

## **RULES ON SPECIAL ADVISERS TO THE COMMISSION**

### **1. INTRODUCTION**

Special advisers to the Commission are subject to the Conditions of Employment of Other Servants of the European Communities (CEOS)<sup>1</sup>. These rules repeal and replace all previous decisions in this matter<sup>2</sup> and are intended primarily to update, in the interests of transparency, the procedure for appointing special advisers and to specify the way in which the Budgetary Authority is to be informed of their appointment, as provided for in the Conditions of Employment.

### **2. DEFINITION OF SPECIAL ADVISERS**

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

Special advisers provide direct assistance to Members of the Commission. Special advisers who provide assistance to institutional bodies<sup>3</sup> are answerable to the President or the Vice-President responsible for Personnel and Administration.

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

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

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

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

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

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

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

These rules do not apply to special advisers covered by other specific Commission decisions and remunerated from appropriations specifically intended for that purpose<sup>4</sup>.

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

At the beginning of each financial year, the Personnel and Administration DG (DG ADMIN) informs the Members of the Commission of the total appropriations in the specific budget heading for special advisers and sets an amount for each Member for the year. The number of days actually available will depend on the level of remuneration decided in the light of the special adviser's qualifications. A shared reserve of about 15% is established to meet additional needs in terms of days to be worked and mission appropriations<sup>5</sup> for special advisers already appointed at the beginning of the year and, in exceptional circumstances, in the event of unforeseen and duly justified needs, further appointments of special advisers. During the second half of the year DG ADMIN allocates the reserve, including reallocation of days not used; it keeps the Members informed of their remaining funding.

### **4. PRIOR NOTIFICATION OF THE BUDGETARY AUTHORITY**

As part of the budget procedure, the budgetary authority is notified of the total amount earmarked for special advisers for the following year. To its request for appropriations, submitted during preparation of the preliminary draft budget, the Commission attaches general information in the form of an estimate of expenditure<sup>6</sup> relating to the number of days of work required and the missions budget. The estimate is prepared by the Office for the administration and payment of individual entitlements (PMO), which is responsible for managing the budget heading for special advisers, and by DG ADMIN. Advance management of appropriations takes account of the cost of fees and missions in the case of paid special advisers and of the cost of missions in the case of unpaid special advisers.

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

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

<sup>5</sup> Based on the average daily cost of a mission.

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

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

## **5. SELECTION AND DESIGNATION OF SPECIAL ADVISERS**

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

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

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

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

## **6. DESIGNATION AND APPOINTMENT OF SPECIAL ADVISERS**

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

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

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

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

## **7. REMUNERATION OF SPECIAL ADVISERS**

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

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

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

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

## **8. MANAGEMENT OF SPECIAL ADVISERS**

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

DG ADMIN is responsible for handling the process leading to the employment of special advisers, including checking, on the basis of the documents provided by the Members of the Commission, that there is no conflict of interest between the special adviser's future duties and any outside activities. In the performance of these tasks, it ensures that the collecting and processing of personal data relating to special advisers, particularly in connection with the checks on conflict of interest and the publication of their curriculum vitae on the Commission's website, is proportional to the nature of the duties of the special advisers and is carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>8</sup>.

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<sup>7</sup> 22 being the average number of working days in a month.

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

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

Annexes:

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

**DECLARATION ON THE HONOUR OF NO CONFLICT OF INTEREST BETWEEN THE DUTIES  
OF SPECIAL ADVISER TO THE COMMISSION AND OTHER ACTIVITIES**

**The Special Adviser :**

**Surname:**

**First name:**

**Terms of reference of the Special Adviser:**

**Office of Commissioner:**

**Surname:**

**First name:**

The European Commission intends to offer Mr/Ms [.....] a contract as Special Adviser. This contract is governed by Article 5 and Articles 123 and 124<sup>1</sup> of the Conditions of Employment of Other Servants (CEOS) of the European Union, which lay down the rights and obligations of Special Advisers (see Annex), and by the Rules Governing Special Advisers<sup>2</sup>.

Attention is drawn in particular to the obligations that **the function of Special Adviser** entails:

- to carry out duties impartially and objectively with due respect for the duty of loyalty and discretion with regard to the Communities, and be guided solely by the interests of the Communities;
- not to take instructions from any government, authority, organisation or person outside the Commission, in relation to the duties of Special Adviser;
- in performing the duties of Special Adviser, not to deal with any matter in which, directly or indirectly, he/she has any personal interest such as to impair his/her independence, in particular family and financial interests, and, should such a situation arise, inform the Authority Responsible for Concluding Contracts of Employment (AHCC).<sup>3</sup> immediately in writing;
- not to accept from any government or from any other source outside the Commission any honour, decoration, favour, gift or payment in connection with duties as Special Adviser, without the permission of the AHCC.

The Special Adviser must not exploit his/her function in an inappropriate manner which could harm the image of the Commission or the Commissioner.

I, [.....], herewith **declare that I am aware of the obligations detailed above and confirm that there is no conflict of interest between the future duties of Special Adviser and my other activities.**

**Please date and sign this form as well as the attached Annex.**

**Date:**

**Signature:**

<sup>1</sup> Article 124 of the CEOS refers to Articles 11, 11a and 12 of the Staff Regulations which apply by analogy to Special Advisers.

<sup>2</sup> Rules Governing Special Advisers to the Commission adopted on 19 December 2007 (C(2007)6655).

<sup>3</sup> Via Unit DG HR-C1 "Senior Management & CCA".

## **Annex**

### **Applicable Staff Regulations**

#### **Conditions of Employment of Other Servants of the European Community**

##### *Article 5*

For the purposes of these conditions of employment, 'special adviser' means a person who, by reason of his special qualifications and notwithstanding gainful employment in some other capacity, is engaged to assist one of the institutions of the Communities either regularly or for a specified period and who is paid from the total appropriations for the purpose under the section of the budget relating to the institution which he serves.

##### TITRE VI

#### **Special advisers**

##### *Article 123*

1. The remuneration of special advisers shall be determined by direct agreement between the adviser concerned and the authority referred to in the first paragraph of Article 6. The contract of a special adviser shall be for a term not exceeding two years. It shall be renewable.

2. An institution which intends to recruit a special adviser or renew his contract shall notify the competent budgetary authority, specifying the remuneration contemplated.

Before the contract is finally concluded there shall be an exchange of views with the competent budgetary authority on the proposed remuneration if within one month following the date of notification a member of that authority or the institution concerned so requests.

##### *Article 124*

Articles 1c, 1d, 11, 11a, 12 and 12a, the first paragraph of Article 16, Articles 17, 17a, 19, 22, 22a and 22b, the first and second paragraphs of Article 23 and the second paragraph of Article 25 of the Staff Regulations, concerning the rights and obligations of officials, and Articles 90 and 91 of the Staff Regulations, concerning appeals, shall apply by analogy.

#### **Staff Regulations of Officials**

##### *Article 1c*

Any reference in these Staff Regulations to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.

##### *Article 1d*

1. In the application of these Staff Regulations, any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation shall be prohibited.

For the purposes of these Staff Regulations, non-marital partnerships shall be treated as marriage provided that all the conditions listed in Article 1(2)(c) of Annex VII are fulfilled.

2. With a view to ensuring full equality in practice between men and women in working life, which shall be an essential element to be considered in the implementation of all aspects of these Staff Regulations, the principle of equal treatment shall not prevent the institutions of the European Communities from maintaining or adopting measures providing for specific advantages in order to make it easier for the underrepresented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers.

3. The institutions shall determine, by agreement, after consulting the Staff Regulations Committee, measures and actions to promote equal opportunities for men and women in the areas covered by these Staff Regulations, and shall adopt the appropriate provisions notably to redress such de facto inequalities as hamper opportunities for women in these areas.

4. For the purposes of paragraph 1, a person has a disability if he has a physical or mental impairment that is, or is likely to be, permanent. The impairment shall be determined according to the procedure set out in Article 33. A person with a disability meets the conditions laid down in Article 28(e) if he can perform the essential functions of the job when reasonable accommodation is made.

“Reasonable accommodation”, in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

5. Where persons covered by these Staff Regulations, who consider themselves wronged because the principle of equal treatment as set out above has not been applied to them, establish facts from which it may be presumed that there has been direct or indirect discrimination, the onus shall be on the institution to prove that there has been no breach of the principle of equal treatment. This provision shall not apply in disciplinary proceedings.

6. While respecting the principle of non-discrimination and the principle of proportionality, any limitation of their application must be justified on objective and reasonable grounds and must be aimed at legitimate objectives in the general interest in the framework of staff policy. Such objectives may in particular justify stipulating a mandatory retirement age and a minimum age for drawing a retirement pension.

#### *Article 11*

An official shall carry out his duties and conduct himself solely with the interests of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Communities.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.

#### *Article 11a*

1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter.

3. An official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.

#### *Article 12*

An official shall refrain from any action or behaviour which might reflect adversely upon his position.

#### *Article 12a*

1. Officials shall refrain from any form of psychological or sexual harassment.

2. An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution. An official who has given evidence on psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.

3. “Psychological harassment” means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.

4. “Sexual harassment” means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender.

#### *Article 16*

An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

(...)

#### *Article 17*

1. An official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

2. An official shall continue to be bound by this obligation after leaving the service.

*Article 17a*

1. An official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality.

2. Without prejudice to Articles 12 and 17, an official who intends to publish or cause to be published, whether alone or with others, any matter dealing with the work of the Communities shall inform the Appointing Authority in advance.

Where the Appointing Authority is able to demonstrate that the matter is liable seriously to prejudice the legitimate interests of the Communities, the Appointing Authority shall inform the official of its decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the Appointing Authority shall be deemed to have had no objections.

*Article 19*

An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Communities so require and such refusal would not entail criminal consequences as far as the official is concerned. An official shall continue to be bound by this obligation after leaving the service.

The provisions of the preceding paragraph shall not apply to an official or former official giving evidence before the Court of Justice of the European Communities or before the Disciplinary Board of an institution on a matter concerning a servant or former servant of one of the three European Communities.

*Article 22*

An official may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

A reasoned decision shall be given by the appointing authority in accordance with the procedure laid down in regard to disciplinary matters.

The Court of Justice of the European Communities shall have unlimited jurisdiction in disputes arising under this provision.

*Article 22a*

1. Any official who, in the course of or in connection with the performance of his duties, becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, including fraud or corruption, detrimental to the interests of the Communities, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Communities shall without delay inform either his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or the European Anti-Fraud Office (OLAF) direct.

Information mentioned in the first subparagraph shall be given in writing.

This paragraph shall also apply in the event of serious failure to comply with a similar obligation on the part of a Member of an institution or any other person in the service of or carrying out work for an institution.

2. Any official receiving the information referred to in paragraph 1 shall without delay transmit to OLAF any evidence of which he is aware from which the existence of the irregularities referred to in paragraph 1 may be presumed.

3. An official shall not suffer any prejudicial effects on the part of the institution as a result of having communicated the information referred to in paragraphs 1 and 2, provided that he acted reasonably and honestly.

4. Paragraphs 1 to 3 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

*Article 22b*

1. An official who further discloses information as defined in Article 22a to the President of the Commission or of the Court of Auditors or of the Council or of the European Parliament, or to the European Ombudsman, shall not suffer any prejudicial effects on the part of the institution to which he belongs provided that both of the following conditions are met:

(a) the official honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(b) the official has previously disclosed the same information to OLAF or to his own institution and has allowed the OLAF or that institution the period of time set by the Office or the institution, given the complexity of the case, to take appropriate action. The official shall be duly informed of that period of time within 60 days.

2. The period referred to in paragraph 1 shall not apply where the official can demonstrate that it is unreasonable having regard to all the circumstances of the case.

3. Paragraphs 1 and 2 shall not apply to documents, deeds, reports, notes or information in any form whatsoever held for the purposes of, or created or disclosed to the official in the course of, proceedings in legal cases, whether pending or closed.

#### *Article 23*

The privileges and immunities enjoyed by officials are accorded solely in the interests of the Communities. Subject to the Protocol on Privileges and Immunities, officials shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force.

When privileges and immunities are in dispute, the official concerned shall immediately inform the appointing authority.

(...)

#### *Article 25*

(...)

Any decision relating to a specific individual which is taken under these Staff Regulations shall at once be communicated in writing to the official concerned. Any decision adversely affecting an official shall state the grounds on which it is based.

(...)

#### *Article 90*

1. Any person to whom these Staff Regulations apply may submit to the appointing authority a request that it take a decision relating to him. The authority shall notify the person concerned of its reasoned decision within four months from the date on which the request was made. If at the end of that period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it, against which a complaint may be lodged in accordance with the following paragraph.

2. Any person to whom these Staff Regulations apply may submit to the appointing authority a complaint against an act adversely affecting him, either where the said authority has taken a decision or where it has failed to adopt a measure prescribed by the Staff Regulations. The complaint must be lodged within three months. The period shall start to run:

- on the date of publication of the act if it is a measure of a general nature;
- on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification, if the measure affects a specified person; if, however, an act affecting a specified person also contains a complaint against another person, the period shall start to run in respect of that other person on the date on which he receives notification thereof but in no case later than the date of publication;
- on the date of expiry of the period prescribed for reply where the complaint concerns an implied decision rejecting a request as provided for in paragraph 1.

The authority shall notify the person concerned of its reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it, against which an appeal may be lodged under Article 91.

#### *Article 91*

1. The Court of Justice of the European Communities shall have jurisdiction in any dispute between the Communities and any person to whom these Staff Regulations apply regarding the legality of an act adversely affecting such person within the meaning of Article 90(2). In disputes of a financial character the Court of Justice shall have unlimited jurisdiction.

2. An appeal to the Court of Justice of the European Communities shall lie only if:

- the appointing authority has previously had a complaint submitted to it pursuant to Article 90(2) within the period prescribed therein, and
- the complaint has been rejected by express decisions or by implied decision.

3. Appeals under paragraph 2 shall be filed within three months. The period shall begin:

- on the date of notification of the decision taken in response to the complaint;

– on the date of expiry of the period prescribed for the reply where the appeal is against an implied decision rejecting a complaint submitted pursuant to Article 90(2); nevertheless, where a complaint is rejected by express decision after being rejected by implied decision but before the period for lodging an appeal has expired, the period for lodging the appeal shall start to run afresh.

4. By way of derogation from paragraph 2, the person concerned may, after submitting a complaint to the appointing authority pursuant to Article 90(2), immediately file an appeal with the Court of Justice, provided that such appeal is accompanied by an application either for a stay of execution of the contested act or for the adoption of interim measures. The proceedings in the principal action before the Court of Justice shall then be suspended until such time as an express or implied decision rejecting the complaint is taken.

5. Appeals under this Article shall be investigated and heard as provided for in the Rules of Procedure of the Court of Justice of the European Communities.

**Date:**

**Signature:**

**DECLARATION OF ACTIVITIES IN VIEW OF APPLYING TO THE FUNCTION OF  
SPECIAL ADVISER TO THE EUROPEAN COMMISSION<sup>1</sup>**

**THE SPECIAL ADVISER**      **Surname:** \_\_\_\_\_ **First name:** \_\_\_\_\_

**OFFICE OF COMMISSIONER**      **Surname:** \_\_\_\_\_ **First name:** \_\_\_\_\_

**1. GAINFUL ACTIVITIES**

**a) current:** .....  
.....  
.....  
.....  
.....  
.....

**b) last three years:** .....  
.....  
.....  
.....  
.....  
.....

**2. ACTIVITIÉS IN A VOLUNTARY OR HONORARY CAPACITY**

**a) current:** .....  
.....  
.....  
.....  
.....

**b) Last three years:** .....  
.....  
.....  
.....  
.....

**I certify that the above information is true and complete and I undertake to update it in the event of any change by informing the Authority Responsible for Concluding Contracts of Employment<sup>2</sup> in writing.**

DATE : \_\_\_\_\_ SIGNATURE \_\_\_\_\_

<sup>1</sup> Please describe the activity in detail and give the names, addresses and telephone numbers of any employers.

<sup>2</sup> Via unit HR.C1 for the attention of the Head of Unit (postal address: European Commission, DG HR-C1, 11 rue de la Science, B-1049 Bruxelles)

**STATUTORY INFORMATION NOTE ON THE PROTECTION OF INDIVIDUALS WITH REGARD TO THE PROCESSING OF PERSONAL DATA – SPECIAL ADVISERS: VERIFICATION THAT NO CONFLICT OF INTEREST EXISTS AND PUBLICATION ON EUROPA**

The collection and processing of declarations by Special Advisers concerning their activities and sworn statements that no conflict of interest exists are covered by Regulation (EC) No 45/2001<sup>1</sup>. The following legal information applies to this data collection and processing operation:

(a) identity of the person responsible for collecting and processing the data: Head of Unit HR-C1 (where appropriate, after obtaining the opinion of the Head of Unit HR-E3);

(b) the purposes of the processing operation for which the data are intended:

- publication of the list of Special Advisers to the European Commission (name, terms of reference, curriculum vitae<sup>2</sup> and photo (optional) of the Special Adviser, name of Commissioner to whom the Adviser is to report) on the Europa website;
- publication of the sworn statements on the Europa website;
- analysis of the declarations of activities in order to determine whether there may be a conflict of interest within the meaning of Articles 11 and 11a of the Staff Regulations of Officials of the European Communities (applicable by analogy to Special Advisers);
- transmission of the names of the Special Advisers to the budgetary authority (European Parliament), together with financial information (duration of the contract, number of days to be worked, level of remuneration, mission expenses);
- where appropriate, transmission of the declarations of activities to a supervisory authority (e.g. European Parliament, Court of Auditors);

(c) the recipients or categories of recipients of the data:

- declarations of activities: the Member of the European Commission responsible for Interinstitutional Relations and Administration with a view to the appointment of the Special Adviser and the Commissioner to whom the Special Adviser is to report;
- sworn statements and list of Special Advisers to the European Commission (name, terms of reference, curriculum vitae and photo (optional) of the Special Adviser, name of Commissioner to whom the Adviser is to report): Europa website
- list of the names of the Special Advisers, together with financial information: budgetary authority;

(d) whether replies to the questions are compulsory or voluntary, as well as the possible consequences of a failure to reply: the replies to the sworn statements on conflict of interest and declarations concerning activities are compulsory; unless there is a reply no contract can be signed;

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

<sup>2</sup> The curriculum vitae must not contain information of a private nature, such as family circumstances, private address, etc.

(e) the existence of the right of access to, and the right to rectify, the data concerning the Special Adviser: this right can be exercised by contacting the person responsible for processing the data; Special Advisers should bear in mind when submitting their curriculum vitae that only relevant information should be included in their CV since it will be published on the Europa website;

(f) the legal basis of the processing operation for which the data are intended: Articles 123 and 124 of the Conditions of Employment of Other Servants of the European Communities; Articles 11 and 11a of the Staff Regulations of Officials of the European Communities; Rules governing Special Advisers to the European Commission<sup>3</sup>; Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents;

(g) the time-limits for storing the data: five years after expiry of the contract. Reasons must be given in individual cases for any storage beyond that time, e.g. where it is required in order to establish a right before the courts.

The Special Adviser has the right of recourse at any time to the European Data Protection Supervisor ([edps@edps.europa.eu](mailto:edps@edps.europa.eu)).

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<sup>3</sup> Rules on Special Advisers to the European Commission adopted on (...) 2007.

STATEMENT OF ASSURANCE FROM [PRESIDENT/MEMBER] OF NON-CONFLICT OF INTEREST WITH A VIEW TO THE APPOINTMENT OF [NAME OF PERSON] AS A SPECIAL ADVISER TO THE EUROPEAN COMMISSION

**This form offers two alternatives: please complete EITHER Option A OR Option B and delete the one that does not apply.**

**A/** I, the undersigned, [President/Member of the Commission or Chef de cabinet], hereby confirm that, on the basis of the declaration of activities and the sworn statement declaring that there is no conflict of interest presented by [Mr/Ms name of Special Adviser], and with regard to the tasks he/she will perform, there is no conflict of interest between his/her future duties as special adviser and his/her outside activities.

Comments:

.....  
.....  
.....  
.....

**B/** I, the undersigned, [President/Member of the Commission or Chef de cabinet], hereby declare that, notwithstanding the declaration of activities and the sworn statement declaring that there is no conflict of interest presented by [Mr/Ms name of Special Adviser], there may be a potential risk for the Commission’s good name (please specify):

.....  
.....  
.....  
.....

However, [the President/Member] is willing to accept this potential risk and also considers it to be acceptable for the Commission as a whole. He/she therefore wishes to proceed with the offer of a contract to [Mr/Ms name of Special Adviser].

Please give any information regarding possibilities for [the President/Member] of reducing this risk of potential conflict of interest, whether real or apparent:

.....  
.....  
.....  
.....

**Please date and sign your declaration:**

Brussels, [Date]

[President/Member of the Commission or Chef de cabinet]

**Signature:**

## PERSONAL CERTIFICATE

to be returned to ARES ve\_pmo.01.salaries

For the correct calculation of the tax, the special Adviser certifies that (s)he:

- Is retired from the European Union institutions or agencies;
- Is retired **OUTSIDE** the European Union institutions or agencies;
- Works for the following European Union institution or agency:.....;
- Has ..... (*number*) dependent child(ren)<sup>1</sup> at the moment of the execution of the contract.

Name and First Name of the Special Adviser:....

Date: ....

Signature of the Special Adviser:....

CC: Horacio Barata

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<sup>1</sup> Article 2 of the Annex VII of the Staff Regulations: "Dependent child" means the legitimate, natural or adopted child of an agent or of his spouse, who is actually being maintained by the agent.

**APPOINTMENT OF A SPECIAL ADVISER**

**SPECIAL ADVISERS – PERSONAL DETAILS**

**(to be completed and returned by the requesting Cabinet to:  
Head of Unit HR-C1 – DG Human Resources and Security – SC11 8/44)**

**PERSONAL INFORMATION**

NAME: .....  
FIRST NAME: .....  
DATE OF BIRTH: .....  
ADDRESS:.....

**UP-TO-DATE CURRICULUM VITAE**

- attached
- will be sent to you within eight days

**CONTRACT ..... (year n) (until ..... (year n + 1 unless the Cabinet concerned issues other instructions)**

**TYPE of CONTRACT** (“paid special adviser” or “unpaid special adviser”, please specify):  
.....

**PURPOSE of the APPOINTMENT:**  
.....  
.....

**JUSTIFICATION:**.....  
.....

**ESTIMATED EXPENDITURE**

Number of days to be worked (between the date of signing of the contract and 31 March ..... **(year n + 1)** at the latest): .....

1. Fees (paid advisers only)  
Daily rate: .....
2. Missions (paid and unpaid advisers)  
Purpose: .....  
Destination: .....  
Mission appropriations<sup>1</sup>: .....

**REQUESTING CABINET**

**(name of the Member of the Commission):**.....

NAME of APPLICANT: .....  
TITLE (Member of the Commission or Chef de Cabinet): .....

Name and contact details of the person responsible for contacts with DG HR : .....  
Brussels, ...

APPLICANT'S SIGNATURE.....

<sup>1</sup> Mission appropriations: expressed as a number of days x average cost of mission per day (in euros).

# **CERTIFICATE FOR THE PAYMENT TO SPECIAL ADVISERS**

**to be returned to ARES ve\_pmo.01.salaries**

Mr/Ms ..... (Name, first name),  
Special Adviser to the European Commission has worked ..... days in  
..... (month and year in numbers).

The fees are to be paid in euros  
to account No. ....  
at (name of bank): .....

The *detailed information*<sup>1</sup> required for the transfer of the amount due to the above  
account, namely:

- ❖ the address of the special adviser (= the account holder) and
- ❖ the *complete* structure of the banking data for the country in which the bank  
account is held,
  - is already in your possession
  - is attached to this form.

## **CERTIFICATION OF DAYS WORKED BY THE MEMBER OR AUTHORISED MEMBER OF THE SPECIAL ADVISER'S PRIVATE OFFICE (CABINET)**

DATE <sup>2</sup>: .....

PRIVATE OFFICE (CABINET): .....

NAME: .....

FIRST NAME: .....

(AUTHORISED) MEMBER'S SIGNATURE:

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<sup>1</sup> To help you provide the necessary information, the PMO Fichier Tiers can provide you with a form (different for each Member State) which is designed to reflect the banking structures of the country concerned and which can be filled in and attached to the request for reimbursement of expenses.

<sup>2</sup> The date of signature must be dated after the last worked day of the special adviser.