

5966/99

LIMITE

JAI 6
EVAL 14

NOTE

from : Secretary-General

to : Permanent Representatives Committee (Part 2)/Council

Subject: Implementation of the Joint Action of 29 June 1998 establishing a mechanism for the collective evaluation of applicant countries in the field of Justice and Home Affairs

- Detachment of specialised national experts and practitioners to the General Secretariat of the Council for a limited period
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1. Ambassadors will find attached, for discussion and subsequent transmission to the Council for adoption, a draft Council Decision providing for the detachment to the General Secretariat of the Council of four specialised national experts and practitioners in Justice and Home Affairs.
2. This draft Council Decision will determine the rules applicable to national experts on detachment to the General Secretariat of the Council.

It reproduces almost exactly the Council Decision on the rules applicable to national experts on detachment to the General Secretariat of the Council (Directorate-General for Justice and Home Affairs) in the context of implementation of the plan to step up the fight against organised crime.

3. The draft Council Decision is preceded by a note stating the reasons for the detachment of national experts, the required number and profile of the experts and detailing the tasks to be assigned to them.

A financial statement is also attached.

4. It is suggested that the Permanent Representatives Committee assess the experience acquired, before the Secretary-General replaces the experts at the end of the first period.

5. Proposal for a Decision

The Permanent Representatives Committee is invited to endorse the draft Council Decision on the rules applicable to national experts on detachment to the General Secretariat of the Council (Directorate-General for Justice and Home Affairs) in the context of implementation of the Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs and to submit it to the Council for adoption following legal/linguistic finalisation.

Recruitment to the General Secretariat of the Council of four national experts and practitioners specialised in Justice and Home Affairs

1. Context

As indicated in the interim report by the Working Party on Collective Evaluation to the Permanent Representatives Committee (14190/98 EVAL 19 ELARG 109), the frequency of proceedings set by the Austrian Presidency and increased by the current and next Presidencies, the need to collect and analyse scarce data from many sources (law enforcement and control administrations and departments in the Member States, the HCR, Interpol, the Council of Europe, NGOs, etc.) the establishment of close contact with the Member States' diplomatic representations in the applicant countries together with the difficulty of making a precise assessment of the reality of the integration of the European Union's acquis in matters as sensitive as, for example, the processing of asylum applications and respect for the rule of law in the conduct of police and judicial business, justify the temporary secondment to Directorate-General H (Justice and Home Affairs) of the Council General Secretariat of four national experts, two in the fields of immigration/asylum/visas/external frontier control, one in police matters and one in civil and criminal law.

The highly successful experiment in the use of national experts for implementation of the action plan to combat organised crime is another argument in favour of using this arrangement.

2. Staff requirements

2.1. It is proposed that four national experts be assigned to Directorate-General H (Justice and Home Affairs) at the General Secretariat of the Council of the European Union.

2.2. The experts should have the following profiles:

- one expert in civil and/or criminal law who has had operational and/or organisational responsibilities;

- one expert from the Member States' law enforcement and control agencies (police, customs) who has had operational and/or organisational responsibilities;
- two experts in the fields of immigration, asylum, visas and the control of external frontiers who have had operational and/or organisational responsibilities.

2.3. These experts would be recruited for two years (with the possibility of a further year). At the end of the first period, the experts will be replaced by the General Secretariat of the Council on the basis of an assessment of the arrangement submitted for discussion in the Permanent Representatives Committee.

2.4. Candidates' international experience, language and computer skills as well as their varying geographical origins will be taken into account in selecting experts.

Care will be taken, when the experts are being chosen or replaced, to ensure balance in the representation of the Member States.

3. Tasks

3.1. It should be made clear that the detached experts are not obliged and will not be obliged to perform the normal tasks of General Secretariat officials, namely taking on the secretariat function at Working Parties involved in the Council's normative work and advising the Presidency in the conduct of its legislative programme.

They will not, however, form a separate entity but will be an integral part of the General Secretariat of the Council. Experts will work to the Director-General responsible for cooperation in the field of Justice and Home Affairs.

3.2. They will be asked to help with the preparation of assessment reports on the applicant countries, the drafting of questionnaires to be sent to the Member States' embassies in the applicant countries and the preparation and conduct of any evaluation missions in the field.

4. Rules applicable

The General Secretariat will recruit national experts for detachment on the basis of the Council Decision establishing the rules applicable to national experts on detachment to the Directorate-General for Justice and Home Affairs of the General Secretariat of the Council of the European Union in the context of implementation of the Joint Action of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs. A draft Council Decision is attached.

FINANCIAL STATEMENT
BUDGETARY ESTIMATE
OF THE COST OF NATIONAL EXPERTS ON DETACHMENT (JHA)

Estimated requirements are four national experts.

These experts will be placed on detachment and paid by their national administrations. The period of detachment is two years, renewable for one year (three years max.). The estimated starting date for contracts is 1 May 1999.

There are two hypotheses: the expert decides or does not decide to move to the area of the European Union's headquarters (Brussels).

	Reference to the draft Decision	Hypothesis A Expert moves to Brussels	Hypothesis B Expert does not move to Brussels
Sickness insurance	Art. 5(4)	EUR 190 a month	
Accident insurance	Art. 5(3)	EUR 75 a month	
Subsistence allowance	Art. 12	EUR 3 150 a month	
Additional flat-rate allowance	Art. 13	n/a	
Travel expenses	Art. 14(1)	-	EUR 600 a month
	Art. 14(2)	EUR 1 750 per annum	-
	Art. 14(3) (a)	EUR 500 on taking up duties EUR 500 on termination of service	
	Art. 14(3) (b)	EUR 1 500 when removal takes place EUR 1 500 on termination of service	- -
Removal expenses	Art. 15	EUR 5 350 on taking up duties EUR 5 350 on termination of service	-
Mission expenses	Art. 16	EUR 750 a month	
Adjustment of the additional flat-rate allowance	Art. 17	n/a	
"Single" amounts		EUR 7 350 on taking up duties EUR 7 350 on termination of service EUR 1 750 per annum	EUR 500 on taking up duties EUR 500 on termination of service
Monthly amount		EUR 4 165 a month	EUR 4 765 a month
Annual cost		EUR 49 980 per annum	EUR 57 180 per annum

Schedule

	1999 (8 months)	2000	2001	2002 (4 months)
Hypothesis A	EUR 7 350 + EUR 1 750 + (8 x 4 165) = EUR 42 420	EUR 1 750 + (12 x 4 165) = EUR 51 730	EUR 1 750 + (12 x 4 165) = EUR 51 730	EUR 7 350 + (4 x 4 165) = EUR 24 010
Two experts:	EUR 84 840	EUR 103 460	EUR 103 460	EUR 48 020
Hypothesis B	EUR 500 + (8 x 4 765) = EUR 38 620	(12 x 4 765) = EUR 57 180	(12 x 4 765) = EUR 57 180	EUR 500 + (4 x 4 765) = EUR 19 560
Two experts:	EUR 77 240	EUR 114 360	EUR 114 360	EUR 39 120
TOTAL	EUR 162 080	EUR 217 820	EUR 217 820	EUR 87 140
Round figures	EUR 170 000	EUR 220 000	EUR 220 000	EUR 90 000 ⁽¹⁾

These amounts will be charged against heading 1113 – "Special advisers and other persons mandated by the Council" of Section II – Council of the Budget.

⁽¹⁾ Experts may have to be replaced during the third year. The estimated cost for the full year would then be EUR 250 000.

COUNCIL DECISION

of

on the rules applicable to national experts on detachment

to the General Secretariat of the Council

(Directorate-General for Justice and Home Affairs)

in the context of the collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 151(2) thereof,

Whereas on 29 June 1998 the Council adopted a Joint Action on the basis of Article K.3 of the Treaty on European Union establishing a mechanism for collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs;

Whereas the specific nature and volume of the work to be done justifies the detachment of a team of national experts and practitioners in Justice and Home Affairs to the General Secretariat of the Council for a limited period,

HAS DECIDED AS FOLLOWS:

CHAPTER I: GENERAL PROVISIONS

Article 1

Definition

1. These rules are applicable to national experts on detachment to the General Secretariat of the Council (Directorate-General for Justice and Home Affairs), hereafter referred to as the "General Secretariat", in the context of collective evaluation of the enactment, application and effective implementation by the applicant countries of the acquis of the European Union in the field of Justice and Home Affairs
2. The persons covered by these Rules shall remain in paid employment in an international, national, regional or local administration throughout the period of detachment.
3. Except where the Secretary-General grants a derogation, detached national experts shall be nationals of a Member State of the European Union.

Article 2

Period of detachment

1. The period of detachment of detached national experts shall depend on the tasks assigned to them. Under no circumstances may they be detached for less than three months or more than three years. They shall serve on a full-time basis throughout the period of detachment.

2. The probable period of detachment shall be fixed at the outset in an exchange of letters between the Secretary-General and the Office of the Permanent Representative of the Member State concerned, or the employer in the case of an international organisation.
3. No national expert may be detached to the General Secretariat more than once.

Article 3

Duties

1. Detached national experts shall assist General Secretariat officials and carry out the duties assigned to them in a predetermined work programme or job description.
2. Unless special instructions to the contrary are given, under the authority of the Secretary-General, by the Director-General of the Directorate-General for Justice and Home Affairs, detached national experts shall not enter into any commitment on the General Secretariat's behalf with third parties.
3. Detached national experts may work in any field where their services are deemed necessary provided there is no conflict with the interests of the European Union.

Article 4

Level, professional experience and knowledge of languages

1. To qualify for detachment to the General Secretariat a national expert must have at least three years' experience of administrative, advisory or supervisory duties in a grade equivalent to Categories A or B at the General Secretariat.

2. A detached national expert must have a thorough knowledge of one European Union language and a satisfactory knowledge of a second language where this is necessary for the performance of his duties.

Article 5

Social security

1. Before the period of detachment begins, the civil service from which the official is to be detached shall certify to the General Secretariat that he will remain subject throughout the period of detachment to the social security legislation applicable to that civil service which will assume responsibility for expenses incurred abroad.
2. From the day he takes up duty a detached national expert shall be personally insured against the risk of accidents on the same terms as General Secretariat employees not covered by the Staff Regulations.
3. A detached national expert who cannot be covered by a public sickness insurance scheme can apply to have this risk insured by the General Secretariat subject to his contributing half the relevant insurance premium. In such a case, his contribution shall be deducted monthly from the allowance referred to in Article 12.

Article 6

Breaks in or termination of periods of detachment

1. The General Secretariat may authorise breaks in periods of detachment and specify the terms applicable. The allowances referred to in Articles 12 and 13 shall not be payable during such breaks. The allowances referred to in Articles 14 and 15 shall be paid only if the break is at the General Secretariat's request.
2. Periods of detachment may be terminated if the interests of the General Secretariat or the expert's employer so require or for any other sufficient cause.

CHAPTER II: RIGHTS AND OBLIGATIONS OF A NATIONAL EXPERT ON DETACHMENT

Article 7

1. A detached national expert shall carry out his duties and conduct himself solely with the interests of the Council in mind.
2. A detached national expert shall abstain from any action, and in particular any public expression of opinion, which may reflect on his position.
3. A detached national expert who, in the performance of his duties, is called upon to pronounce on a matter in the handling or outcome of which he has a personal interest such as to impair his independence shall inform the head of the department to which he is assigned.
4. A detached national expert shall exercise the greatest discretion with regard to all facts and information coming to his knowledge in the course of or in connection with the performance of his duties; he shall not in any form whatsoever disclose to any unauthorised person any document or information not already made public. He shall continue to be bound by this obligation after his period of detachment has terminated.
5. A detached national expert shall not, whether alone or together with others, publish or cause to be published any matter dealing with the work of the European Union without obtaining permission in accordance with the conditions and rules in force at the General Secretariat. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the European Union.
6. All rights in any work done by a detached national expert in the performance of his duties shall be the property of the General Secretariat.

7. A detached national expert shall reside at his place of employment or at no greater distance therefrom as is compatible with the proper performance of his duties.
8. A detached national expert shall assist and tender advice to the superiors to whom he is assigned; he shall be responsible to them for performance of the tasks entrusted to him.

CHAPTER III: WORKING CONDITIONS OF THE DETACHED NATIONAL EXPERT

Article 8

Hours of work

1. A detached national expert shall be bound by the rules on hours of work in force at the General Secretariat.
2. However, a detached national expert shall not be authorised to work half-time.

Article 9

Leave and holidays

A detached national expert shall be subject to the rules on annual leave, special leave and holidays in force at the General Secretariat.

Article 10

Management and control

Management and control of leave and working time shall be the responsibility of the Directorate-General for Justice and Home Affairs.

CHAPTER IV: EMOLUMENTS

A. Remuneration

Article 11

Declaration of salary paid by the expert's employer

1. The Office of the Permanent Representative of the Member State concerned, or the employer in the case of an international organisation, shall notify the General Secretariat of the gross annual salary paid to each detached national expert.
2. This information shall appear in the exchange of letters between the General Secretariat and the Office of the Permanent Representative of the Member State concerned, or the employer in the case of an international organisation.

B. Allowances

Article 12

Subsistence allowances

1. A detached national expert shall be entitled, throughout the period of detachment, to a subsistence allowance equal to the daily allowance payable to a General Secretariat official in Grade A4 to A8 and Category B for a mission of long duration calculated in accordance with the scale in force at the place of employment. This allowance shall be paid monthly. However, the exchange of letters referred to in Article 18(2) may stipulate that this allowance shall not be paid.
2. The allowance shall be payable for periods of mission, annual leave, special leave and holidays granted by the General Secretariat.
3. The allowance shall be reduced by seventy-five per cent if the place of recruitment is less than fifty kilometres from the place of employment.

4. An advance payment shall be made to a national expert on detachment, when he takes up his duties, corresponding to the allowances to which he is entitled under paragraph 1 for the period from the day on which he takes up his duties to the last day of the second month following that in which he takes up his duties.

Where such payment is made, there shall be no further entitlement to allowances for the corresponding period.

Where a national expert on detachment definitively ends his employment with the General Secretariat before expiry of the period taken into account for the calculation of the advance payment, that portion of the advance payment made to the expert which corresponds to the period not spent in the General Secretariat's employment shall be recoverable.

Article 13

Additional flat-rate allowance

Except where the place of recruitment of the detached national expert is less than fifty kilometres from his place of employment, he shall, where appropriate, receive an additional flat-rate allowance equal to the difference between the gross annual salary (less family allowances) paid by his employer plus the subsistence allowance paid by the General Secretariat and the basic salary payable to an official in step 1 of Grade A8 or step 1 of Grade B5, depending on the category to which he is assimilated.

C. Reimbursement of expenses

Article 14

Travel expenses

1. If a national expert on detachment has not removed his personal effects from his place of recruitment to his place of employment, he shall be entitled each month to the cost of a return journey from his place of employment to his place of recruitment. This payment shall be made at the end of each month or on the last day worked if the whole month is not worked. This flat-rate payment shall be based on the cost of the first-class rail fare where the single journey does not exceed five hundred kilometres. Where the journey exceeds five hundred kilometres or involves a sea crossing, payment shall be based on the reduced-price economy-class air fare (the lowest fare offered by the national companies serving the place of recruitment and the place of employment).
2. The rate applied shall be that in force on 1 January of the current year at the General Secretariat's Travel Office. This rate shall be reviewed on 1 July in respect of journeys where the price has increased by more than five per cent since 1 January. Where a whole month is not worked, the amount shall be calculated in proportion to the number of days worked.
3. If a detached national expert does remove his personal effects from his place of recruitment to his place of employment, he shall be entitled each year for himself, his spouse and his dependent children to a flat-rate payment equal to the cost of a return journey from his place of employment to his place of recruitment in accordance with the rules and conditions in force at the General Secretariat.
4. In accordance with the rules and conditions in force at the General Secretariat, a detached national expert shall be entitled to reimbursement of travel expenses:

(a) for himself:

- from his place of recruitment to his place of employment at the beginning of the period of detachment;
- from his place of employment to his place of recruitment at the end of the period of detachment;

(b) for his spouse and dependent children:

- from the place of recruitment to the place of employment when removal takes place;
- from the place of employment to the place of recruitment at the end of the period of detachment.

5. For the purpose of these Rules, the place of recruitment shall be the place where the detached national expert performed his duties prior to his detachment. The place of employment shall be the place in which the department to which he is assigned is located. The exchange of letters between the General Secretariat and the Office of the Permanent Representative of the Member State concerned, or the employer in the case of an international organisation, shall specify these places.

Article 15

Removal expenses

1. A detached national expert who is obliged to move his residence to his place of employment may remove his personal effects no later than six months after taking up duty provided that the probable period of detachment is at least two years and that the place of recruitment is at least fifty kilometres from the place of employment.
2. A detached national expert shall be entitled to reimbursement of the costs of removing his personal effects in accordance with the rules and conditions in force at the General Secretariat.

3. Removal must take place within three months of the end of the period of detachment.

Article 16

Missions and mission expenses

1. A detached national expert may be sent on mission only in accordance with Article 3 of these Rules.
2. Mission expenses shall be reimbursed in accordance with the rules and conditions relating to the reimbursement of mission expenses for officials in force at the General Secretariat.

Article 17

Adjustment of emoluments

1. The emoluments to which a detached national expert is entitled shall not be revised during the period of detachment.
2. However, the additional flat-rate allowance referred to in Article 13 shall be adjusted once a year, without retroactive effect, to take account of changes in the basic salaries of Community officials.

CHAPTER V: ADMINISTRATIVE AND BUDGETARY PROVISIONS

Article 18

Budgetary allocations and contracts

1. Expenditure arising from the detachment of national experts shall be charged to budget heading 1113 in Section II of the budget (Special advisors and other persons mandated by the Council).

2. Detachment shall be implemented by an exchange of letters between the Secretary-General and the Office of the Permanent Representative of the Member State concerned, or the employer in the case of an international organisation. The exchange of letters shall indicate the names of the individuals authorised to lay down detailed arrangements for detachment under these rules. Any letter extending, breaking or terminating the period of detachment shall also be sent by the Secretary-General. A detached national expert shall present himself to the appropriate department of the Directorate-General for Administration and Protocol on the first day of his detachment to complete the relevant administrative formalities. He shall take up duty on the first of the month.

Article 19

Settlement of expenditure

Payments shall be made monthly in arrears by the appropriate department of the Directorate-General for Administration and Protocol, in euro into a bank account opened at a banking institution in Belgium.

Article 20

Expenditure on infrastructure

Expenditure on the provision of working facilities (offices, furniture, machines, etc.) for detached national experts paid from administrative appropriations shall be charged to administrative appropriations.

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

Done at

For the Council
The President