



THE OFFICE FOR HARMONIZATION IN THE INTERNAL MARKET  
(TRADE MARKS AND DESIGNS)

The President

**Decision No ADM 10-10 Rev  
on the rules applicable to  
national experts on  
secondment to the  
departments of the OHIM**

The President of the Office for Harmonization in the Internal Market (Trade Marks and Designs),

Having regard to Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark, and in particular Article 124(2)(a) thereof,

Whereas Decisions No ADM-09-06 and ADM-10-10 have provided detailed rules governing the work of seconded national experts in the Office;

Whereas it is convenient to review the provisions regarding leave in order to align them to the rules in force at the Office,.

HAS DECIDED AS FOLLOWS:

**CHAPTER I: GENERAL PROVISIONS**

**Article 1 – Definition**

1. These rules shall apply to staff temporarily on secondment to the departments of the Office under the terms of agreements for the exchange of staff<sup>1</sup> between the Office and the central industrial property offices of the Member States or the candidate countries for accession to the European Union or the Benelux Trade Marks Office or other national/international institutions.
2. The persons covered by these rules shall be in paid employment in a national or international institution throughout the period of secondment.
3. Except where the President of the Office grants a derogation, SNEs shall be nationals of a Member State of the European Union or of a candidate country or of an EFTA country.

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<sup>1</sup> SNEs (Seconded National Experts)

4. Secondment shall be implemented by an exchange of letters between the Office and the expert's employer. The letter must indicate, in particular:
  - the name of the SNE;
  - the duties he or she carries out at the original place of employment;
  - the OHIM department he/she will be assigned to; and
  - the duration of the secondment.

Any letter extending, breaking or terminating the period of secondment shall also be sent by the President of the Office.

A copy of these letters will be sent to the Office of the Permanent Representative or the official representation in the European Communities of the country in question in Brussels.

## **Article 2 – Period of secondment**

1. The initial period of secondment may not last less than 3 months. The total period of secondment of the SNEs shall not exceed four years. Exceptionally, at the request of the Department concerned and where the interests of the service warrant it, the President of the Office may authorise an extension of the secondment for a maximum of one more year at the end of the four-year period. SNEs shall serve on a full-time basis throughout the period of secondment.
2. The intended period of secondment shall be fixed at the outset in the exchange of letters provided for in Article 1(4). The same procedure shall apply in the case of a renewal of a period of secondment.

## **Article 3 – Duties**

1. SNEs shall carry out the tasks assigned to them in accordance with a predetermined work programme or job description established by the Office.
2. SNEs may be appointed as examiners, members of an opposition division, members of a cancellation division or members of an invalidity division pursuant to Articles 126, 127 and 129 of the Community Trade Mark Regulation and Articles 103 and 105 of the Community Design Regulation. They may also exercise functions within the framework of cooperation programmes and be entrusted duties in the best interest of the Office. In all other respects, SNEs shall not be allowed to take official acts involving exercising any public law prerogatives of the Office and shall not enter into any commitments on behalf of the Office with third parties, unless special instruction to the contrary is given in an individual case, under the authority of the President of the Office, by the director of department to which the national expert is seconded. SNEs are excluded from official managerial tasks.

3. SNEs may work in any area where their services are deemed necessary provided there is no conflict with the interests of the Office.

#### **Article 4 – Level, professional experience and knowledge of languages**

1. To qualify for secondment to the Office, an SNE must have at least three years' experience equivalent to one of the administrator (administrative and advisory duties which require a university education or equivalent professional training) or assistant (executive duties which require a post-secondary education or secondary education giving access to post-secondary education and appropriate professional experience or equivalent training) grades at the Office. The President of the Office may grant an exception regarding minimum professional experience.
2. An SNE must have a thorough knowledge of one of the languages of the Office<sup>2</sup> for the performance of his or her duties.

#### **Article 5 - Breaks in periods of secondment**

1. The Office may authorise breaks in periods of secondment and specify the terms applicable. During such breaks:
  - a) the allowances referred to in Articles 14 and 18 shall not be payable;
  - b) the allowances referred to in Articles 17 shall be payable only if the break is at the Office's request;
  - c) any reimbursement of remuneration to the expert's employer under Article 15 shall be automatically suspended.
2. The Office shall inform the SNE's employer.

#### **Article 6 – Termination of periods of secondment**

1. Subject to paragraph 2, the secondment may be terminated at the request of the Office or of the SNE's employer, upon the party concerned giving three months' notice to the other party. It may also be terminated upon giving the same notice at the SNE's request, subject to the Office's agreement.
2. The secondment may be terminated without notice in exceptional circumstances:
  - a) by the SNE's employer, if the employer's essential interests so require;

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<sup>2</sup> The languages of the Office are Spanish, German, English, French and Italian.



- b) by agreement between the Office and the employer, on request by the SNE to both parties, if the SNE's essential personal or professional interests so require;
  - c) by the Office in the event of a failure by the SNE to respect his or her obligations under these rules.
3. In the event of termination under paragraph (2)(c), the Office shall immediately inform the employer.

## **CHAPTER II: RIGHTS AND OBLIGATIONS OF SNEs**

### **Article 7**

1. During the period of secondment:

- a) SNEs shall carry out their duties and shall behave solely with the interests of the Office in mind;
- b) SNEs shall abstain from any action, and in particular any public expression of opinion, which may reflect on their position;
- c) SNEs shall not, in the performance of their duties, deal with a matter in which, directly or indirectly, they have any personal interests such as to impair their independence, and, in particular, family and financial interests. If it falls in the performance of their duties to deal with such a matter, they shall inform their direct superior immediately who shall take any appropriate measure, and may, in particular, relieve the SNE from responsibility in this matter.

SNEs may neither keep nor acquire, either directly or indirectly, in undertakings which are subject to the authority of the OHIM or which have dealings with the OHIM, any interests of such kind or magnitude as might impair their independence in the performance of their duties;

- d) SNEs shall exercise the greatest discretion with regard to all facts and information coming to their knowledge in the course of or in connection with the performance of their duties; they shall not in any form whatsoever disclose to any unauthorised person any document or information not already made public. They shall continue to be bound by this obligation after their period of secondment has terminated;
- e) SNEs have the right to freedom of expression, with due respect to the principles of loyalty and impartiality.

SNEs who intend to publish or cause to be published, whether alone, or with others, any matter dealing with the work of the Office shall inform their direct superior in advance. Where the direct superior is able to demonstrate that the matter is liable seriously to prejudice the legitimate interests of the Office, the direct superior shall inform the SNE of its decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the direct superior shall be deemed to have had no objections;

- f) all rights in any work done by an SNE in the performance of his or her duties shall be the property of the Office;
  - g) an SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of his or her duties;
  - h) based on his or her professional knowledge and experience, the SNE shall assist and tender advice to the superiors in the OHIM to whom he or she is assigned and shall be responsible to his or her superiors for performance of the tasks entrusted to him or her;
  - i) an SNE shall accept no instructions relating to the performance of his or her duties from his or her employer or from national governments. He or she shall not undertake any activities for governments or for other persons, private companies or public bodies. If he or she is requested to undertake any activities by his or her employer, prior agreement from the OHIM's line manager shall be obtained.
2. Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle the OHIM, if it sees fit, to terminate the secondment of an SNE pursuant to Article 6.
3. After termination of the secondment, an SNE shall continue to be bound by the duty to behave with integrity and discretion as regards the exercise of new tasks assigned to him or her and the acceptance of certain appointments or benefits.

To this end, during the three years after the period of secondment an SNE shall inform the OHIM without delay of any duties which he or she is required to carry out for his current employer which may give rise to any conflict of interest in relation to his or her duties while seconded to the OHIM.

### **CHAPTER III: WORKING CONDITIONS OF SNEs**

#### **Article 8 – Social security, accident insurance**

1. Before the period of secondment begins, the employer from which the SNE is to be seconded shall certify to the Office that he or she will remain subject, throughout the period of secondment, to the social security legislation applicable to that employer, who will assume responsibility for expenses incurred abroad.
2. An SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by the Office. The expert shall pay half the relevant insurance premium and his or her contribution shall be deducted monthly from the allowances referred to in Article 14.
3. From the day on which their secondment begins, SNEs shall be covered against the risk of accident. The Office shall provide them with a copy of the terms of this cover on the day on which they report to the Human Resources Department to complete the administrative formalities related to the secondment.

#### **Article 9 – Working hours**

1. An SNE shall be bound by the rules on the duration and hours of work in force at the Office.
2. However, an SNE shall not be authorised to work part-time.

#### **Article 10 – Sick leave**

1. In the event of absence for reasons of sickness or accident, the SNE shall notify his or her superior as soon as possible, stating his or her present address. He or 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 Office.
2. If such absence due to sickness or accident of not more than three days exceeds a total of twelve days over a period of twelve months, the 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 longer, the allowances referred to in Articles 14 and 18 and any reimbursement of remuneration to the expert's employer under Article 15 may be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy. Such leave may



not extend beyond the duration of the secondment of the person concerned.

4. However, SNEs who are the victim of a work related injury which occurs during the secondment shall continue to receive the allowance in full throughout the period during which they are unfit for work up to the end of the duration of the secondment.

#### **Article 11 – Annual leave, special leave and holidays**

1. An SNE shall be subject to the rules on annual leave, special leave and official holidays in force at the Office, unless otherwise stated. Leave entitlement for grade does not apply to SNEs.
2. Days of annual leave not taken by the end of the secondment shall be forfeited.
3. Travelling time linked to annual leave is granted once per calendar year for travel to and from the place of origin, provided that annual leave has been taken. For the purposes of these Rules, the place of origin shall be deemed to be the place of residence as per Art. 16 of this Decision).
4. Travelling time not taken by the end of the secondment shall be forfeited.
5. Leave is subject to prior authorisation by the service to which the national expert on secondment is assigned.

#### **Article 12 – Management and control**

Management and control of leave, working time and absences shall be the responsibility of the service to which the SNE is assigned.

#### **Article 13 – Maternity leave**

1. An SNE who is pregnant shall be granted maternity leave of twenty weeks, during which period she shall receive the allowances fixed on the basis of Articles 14 and 18.

The leave shall start not earlier than six weeks before the expected date of confinement shown in the certificate and end not earlier than 14 weeks after the date of confinement. In the case of multiple or premature birth or the birth of a handicapped child, the duration shall be of 24 weeks. Premature birth for the purposes of this provision is a birth taking place before the end of the 34<sup>th</sup> week of pregnancy.

2. Where the national legislation of the employer of the SNE grants a longer period, a break in the secondment shall be applied for the period

exceeding that granted by the Office. A period equivalent to the break shall be added to the end of the secondment if the interests of the Office warrant it.

3. An SNE may, as an alternative, apply for a break in the secondment to cover the period allowed for maternity leave. In that case, the second sentence of paragraph (2) above shall apply.

## **CHAPTER IV: ALLOWANCES AND EXPENSES**

### **Article 14 – Subsistence allowances**

1. An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance pursuant to paragraph 7 below.
2. On the date of entry into force of this Decision the daily subsistence allowance for Spain shall be EUR 88,23 in accordance with the Daily mission allowance as specified in the OHIM's Missions Guide<sup>3</sup>. However, the exchange of letters referred to in Article 1(4) may stipulate that this allowance shall not be paid. The decision to pay the allowance shall be taken by the President of the Office.
3. The daily subsistence allowance shall be payable for periods of mission, annual leave, special leave and official holidays granted by the Office. For periods of training outside the OHIM's premises, Article 20 below applies.
4. SNEs who, during the three years ending six months before the secondment, did habitually reside or carry on their main occupation at a distance of 150 km or less from the place of secondment or for whom the distance between the place of the deemed residence as determined in accordance with Article 16 and the place of secondment is 150 km or less shall receive a daily allowance reduced by 75%.

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, the first 75 days of the subsistence allowances to which he or she is entitled shall be advanced, on request of the SNE, in the form of a lump sum and the allowances shall not be paid during the corresponding period. If the secondment is ended during the first 75 days, the amount corresponding to the remaining part of that period shall be returned.

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<sup>3</sup> Updated with the adjustments for the remunerations of the basic salaries of officials and other agents of the European Union.



6. The SNE shall inform the Human Resources Department of the Office of any similar payments received from other sources. Any such amounts shall be deducted from the corresponding allowance paid by the Office pursuant to paragraph 1 above.
7. An SNE shall be entitled, each month, to the cost of a return journey from the place of secondment to the place of the deemed residence.

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

Distance between place of origin and place of secondment (km)	Amount in EUR
0 – 150	0
> 150	77,83
> 300	138,35
> 500	224,85
> 800	363,21
> 1300	570,77
> 2000	683,21
> 2700	795,65
> 3500	908,09

8. Where a whole month is not worked for reasons other than annual holidays or sick leave, the amount shall be calculated in proportion to the number of days worked.
9. These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and to facilitate a monthly return journey to the place of origin. It shall in no circumstances be construed as remuneration paid by the OHIM.

#### **Article 15 – Possible reimbursement and review of remuneration**

If its interests so require, the Office may reimburse all or part of the gross salary of an SNE during the period of secondment or the cost of arranging a substitute, to his or her employer under an agreement to be concluded in advance and recorded in the exchange of letters provided for in Article 1(4). The basis for the calculation of the reimbursement to the National Office shall be the average gross salary of the SNE before taxation and without social charges per month which will be calculated on the basis of the last three SNE's pay-slips and data provided for by the National Office concerned. "Seasonal" concepts (e.g. the extra Christmas / Summer / Easter salary etc.) shall also be taken into account.

Reimbursement on the basis of annual review:

The reimbursement of the SNE's salary to the National Office may be subject to review during the period of secondment. One adaptation per year may be granted on request of the National Office or the Office in order to adapt to any changes with regard to the salaries. The recalculation shall be done on the basis of data provided for by the National Office.

#### **Article 16 – Place of residence**

1. For the purposes of these Rules, the place of the deemed residence shall be the place where the SNE performed his or her duties for the employer immediately prior to the secondment. The place of secondment shall be the place where the Office department to which the SNE is assigned is located. Both places shall be identified in the exchange of letters mentioned in Article 1(4).

#### **Article 17 – Travel expenses at the beginning and end of secondment**

1. An SNE shall be entitled to reimbursement of travel expenses for himself/herself:
  - at the beginning of the period of secondment, from the place of the deemed residence to the place of secondment;
  - at the end of the period of secondment, from the place of secondment to the place of the deemed residence.
2. Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the Office<sup>4</sup>.

#### **Article 18 – Additional monthly flat-rate allowance**

1. Where the SNE is paid less than an official in step 1 of grade AD6, he or she shall receive an additional monthly flat-rate allowance equal to the difference between the gross monthly salary before taxes and with the deduction of social charges, paid by his/her employer, plus the subsistence allowances and the basic salary payable to an official in step 1 of grade AD6. The basis for the calculation shall be the amount of the salary reimbursement agreed upon in the exchange of letters between the OHIM and the National Office concerned.
2. Where a whole month is not worked, the amount shall be calculated in proportion to the number of days worked.

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<sup>4</sup> Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis, with the exceptions mentioned in the present Decision.

### **Article 19 – Missions and mission expenses**

1. An SNE may be sent on mission only in accordance with Article 3 of these Rules.
2. Mission expenses shall be reimbursed in accordance with the rules and conditions relating to the reimbursement of mission expenses for officials in force at the Office.

### **Article 20 – Training**

1. SNEs shall be entitled to attend training courses organised by the Office, if the interests of the Office warrant it. The reasonable interests of the SNE to attend, in particular in view of the SNE's professional career after the secondment, have to be considered when deciding on the permission to attend courses.
2. Where the training course is organised outside the OHIM's premises, and provided that it lasts for at least 3 months, the subsistence allowance provided for in Article 14 above shall be corrected according to the corresponding ratio between the weightings mentioned in Article 64 of the Staff Regulations for Alicante and for the country in which the training is organised. These weightings will not be applied retroactively. SNEs shall be entitled to reimbursement of travel expenses from the place of secondment to the place of the training and, at the end of the training, from the place of the training to the place of secondment.

### **Article 21 – Social benefits**

SNEs and their families are entitled to the majority of the social benefits provided by the OHIM. In particular, SNEs' children will be admitted into the European School in Alicante on the same basis as those of staff of the Office. However, they are not entitled to any direct social allowances or grants paid by the OHIM to its staff.

## **CHAPTER V: APPEALS**

### **Article 22**

Any SNE seconded for more than 6 months may submit to the Director of the Human Resources Department a complaint against an act under this Decision by OHIM services, adversely affecting him except 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 Director of the Human Resources Department 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<sup>5</sup>.

## **CHAPTER VI: ADMINISTRATIVE AND BUDGETARY PROVISIONS**

### **Article 23 – Taking up duties**

Any SNE shall report to the Human Resources Department on the first day of secondment to complete the relevant administrative formalities. He or she shall take up duty on either the first or on the sixteenth of the month.

### **Article 24 – Settlement of expenditure**

Payments shall be made in euros.

## **CHAPTER VII: FINAL PROVISIONS**

### **Article 25 - Repeal of earlier decisions**

Decision ADM-10 10 is hereby annulled and replaced.

### **Article 26 - Entry into force**

This Decision shall enter into force on 12 September 2011.

Done in Alicante on 08 September 2011



António CAMPINOS

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<sup>5</sup> However, this article does not prevent a SNE from bringing an action against the initial decision, under the conditions laid down in Article 230 of the EC Treaty.