country capital or nearest responsible diplomatic or consular mission, which should take the lead in advising the next-of-kin of the prisoner's arrest and welfare if the detainee so wishes.

If the diplomatic or consular mission receives any complaints of ill-treatment from the detainee, it should immediately inform the detainee's capital or nearest diplomatic or consular mission, and in liaison with it take the matter up at a suitable level with the local authorities.

(c) Petitions for pardons/early releases

At the discretion of the diplomatic or consular mission, and in liaison with the detainee's home country capital or nearest diplomatic or consular mission, basic assistance may be provided in connection with petitions for pardon or early release. This should only be considered when requested by the detainee.

Assistance could include:

- transmission of petitions to appropriate officials;
- ensuring that the petition is dealt with and not "lost";
- liaising with the home country capital or nearest diplomatic or consular mission for help in drafting the petition and in translation.

At the discretion of the diplomatic or consular mission and if time permits, in liaison with the detainee's home country capital or nearest diplomatic or consular mission, support may also be given to requests for special treatment on humanitarian or medical grounds.

(d) Legal representation

In countries where free legal aid is available the diplomatic or consular mission should ensure that unrepresented citizens of the European Union who are detained understand how to apply for it. Where there is no free legal aid, the detainee must make arrangements to pay for legal representation.

If the detainee has no funds of his own, relatives or friends may be able to assist. The diplomatic or consular mission should ask the detainee's home country capital or nearest diplomatic or consular mission to make the necessary arrangements.

If necessary, the diplomatic or consular mission should act as a channel for any funds deposited by the detainee's relatives or friends, via the authorities in his home country capital or nearest diplomatic or consular mission.

(e) Release from prison/transfer of detainees

If the detainee needs financial assistance on his release from prison in order to return to his home country, he may be treated in the same manner as any other distressed citizen of the European Union, within the meaning of Article 5(1)(e) of the Decision.

If the detainee wishes to apply for a transfer under an existing scheme, the diplomatic or consular mission should inform the detainee's home country capital or nearest diplomatic or consular mission immediately, and thereafter act as a channel of communication if necessary.

(f) Payment of fines

If a detainee is unable to pay bail or a fine imposed by an overseas court, the diplomatic or consular mission should inform the detainee's home country capital or nearest diplomatic or consular mission and at the same time give details of any alternative sentence. If necessary, the diplomatic or consular mission giving protection should act as a channel for any funds deposited by the detainee's relatives or friends for the payment of bail or fines, received via the authorities in the detainee's home country capital or nearest diplomatic or consular mission.

D. ASSISTANCE TO VICTIMS OF VIOLENT CRIME (Article 5(1)(d))

9. Victims of violent crime should be given all possible prompt and sympathetic assistance subject to the conditions laid down in these instructions.

They should be given help to obtain medical assistance and legal advice as quickly as possible. They should be shown how to report the crime without delay to the appropriate police authorities, and if necessary helped to make their report.

Their attention should be drawn to the possibility, where such possibilities exist, of obtaining compensation under local compensation schemes, and they should be advised how to apply. Full details of the incident, and an assessment of its seriousness, should be conveyed to the victim's home town capital or nearest diplomatic or consular mission.

E. RELIEF AND REPATRIATION OF DISTRESSED CITIZENS OF THE UNION  
(Article 5(1)(e))

Destitution

10. Assistance may be offered in the following ways:
- (a) distressed persons may be given guidance on helping themselves;
  - (b) assistance may be given to them to enable them to obtain money from private sources;
  - (c) an advance of funds may be made against security;



- (d) if no other funds are available, and the criteria below are met, they may, on the authority of the nearest diplomatic or consular mission or capital, be repatriated to their own country or nearest diplomatic or consular mission by means of an advance from public funds against a UTR;
  - (e) issue of a temporary travel document, if necessary;
  - (f) cash advances;
  - (g) baggage.
- (a) Encouragement to help themselves

Distressed persons should be encouraged to help themselves. For example:

- local banks may be willing to accept a cheque if accompanied by a cheque card or credit card; the diplomatic or consular mission may be able to offer advice on how to transfer money quickly using commercial channels;
- the diplomatic or consular mission may allow a reverse-charge telephone call to arrange transfer of funds through commercial channels or for prepaid tickets to be issued by a local airline;
- the diplomatic or consular mission may encourage applicants to seek employment where this is permissible under local law.

(b) Helping them to obtain money from private sources

When a distressed individual is unable to help himself the diplomatic or consular mission may act as a channel of communication to the individual's own capital or nearest diplomatic or consular mission, and request them to contact relatives, friends or a bank in order to ask them to provide funds.

(c) Advance of funds

Where no other source is available the diplomatic or consular mission should refer to the individual's home country capital or nearest diplomatic or consular mission, giving details of any security which the distressed person could offer to guarantee repayment of a financial advance against a UTR.

(d) Repatriation where the applicant has no funds available

Repatriation should be considered only after all other sources of help have been exhausted, and then only with the authority of the individual's home country capital or nearest diplomatic or consular mission.

Other sources could include the applicant's family, friends or employers, to whom approaches for help may be made by the authorities in the capital concerned. Once the authorities have agreed to repatriate, a signed UTR must always be obtained before the diplomatic or consular mission purchases a non-refundable ticket or non-refundable pre-paid travel advice (PTA).

The person being repatriated should be sent either to his home country or to the nearest country where there is a diplomatic or consular mission of his own home country, or to the State of his permanent residence.

Further details on repatriation procedure are given in Point F.

(e) Issue of a temporary travel document

When a national of one of the following Union Member States:

- Ireland,
- Netherlands,
- Portugal,
- United Kingdom,

is repatriated following an advance of public funds, his passport should, except where contrary instructions are received, be impounded but not marked and returned to the home country capital or nearest diplomatic or consular mission of the nationality of the person being repatriated, together with the signed UTR. A temporary travel document valid for a single journey should be issued in its place.

Passports of nationals of other Union Member States should not be marked or impounded except at the request of the national authorities. If the passport is not impounded, the following sentence in the common format undertaking to repay (repatriation) in Annex II to the Decision must be deleted before the applicant signs the UTR:

"I understand that passport facilities will not normally be available to me until my debt has been paid in full".

## (f) Cash advances

No cash should be given to individuals being repatriated except minimum subsistence to meet the cost of food and unavoidable expenses before and during the journey. The value of any such cash advance should be included in the UTR.

## (g) Baggage

Only in exceptional circumstances, and with the express consent of the national authorities accepting responsibility for the repatriation, may excess baggage costs be paid on behalf of those being repatriated.

F. REPATRIATION PROCEDURE (Article 5(b) to (e))

For repatriation procedures, the following instructions should be followed:

- (a) obtain confirmation from the applicant's national authorities that the applicant is eligible for assistance, establishing nationality and place of permanent residence;
- (b) obtain full personal details of applicant, reasons for application, applicant's circumstances, names of family, friends and employer, and details of any relevant assets (e.g. bank account) held in home country or elsewhere; convey details to applicant's home country capital or nearest diplomatic or consular mission;
- (c) obtain the authority to repatriate from the applicant's home country capital or nearest diplomatic or consular mission;

- (d) obtain UTR;
- (e) if possible, obtain security for the advance (e.g. cheque signed by applicant);
- (f) purchase and issue a non-refundable travel ticket or PTA, and, if appropriate, issue advance;
- (g) under Article 6(1) of the Decision, the diplomatic or consular mission may, in cases of extreme urgency, give a financial advance or financial help and incur expenditure on behalf of a citizen of the Union without seeking the permission of the competent authorities of the Member State of which that citizen is a national.

The consular fee normally charged by the diplomatic or consular mission for repatriation should be levied or included in the UTR.

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**(c) Protection of EU citizens in the event of a crisis in a Third Country**

*(Guidelines on Consular Protection adopted by the Council on 26 June 2006 - doc. 10109/2/06 REV 2)*

**Introduction**

1. Notwithstanding primary national responsibility in consular matters, these guidelines are designed to provide a framework for consular cooperation, especially in situations in which the safety of EU citizens is endangered in a third country. They have been drawn up as part of the implementation of the mutual protection obligation provided for in Article 20 of the Treaty establishing the European Community and of the cooperation tasks, as stipulated under article 20 of the Treaty of the EU; and build on the two Decisions adopted in 1995 (cf. OJ L 314 of 28.12.1995 and document 11107/95) with a view to strengthening European solidarity.
2. Implementation is left to the discretion of the heads of missions or posts in the light of local circumstances. For the purposes of these guidelines, citizens of states acceding to the EU should be considered on a same footing as citizens of existing EU Member States.
3. Some Member States may have bilateral agreements with third countries whereby citizens from the latter will be under their responsibility. Such third country citizens are referred to in these guidelines as "entitled persons". References to the missions of Member States should be taken to include missions of Acceding States under the conditions of the relevant Acts of Accession<sup>113</sup>.
4. Commission delegations should be included in contingency planning. It is understood that — at the request of the Presidency and as appropriate — Commission delegations / representations could provide logistic support to Member States' missions, especially during crises.

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<sup>113</sup> See: Accession Treaty concluded with Bulgaria and Romania, Article 2, 3(1)-(2) of the Protocol on the admission conditions, OJ, 21.06.2005, L 157/29

5. These guidelines in no way preclude further initiatives being proposed by Heads of Mission in the light of specific situations that may arise in third countries, especially where the ability of local authorities to respond effectively to a significant incident may be limited.

However, given the diverse range of possible threats, no region in the world should be excluded from consideration.

## 6. Consular Contingency Planning

Experience in crisis management and prevention shows that it is desirable to produce contingency plans in advance of a crisis. For these plans to be effective, they require the participation of all diplomatic and consular representations of Member States present in a third country. Such plans may follow the open-ended list in Annex I, as well as the Fiche in Annex II.

## 7. Responsibilities

- 7.1. In countries at risk of a crisis where not all Member States are represented, Heads of Mission should decide amongst themselves how they will share responsibilities for ensuring that nationals of all Member States are covered by contingency plans.
- 7.2. Their decision should be based on pragmatism, flexibility and a fair division of the consular burden. This may extend to deciding that nationals of particular unrepresented Member States who seek assistance should be directed to particular EU Member States' representations as agreed by Heads of Mission locally. This may also include a recommendation to capitals that a request be made to unrepresented Member States to assist with the expenses incurred in contingency planning (emergency kits, including first-aid, food, medicines, etc.) on behalf of their nationals.

- 7.3. The co-ordination effort and the associated responsibilities should also include defining which mission will co-ordinate with local authorities, with third countries and with international organisations. A thematic approach may be as valid as an approach by institution (local government, prisons, hospitals, UN, NGOs).

## **8. Consular Information**

- 8.1. Consular contingency planning needs to be based on adequate information on EU citizens who may be affected, recorded in a commonly understood format. This is especially important where one EU mission closes and requests another to assume its consular responsibilities.
- 8.2. Missions of Member States are invited to encourage their nationals – and other EU nationals for whom they have responsibility – to register their consular details on a voluntary basis<sup>114</sup>. Such registration should include, as far as possible: name, nationality, contact details in-country — including address, telephone numbers (possibly also employer's details), e-mail, contact details of next of kin, details of any dependants in-country, special requirements / disabilities, and agreement to this information being shared in times of crisis with the representations of other Member States.

A specimen information sheet can be found in Annex III.

## **9. Consultation**

- 9.1. In countries in which local circumstances so warrant, the heads of the diplomatic and consular mission holding the local Presidency will organise at least one meeting every three months with their colleagues to discuss the safety of EU citizens.

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<sup>114</sup> Concerning processing of personal data occurring and being collected and registered in terms of the application of this point, the relevant EU rules shall apply, in particular Council and European Parliament Directive 95/46/EC.



- 9.2. In normal circumstances, meetings should consider, as a matter of routine, questions such as prison conditions; problems over consular access, etc.
- 9.3. The chair of the local consular co-operation group should keep a dossier of useful consular assistance contacts, including information such as names and contact details of EU Member States' consular staff and key local contacts such as police, prison authorities, mortuaries, airports etc.
- 9.4. These meetings will also review the effectiveness of contingency planning by EU missions locally, including a review of the need for maintaining/updating crisis information sheets. Missions responsible for unrepresented EU nationals will pass on the same information to these unrepresented nationals as they would to their own nationals (e.g. through travel advice websites, notices through the warden networks, etc).
- 9.5. The head of the diplomatic and consular mission holding the local Presidency will report on the meeting to all delegations and to the EC Delegation/Representation as the case may be. Such a report should highlight any possible significant issues that cannot be resolved in-country.
- 9.6. Specialist meetings of the relevant staff from the various missions may also be arranged.
- 9.7. Furthermore, regular meetings of staff dealing with consular issues held once every 4 to 6 weeks can provide a useful forum to exchange information and ideas. The meetings can be used to identify emerging themes in consular work, and to discuss best practice in handling different types of case.

- 9.8. Delegations should use the "Consular Affairs" working party to review best practices and strategies for handling assistance cases (e.g. deaths, hospitalisations). This should help ensure that citizens of non-represented Member States receive consistent service from posts in third countries.
- 9.9. EU posts in third countries should also share information on changes in local legislation which have a direct impact on consular work, particularly if this can lead to changes in the treatment of detainees, court procedures, medical treatment, etc.
- 9.10. In areas where distance and transport are a problem, visits to prisons and hospitals can be co-ordinated through advance planning, allowing EU missions to share the burden of visiting their nationals, or increasing the number of visits their nationals receive.
- 9.11. Member states' missions could share information about legal advice locally available, and, in particular, which legal practitioners might be willing to provide pro-bono legal advice to EU nationals who would otherwise not be able to afford to pay for representation.

## **10. Travel Advice**

- 10.1. Member States are encouraged to share changes to travel advice relevant to the third country in question, once they have been issued including those from Member States which are not represented.
- 10.2. The information should to the extent possible include a description of the nature of the threat and indicate whether the threat is considered relevant to citizens of other EU Member States.

**11. VHF/UHF communications networks between missions**

- 11.1. To ensure permanent contact between them where local circumstances so warrant, missions will examine the possibility of establishing an autonomous communications network in countries in which they do not have one, or of improving the operational efficiency of the existing network if necessary.

**12. Emergency planning and crises**

- 12.1. Emergency plans of all EU Member States represented in a third country capital should be shared. This not only helps those who do not yet have an emergency plan to prepare theirs, but leads to a broader degree of commonality, and therefore a more efficient response.
- 12.2. Emergency plans should be reviewed on a regular basis to ensure that updates in one plan are reflected in others.
- 12.3. Heads of mission or their staff will inform one another of developments regarding the situation of their nationals, their location, threats to their safety, instructions to be communicated to them particularly in the event of assembly or evacuation, and of all the resources at their disposal. They will also inform one other of the establishment of emergency reserves and the procedures for using them.
- 12.4. Common practical exercises, or evacuation seminars, involving resident and non-resident Member States, including military personnel are a good way of sharing details on national planning, and to identify issues of common concern.
- 12.5. Co-ordination with third parties is of particular importance. EU Member States' plans should be not only consistent with each other, but should also fit with those of the host country (where applicable) and those of other major partners, such as friendly third countries, UN, and NGO plans. Early co-ordination meetings with interested third parties can help ensure that all relevant information is taken into account, and that best use is made of available resources.

- 12.6. If one or more assembly points are chosen for all EU citizens (particularly with a view to joint evacuation), the diplomatic and consular missions will appoint a representative for the assembly centre(s).
- 12.7. In the event of a crisis taking place which requires implementation of the security plans, the Presidency in a Third Country should ensure co-ordination of such plans, even if it is not directly taking part in their implementation.
- 12.8. Without prejudice of the provisions of Article 6 of the Council Decision of 19 December 1995 concerning the repayment of costs, etc., Member States will reimburse those Member States which act on their behalf for expenses incurred in securing the safety of their nationals (e.g. where provision of a radio network is necessary, hiring of vehicles to transport persons to a safe area, etc.), in a pragmatic way.
- 12.9. The diplomatic and consular missions will work together to ensure that use of space on transportation used for an evacuation is maximised and that rotations are optimised.
- 12.10. Where EU nationals being evacuated are asked to pay the costs of the evacuation as well as other expenses related thereto (see point 12.8 above), payment arrangements should be made from Member State to Member State, on a pro-rata basis.

It will then be the responsibility of the requesting Member State to pursue repayment from its nationals.

12.11. Member States requesting the inclusion of their nationals and entitled persons will:

- (a) notify the evacuating state (both locally and centrally) of the details of the entitled persons they wish to have evacuated;
- (b) if possible, ensure that the entitled persons reach the embarkation point;
- (c) provide consular verification at the point of embarkation if they are represented locally (or send staff from the nearest local mission if requested by the evacuating state); and
- (d) take responsibility for their entitled persons from the point of disembarkation.

**13. Dispatch of consular and medical support teams**

- 13.1. A Member State may decide to send a consular and medical support team (consisting of staff with experience of consular work and emergency doctors, psychiatrists, etc., and, if possible, having autonomous communications and IT equipment) to facilitate the work of its mission by providing reception facilities and psychological support for its citizens.
- 13.2. In such cases, it will inform its partners, both at local and at central level, of the dispatch of the mission, the objectives assigned to it and the resources available. Member States wishing to complement any such team will make the necessary arrangements with the lead team.
- 13.3. When such teams are dispatched by Member States, logistic support will be provided locally either by the Member States' missions present, and or the Commission delegations, in accordance with arrangements made locally.

## 14. Communication between Capitals

- 14.1. Effective communication between capitals during times of crisis is essential to complement planning in-country. Member States who have responsibility for contingency planning on behalf of unrepresented Member States in a third country are encouraged to share significant decision-making through the use of COREUs and e-mails circulated to their counterparts in the consular crisis units. This is of particular importance where the seriousness of the threats facing citizens from different Member States varies, where a Member State may decide to evacuate its own citizens unilaterally or when sharing urgent information that is not of a confidential nature. Member States should privilege the use of e-mail messages to e-mail recipients that can be reached on a seven-days-a-week, twenty-four-hours-a-day basis. The use of teleconferencing, for a rapid exchange of information during crises, as well as of the consular Web-based forum for less urgent matters — including changes in travel advice — is also encouraged.
- 14.2. The list of Heads of Crisis Units and contacts in the consular departments is available on the General Secretariat's secure forum page.

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**ANNEX I****ITEMS TO BE CARRIED OUT ROUTINELY BY MISSIONS IN THIRD COUNTRIES**

1. Convening meetings for updates on contingency and evacuation plans in the event of a crisis. At the earliest stage possible, determining which country or countries will co-ordinate a possible evacuation and establishing the burden sharing arrangements.
2. Circulating a scheme of contingency plans. The scheme should, i.a., include the information described in Annex II. If possible, a common list of the main contact points should be kept, as well as ensuring an ongoing liaison among them.
3. Keeping a registry of EU citizens who have voluntarily provided their addresses, telephone numbers and other useful information.
4. Establishing and/or maintaining VHF/UHF or other emergency networks among the EU missions and Commission delegations / representations present and, if necessary or advisable, with the missions of third countries. Special attention should be paid to ensuring cell-phones used by the different actors are compatible.
5. Establishing an effective exchange of information regarding countries of secondary accreditation for the preparation of data to be provided to the current Presidency.
6. Gathering non-represented EU citizens at the assembly points established by the contingency plans.
7. Estimating – and providing – the necessary personnel to cover the administrative procedures that concern their citizens and those they are representing.
8. Where necessary, consulting and involving honorary consuls.

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**ANNEX II**

**SPECIMEN INFORMATION SHEET**

(It may be accompanied by maps, photographs, etc.)

Nationals:

- Number of nationals: registered/passing through  
(estimate)
- Location by city, town or area
- Isolated communities (religious, companies, NGOs)
- Cooperation agreements with other States, the safety and protection of whose citizens must be ensured. It would be useful to specify the number of persons in question, their location and their means of communication.

Division of large cities into zones:

- number of families per zone
- location of zones
- persons responsible for zones: name and contact details

Assembly centres:

- Exact location and resources available to receive nationals at centres (personnel, essential supplies, means of communication, etc.)
- Person responsible for assembly point (name and contact details)
- Emergency reserves in position:



- Rations, long-life foodstuffs, essential supplies
- Medicines, water tanks or pumps, tanks of fuel, bedding, blankets.
- Medical facilities (cf. doc. 8024/99 COR 1), if required

Security radio networks:

a) In town

- Type of facility and description of equipment
- Number of portables
- "National community" channel, frequencies and call signs
- "Communication between EU missions" channel, frequencies and call signs

b) Long distance

- HF/BLU equipment
- Call signs and frequencies
- FM material
- Frequency
- Satellite suitcases
- Telephone numbers and identifiers

Other means of communication:

- Emergency number(s) of embassy and consulate
- Mobile telephone number(s)
- Fax number(s)

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**ANNEX III**

**PERSONAL DATA SHEET**

The information on this sheet is provided on a strictly voluntary basis. It is intended for use in crisis situations only. The person providing data agrees that they can be shared with the authorities of other (Member) States to ensure a better co-ordination of planning and/or evacuation.

Full name:

Address (local):

Telephone (local):

Address (Home):

Telephone (Home):

E-mail:

Person(s) to be contacted in case of need:

Name:

Address:

Telephone:

E-mail:

In case of evacuation, this person has been instructed to go to assembly point: XXX

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