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COUNCIL DECISION

of 24 September 2004

concerning the Rules applicable to national experts and military staff on secondment to the European Defence Agency

(2004/677/EC)

(OJ L 310, 7.10.2004, p. 64)

Amended by:

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COUNCIL DECISION

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concerning the Rules applicable to national experts and military staff on secondment to the European Defence Agency

(2004/677/EC)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Council Joint Action 2004/551/CFSP of 12 July 2004 on the establishment of the European Defence Agency ([1]), and in particular Article 11(3)(3.2.) thereof,

Whereas:

(1) Seconded national experts (hereinafter referred to as SNEs) and seconded national military staff should enable the European Defence Agency (hereinafter referred to as 'the Agency') to benefit from the high level of their knowledge and professional experience, in particular in areas where such expertise is not readily available.

(2) SNEs should foster the exchange of professional experience and knowledge in the field of defence capabilities development, research, acquisition and armaments by temporarily assigning to the Agency experts from Member States' administrations,

HAS DECIDED AS FOLLOWS:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. These Rules are applicable to SNEs seconded to the Agency by a Member State participating in that Agency.

2. The persons covered by these Rules shall remain in the service of their employer throughout the period of secondment and shall continue to be paid by that employer.

3. The Agency shall recruit SNEs in accordance with requirements and budgetary possibilities. The Chief Executive of the Agency shall establish the arrangements for such recruitment, with the assent of the Steering Board of the Agency.

4. SNEs must be nationals of a Member State and shall be recruited on a geographical basis as wide as possible among the nationals of the participating Member States. The Member States and the Agency shall cooperate to ensure, as far as possible, a balance between men and women and observe the principle of equal opportunities.

5. Secondment shall be implemented by an Exchange of Letters between the Chief Executive of the Agency and the Permanent Representation of the Member State concerned. A copy of the Rules applicable to SNEs on secondment to the Agency shall be attached to the Exchange of Letters.

6. SNEs should be drawn from governments, ministries or governmental agencies of Member States.

([1]) OJ L 245, 17.7.2004, p. 17.

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Article 2

Period of secondment

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1. The period of secondment may not be less than two months nor exceed three years and may be renewed successively up to a total period not exceeding four years.

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2. The intended period of secondment shall be fixed at the outset in the Exchange of Letters provided for in Article 1(5). The same procedure shall apply in the case of a renewal of the period of secondment.

3. A SNE who has already been seconded to the Agency may be seconded again, in accordance with internal rules laying down maximum periods during which such persons may be present in Agency departments and subject to the following conditions:

(a) the SNE must continue to meet the conditions for secondment;

(b) a period of at least three years must have elapsed between the end of the previous period of secondment and any further secondment; this provision shall not prevent the Agency from accepting the secondment of a SNE whose initial secondment lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period.

Article 3

Place of secondment

The place of secondment shall be at the seat of the Agency or at the place where the Agency's Directorate/unit to which the SNE is assigned is located.

Article 4

Duties

1. SNEs shall fulfil the mission, carry out the tasks and perform the duties assigned to them by the Chief Executive of the Agency.

The duties carried out shall be defined by mutual agreement between the Agency and the national administration which seconds the national expert in the interest of the Agency and taking into account the candidate's qualifications.

2. A SNE shall take part in missions and meetings only:

(a) if accompanying the Head of the Agency or a temporary staff member, or

(b) as an observer or solely for information purposes, if alone.

The Chief Executive of the Agency may derogate from this rule on the basis of a mandate given to the SNE, after verifying that there is no potential conflict of interest. Unless a special mandate has been granted, under the authority of the Head of the Agency, by the Chief Executive of the Agency, the SNE may not commit the Agency externally.

3. The Agency shall retain sole responsibility for approving the results of tasks performed by the SNE.

4. The Agency, the SNE's employer and the SNE shall make every effort to avoid any conflict of interest or appearance of such a conflict in relation to the SNE's duties during secondment. To this end, the Agency shall, in good time, inform the SNE and the employer of the intended duties and shall ask each of them to confirm in writing that they know of no reason why the SNE should not be assigned to those

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duties. The SNE shall be asked in particular to declare any potential conflict between his family circumstances (in particular the professional activities of close family members or any important financial interests of his own, or of close family members) and the proposed duties while on secondment.

The employer and the SNE shall undertake to notify the Agency of any change of circumstances during the secondment which could give rise to any such conflict.

5. Where the Agency considers that the nature of the tasks entrusted to the SNE requires particular security precautions, security clearance shall be obtained before the SNE is seconded.

6. In the event of failure to comply with the provisions of paragraphs 2, 3 and 4 of this Article, the Agency may terminate the secondment of the SNE under the terms of Article 8.

Article 5

Rights and obligations

1. During the period of secondment:

(a) a SNE shall carry out his duties and shall behave solely with the interests of the Agency in mind;

(b) a SNE shall abstain from any action, and in particular any public expression of opinion, which may reflect on his position at the Agency;

(c) any SNE who, in the performance of his duties, is called upon to give a decision on the handling or outcome of a matter in which he has a personal interest that could impair his independence, shall inform the Head of the department to which he is assigned;

(d) a SNE shall not, whether alone or together with others, publish or cause to be published any text dealing with the work of the Agency or the European Union without obtaining permission in accordance with the conditions and rules in force at the Agency. Permission shall be refused only where the intended publication is liable to prejudice the interests of the Agency or the European Union;

(e) all rights in any work done by a SNE in the performance of his duties shall be the property of the Agency;

(f) a SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of his activities;

(g) a SNE shall assist and tender advice to the superior to whom he is assigned and shall be responsible to his superior for the performance of the tasks entrusted to him;

(h) a SNE shall, in the exercise of his duties, accept no instructions from his employer or national government. He shall not undertake any activities for his employer, nor for governments, nor for any other person, private company or public body.

2. Both during and after the period of secondment, a SNE 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 lawfully made public, nor shall he use it for personal gain.

3. At the end of the secondment a SNE shall continue to be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

To that end, in the three years following the period of secondment, a SNE shall inform the Agency forthwith of any duties or tasks he has to

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perform for his employer which are likely to give rise to a conflict of interest in relation to the tasks he carried out during secondment.

4. A SNE shall be subject to the security rules in force in the Agency.

5. Failure to comply with the provisions of this Article during the period of secondment shall entitle the Agency to terminate the secondment of a SNE under the terms of Article 8.

Article 6

Level, professional experience and knowledge of languages

1. To qualify for secondment to the Agency a SNE must have at least three years' full-time experience of administrative, scientific, technical, advisory or supervisory functions equivalent to those of grade AD5-AD16 and AST5-AST11 as defined in the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the Communities as laid down in Regulation (EEC, Euratom, ECSC) No 259/68 [1], hereinafter referred to as 'Staff Regulations'. Before the secondment, the SNE's employer shall supply the Agency with a statement of the expert's employment covering the previous twelve months.

2. A SNE must have a thorough knowledge of one Community language and a satisfactory knowledge of a second Community language for the performance of his duties.

Article 7

Suspension of secondment

1. The Agency may authorise suspensions of secondment and specify the terms applicable. During such suspensions:

(a) the allowances referred to in Articles 15 and 16 shall not be payable;

(b) the expenses referred to in Articles 18 and 19 shall be payable only if the suspension is at the Agency's request.

2. The Agency shall inform the SNE's employer.

Article 8

Termination of periods of secondment

1. Subject to paragraph 2, secondment may be terminated at the request of Agency or of the SNE's employer, provided three months' notice is given. It may also be terminated at the SNE's request provided the same notice is given and subject to the Agency's agreement.

2. In certain exceptional circumstances the secondment may be terminated without notice:

(a) by the SNE's employer, if the employer's essential interests so require;

(b) by agreement between the Agency and the employer, at the request of the SNE to both parties, if the SNE's essential personal or professional interests so require;

(c) by the Agency in the event of failure by the SNE to comply with his obligations under these rules. The SNE shall first be given an opportunity to submit his defence.

[1] OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 723/2004 (OJ L 124, 27.4.2004, p. 1).

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3. In the event of termination under paragraph 2(c), the Agency shall immediately inform the employer.

CHAPTER II

WORKING CONDITIONS

Article 9

Social security

1. Before the period of secondment begins, the employer from which the national expert is to be seconded shall certify to the Agency that, throughout the period of secondment, the SNE will remain subject to the social security legislation applicable to the public administration which employs the SNE and which will assume responsibility for expenses incurred abroad.

2. From the commencement of his secondment, the SNE shall be covered by the Agency against the risk of accident. The Agency shall provide him with a copy of the terms of this cover on the day on which he reports to the section of the relevant Directorate/unit to complete the administrative formalities related to the secondment.

Article 10

Working hours

1. A SNE shall be subject to the rules in force in the Agency as regards working hours. These rules may be modified by the Chief Executive of the Agency where the needs of the department so require.

2. A SNE shall serve on a full-time basis throughout the period of secondment.

3. A SNE may work flexible hours only if authorised by the Agency department to which he is assigned. Authorisation shall be forwarded for information to the relevant unit of the Agency.

4. The allowances in force within the Agency for shift-work may be granted to SNEs.

Article 11

Absence for reasons of sickness or accident

1. In the event of absence for reasons of sickness or accident, a SNE shall notify his superior as soon as possible, stating his present address. He shall produce a medical certificate if absent for more than three days and may be required to undergo a medical examination arranged by the Agency.

2. If absence due to sickness or accident of not more than three days exceeds a total of twelve days over a period of twelve months, a SNE shall be required to produce a medical certificate for any further absence due to sickness.

3. Where the period of sick leave exceeds one month or the period of service performed by the SNE, whichever is the longer, the allowances referred to in Article 15(1) and (2) shall be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy. Sick leave may not extend beyond the duration of the secondment of the person concerned.

4. However, a SNE who is the victim of a work-related injury which occurs during the secondment shall continue to receive, in full, the allowances provided for in Article 15(1) and (2) throughout the

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period during which he is unfit for work up to the end of the period of secondment.

Article 12

Annual leave, special leave and holidays

1. A SNE shall be entitled to two-and-a-half working days of leave per whole month of service (30 days per calendar year).

2. Leave is subject to prior authorisation by the Directorate/unit to which the SNE is assigned.

3. A SNE may, on reasoned application, be granted special leave in the following cases:

— marriage of the SNE: two days;

— serious illness of spouse: up to three days;

— death of spouse: four days;

— serious illness of a relative in the ascending line: up to two days annually;

— death of a relative in the ascending line: two days;

— birth of a child: two days;

— serious illness of a child: up to two days annually;

— death of a child: four days.

4. Upon a duly justified request by the SNE's employer, up to 2 days of special leave in a 12-month period may be granted by the Agency on a case-by-case basis.

5. Days of annual leave not taken by the end of the period of secondment shall be forfeited.

Article 13

Maternity leave

1. A SNE who is pregnant shall be granted maternity leave of sixteen weeks, during which period she shall receive the allowances provided for in Article 15.

2. A SNE who is breast-feeding may on request, on the basis of a medical certificate attesting the fact, be granted special leave for a maximum of four weeks running from the end of her maternity leave, during which period she shall receive the allowances laid down in Article 15.

3. Where the national legislation of the employer of the SNE grants longer maternity leave, the secondment shall be suspended for the period exceeding that granted by the Agency. In that case, a period equivalent to the suspension shall be added at the end of the secondment if the interests of the Agency warrant it.

4. A SNE may, alternatively, apply for a suspension of the secondment to cover the whole of the periods allowed for maternity and breast-feeding leave. In that case, a period equivalent to the suspension shall be added at the end of the secondment if the interests of the Agency warrant it.

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Article 14

Management and control

Management and control of leave shall lie with the administration of the Agency. Control of working time and absences shall be the responsibility of the Directorate/unit to which the SNE is assigned.

CHAPTER III

ALLOWANCES AND EXPENSES

Article 15

Subsistence allowances

1. A SNE shall be entitled to a daily subsistence allowance throughout the period of secondment, which shall be equivalent to the allowance paid to a national expert seconded to the General Secretariat of the Council of the European Union.

2. If the SNE has not received removal expenses from either the Agency or from the employer, an additional monthly allowance shall be paid, which shall be equivalent to the allowance paid to a national expert seconded to the General Secretariat of the Council. This allowance shall be paid monthly in arrears.

3. These allowances shall be payable for periods of mission, annual leave, maternity leave, special leave and holidays granted by the Agency.

4. SNEs who during the three years ending six months before the secondment habitually resided or pursued their principal professional activity at a location situated at a distance of 150 km or less from the place of secondment shall receive a daily subsistence allowance as set out in paragraph 1. For the purpose of this provision, circumstances arising from work done by SNEs for a State other than that of the place of secondment or for an international organisation shall not be taken into account.

5. When the SNE starts the secondment, he shall receive an advance amount equivalent to 75 days of the subsistence allowance, whereupon entitlement to any further such allowances shall cease during the corresponding period. If the secondment to the Agency is ended before the expiry of the period taken into account to calculate the advance, the SNE is obliged to return the amount corresponding to the remaining part of that period.

6. At the time of the Exchange of Letters provided for in Article 1 (5), the Agency shall be informed of any payment similar to that mentioned in paragraph 1 of this Article received by the SNE. Any such amounts shall be deducted from the allowance paid by the Agency pursuant to the said paragraph 1.

7. Daily and monthly allowances shall be adjusted each year without retroactive effect on the basis of the adaptation of the basic salaries of Community officials in Brussels and Luxembourg.

8. For SNEs seconded to a Agency Liaison Office, the subsistence allowances referred to in this Article may be replaced by a housing allowance where this is justified by the specific circumstances of the country of secondment, subject to a reasoned decision by the Chief Executives of the Agency.

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Article 16

Additional flat-rate allowance

1. Except where the place of residence of a SNE is 150 km or less from the place of secondment, 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 allowances paid by the Agency and the basic salary payable to an official in step 1 of grade AD7 or grade AST5 depending on the category to which he is assimilated.

2. This allowance shall be adjusted once a year without retroactive effect on the basis of the adaptation of the basic salaries of Community officials.

Article 17

Place of residence

1. For the purposes of these Rules, the place of residence shall be the place where the SNE performed his duties for the employer immediately prior to secondment. The place of secondment shall be the place where the Agency's Directorate/unit to which the SNE is assigned is located. Both places shall be identified in the Exchange of Letters mentioned in Article 1(5).

2. If, on secondment as a SNE, a national expert is already on secondment on behalf of his employer in a place other than that in which the latter's head office is located, the place of residence shall be whichever of the two is closer to the place of secondment.

3. The place of residence shall be deemed to be the place of secondment where:

(a) during the three years ending six months before the secondment, the SNE habitually resided or pursued his principal professional activity at a place situated 150 km or less from the place of secondment; or

(b) at the time of the Agency's request for the secondment, the place of secondment is the principal residence of the SNE's spouse or of any of his dependent children.

To that end, residence at 150 km or less from the place of secondment is to be treated as residence at that place.

4. For the purposes of applying this Article, circumstances arising from work done by SNEs for a State other than that of the place of secondment shall not be taken into account.

Article 18

Travel expenses

1. A SNE whose place of residence is more than 150 km from the place of secondment is entitled to reimbursement of travel expenses:

(a) for himself/herself:

— from the place of residence to the place of secondment at the beginning of the period of secondment;

— from the place of secondment to the place of residence at the end of the period of secondment;

(b) for his spouse and dependent children, provided that they live with the SNE and that the removal is reimbursed by the Agency:

— at the beginning of the secondment, on removal from the place of residence to the place of secondment;

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— at the end of the secondment, from the place of secondment to the place of residence.

2. Unless the journey is made by air, the amount shall be reimbursed at a flat rate, limited to the cost of the second-class rail fare, without supplements. This shall also apply to journeys made by car. Where the rail journey exceeds 500 km or where the standard route involves a sea-crossing, air travel may be reimbursed up to actual cost of a reduced-price ticket (PEX or APEX), on production of tickets and boarding cards.

3. By way of derogation from paragraph 1, SNEs who prove that they have changed the place at which they will pursue their principal activity after the secondment shall be entitled to reimbursement of travel expenses to that place within the above limits. The reimbursement may not involve payment of a sum higher than that to which the SNE is entitled in the event of return to the place of residence.

4. If a SNE has effected his removal from his place of residence to his place of secondment, he will be entitled each year to a flat-rate payment equal to the cost of a return journey from his place of secondment to his place of residence for himself, his spouse and any dependent children on the basis of the provisions in force at the Agency.

Article 19

Removal expenses

1. Unless the second sentence of Article 15(4) applies, a SNE may remove his personal effects from the place of residence to the place of secondment, at the Agency's expense, after obtaining its prior authorisation, pursuant to rules in force at the Agency at the time concerning reimbursement of removal costs, provided the following conditions are met:

(a) the initial period of secondment must be for three years;

(b) the SNE's place of residence must be 100 km or more from the place of secondment;

(c) the removal must be completed within six months of the starting date of the secondment;

(d) authorisation must be requested at least two months before the intended date of removal;

(e) the removal costs are not being refunded by the employer;

(f) the SNE must send originals of estimates, receipts and invoices to the Agency and a certificate from the SNE's employer confirming that the employer is not bearing removal costs.

2. Subject to paragraphs 3 and 4, where the removal to the place of secondment has been reimbursed by the Agency, the SNE shall be entitled at the end of the secondment, after prior authorisation, to reimbursement of removal costs from the place of secondment to the place of residence, pursuant to rules in force in the Agency at the time concerning reimbursement of removal costs, subject to the conditions set out in paragraph 1(d), (e) and (f) and the following further conditions:

(a) the removal cannot take place earlier than three months before the end of the secondment;

(b) the removal must be completed within six months following the end of the secondment.

3. A SNE whose secondment is terminated at his request or at the employer's request within two years from the start of the secondment shall not be entitled to reimbursement of removal costs to the place of residence.

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4. Where the SNE proves that the place where he will pursue his principal activity after secondment has changed, removal costs to that new place may be reimbursed, but only up to the amount which would have been paid in the case of removal to the place of residence.

Article 20

Missions and mission expenses

1. A SNE may be sent on mission subject to Article 4.

2. Mission expenses shall be reimbursed in accordance with the provisions in force at the General Secretariat of the Council.

Article 21

Training

A SNE shall be entitled to attend training courses organised by the Agency, if the interests of the Agency warrant it. The reasonable interests of the SNE, having regard in particular to his professional career after the secondment, shall be considered when a decision on permission to attend courses is taken.

Article 22

Administrative provisions

1. The SNE shall report to the relevant Directorate/unit on the first day of secondment to complete the requisite administrative formalities. He shall take up his duties on either the first or the sixteenth of the month.

2. A SNE assigned to a Agency Liaison Office shall report to the relevant Directorate/unit of the Agency in his place of secondment.

3. Payments shall be made by the appropriate Directorate/unit of the Agency, in euro, into a bank account opened at a banking institution in the place of secondment.

CHAPTER IV

APPLICATION OF THE RULES TO SECONDED NATIONAL MILITARY STAFF

Article 23

Rules applying to seconded military staff

Subject to Articles 24 to 33, these Rules shall also apply to military staff seconded to the Agency.

Article 24

Conditions

Seconded military staff must be on paid service in the armed forces of a participating Member State throughout their secondment.

Article 25

External commitments

Seconded military staff may not involve the Agency in an external commitment, except under a special mandate granted under the authority of the Chief Executive of the Agency.

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Article 26

Security clearance

By way of derogation from Article 4(5), the appropriate level of the seconded military staff member's security clearance, which may not be lower than SECRET, must be stipulated in the Exchange of Letters referred to in Article 1(5).

Article 27

Professional experience

By way of derogation from Article 6(1), a military staff member working at administrative or advisory level and showing a high degree of competence for the duties to be carried out may be seconded to the Agency.

Article 28

Suspension and termination of secondment

1. Authorisation for Article 7 to be applied to a seconded military staff member shall be given by the Chief Executive of the Agency.

2. By way of derogation from Article 8, secondment may be terminated if the interests of the Agency or of the seconded military staff member's national administration so require or for any other sufficient cause.

Article 29

Serious failure to comply with obligations

1. By way of derogation from Article 8(3), secondment may be terminated without notice in serious cases of intentional or negligent failure of the seconded military staff member to comply with his obligations. The decision shall be taken by the Chief Executive of the Agency after the person concerned has had an opportunity to submit his defence. Before taking his decision, the Chief Executive shall notify the Permanent Representative of the Member State of which the seconded military staff member is a national. Further to that decision, the allowances referred to in Articles 18 and 19 shall no longer be granted.

Prior to the decision referred to in the first paragraph, a seconded military staff member may be suspended where serious failure to comply with his obligations is alleged against him by the Chief Executive of the Agency after the person concerned has been given an opportunity to submit his defence. The allowances referred to in Articles 15 and 16 shall not be paid during this suspension, which may not exceed three months.

2. The Chief Executive of the Agency may bring to the attention of national authorities any violation by a military staff member on secondment of the Rules set out or referred to in this Decision.

3. A military staff member on secondment shall continue to be subject to his national disciplinary rules.

Article 30

Special leave

By way of derogation from Article 12(4), unpaid additional special leave may be granted by the Agency for training by the employer subject to a duly reasoned request by the employer.

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Article 31

Allowances

By way of derogation from Articles 15(1) and 16, the Exchange of Letters referred to in Article 1(5) may stipulate that allowances provided for therein will not be paid.

Article 32

Place of residence

1. The seconded military staff member is considered as having his place of residence in the capital of the Member State of which he is a national, when, pursuant to Article 17(1), (2) and (3)(a), his place of residence is situated at 150 km or less from the place of secondment.

2. The seconded military staff member is considered as having his place of residence in the capital of the Member State of which he is a national when the place of principal residence of the spouse or of the child (children) referred to in Article 17(3)(b) is situated in a Member State other than that of secondment.

CHAPTER V

FINAL PROVISIONS

Article 33

Amendments and Implementing Rules

The provisions of these Rules concerning the Articles 4, 5, 8, 10, 12 to 14, 21 to 32, may be amended, to the extent necessary, by the Steering Board of the Agency, acting in accordance with Article 9(1)(1.10.) and Article 11(3)(3.2.) of the Joint Action 2004/551/CFSP. Any such proposed amendments shall be transmitted to the Council. These amendments shall be deemed approved unless the Council, within two months and acting by qualified majority, shall decide to modify them.

Amendments to other provisions of these Rules, in particular those concerning remuneration, allowances and social security benefits, shall be adopted by the Council, acting by unanimity, upon proposal from the Steering Board of the Agency.

Article 34

Evaluation

Within three years after the entry into force of this Decision or upon the entry into force of the Treaty establishing a Constitution for Europe, whichever is the earliest, the Council shall evaluate and amend these Rules or take a decision on its expiration, as appropriate.

Article 35

Effect

This Decision shall take effect on the day of its publication in the *Official Journal of the European Union*.