



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 29 October 2013

15515/13

LIMITE

**COPS 471
RELEX 974
CSDP/PSDC 721
PESC 1313
FIN 686**

COVER NOTE

from: EEAS
date of receipt: 28 October 2013
to: Delegations
Subject: Priority setting for CFSP actions - more effective use of the CFSP budget

Delegations will find attached the above mentioned document.

Priority setting for CFSP actions - more effective use of the CFSP budget

I. Introduction

1. More than ten years since the start of EU crisis management missions, three years after the entry into force of the Lisbon Treaty, and following the EEAS review, **a fresh look** at EU operational action in Common Foreign and Security Policy, the CFSP budget and its possibilities and limitations is timely.
2. There are two main trends:
 - after a significant growth of the CFSP budget in the last Multiannual Financial Framework, commensurate with the growing EU ambitions, **funds will be more limited** in the future. This will require better targeted priority-setting and planning.
 - on the other hand, the post-Lisbon EU architecture and the continuing consolidation of the EU as a global political actor are also giving rise to a number of **foreign and security policy operational needs** that fall outside the CSDP remit and also do not fit under development or other cooperation instruments of the EU. Using article 28 TEU as a legal basis, the CFSP budget could be used for such **operational needs**¹.

Such actions could for instance include: ad hoc strategic advice to foreign governments on security issues; some aspects of sanctions policy; international confidence building-measures; certain political monitoring activities other than elections; equipping foreign (civilian) law enforcement and security services; training for participation in civilian CSDP missions; establishment of CFSP outreach and advocacy networks; or responding to specific one-off foreign and security policy needs.
3. In addition, there is the specific case of a number of **civilian CSDP missions** which are in the process of being downsized and/or phased-out, rendering necessary concrete progress on exit strategies and follow-on activities to build upon achievements and mandate delivery, thus ensuring **longer term sustainability** outside the CSDP remit. The use of article 28 TEU can be considered in this context, as one of the available options.
4. Finally, there is also a need to **review the process**, with particular attention to Member States' involvement.
5. While the trends listed above may appear contradictory, within a context of declining resources there would seem to be sufficient scope to also consider new types of activities.
6. In any case, this warrants a debate with Member States. **The objective of the current note is to provide a basis for such a discussion among Member States**, with reference also to the roadmap on civilian CSDP and preparations for the European Council on Security and Defence.

¹ Pursuant to article 24(1) TEU, the Union's competence in matters of common foreign and security policy "shall cover all areas of foreign policy and all questions relating to the Union's security...".

II. Financial forecast

7. During the current Multiannual Financial Framework, the CFSP budget increased from EUR 159.2 million in 2007 up to EUR 396 million in 2013.
8. The 2014 CFSP budget proposed by the Commission includes EUR 314 million in commitment appropriations. This amount shall not be increased and shall remain flat over the period 2014-2020.
9. While the 2014 budget is considerably lower than the 2013 one, both in 2012 and in 2013 there have been significant transfers of commitment appropriations to other budget lines.
10. Article 13(2) and 13(3) of the Financial Regulation allow the carry-over of unspent appropriations for the following budgetary year only in two specific cases¹.

III. Operational needs and financing

Scope

11. Article 28 TEU allows the Council, "*where the international situation requires operational action by the Union*" to take "*the necessary decisions*".

Though the Treaty does not provide a definition of "operational action", it follows from the wording of this provision that its scope of application is **potentially very broad**.

Traditionally, **article 28 TEU** (ex-article 14 TEU) has been applied as the legal basis for the Council Decisions on **civilian CSDP civilian missions**. In addition, the only other areas where the Council has traditionally decided to take action pursuant to this provision is **non-proliferation and disarmament**.

12. At the same time (though not always based on this legal basis), the **CFSP budget** was used to fund actions such as:
 - the deployment of the EU police advisory team in FYROM following the termination of the mandate of the EU Police Mission Proxima (2005);
 - and the Independent international fact-finding mission on the conflict in Georgia (2008).

Finally, the CFSP budget is currently also used to finance the activities of EUSR².

¹ The two specific cases are:

- for commitment appropriations, when the Legal act has been approved in the last quarter of the year and the Authorizing Officer (AO) has been unable to commit the funds.
- for payment appropriations, when there is a surplus in the budget line at the end of the year.

² Article 33 TEU is the legal basis specifically dedicated to EUSRs. The current use of article 28 TEU in addition to article 33 for the adoption of Council Decisions appointing EUSRs is superfluous.

13. The application of article 28 TEU, including the recourse to the CFSP budget, over the years has thus focused on two key areas, but was certainly **not uniform** across the board¹.

The scope of the Union's CFSP is however much wider, covering "*all areas of foreign policy and all questions relating to the Union's security*" (article 24(1) TEU).

Hence, in principle, the Council has powers to address other legitimate foreign policy or security objectives of the EU by decisions adopted under article 28 TEU (within applicable TEU/TFEU provisions). However, this shall not automatically entail recourse to the Union budget and to the CFSP budget line in particular.

Basic elements

14. The basic elements of an operational EU action under article 28 TEU are referred to in the same article. A Council Decision adopted under this article should lay down:
- its objectives;
 - its scope;
 - the means to be made available;
 - its duration, if necessary; and
 - the conditions for its implementation.

Objectives

15. Article 23 TEU provides that "*the Union's action on the international scene, pursuant to this Chapter (CFSP), shall be guided by the principles, shall pursue the objectives of, and be conducted in accordance with the general provisions laid down in Chapter I*". These general provisions and objectives are enshrined in articles 21 and 22 TEU.

Article 21(2) lists common objectives of the EU external action but does not distinguish between CFSP and other external policies of the Union.

The implementation of CFSP shall not affect the application of the procedures and the extent of the powers of the institutions laid down by the Treaties for the exercise of non CFSP external action, and vice versa (article 40 TEU). When taking place in a developing country, CFSP action shall however take into account EU development policy objectives (article 208 TFEU).

The CSDP provisions are set out in articles 42 to 46 TEU. Article 42(1) states that the CSDP "*shall be an integral part of CFSP*".

¹ Note also in this context that former article 14 TEU was used as a legal basis for the setting up of EU entities such as the Institute for Security Studies and the EU Satellite Centre, whereas the current article 28 TEU was used as a legal basis for the European Security and Defence College. Yet, the European Defence Agency was established under the sole articles 42 and 45 of the TEU. The Financial Regulation refers to article 28 TEU as a legal basis for a basic act under Title V TEU.

16. Among the **possible operational actions** to be covered by article 28(1) TEU, the following examples could be mentioned. Of course, in all instances duplication and overlap with EU development and cooperation instruments needs to be avoided.
- **ad hoc strategic advice to foreign governments on security issues**, particularly outside crisis management contexts (e.g. Moldova), in post crisis management contexts (e.g. DRC, Iraq - see also below), or when the deployment of a CSDP mission is not justified (e.g. Yemen, Lebanon);
 - **some aspects of sanctions policy**, notably outreach activities to third countries (e.g. for the purpose of alignment with EU measures), legal and technical advice, including on asset recovery (e.g. Tunisia, Libya...);
 - **international confidence building-measures** in the field of cyber, maritime security, territorial or other disputes (e.g. exchange of information, emergency liaison mechanisms, reporting on serious incidents, joint and table-top exercises, meetings, seminars...), beyond CSDP;
 - **certain political monitoring activities** (other than elections), including by third parties (e.g., implementation of peace agreements, UN Security Council Resolutions, etc...);
 - **equipping foreign (civilian) law enforcement and security services**, particularly those trained by CSDP civilian missions¹;
 - **training** for participation in civilian CSDP missions;
 - establishment of **CFSP outreach and advocacy networks** in support of the implementation of relevant EU strategies² (e.g. in the field of cyber security, involving think tanks, civil society and businesses) or other CFSP objectives;
 - or responding to **specific one-off foreign and security policy needs** (e.g. contributing to the setting up of an ad hoc international tribunal).

17. At this stage, it is very difficult to estimate the cost impact of such actions measured against the allocations for CSDP missions, EUSRs and non-proliferation and disarmament projects, but generally the type of actions mentioned above is unlikely to be very costly in itself.

On the other hand, the human resources cost for the management by the EEAS and the Commission of a number of smaller projects deserves due consideration.

18. Article 28 TEU could thus allow for additional EU actions financed from the CFSP budget, going beyond the scope of the actions financed until now. This could help the EU to **effectively address new foreign and security policy needs**. A CFSP action:
- should have a CFSP focus in terms of objectives and content;
 - should not overlap with and infringe on objectives and contents of other (non-CFSP) EU external policies.

¹ The provision of equipment falls outside of the CSDP remit.

² Similar to the non-proliferation consortium established by Council Decision 2010/430/CFSP of 26 July 2010 (OJ L 202/5 of 4 August 2010).

IV. Follow-on to civilian CSDP missions

19. When a CSDP mission is closed down, article 28 TEU could provide the legal basis for a follow-on activity under the CFSP budget (such as continuing to provide strategic advice) with the aim of ensuring longer term sustainability, yet still pursuing a CFSP objective.

For instance, in the case of EUPOL DRC, article 28 could provide the basis for certain tasks considered as being a CFSP priority for the EU which are not foreseen to be covered by the existing development instruments, bilateral activities by the Member States or international stakeholders.

V. Modalities

Means to be made available (financing)

20. In the case of a CFSP action financed from the Union budget, the usual procedures would be applicable, i.e. the budgetary impact statement, prepared by the Commission and agreed in the Council would provide a reference amount for a given action. The Commission would be responsible for the implementation of the budget.
21. Following the Council Decision the Commission would need to apply an appropriate method of the budget implementation. It could possibly take the form of a financing agreement with an outside entity as it is currently the case with CSDP missions or EUSRs. Other forms of budget implementation could also be envisaged as long as they are compatible with article 58 of the Financial Regulation.

Duration

22. This element does not require further elaboration. It has been an established practice that almost all CFSP actions have a duration determined by the Council or at least a sunset clause for a review.

Conditions for implementation

23. Articles 24(1) and 26(3) provides that the CFSP shall be put into effect by the High Representative of the Union for Foreign Affairs and Security Policy (HR) and by the Member States, using national and Union resources.

It will be up to the HR to decide which structures in the EEAS would support a given CFSP action. For the sake of consistency, CFSP actions which follow on or are related to a CSDP mission should ideally be dealt with by the existing crisis management structures.

24. The Political and Security Committee has in accordance with article 38 TEU the mandate to "*monitor the implementation of agreed policies without prejudice to the powers of the High Representative*".

Therefore, the PSC could have in such a situation a role similar to that for EUSRs (i.e. be a contact point for reporting and provide strategic guidance and political direction without prejudice to the HR's responsibilities). The PSC could task whichever Council Working Parties it deems appropriate, to carry out preparatory work on any issue related to the CFSP action in question.

25. Some CFSP actions could exceptionally be carried out by an implementing agency identified in the basic legal act (e.g. as for non-proliferation projects)¹ or by means of calls for proposals.

Some other could take the form of small teams, e.g. under the Head of EU Delegation; the possibility of double-hatting the Head of Delegation as the Head of the Team could be explored.

In the latter case, an important element will be the question of the ratio of administrative personnel within the team. For small teams to be deployed to a third country and be hosted in an EU Delegation, the need to create a separate administrative support could be an important element in the cost-benefit analysis and the consequent political decision.

To ease this particular problem, different possibilities could be further explored:

- a service-level agreement for an administrative support by the Delegation could be elaborated;
- develop a capacity at Headquarters to provide such teams with necessary support for their deployment.

VI. Political priority-setting and supervision

26. In accordance with the TEU/TFEU the Commission is responsible for the implementation of the Union budget, including the CFSP. The Commission proposes the draft budget to the Budgetary Authority.
27. Nonetheless, as all CFSP expenditure needs a basic legal act adopted by the Council, the EEAS and the Council working groups in the area of external relations have an essential role in the planning and priority-setting of CFSP actions.
28. In 2003, the PSC endorsed the document "CFSP Budget: improving its effectiveness" (doc. 7203/1/03). Some specific practices have been developed over subsequent years. On the other hand, some elements referred to in the note on 2003 are no longer valid, either having ceased at some point (e.g. quarterly debates in the PSC - point 3.b, second bullet) or because implementation proved difficult from the very beginning (action statement by a working group - point 4.b, second indent).

¹ In line with Financial Regulation requirements and the provisions on grants thereof, co-financing is applied as a rule. The co-financing approach is being applied since 2012 to all new non-proliferation and disarmament projects. Also, it is important to note that such agencies would have to operate under indirect management, which in turn requires that they comply with a 6-pillar assessment (article 60.2 of the Financial Regulation).

29. Currently, the supervision of the CFSP budget in the external relations part of the Council is limited to two exercises. Firstly, there is the presentation of a yearly note on the CFSP budget orientation for the two years ahead (December/January). This is prepared by the EEAS, in cooperation with the FPI and discussed in PSC and the RELEX working party. Secondly, the FPI provides RELEX with monthly notes on the utilisation of the CFSP budget.
30. In order to make the priority-setting by the Council a more operational exercise and increase its added value, the procedure could be altered as follows:
- once a year in January the PSC should schedule a discussion on policy orientations for the year n+1 in order to allow the Commission to adjust, if necessary, its budget proposal in respect of the CFSP chapter (usually submitted in April to the budgetary authority, formally not later than 1 September). This discussion should be based on an EEAS/FPI note;
 - with respect to the proposed budget the PSC may, if considered necessary, provide its view on the CFSP budget before the adoption of the Council's position (usually in July, formally not later than 1 October) and the conciliation procedure in November;
 - the FPI would continue providing regular monthly updates on the state of play of the CFSP budget to the RELEX Working Party;
 - half way through each semester (March/April, September) the PSC will hold a discussion on the state of play of the CFSP budget based on the FPI input with a view to providing guidance for a possible reorientation of the CFSP priorities.

If agreeable to MS, the above-mentioned way-forward can replace the procedures of 2003 (doc.7203/1/03).

VII. Way forward

31. The various issues raised in this note should not be treated as a single package:
- it should be possible to find swift agreement on the issue of **political priority-setting and supervision**;
 - in addition, there is an operational requirement to achieve progress on the issue of **sustainability and exit strategies**. The use of article 28 is one of the options in this context;
 - the issue of the financing of **new operational needs** under CFSP can be taken forward as a separate work strand, taking into account also the forecasts for future execution of the budget.