

EUROPEAN EXTERNAL ACTION SERVICE

Decision of the High Representative of the Union for Foreign Affairs and Security Policy

of 23 March 2011

establishing the rules applicable to National Experts Seconded to the European External Action Service

(2012/C 12/04)

THE HIGH REPRESENTATIVE,

Having regard to the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, in particular Article 6(3) thereof,

Whereas:

- (1) According to Article 6(3) of the Council Decision establishing the European External Action Service ⁽¹⁾ (EEAS) (the Council Decision) the EEAS may, in specific cases, have recourse to a limited number of specialised seconded national experts.
- (2) The High Representative shall, also according to Article 6(3) of the Council Decision, adopt rules, equivalent to those laid down in Council Decision 2003/479/EC of 16 June 2003 (now repealed and replaced by Council Decision 2007/829/EC of 5 December 2007 ⁽²⁾) concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council, under which SNEs are put at the disposal of the EEAS in order to provide specialist expertise.
- (3) Seconded national experts (SNEs) should enable the EEAS to benefit from their high level of knowledge and professional experience, in particular in areas where such expertise is not readily available.
- (4) The secondment of national experts to the EEAS should foster the exchange of professional experience and knowledge of European policies.
- (5) SNEs should be drawn from public administrations in Member States or from international organisations.
- (6) The rights and obligations of SNEs and seconded military staff set out in this Decision should ensure that they carry out their duties solely in the interests of the EEAS.

(7) This Decision should set out all the conditions of employment of SNEs.

(8) Special provision should be made for military staff seconded to the EEAS to form the European Union Military Staff.

(9) Special provision should be made for SNEs seconded to Union delegations. Inequality of treatment between SNEs from different institutions (principally from the European Commission and the EEAS) in Union Delegations should be avoided where possible,

HAS ADOPTED THIS DECISION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Scope

1. These rules are applicable to seconded national experts (SNEs) seconded to the European External Action Service (EEAS) by Member States' public administrations. They shall also apply to experts on secondment from an international organisation.
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 EEAS shall recruit SNEs in accordance with requirements and budgetary possibilities. The Human Resources Department shall establish the arrangements for such recruitment.
4. SNEs must be nationals of a Member State.
5. The Member States and the EEAS shall cooperate to ensure, as far as possible, that recruitment of SNEs to the EEAS is based on merit whilst ensuring adequate geographical and gender balance, in particular to ensure a meaningful presence of nationals from all the Member States.

⁽¹⁾ OJ L 201, 3.8.2010, p. 30.

⁽²⁾ OJ L 327, 13.2.2007, p. 10.

6. Secondment shall be implemented by an exchange of letters between the Chief Operating Officer and the Permanent Representation of the Member State concerned, or the international organisation, as appropriate. The place of secondment must be indicated in the exchange of letters. A copy of the rules applicable to SNEs on secondment to the EEAS shall be attached to the exchange of letters.

Article 2

Period of secondment

1. The period of secondment may not be less than six months nor exceed two years and may be renewed successively up to a total period not exceeding four years. Exceptionally, at the request of the relevant Managing Director or equivalent, and where the interests of the service warrant it, the Human Resources Department 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. Notwithstanding paragraph 1, the period for which an SNE is seconded to take part in the preparation of crisis management operations or to study their launch may be less than six months.

3. The intended period of secondment shall be fixed at the outset in the exchange of letters provided for in Article 1(6). The same procedure shall apply in the case of a renewal of the period of secondment.

4. An SNE who has already been seconded to the EEAS may be seconded again, subject to the following conditions:

- (a) the SNE must continue to meet the conditions for secondment; and
- (b) a period of at least six years must have elapsed between the end of the previous period of secondment and any further secondment; if, at the end of the first secondment, the SNE has received an extension, the six-year period shall begin to run from the expiry of that extension.

This provision shall not prevent the EEAS from accepting the secondment, less than six years after the end of the first period of secondment, of an SNE whose initial secondment lasted for less than six years, but in that case the new secondment shall not exceed the unexpired part of the six-year period.

Article 3

Place of secondment

1. SNEs shall be seconded to the EEAS central administration in Brussels, or to a Union Delegation.

2. The place of secondment may be changed during the secondment by means of a further exchange of letters in accordance with Article 1(6) if the possibility of changing that place was not envisaged in the original exchange of letters. The administration which seconded an SNE shall be kept informed of any changes to the place of secondment.

Article 4

Duties

1. An SNE shall assist members of the staff of the EEAS and carry out the tasks assigned to him/her. The duties carried out shall be defined by mutual agreement between the EEAS and the administration which seconded the national expert in the interest of the EEAS and taking into account the SNE's qualifications.

2. Subject to paragraph 8 below, an SNE may take part in missions and meetings only:

- (a) if accompanying a member of the EEAS staff;

or

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

Unless a mandate has been entrusted to an SNE under paragraph 8 below, he/she may not represent the EEAS with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.

The limitations in this paragraph do not apply to SNEs seconded to the Civilian Planning and Conduct Capability, the Crisis Management and Planning Directorate, or the EU Situation Centre.

3. The EEAS, through the SNE's line manager, shall retain sole responsibility for approving the results of tasks performed by the SNE.

4. The EEAS, 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 that end, the Human Resources Department 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 duties including, in particular, with reference to the SNE's employment experience.

5. The SNE shall be asked in particular to declare any potential conflict between his/her family circumstances (in particular the professional activities of close family members or any important financial interests of his/her own, or of close family members) and the proposed duties while on secondment. The employer and the SNE shall undertake to notify the SNE's line manager and the Human Resources Department of any change of circumstances during the secondment which could give rise to any such conflict.

6. Where the SNE's line manager 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.

7. In the event of failure to comply with the provisions of paragraphs 2, 4 and 5, the EEAS may terminate the secondment of the SNE under the terms of Article 9(2)(c).

8. Notwithstanding paragraph 1 and the first subparagraph of paragraph 2, the Managing Director, or equivalent, of the service to which the SNE is assigned may, acting under the authority of the High Representative and acting on a proposal from the SNE's line manager, entrust the SNE with specific tasks or duties and charge him/her with the conduct of one or more specific missions or meetings provided that there is no conflict of interest.

Article 5

Rights and obligations

1. During the period of secondment:

- (a) the SNE shall carry out his/her duties objectively and impartially and shall behave solely with the interests of the EEAS in mind;
- (b) the SNE shall abstain from any action, and in particular any public expression of opinion, which may reflect on his/her position at the EEAS;
- (c) any SNE who, in the performance of his/her duties, is called upon to give a decision on the handling or outcome of a matter in which he/she has a personal interest that could impair his/her independence, shall inform his/her line manager;
- (d) the SNE shall not, whether alone or together with others, publish or cause to be published any text dealing with the work of the European Union without obtaining permission from his/her line manager: permission shall be refused only where the intended publication is liable to prejudice the interests of the European Union;
- (e) all rights in any work done by an SNE in the performance of his/her duties shall be the property of the EEAS;
- (f) the SNE shall reside at the place of secondment or at no greater distance therefrom than is compatible with the proper performance of his/her activities;
- (g) the SNE shall assist and tender advice to the superior to whom he/she is assigned and shall be responsible to his/her superior for the performance of the duties entrusted to him/her;
- (h) the SNE shall, in the exercise of his/her duties, accept no instructions from his/her employer or national government: he/she shall not undertake any activities for his/her employer, nor for governments, nor for any other person, private company or public body.

2. Both during and after the period of secondment, the SNE shall exercise the greatest discretion with regard to all facts and information of which he/she becomes aware in the course of or in connection with the performance of his/her duties. He/she shall not in any form whatsoever disclose to any unauthorised person any document or information not already lawfully made public, nor shall he/she use it for personal gain.

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

4. SNEs shall be subject to the security rules in force in the EEAS.

5. Failure to comply with the provisions of paragraphs 1, 2 and 4 during the period of secondment shall entitle the EEAS to terminate the secondment of an SNE under the terms of Article 9(2)(c).

Article 6

Level, professional experience and knowledge of languages

1. To qualify for secondment to the EEAS, the SNE must have at least three years' full-time experience of administrative, scientific, technical, advisory or supervisory functions equivalent to those of function groups AD or AST as defined in the Staff Regulations of Officials of the European Union and the Conditions of Employment of other servants of the Union ⁽¹⁾.

2. The SNE must have a thorough knowledge of one Union language and a satisfactory knowledge of a second language for the performance of his/her duties.

Article 7

Selection procedures

1. SNEs shall be selected according to an open and transparent procedure, the practical details of which shall be decided by the Human Resources Department.

In duly justified exceptional circumstances, and in the interests of the service, an SNE may be selected without following such procedures. Authorisation for such derogation must be sought from the Chief Operating Officer.

2. Before the secondment, the line manager must ensure that sufficient budget allocation is available.

3. Applications shall be forwarded to the Human Resources Department by the relevant Permanent Representation.

Article 8

Suspension of secondment

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

- (a) the allowances referred to in Articles 16 and 17 shall not be payable;
- (b) the expenses referred to in Articles 19 and 20 shall be payable only if the suspension is at the EEAS's request.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

2. The Human Resources Department shall inform the SNE's employer.

Article 9

Termination of periods of secondment

1. Subject to paragraph 2, secondment may be terminated at the request of the EEAS (agreed by the Human Resources Department and the relevant Managing Director or equivalent) 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 agreement of the Human Resources Department and the relevant Managing Director or equivalent.

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 Human Resources Department and the relevant Managing Director or equivalent and the employer, at the request of the SNE to both parties, if the SNE's essential personal or professional interests so require; or
- (c) by the EEAS (agreed by the Human Resources Department and the relevant Managing Director or equivalent) in the event of failure by the SNE to comply with his/her obligations under these rules; the SNE shall first be given an opportunity to submit his/her defence.

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

CHAPTER II

WORKING CONDITIONS

Article 10

Social security

1. Before the period of secondment begins, the employer from which the SNE is to be seconded shall certify to the EEAS that, throughout the period of secondment, the SNE will remain subject to the social security legislation applicable to the public administration or international organisation which employs the SNE and which will assume responsibility for expenses incurred abroad. To this end, the SNE's employer shall provide the Human Resources Department with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72 ⁽¹⁾.

2. From the commencement of his/her secondment, the SNE shall be covered by the EEAS against the risk of accident. The Human Resources Department shall provide him/her with a copy of the terms of this cover on the day on which he/she reports to the relevant department of the EEAS to complete the administrative formalities related to the secondment.

3. When, in the context of a mission in which the SNE is participating under the terms of Articles 4 and 21, or when, as a result of specific risks at the place of secondment, additional or specific insurance is required, the relevant costs shall be borne by the EEAS.

Article 11

Working hours

1. An SNE shall be subject to the rules in force in the EEAS as regards working hours. These rules may be modified by the Chief Operating Officer where the needs of the EEAS so require.

2. An SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request from the SNE's line manager, and subject to compatibility with the interests of the EEAS, the Human Resources Department may authorise an SNE to work part-time, after agreement from his/her employer.

3. Where part-time working is authorised, the SNE shall work at least half of the normal working time.

4. The allowances in force within the EEAS for shift-work or standby duty may be paid to SNEs.

Article 12

Absence for reasons of sickness or accident

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

2. If absence due to sickness or accident of not more than three days exceeds a total of 12 days over a period of 12 months, an SNE shall be required to produce a medical certificate for any further absence due to sickness.

3. Where the period of sick leave exceeds three months or the period of service performed by the SNE, whichever is the longer, the allowances referred to in Article 16(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, an 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 16(1) and (2) throughout the period during which he/she is unfit for work up to the end of the period of secondment.

Article 13

Annual leave, special leave and holidays

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

⁽¹⁾ OJ L 74, 27.3.1972, p. 1.

2. Leave is subject to prior authorisation by the SNEs line manager.

3. An SNE shall be granted special leave in the following cases:

- marriage of the SNE: four days,
- change of residence of the SNE: two days,
- removal to take up duties: up to 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,
- death of a relative in the ascending line: up to two days,
- marriage of a child: two days,
- birth of a child: 10 days, to be taken during the 14 weeks following the birth,
- death of wife during maternity leave: a number of days corresponding to the remaining maternity leave which would be applicable under the Staff Regulations,
- serious illness of a child: up to two days,
- very serious illness of a child, as certified by a doctor, or hospitalisation of a child aged 12 or under: up to five days,
- death of a child: four days,
- adoption of a child: one period of 20 weeks (24 weeks if the child is disabled), on the same basis as would be applicable under the Staff Regulations.

Additional special leave of two days per period of 12 months may be granted at the request (with due justification) of the SNE.

For the purposes of this provision, an unmarried partner of an SNE may be treated as a spouse on the same basis as would be applicable under the Staff Regulations.

4. Upon a duly substantiated application by the SNE's employer, up to two days of additional special leave in a 12-month period may be granted by the EEAS (the Human Resources Department and the relevant Managing Director or equivalent) on a case-by-case basis.

5. In the case of part-time work, annual leave shall be reduced proportionately.

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

Article 14

Maternity leave

1. An SNE who is pregnant shall be granted maternity leave of 20 weeks, during which period she shall receive the allowances provided for in Article 16. The leave shall begin not earlier than six weeks before the probable date of delivery indicated in the certificate and shall end not earlier than 14 weeks after the date of delivery. In the event of multiple or

premature birth or birth of a handicapped child, the period of leave shall be 24 weeks. For the purposes of this provision, a premature birth shall be one which occurs before the end of the 34th week of pregnancy.

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

3. An SNE may, alternatively, apply for a suspension of the secondment to cover the whole of the period allowed for maternity. In that case, a period equivalent to the suspension shall be added at the end of the secondment if the interests of the EEAS warrant it.

Article 15

Management and control

Management and control of leave shall lie with the SNE's line manager and the Human Resources Department. Control of working time and absences shall be the responsibility of the SNE's line manager.

CHAPTER III

ALLOWANCES AND EXPENSES

Article 16

Allowances

1. An SNE shall be entitled to a daily subsistence allowance throughout the period of secondment. Where the distance between the place of origin and the place of secondment is 150 km or less, the daily allowance shall be EUR 31,92. Where the distance is more than 150 km, the daily allowance shall be EUR 127,65.

2. If the SNE has not received removal expenses from either the EEAS or from the employer, an additional monthly allowance shall be paid as shown in the table below:

Distance between place of origin and place of secondment (km)	Amount in euro
0-150	0
> 150	82,05
> 300	145,86
> 500	237,05
> 800	382,92
> 1 300	601,73
> 2 000	720,27

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

4. When the SNE starts the secondment, he/she 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 EEAS is ended before the expiry of the period taken into account to calculate the advance, the SNE shall be obliged to return the amount corresponding to the remaining part of that period.

5. At the time of the exchange of letters provided for in Article 1(6) the Human Resources Department shall be informed by the SNE's employer of any payment similar to that mentioned in paragraphs 1 and 2 of this Article received by the SNE. Any such amounts shall be deducted from the corresponding allowances paid by the EEAS.

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

Article 17

Additional flat-rate allowance

1. Except where the place of origin of the SNE is 150 km or less from the place of secondment, he/she shall, receive an additional flat-rate allowance equal to the difference between the gross annual salary (less family allowances) paid by his/her employer plus any allowances paid by the EEAS, pursuant to Article 16, and the basic salary payable to an official in step 1 of grade AD 6 or grade AST 4, depending on the function group to which he/she 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 Union officials.

Article 18

Places of recruitment, secondment, origin and return

1. For the purposes of these rules,

- the place of recruitment shall be the place where the SNE performed his/her duties for the employer immediately prior to secondment,
- the place of secondment shall be Brussels, or the Union delegation to which the SNE is assigned is located,
- the place of origin shall be the place where his/her employer's head office is located,
- the place of return shall be the place where the SNE will perform his/her main activity after the secondment is terminated.

2. If either the place of recruitment or the place of return is located outside the territory of the European Union or in a Member State other than that in which the SNE employer's

head office is located or, if the SNE does not pursue a professional activity after his/her secondment is terminated, the place of origin shall be considered to be the place of recruitment or place of return, as appropriate.

The place of recruitment, the place or places of secondment and the place of origin shall be determined in the exchange of letters referred to in Article 1(6). The place of return shall be determined on the basis of a declaration by the SNE's employer.

3. 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 or for an international organisation shall not be taken into account.

Article 19

Travel expenses

1. An SNE whose place of recruitment is more than 150 km from the place of secondment shall be entitled to reimbursement of travel expenses:

- (a) for him/herself;
- (b) for his/her spouse and dependent children, provided that they live with the SNE and that the removal is reimbursed by the EEAS.

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 the actual cost of a reduced-price ticket (PEX or APEX), on production of tickets and boarding cards.

3. The SNE shall be entitled to reimbursement for him/herself and, if applicable, for the persons referred to in paragraph 1(b), of travel expenses to the place of return at the end of the secondment within the above limits. The reimbursement may not be for a sum higher than that to which the SNE would have been entitled if he/she had returned to his/her place of recruitment.

4. If an SNE has effected his/her removal from his/her place of recruitment to his/her place of secondment, he/she shall be entitled each year to a flat-rate payment equal to the cost of a return journey from his/her place of secondment to his/her place of origin for him/herself, his/her spouse and any dependent children.

5. For the purposes of this provision, an unmarried partner of an SNE may be treated as a spouse on the same basis as would be applicable under the Staff Regulations.

Article 20

Removal expenses

1. The SNE may remove his/her furniture and his/her personal effects from the place of recruitment to the place of secondment, at the EEAS's expense, after obtaining the prior authorisation of the Human Resources Department, provided the following conditions are met:

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

- (b) the SNE's place of recruitment 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; and
- (f) the SNE must send originals of estimates, receipts and invoices to the Human Resources Department and a certificate from the SNE's employer confirming that the employer is not bearing the removal costs.

2. Subject to paragraph 3, where the removal to the place of secondment has been reimbursed by the EEAS, 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 return, pursuant to the rules in force in the EEAS concerning reimbursement of removal costs, subject to fulfillment of the conditions set out in paragraph 1(d) and (e) above and the following further conditions:

- (a) the removal cannot take place earlier than six months before the end of the secondment;
- (b) the removal must be completed within six months following the end of the secondment;
- (c) the amount of removal expenses reimbursed by the EEAS for the removal at the end of the secondment may not exceed the amount of the removal expenses to which he/she would have been entitled if he/she had returned to his/her place of recruitment; and
- (d) after sending the originals of estimates received and the invoice for the removal to the EEAS, and a declaration by the SNE's employer confirming that the employer is not bearing all or part of the removal costs.

3. An SNE whose secondment is terminated at his/her request or at the employer's request within two years of the start of the secondment shall not be entitled to reimbursement of removal costs at the end of the secondment.

4. Reimbursement of expenses under this Article shall be made in accordance with the relevant rules and conditions applicable in the EEAS.

Article 21

Missions and mission expenses

- 1. An 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 EEAS.

Article 22

Training

An SNE shall be entitled to attend training courses organised by the EEAS, if the interests of the EEAS warrant it. The reasonable

interests of the SNE, having regard in particular to the performance of his/her professional duties, shall be considered when the SNE's line manager takes the decision on permission to attend courses.

Article 23

Administrative provisions

1. The SNE shall report to the Human Resources Department on the first day of secondment to complete the requisite administrative formalities. He/she shall take up his/her duties on either the first or the 16th of the month.

2. An SNE assigned to a Union Delegation shall report to the Head of the Union Delegation at his/her place of secondment.

3. Payments shall be made by the EEAS, in euro, into a bank account opened at a banking institution in Brussels. In the case of an SNE seconded to a place other than Brussels, payments may be made in euro into a bank account opened at a banking institution either in Brussels or at the SNE's place of origin.

CHAPTER IV

SNE'S SECONDED TO UNION DELEGATIONS

Article 24

Rules applying to SNEs seconded to Union Delegations

Subject to the rules set out in this Chapter, the rules laid down elsewhere in this Decision shall also apply to SNEs seconded to Union Delegations.

Article 25

Allowances

1. The allowances referred to in Article 16 shall be paid in euro in Belgium. They shall be subject to the weighting applicable to the remuneration of officials employed in Belgium.

2. By way of derogation from paragraph 1, the Human Resources Department may, at the SNE's request, authorise the payment of subsistence allowances in the currency of the place of secondment or, in exceptional and duly justified cases and in order to maintain purchasing power, in another currency. The allowances shall then be subject to the weighting provided for in Article 12 of Annex X to the Staff Regulations and converted at the corresponding exchange rate.

3. An allowance for living conditions, fixed according to the same criteria as those laid down in Article 10 of Annex X to the Staff Regulations, shall be paid to SNEs seconded to EU delegations in third countries. The daily subsistence allowance referred to in Article 16(1) of these Rules shall constitute the reference amount referred to in Article 10 of Annex X to the Staff Regulations.

Article 26

Reimbursement of costs

1. The expenses referred to in Article 19(1)(b) and Article 19(4) shall not be reimbursed.

2. The expenses referred to in Article 20 shall not be reimbursed.

Article 27

Annual leave

The rules on annual leave applicable to EEAS staff in Union Delegations shall apply equally to EEAS SNE's in Union Delegations.

CHAPTER V

NATIONAL EXPERTS ON FREE SECONDMENT

Article 28

SNEs on free secondment

1. For the purposes of this Decision, a 'cost-free SNE' shall mean an SNE for whom the EEAS does not pay any of the allowances provided for in Chapters III or IV or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment, and without prejudice to any different agreement between the EEAS and the administration which seconds the cost-free SNE.

2. The Human Resources Department may, on request by the relevant Managing Director or equivalent, authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the Department in question, the geographical balance and the work to be carried out.

CHAPTER VI

APPLICATION OF THE RULES TO SECONDED NATIONAL MILITARY STAFF

Article 29

Rules applying to seconded military staff

Subject to the rules in this chapter, the rules laid down elsewhere in this Decision shall also apply to military staff seconded to the EEAS in order to form the European Union Military Staff (EUMS) pursuant to Council Decision 2001/80/CFSP of 22 January 2001 on the establishment of the Military Staff of the European Union ⁽¹⁾, as amended.

Article 30

Conditions

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

Article 31

Recruitment

The Director-General of the EUMS shall establish the arrangements for recruitment of seconded military staff ⁽²⁾.

Article 32

Exchange of letters

The exchange of letters referred to in Article 1(6) shall take place between the Chief Operating Officer and the Permanent Representation of the Member State concerned for the Director-General of the EUMS, the Deputy Director-General of the EUMS and all Director and Branch Chief appointments, and between the Director-General of the EUMS and the Permanent Representation of the Member State concerned for all other appointments. This exchange of letters must also mention any restriction on an SNE's participation in missions.

Article 33

Length of secondment

1. The length of secondment may not be less than six months nor more than three years and it may be extended successively up to a total period not exceeding four years.

2. Except in exceptional cases, a period of at least three years must have elapsed between the end of the previous period of secondment and a further secondment, where the conditions so justify and in agreement with the Director-General of the EUMS

Article 34

Tasks

Notwithstanding Article 4, seconded military staff acting under the authority of the High Representative shall fulfil the mission, carry out the tasks and perform the duties assigned to them in accordance with the Annex to Decision 2001/80/CFSP, as amended.

Article 35

Security clearance

The appropriate level of the seconded military staff member's security clearance must be stipulated in the exchange of letters referred to in Article 1(6) and may not be lower than SECRET.

Article 36

Professional experience

Notwithstanding 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 EEAS.

Article 37

Suspension and termination of secondment

1. Authorisation for Article 8(1) to be applied to a seconded military staff member shall be given by the Director-General of the EUMS.

2. Notwithstanding Article 9(2), secondment may be terminated without notice if the interests of the EEAS or of the seconded military staff member's national administration so require or for any other sufficient cause.

⁽¹⁾ OJ L 27, 30.1.2001, p. 7.

⁽²⁾ EUMS Manning and Turnover Policy, Document 5402/2011.

*Article 38***Serious failure to comply with obligations**

1. Secondment may be terminated without notice in serious cases of intentional or negligent failure of the seconded military staff member to comply with his/her obligations. Notwithstanding Article 9(2)(c), the decision shall be taken by the Director-General of the EUMS after the person concerned has had an opportunity to submit his/her defence. Before taking a decision, the Director-General of the EUMS shall notify the Permanent Representative of the Member State of which the seconded military staff member is a national. Following that decision, the expenses referred to in Articles 19 and 20 shall no longer be reimbursed.

Prior to the decision referred to in the first subparagraph, a seconded military staff member may be suspended where serious failure to comply with his/her obligations is alleged against him/her by the Director-General of the EUMS after the person concerned has been given an opportunity to submit his/her defence. The allowances referred to in Articles 16 and 17 shall not be paid during this suspension, which may not exceed three months.

2. The Director-General of the EUMS shall inform the national authorities of 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/her national disciplinary rules.

*Article 39***Working hours**

The second sentence of Article 11(2) shall not apply to seconded military staff.

*Article 40***Special leave**

Unpaid additional special leave may be granted by the EEAS for training by the employer, subject to a duly reasoned application by the employer.

*Article 41***Allowances**

The exchange of letters referred to in Article 1(5) may stipulate that allowances provided for in Articles 16 and 17 will not be paid.

CHAPTER VII

FINAL PROVISIONS*Article 42***Complaints**

1. Without prejudice to the possibilities for instituting proceedings after taking up his/her 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 Human Resources Department about an act adopted by the EEAS under this Decision which adversely affects him/her, with the exception of decisions which are direct consequences of decisions taken by his/her employer.

2. 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 Human Resources Department shall notify the person concerned of its reasoned decision within four months of 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.

*Article 43***Repeals**

Council Decision 2007/829/EC of 5 December 2007 and the Commission Decision of 12 November 2008 (C(2008) 6866) shall remain applicable to all secondments taking place at the time of the entry into force of this Decision, without prejudice to Article 44.

*Article 44***Effect**

This Decision shall take effect on the day of its adoption. With effect from that day it shall apply to:

- (a) any new secondment to the EEAS; and
- (b) any renewal of a secondment made previously to the Commission or Council, but which function has been transferred to the EEAS. In such cases, the period of secondment as set out in Article 2 shall be deemed to start from the date of the transfer to the EEAS.

Done at Brussels, 23 March 2011.

The High Representative
C. ASHTON