



DECISION No MB/2013/15

**OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR NETWORK
AND INFORMATION SECURITY
LAYING DOWN RULES ON THE SECONDMENT OF NATIONAL EXPERTS (SNE)
TO THE AGENCY**

THE MANAGEMENT BOARD OF ENISA,

Having regard to the Regulation (EU) No 526/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 426/2004 (hereinafter referred to as "the Regulation"), and in particular Article 25 (2) thereof,

Whereas:

- (1) Seconded national experts (SNEs) should enable the Agency to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available;
- (2) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies by temporarily assigning experts from the administrations of the Member States to the Agency, even for short periods. In order to ensure that the Agency's independence is not compromised by private interests, it should be stipulated that SNEs must come from a national, regional or local public administration. The secondment of an SNE by an employer other than a national, regional or local public administration should be authorised only on a case-by-case basis, once it has been ascertained that the SNE's employer is part of the public sector or is an independent university or research organisation that does not seek to make profits for redistribution;
- (3) In order to avoid any conflict of interests, the rights and obligations of SNEs, as set out in this Decision, should ensure that they carry out their duties solely in the interests of the Agency;
- (4) In view of their special status, it should be stipulated that SNEs acting alone will not exercise any of the responsibilities that belong to the Agency by virtue of the powers conferred upon it, unless specially empowered to do so in writing by the Executive Director of the Agency;
- (5) It is desirable to consolidate the Rules applicable to SNEs in a single text, preserving their specific features while also simplifying them and, in the case of working conditions and the granting of subsistence allowances, by bringing them as much as possible into line with the Staff Regulations of Officials of the European Union (Staff Regulations of Officials) and the conditions of Employment of Other Servants of the European Union (Conditions of Employment) laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (together referred to as "Staff Regulations"), but without actually assimilating SNEs to these categories;

HAS ADOPTED THIS DECISION:

Chapter I
General provisions
Article 1
Scope and definitions

1. These Rules shall apply to national experts seconded to the Agency (hereinafter referred to as SNEs or seconded national experts). Seconded national experts are staff employed by a national, regional or local public administration, who are seconded to the Agency so that it can use their expertise in a particular field.

For the purposes of this Decision, the public administration means all State administrative services at central, federal and regional level, comprising ministries, government and parliament services, the courts, central banks, and the administrative services of local authorities, as well as the decentralised administrative services of the State and of such authorities.

The persons covered by these rules must have worked for their employer on a permanent or contract basis for at least 12 months before their secondment and shall remain in the service of that employer throughout the period of secondment. The SNE's employer shall thus undertake to continue to pay his salary, to maintain his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform the responsible Unit of the Agency of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension. The termination of or change in the SNE's administrative status (permanent official or contract staff member) may lead to the termination of his secondment by the Agency, without notice, in accordance with Article 10(2)(c).

2. Notwithstanding the second subparagraph of paragraph 1, the Executive Director may, on a case-by-case basis, authorise the secondment of an SNE from an employer other than a State public administration if the interests of the Agency warrant bringing in specific expertise as a temporary measure, provided that the SNE's employer:

- is an independent university or research organisation which does not set out to make profits for redistribution; or

- is in fact part of the public sector.

For the purposes of this Decision, to qualify as being part of the public sector the SNE's employer must meet all the following conditions:

- it must be attached to a public administration, as defined in paragraph 1, and specifically it must have been created by legislation or regulation;

- its resources must come primarily from public funding;

- any activities in which it competes against other private or public entities on the market must represent less than half of its activities.

The Human Resources Section of the Agency, shall, if necessary, clarify the arrangements for implementing the different criteria and communicate them to the

Permanent Representations of the EU Member States, the third countries mission to the EU.

3. Except where the Executive Director grants derogation, an SNE must be a national of an EU or associated countries.
4. When a secondment is being planned, the Agency shall ensure the geographical and gender balance and compliance with the principle of equal opportunities, in accordance with the principles set out in Article 1d and Article 27 of the Staff Regulations.

The Human Resources Section of the Agency shall monitor compliance and, in the event of a serious imbalance at the Agency level, shall take the necessary corrective measures to ensure balanced representation of SNEs.

5. Any reference in these Rules 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 2

Cost-free seconded national experts

1. For the purposes of this Decision, "cost-free SNEs" means SNEs for whom the Agency does not pay any of the allowances provided for in Chapter III or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment.
2. Cost-free SNEs may be seconded from the administrations of countries which have concluded arrangements with the Agency in accordance with Article 30 of the Regulation (EU) No 526/2013 (hereinafter third countries).
3. In addition, the Executive Director may authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the geographical balance and the work to be carried out.

Article 3

Selection procedure

1. SNEs shall be selected according to an open and transparent procedure, the practical details of which shall be decided by the Executive Director.
2. Before the secondment, the Units must have been authorised to use SNEs in accordance with the staff policy plan.
3. Applications shall be forwarded by the Permanent Representations and, where provided for in the vacancy notice, by the third countries competent authorities.
4. The secondment shall be authorised by the Executive Director and effected by an exchange of letters between that Executive Director and the Permanent Representation of the Member State concerned or, as the case may be, the third countries missions to the EU.

Article 4

Period of secondment

1. The initial period of secondment may not be less than six months or more than two years. It may be renewed once or more, up to a total period not exceeding four years. Exceptionally, at the request of the Unit concerned and where the interests of the service warrant it, the Executive Director may authorise one or more extensions of the secondment for a maximum of two more years at the end of the four-year period.
2. The initial duration of the secondment shall be specified in the exchange of letters referred to in Article 3(4). Any extension of the period of secondment shall be the subject of a new exchange of letters.
3. An SNE who has already been seconded to the Agency may be seconded to it another time subject to the Agency's internal rules governing the maximum length of time such persons may spend in the Agency and subject further to the following conditions:
 - a) the SNE must continue to meet the conditions for secondment;
 - b) a period of at least six years must have elapsed between the end of the previous period of secondment and the new secondment; if at the end of the previous secondment the SNE has signed an employment contract with the Agency, the duration of that contract or secondment shall be taken into account when calculating the six-year period referred to above.

The minimum period of six years referred to in point b) shall not be required if the previous secondments lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period, without prejudice to the possibility of extending it by up to two more years, as provided for in paragraph 1.

Article 5 Place of secondment

SNEs may be seconded to any place of employment of the Agency.

Article 6 Tasks

1. SNEs shall assist the Agency statutory staff members. They may not perform middle or senior management duties, even when deputising for their immediate superior.
2. An SNE shall take part in missions or external meetings only as part of a delegation led by the Agency statutory staff member or, if on his own, as an observer or for information purposes.
3. In all other cases, by way of derogation from paragraph 2, the Executive Director may give a specific mandate to the SNE to participate on his own in one or more missions or external meetings, after having ensured that there is no potential conflict of interest.

In such cases the Executive Director shall give the SNE clear and specific written instructions on the position to be adopted during the missions or meetings in question. The Executive Director may delegate his power to derogate to the Head of Unit concerned.

Under no circumstances may an SNE on his own represent the Agency with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf. An SNE may, however, represent the Agency in legal proceedings as co-agent with a statutory staff member.

4. The Agency shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
5. The Unit concerned, the SNE's employer and the SNE must ensure that there is no conflict of interest in relation to the SNE's duties while seconded to the Agency.

For this purpose, the Unit to which the SNE is to be seconded shall inform the SNE and his employer before the start of the secondment about the intended duties and ask them to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties.

The employer and the SNE shall also undertake to inform the Head of Unit to which the SNE is seconded of any change of circumstances during the secondment which could give rise to any such conflict.

6. In cases where the Unit to which an SNE is to be seconded considers that the nature of its activities requires particular security precautions, security clearance shall be obtained prior to recruitment.
7. Failure on the part of the SNE to comply with his obligations arising from this Decision shall entitle the Agency, if it sees fit, to terminate the secondment of the SNE pursuant to Article 10(2)(c).

Article 7 Rights and obligations

1. During the period of secondment:
 - a) The SNE shall carry out his duties and conduct himself solely with the interests of the Agency in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside the Agency. He shall carry out the duties assigned to him objectively, impartially and in keeping with his/her duties of loyalty to the European Union.
 - b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Agency shall be subject to the Agency's rules on prior authorisation statutory staff members¹. The department concerned shall consult the SNE's employer before issuing an authorisation.
 - c) The SNE shall refrain from any action or behaviour which might reflect adversely upon his position and from any form of psychological or sexual harassment².
 - d) The SNE shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interests such as to impair his independence, and, in particular, family and financial interests. If he has occasion

¹ Article 12b of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis

² Article 12a of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis

in the performance of his duties to deal with such a matter, he shall immediately inform his Head of Unit, who will take any appropriate measure and may, in particular, relieve the SNE of responsibility in this matter.

The SNE may neither keep nor acquire, either directly or indirectly, in undertakings which are subject to the authority of the Agency or which have dealings with the Agency, any interests of such kind or magnitude as might impair his independence in the performance of his duties.

The SNE shall declare any gainful activity performed in a professional capacity by his spouse, as defined by the Staff Regulations.

- e) The SNE 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.
- f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to the work of the European Union shall inform his Head of Unit in advance. Where the Head of Unit is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of the Agency, he shall inform the SNE of his decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the Head of Unit shall be deemed to have had no objections.

- g) All rights in any work done by the SNE in the performance of his duties shall be the property of the Agency.
 - h) The SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of his activities.
 - i) Based on his professional knowledge and experience, the SNE shall assist and tender advice to the superiors in the Agency to whom he is assigned and shall be responsible to his superiors for performance of the tasks entrusted to him.
2. Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle the Agency, if it sees fit, to terminate the SNE's secondment pursuant to Article 10(2)(c).
 3. At the end of the secondment the SNE shall continue to have a duty of loyalty to the Agency and 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.

Article 8

Professional experience and knowledge of languages

1. To qualify for secondment to the Agency, a national expert must have at least three years' experience of administrative, legal, scientific, technical, advisory or supervisory functions which can be regarded as equivalent to those of function groups AD or AST – this latter function group being taken into consideration only for highly specialised job profiles – as defined in the Staff Regulations.
2. The SNE must produce evidence of a thorough knowledge of one of the European Union languages and a satisfactory knowledge of another European Union language to

the extent necessary for the performance of his duties. An SNE from a third country must produce evidence of a thorough knowledge of one European Union language necessary for the performance of his duties.

Article 9 Suspension of secondment

1. At the written request of the SNE or his employer, and with the latter's agreement, the Agency may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:
 - a) the subsistence allowances referred to in Article 17 shall not be payable;
 - b) the travel expenses referred to in Article 19 shall be payable only if the suspension is at the Agency's request.
2. The period of suspension shall not be counted in the period of secondment as defined in Article 4.

Article 10 Termination of periods of secondment

1. Subject to paragraph 2, the expert's secondment may be terminated at the request of the Agency or the SNE's employer, subject to three months' notice, or at the SNE's request, subject to the same period of notice and with the agreement of the Agency and the SNE's employer.
3. In 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 the Agency and the employer acting jointly, at the request of the SNE addressed to both parties, if the SNE's personal or professional interests so require;
 - c) by the Agency in the event of failure by the SNE or his employer to respect their obligations under this Decision; the Agency shall immediately inform the SNE and his employer accordingly.

Chapter II Working conditions

Article 11 Social security

1. Before the period of secondment begins, the national public administration from which the SNE is to be seconded shall certify that he will remain, throughout the period of secondment, subject to the social security legislation applicable to the public administration that employs him and is responsible for expenses incurred abroad. To this end, the SNE's employer shall provide the Agency with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72³.
2. From the day on which their secondment begins, SNEs shall be covered by the Agency against the risk of accident. The Agency shall provide them with a copy of the terms

³ OJ L 74, 27.3.1972, p. 1.

of this cover on the day on which they report to the appropriate Unit of the Agency to complete the administrative formalities related to the secondment.

3. A SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by the Agency. The SNE shall pay half the relevant insurance premium and his contribution shall be deducted monthly from the subsistence allowances referred to in Article 17.

Article 12 Working hours

1. The working hours for SNEs shall be the same as those in force at the Agency⁴.
2. An SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request originating from the Unit concerned, the Executive Director may allow an SNE to work part time, provided the SNE's employer agrees and the arrangement is compatible with the smooth running of the department.

Article 13 Sick leave

1. The rules in force at the Agency on absence due to sickness or accident shall apply to SNEs⁵.
2. Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the subsistence allowances referred to in Article 17 shall be automatically suspended.

Sick leave may not extend beyond the duration of the secondment of the person concerned.

3. SNEs who are the victim of a work-related injury which occurs during the secondment shall continue to receive the subsistence allowances in full throughout the period during which they are unfit for work. These allowances shall not, however, be paid beyond the end of the period of secondment.

Article 14 Annual and special leave

1. With the exception of the provisions relating to grade, the rules in force at the Agency on annual and special leave, applicable to statutory staff members, shall apply to SNEs⁶.
2. Leave shall be subject to prior authorisation by the Head of Unit to which the SNE is seconded. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid.

⁴ Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis

⁵ Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis

⁶ Articles 57 and 59a of and Annex V to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis

3. Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave by the Agency in a 12-month period to visit his employer.
4. Days of annual leave not taken by the end of the period of secondment shall be forfeited.

Article 15 Maternity leave

1. The rules in force at the Agency on maternity leave shall apply to SNEs⁷. While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 17.
2. Where the rules that are binding upon the SNE's employer provide for a period of maternity leave longer than that granted by the Agency, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by the Agency.

A period equivalent to the break may be added to the end of the secondment if the interests of the Agency warrant it.

3. An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.

Article 16 Management and control

Day-to-day administrative and financial management, such as the calculation and payment of subsistence allowances and travel allowances, shall be the responsibility of the Agency.

Chapter III Allowances and expenses

Article 17 Subsistence allowances

1. An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance. Where the distance between the place of origin as determined in accordance with Article 18 and the place of secondment is more than 150 km, the daily allowance shall be 127,65 EUR; where the distance is 150 km or less SNE receives 25% of the daily subsistence allowance, which is 31,92 EUR⁸.

The monthly subsistence allowance shall be paid in accordance with the following table:

⁷ Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

⁸ These allowances are adjusted annually on the basis of the adaptation of the basic salaries of the Union officials in Brussels with accordance with Article 65 of the Staff Regulations. The current rates are published on the Commission internet site

Distance between place of origin and place of secondment (km)	Amount in €
0 - 150	0
> 150	82,05
> 300	145,06
> 500	237,05
> 800	382,92
> 1300	601,73
> 2000	720,27

2. In the case of cost-free SNEs, the exchange of letters referred to in Article 3(4) shall stipulate that these allowances will not be paid.
3. The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances in the month following their adoption. The Human Resources Section shall be responsible for implementing this provision and the new rates for subsistence allowances shall be published as an Administrative Notice by the Head of the responsible Unit.
4. These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and shall in no circumstances be construed as remuneration paid by the Agency.

Before the secondment, the SNE's employer shall certify to the Executive Director that during the secondment it will maintain the level of remuneration the SNE was receiving at the time of his secondment.

The SNE shall inform the Executive Director of any allowance similar to the subsistence allowances paid by the Agency received from other sources. This amount shall be deducted from the subsistence allowances paid by the Agency. Following a duly justified request from the employer, the Agency may decide not to make this deduction.

5. Subsistence allowances shall be payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by the Agency.
6. When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he is entitled shall be advanced in the form of a lump sum, and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum shall be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.
7. Subsistence allowances shall be paid no later than the 25th day of each month.

Article 18 Place of origin

3. For the purposes of this Decision, "place of origin" means the place where the SNE performed his duties for his employer at the time of his secondment. The place of secondment shall be the place where the Agency Unit to which the SNE is seconded is located. Both places shall be identified in the exchange of letters referred to in Article 3(4).

2. If, six months before his secondment to the Agency as an SNE, a national expert already has his main residence in a place other than that in paragraph 1, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

Article 19 Travel expenses

1. SNEs, other than those seconded on a cost-free basis, shall be entitled to reimbursement of their cost of travel between their place of origin and the place of secondment, as defined in Article 18, at the beginning and end of their secondment.
2. Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the Agency⁹
3. By way of derogation from paragraph 1, an SNE who proves that he will be assigned to a place other than his place of origin at the end of the secondment shall be entitled to reimbursement of the travel expenses to that new place under the conditions laid down in paragraph 2. However, this reimbursement may not be more than the amount that would have been paid had the SNE returned to his place of origin.
4. The Agency shall not reimburse any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body. The Permanent Representation concerned or, as the case may be, third countries missions to the EU shall inform the Agency to this effect.

Article 20 Missions and mission expenses

1. SNEs may be sent on mission subject to Article 6.
2. Mission expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the Agency¹⁰.

Article 21 Training

SNEs shall be entitled to attend training courses organised by the Agency if the interests of the Agency warrants it. The interests of the SNE, in particular with a view to his reinstatement into his original administration after the secondment, may be considered when a decision is taken on whether to allow him to attend a training course.

Article 22 Administrative provisions

1. SNEs shall report to the Human Resources Section on the first day of secondment to complete the requisite administrative formalities. They shall take up duty on either the first or the sixteenth day of the month.

⁹ Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis

¹⁰ Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis

2. SNEs seconded to place other than Heraklion, Greece, shall report to the appropriate Unit and the Human Resources Section of the Agency.

Chapter IV Complaints

Article 23

Without prejudice to the possibilities for instituting proceedings after taking up his position, under the conditions and time limits laid down in Article 263 of the Treaty on the Functioning of the European Union, any SNE may submit a complaint to the Executive Director about an act adopted by the Agency under this Decision which adversely affects him, with the exception of decisions which are direct consequences of decisions taken by his employer.

The complaint must be lodged within two months. The period shall start to run 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. The Executive Director shall notify the person concerned of his 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.

TITLE II FINAL PROVISION

Article 33 Entry into force

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

Done at Vilnius, on 17th October 2013

On behalf of the Management Board



Chairperson