



**MANAGEMENT BOARD DECISION No 99/2009**

of 25 June 2009

**LAYING DOWN RULES ON THE  
SECONDMENT OF NATIONAL EXPERTS (SNE) TO FRONTEX**

THE MANAGEMENT BOARD,

HAVING REGARD to the Frontex Regulation<sup>1</sup>, in particular Article 20(2) thereof,

Whereas:

- (1) Seconded National Experts (SNEs) should enable Frontex 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 relating to the management of the external borders by temporarily assigning experts from the administrations of the Member States to Frontex. For the same reason, steps have to be taken to facilitate the use of experts drawn from the administrations of Schengen Associated Countries, candidate countries, and public intergovernmental organisation (IGOs).
- (3) In order to ensure that Frontex' independence is not compromised by private interests, it should be stipulated that SNEs must come from a national, regional or

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<sup>1</sup> Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ, L 349, 25.11.2004, p. 1), as last amended.



local public administration or an IGO. The secondment of an SNE by an employer other than a national, regional or local public administration or an IGO has to 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 profit for redistribution.

- (4) In order to avoid any conflict of interest, 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 Frontex.
- (5) In view of their special status, it should be stipulated that SNEs acting alone will not exercise any of the responsibilities that belong to Frontex by virtue of the powers conferred upon it, unless specially empowered to do so in writing by Frontex Executive Director (ED).
- (6) It is desirable to update 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 allowance, by bringing them as much as possible into line with the Staff Regulations of the Officials of the European Communities (Staff Regulations) and the Conditions of Employment of Other Servants of the European Communities (CEOS), but without actually assimilating SNEs to these categories.
- (7) Steps should be taken to make it easier to review subsistence allowances, taking account of adjustments to the basic salaries of Frontex statutory staff,

HAS ADOPTED THIS DECISION:

## **Chapter I**

### **General Provisions**

#### ***Article 1***

##### ***Scope and definitions***

1. These Rules are applicable to national experts seconded to Frontex (hereinafter referred to as SNEs or seconded national experts).



Seconded National Experts are staff employed by a national, regional or local public administration or an IGO, who are seconded to Frontex 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 remain in the service of that employer throughout the period of secondment.

The SNE's employer thus undertakes 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 Frontex Administrative Services Unit of any change in the SNE's situation in this regard. The SNE's employer also continues 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 Frontex, without notice, in accordance with Article 10(2)(c).

2. Notwithstanding the second subparagraph of paragraph 1, the ED may, on a case-by-case basis, authorise the secondment of an SNE from an employer other than a State public administration or an IGO if the interests of Frontex 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 Director of Administration Division clarifies, if necessary, the arrangements for implementing the different criteria and communicates them to the Permanent Representations of the EU Member States, SAC and the IGOs concerned.

3. Except where the ED by a reasoned decision grants a derogation, an SNE must be a national of a Member State or SAC.
4. When a secondment is being planned, Frontex ensures 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 Director of the Administration Division monitors compliance and, in the event of a serious imbalance at Frontex, takes 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 Frontex 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 public administration, as defined in Article 1(1), of an EU or SAC Member States, or a country with which the Council has decided to open accession negotiations and which has concluded a specific arrangement with Frontex on staff secondment, or from IGO, as part of an arrangement and/or exchange programme with Frontex.



3. In addition, the ED may authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the Frontex Division in question, the geographical balance and the work to be carried out.
4. Cost-free SNEs are to be taken into account in Frontex staff policy plan.

### **Article 3**

#### **Selection Procedure**

1. SNEs are selected according to an open and transparent procedure, the practical details of which are decided by the ED.
2. Before the secondment, the Divisions and 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 SAC competent authorities, the diplomatic missions of the non-member countries whose nationals are eligible for the secondment and the administrations of the IGOs.
4. The secondment shall be authorised by the ED and effected by an exchange of letters between Frontex and the Permanent Representation of the Member State concerned or, as may be the case, the SAC competent authorities, diplomatic missions of the non-member countries whose nationals are eligible for the secondment and the IGOs.

### **Article 4**

#### **Period of secondment**

1. The initial periods of secondment may not be less than three months or more than two years. They may be renewed once or more, up to a total period not exceeding four years. Exceptionally, at the request of the Director of Division concerned and where the interests of service warrant it, the ED 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 secondment is specified in the exchange of letters referred to in Article 3(4). Any change of the period of secondment is subject of a new exchange of letters.
3. An SNE who has already been seconded to Frontex may be seconded to it another time subject to Frontex internal rules governing the maximum length of time such person may spend in Frontex, 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 a new secondment; if at the end of the first secondment, the SNE has signed an employment contract with Frontex, the duration of that contract is taken into account when calculating the six-year period referred to above.

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

#### **Article 5**

##### **Place of secondment**

SNEs may be seconded to any place of employment of Frontex staff members.

#### **Article 6**

##### **Tasks**

1. SNEs assist Frontex statutory staff members. They may not perform middle or senior management duties, even when deputising for their immediate superior.





2. An SNE takes part in missions or external meetings only as part of a delegation led by Frontex statutory staff members 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 ED 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 ED gives the SNE clear and specific instructions for the missions or meetings in question.

The ED may delegate his power to derogate to the Division's Director concerned.

Under no circumstances may an SNE on his own represent Frontex with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.

An SNE may, however, represent Frontex in legal proceedings as co-agent with a statutory staff member.

4. Frontex remains solely responsible for approving the results of any tasks performed by the SNE and for signing any official documents arising from them.
5. The Division 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 Frontex.

For this purpose, the Division to which the SNE is to be seconded informs the SNE and his employer before the start of the secondment about the intended duties and asks 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 have to inform the Director of the Division to which the SNE is seconded of any change of circumstances during the secondment which could give rise to any such conflict.

The Division to which the SNE is seconded keeps a copy of all such exchanges of correspondence in its records and hands it over to the Head of Administrative Services Unit.



6. A security clearance for an SNE must be obtained prior to the secondment in accordance with Frontex Security Manual.
7. Failure on the part of an SNE to comply with his obligations arising from this Decision entitles Frontex, 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 carries out his duties and conducts himself solely with the interests of Frontex in mind. He neither seeks nor takes instructions from any government, authority, organisation or person outside Frontex. He carries out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to Frontex.
  - (b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside Frontex is subject to Frontex rules on prior authorisation for statutory staff members<sup>2</sup>. Before issuing such an authorisation the SNE's employer has to be consulted.
  - (c) The SNE refrains from any action or behaviour which might reflect adversely upon his position and from any form of psychological or sexual harassment<sup>3</sup>.
  - (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 in the performance of his duties to deal with such matter, he has to inform immediately his Head of Unit, who takes any appropriate measure, and may, in particular, relieve the SNE of responsibility in this matter.

<sup>2</sup> Article 12b of the Staff Regulations and the provisions implementing this Article apply mutata mutandis.

<sup>3</sup> Article 12a of the Staff Regulations and the provisions implementing this Article apply mutatis mutandis.





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

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

- (e) The SNE refrains 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 Frontex informs 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 Frontex, he informs 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 is deemed to have had no objections.

- (g) All rights in any work done by the SNE in the performance of his duties is the property of Frontex
  - (h) The SNE resides 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 assists and tenders advice to the superiors in Frontex to whom he is assigned and is responsible to his superiors for performance of the tasks entrusted to him.
2. Failure to comply with any of the provisions of paragraphs 1 during the period of secondment entitles Frontex, 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 continues to have a duty of loyalty to Frontex and to be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

#### **Article 8**

##### ***Professional experience and knowledge of languages***

1. To qualify for secondment to Frontex 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 and in CEOS.
2. The SNE must produce evidence of a thorough knowledge of one of the Community languages and a satisfactory knowledge of another Community language to the extent necessary for the performance of his duties. An SNE from a non-member country must produce evidence of a thorough knowledge of one Community 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, Frontex 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 Articles 19 are payable only if the suspension is at Frontex' request.
2. The period of the suspension is not counted in the period of secondments as defined in Article 4.



## **Article 10**

### ***Termination of periods of secondment***

1. Subject to paragraph 2, the SNE's secondment may be terminated at the request of Frontex 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 Frontex and the SNE's employer.
2. 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 Frontex 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 Frontex in the event of a failure by the SNE or his employer to respect their obligations under this Decision; Frontex immediately informs 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 or IGO from which the SNE is to be seconded certifies that he remains, 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 provides Frontex with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72<sup>4</sup>.

2. From the day on which their secondment begins, SNEs are covered by Frontex against the risk of accident. Frontex provides them with a copy of the terms of this cover on the day on which they report to the appropriate Division of Frontex to complete the administrative formalities related to secondment.
3. A SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by Frontex. The SNE pays half the relevant insurance premium and his contribution is to 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 Frontex<sup>5</sup>.
2. The SNE serves on a full-time basis throughout the period of secondment. Following a duly justified request originating from the Division concerned, the ED may allow an SNE to work part time, provided that the SNE's employer agrees and the arrangement is compatible with the smooth running of the Division.

#### **Article 13**

##### ***Sick leave***

1. The rules in force at Frontex on absence due to sickness or accident apply to SNEs<sup>6</sup>.
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.

<sup>4</sup> OJ L 74, 27.3.1972, p.1.

<sup>5</sup> Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles apply *mutatis mutandis*.

<sup>6</sup> Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles apply *mutatis mutandis*.



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 allowance in full throughout the period during which they are unfit for work. These allowances have 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 Frontex on annual and special leave, applicable to statutory staff members, apply to SNEs<sup>7</sup>.
2. Leave is subject to prior authorisation by the Immediate Superior of the SNE. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances have not to be paid.
3. Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave by Frontex in a 12-month period to visit his employer.
4. Days of annual leave not taken by the end of the period of the secondment shall be forfeited.

#### **Article 15**

##### ***Maternity leave***

1. The rules in force at Frontex on maternity leave apply to SNEs<sup>8</sup>. While on maternity the SNE receives the subsistence allowances referred to in Article 17.

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<sup>7</sup> Articles 57 and 59a of and Annex V to the Staff Regulations and the provisions implementing these Articles apply mutatis mutandis.

<sup>8</sup> Articles 58 of the Staff Regulations and the provisions implementing these Articles apply mutatis mutandis.



2. Where the rules that are binding upon the SNE's employer provide for a period of maternity leave longer than that granted by Frontex, the secondment may, at SNE's request, be interrupted for the period by which that leave exceeds the leave granted by Frontex.

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

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

#### **Article 16**

##### ***Management and control***

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

### **Chapter III**

#### ***Allowances and Expenses***

#### **Article 17**

##### ***Subsistence allowances***

1. An SNE is 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 subsistence allowance shall be 122,97 EUR; where the distance is 150 km or less SNE receives 25% of the daily subsistence allowance, which is 30,75 EUR.





2. The subsistence monthly allowance is paid as shown in the table below:

Distance between the place of origin and the place of secondment (km)	Amount in EUR
0 – 150	0
> 150	79,04
> 300	140,52
> 500	228,36
> 800	368,89
> 1300	579,68
> 2000	693,88

3. In the case of cost-free SNEs, the exchange of letters referred to in Article 3(4), stipulates that the allowances are not to be paid.
4. These allowances are intended to cover SNE's living expenses in the place of secondment on a flat-rate basis and shall be paid in the currency of the place of secondment. The allowances shall in no circumstances be constructed as remuneration paid by Frontex.

Before secondment, the SNE's employer certifies to the ED that during the secondment it will maintain the level of remuneration the SNE was receiving at the time of his secondment.

The SNE informs the ED of any allowance similar to the subsistence allowances paid by Frontex received from other sources. This amount is to be deducted from the subsistence allowances paid by Frontex. Following a duly justified request from the employer, Frontex may decide not to make this deduction.

5. Subsistence allowances are payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by Frontex.



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 are not to be paid during the corresponding period. This lump sum is paid by the 25<sup>th</sup> day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16<sup>th</sup> day of the month, this lump sum shall be paid by the 10<sup>th</sup> day of the following month. If the secondment is ended during the first 75 days, the SNE returns the amount corresponding to the remainder of that period.
7. Subsistence allowances shall be paid no later than the 25th day of each month.
8. The adjustment 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 Administrative Services Unit of Frontex shall be responsible for implementing this provision and the new rate for subsistence allowances shall be published as an Administrative Notice by the Director of Administration Division.

#### **Article 18**

##### ***Place of origin***

1. For the purposes of this Decision, the "place of origin" means the place where the SNE performed his duties for his employer at the time of the secondment. The place of secondment and the place of origin is to be identified in the exchange of letters mentioned in Article 3(4).
2. If, six months before his secondment to Frontex as an SNE, the SNE already has his main residence in a place other than that defined in paragraph 1, the place of origin is deemed to be whichever of the places is closer to the place of secondment.
3. Circumstances arising from work done by the SNE at the place of secondment for a State other than that of the place of secondment, or for an international organisation, shall not be taken into account for the purpose of this Article.



## **Article 19**

### **Travel expenses**

1. SNEs other than those seconded cost-free, are entitled to reimbursement of the cost of their travel between their place of origin and the place of secondment, as defined in Article 18, at the beginning and end of their secondments.
2. Travel expenses are reimbursed in accordance with the relevant rules and condition in force at Frontex<sup>9</sup>.
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 is 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. Frontex does 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, the SAC competent authority, IGOs or diplomatic missions of the non-member countries concerned inform Frontex to this effect.

## **Article 20**

### **Missions and mission expenses**

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

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<sup>9</sup> Article 7(1) and (2) of Annex VII of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.



## **Article 21**

### ***Training***

SNEs are entitled to attend training courses organised by Frontex if the interests of Frontex warrant it. The interests of the SNE in attending, in particular with 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 report to the Administrative Services Unit of Frontex on the first day of the secondment to complete the requisite administrative formalities. They take up duty on either the first or the sixteenth day of the month.
2. SNEs not seconded to Warsaw report to the appropriate Unit and the Administrative Services Unit of Frontex.

## **Chapter IV**

### **Complaints**

## **Article 23**

Without prejudice to the possibilities for instituting proceeding after taking up his position, under the condition and time limits laid down in Article 230 of the EC Treaty, any SNE may submit a complaint to the ED about an act adopted by Frontex entity 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 starts 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 ED notifies 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 deems to constitute an implied decision rejecting it.

## **Chapter V**

### **Final Provisions**

#### **Article 24**

This Decision enters into force at the day following its adoption.

This Decision repeals and replaces Decision of Management Board 15/2006 of 21 September 2006.

Done at Warsaw, 25<sup>th</sup> June 2009.

For the Management Board

R. Strondl  
Chairperson of the Management Board