



European Economic and Social Committee

DECISION No 263/12 A

**LAYING DOWN RULES ON THE SECONDMENT OF NATIONAL EXPERTS
TO THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE**

THE SECRETARY-GENERAL,

Whereas:

- (1) Seconded National Experts (SNEs) should enable the EESC to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available,
- (2) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies by temporarily assigning to the EESC experts from the public institutions of the Member States,
- (3) In order to guarantee that the independence of the institution is not compromised by private interests, it should be stipulated that SNEs be drawn from international (IGOs), national, regional or local public or quasi-public institutions (e.g. governments, state departments, national economic and social councils) not only in the Member States but also in the European Economic Area (EEA), countries that are candidates for EU membership or third countries,
- (4) The rights and obligations of SNEs set out in this Decision should ensure that they carry out their duties solely in the interests of the EESC,
- (5) In view of the temporary nature of their work and their particular status, it should be provided that SNEs should not, acting on their own, take responsibility on behalf of the EESC for the exercise of its public law prerogatives,
- (6) The provisions on the rules on SNEs should be consolidated: they should be streamlined without losing their specific nature and, particularly with regard to working conditions and subsistence allowances, brought more closely into line with the provisions of the Staff Regulations applicable to officials and other servants of the European Union, without considering SNEs as equivalent to these officials or other servants.
- (7) Review of daily and monthly allowances should be facilitated, taking account of changes in the basic salaries of EU officials in Brussels,

.../...

HAS DECIDED AS FOLLOWS:

Chapter I
General provisions

Article 1 - Scope

1. These Rules are applicable to national experts seconded to the EESC, hereinafter referred to as seconded national experts, or SNEs.

Seconded national experts shall be persons seconded to the EESC by an international, national, regional or local public or quasi-public institution so that it can use their expertise in a particular field.

Within the meaning of this decision, a public institution shall include all the central, federal and territorial administrative departments of a state, namely ministries, government and parliamentary departments, courts, central banks, local government departments, and the decentralised administrative departments of that state and its constituent authorities.

Persons covered by these Rules shall have been employed by their employer for at least twelve months as an established or contracted member of staff before their secondment and shall remain in the service of this employer during the period of secondment. In this connection, the employer of the SNE shall undertake to continue to pay the SNE's salary, maintain the SNE's established or contractual status throughout the period of secondment and inform the Directorate for Human Resources and Internal Services of any change in the situation of the SNE in this respect. The employer shall also continue to guarantee all the SNE's social rights, particularly as regards social security and pension rights. Any break or modification of this established or contractual status shall entitle the EESC to terminate the SNE's secondment without notice, in accordance with Article 8(2)(c).

2. Except where the Secretary-General of the EESC grants a derogation, an SNE must be a national of an EU Member State, an EEA country or of one of the countries that are candidates for EU membership.
3. Secondment shall be effected by an exchange of letters between the Secretary-General of the EESC and the Office of the Permanent Representative of the Member State concerned or, as the case may be, with the secretariat of EFTA or the diplomatic missions of the third countries from which the expert is seconded. Correspondence shall be exchanged with the EFTA secretariat for countries of the EEA and with the appropriate diplomatic missions in the case of other non-member countries. A copy of the rules applicable to national experts on secondment to the EESC shall be attached to the exchange of letters.
4. 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 – Selection procedure

1. SNEs shall be selected by means of an open, transparent procedure which includes establishment of a selection board.
2. Before launching a selection procedure, the EESC department concerned must have been authorised to make use of an SNE's services in line with budgetary availability.
3. Applications shall be forwarded by the Offices of the Permanent Representatives of the Member States of the European Union (hereinafter referred to as "PRs") or, where the vacancy notice so provides, by the EFTA secretariat or the diplomatic missions of the third countries and IGOs from which the expert is seconded. The selection board shall verify that SNEs are recruited with due regard for the conditions of eligibility and the criteria of professional experience described in Article 6 of these Rules.

Article 3 - Period of secondment

1. Initial periods of secondment may not be less than six months nor more than two years. They may be renewed once or more, up to a total period not exceeding four years. In exceptional circumstances, and in the interest of the service, the Secretary-General may authorise one or more extensions of the secondment for a maximum of two years at the end of the four-year period.
2. The initial period of secondment shall be fixed at the outset in the exchange of letters provided for in Article 1(3). Any extension of the period of secondment shall be the subject of a new exchange of letters.
3. An SNE who has already been seconded to the EESC may be seconded again subject to the rules laid down by this article 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 most recent period of secondment and a new secondment; if, after the last secondment, the SNE has received an employment contract with the EESC, the duration of that contract or the secondment shall be included in the calculation of the six years

The minimum period of six years referred to in point b) does not apply where previous secondments amount to less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period, without prejudice to the possibility of extending the secondment for up to two additional years provided for in Article 3(1).

Article 4 - Duties

1. SNEs shall assist EESC officials or temporary servants. They may not perform middle or senior management duties, even when deputising for their immediate superior.
2. An SNE shall only take part in missions or in external meetings as a member of a delegation led by an EESC official or temporary servant or, if they are participating in them alone, as an observer or for the purposes of liaison and/or providing information for the EESC.
3. However, in all other cases, by way of exception from paragraph 2 above, the director of the department concerned (or any other equivalent person with a senior management role in an independent body of a directorate) may give a specific mandate for one or more missions to the SNE after having ensured that there is no potential conflict of interest. In this case, the person concerned shall give the SNE clear, precise written instructions regarding the stance to be taken during the missions or meetings in question.
4. Under no circumstances may an SNE on their own represent the EESC with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.
5. An SNE may, however, represent the EESC in legal proceedings if they are accompanied by an official or other servant who is bound by the Staff Regulations, and may as such act on its behalf.
6. The EESC shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
7. Every effort must be made by the EESC departments concerned, by the SNE's employer and by the SNE to avoid any conflict of interest in relation to the SNE's duties while seconded to the EESC.

The SNE shall declare any potential conflict of interest between their family circumstances and the proposed duties while on secondment. In particular, they shall declare the professional activities of close family members or any important interests of their own or of those persons.

8. The employer and the SNE shall be asked to undertake to declare any change of circumstances during the secondment which could give rise to any such conflict to the Director for Human Resources and Internal Services.
9. Failure on the part of the SNE to comply with their obligations shall entitle the EESC, if it sees fit, to terminate the secondment of the SNE under the terms of Article 8.

Article 5 - Rights and obligations

1. During the period of secondment:

- a) the SNE shall carry out their duties and shall conduct themselves solely with the interests of the EU in mind. They shall neither seek nor take instructions from any government, authority, organisation or person outside the EESC. They shall carry out the duties assigned to them objectively and impartially and in keeping with their duties of loyalty towards the EU. They shall not undertake any activities for their employer, for governments or for any other persons, private companies or public bodies;
- b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or carry out any assignment outside the EU shall be subject to the EESC's rules on prior authorisation for officials¹. The department concerned shall consult the SNE's employer before issuing authorisation;
- c) the SNE shall refrain from any action or behaviour which might reflect adversely upon their position, and from any form of psychological or sexual harassment²;
- d) the SNE 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, in particular family or financial interests. If it falls in the performance of their duties to deal with such a matter, they shall inform their head of unit immediately, who shall take any appropriate measure, and may, in particular, relieve the SNE from responsibility in this matter;

the SNE shall declare any profit-making professional activity performed by their spouse according to the definition thereof set out in the Staff Regulations;

- e) the SNE shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public;
- f) The SNE has the right to freedom of expression, with due respect for the principles of loyalty and impartiality;

An SNE who intends to publish or cause to be published, whether alone or with others, any document dealing with the work of the EU shall inform the Director for Human Resources and Internal Services in advance. Where the latter is able to demonstrate that the publication in question is liable seriously to prejudice the legitimate interests of the EU, they shall inform the SNE of their decision in writing within thirty working days of receipt

¹ Article 12 b of the Staff Regulations and the provisions for applying this article shall apply *mutatis mutandis*.

² Article 12 a of the Staff Regulations and the provisions for applying this article shall apply *mutatis mutandis*.

of the information. If no such decision is notified within the specified period, the Director for Human Resources and Internal Services shall be deemed to have had no objections;

- g) all the rights in any work done by the SNE in the performance of their duties shall be the property of the EESC;
 - h) the SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of their activities;
 - i) based on their professional knowledge and experience, the SNE shall assist and tender advice to the superiors in the EESC to whom they are assigned and shall be responsible to their superiors for performance of the tasks entrusted to them.
- 2. Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle the EESC, if it sees fit, to terminate the secondment of an SNE pursuant to Article 8.
 - 3. After termination of the secondment, an SNE shall continue to be bound by the duty to behave with loyalty towards the EU and with integrity and discretion as regards the exercise of new tasks assigned to them and the acceptance of certain appointments or benefits.

Article 6 - Professional experience and knowledge of languages

- 1. To qualify for secondment to the EESC a national expert must have at least three years full time experience of administrative, judicial, 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 of Officials of the EU and in the Conditions of Employment of Other Servants of the EU.
- 2. The SNE shall supply the EESC with statements signed by their previous employer(s) demonstrating the professional experience of at least three years referred to in the previous point.
- 3. An SNE must have a thorough knowledge of one Community language, and a satisfactory knowledge of a second working language, for the performance of their duties. An SNE from a non-member country must have a thorough knowledge of one Community language for the performance of their duties.

Article 7 – Breaks in periods of secondment

1. The EESC may authorise breaks in periods of secondment and specify the terms applicable. During such breaks:
 - a) the allowances referred to in Article 15 shall not be payable;
 - b) the expenses referred to in Article 17 shall be payable only if the break is at the EESC's request.
2. The EESC shall inform the SNE's employer.

Article 8 – Termination of periods of secondment

1. Subject to paragraph 2, the secondment may be terminated at the request of the EESC or of the SNE's employer, on the party concerned giving three months' notice to the other party. It may also be terminated on giving the same notice at the SNE's request.
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 the EESC and the employer acting jointly, at the request of the SNE to both parties, if the SNE's essential personal or professional interests so require;
 - c) by the EESC in the event of a failure by the SNE and/or their employer to respect their obligations under this Decision or for a serious offence by the SNE in connection with the service.

In the event of termination under point c), the EESC shall immediately inform the employer.

Chapter II

Working conditions

Article 9 - Social Security

1. Before the period of secondment begins, the national or international civil service from which the SNE is to be seconded, shall certify to the EESC that they will remain, throughout the period of secondment, subject to the social security legislation applicable to that civil service and will assume responsibility for expenses incurred abroad. If the period of secondment is extended, such certification must be renewed for the corresponding period. To this end, the SNE's employer shall provide the EESC with the certificate referred to in Article 11(1) of Council Regulation (EEC) No. 574/72³.
2. From the day on which their secondment begins, SNEs shall be covered by the EESC against the risk of accident at the workplace or on the way to work. The relevant department of the Directorate for Human Resources and Internal Services shall supply SNEs with a copy of the provisions applying during the secondment on the day when they complete the formalities related to starting their secondment.

Article 10 - Working hours

1. The working hours for SNEs shall be the same as those in force at the EESC.

SNEs shall work full time throughout the period of their secondment.

Article 11 - Sick leave

1. SNEs shall be subject to the rules on absence due to sickness in application at the EESC⁴.
2. Where the period of sick leave exceeds three months or the period of service performed by the SNE concerned, whichever is the longer, the allowances referred to in Article 15 shall automatically be suspended. Sick leave may not extend beyond the duration of the secondment of the person concerned.
3. SNEs who are the victims of a work-related injury which occurs during the secondment shall continue to receive the subsistence allowances in full throughout the period during which they are unfit for work up to the end of the secondment.

³ OJ L 74, 27.3.1972, p.1.

⁴ Articles 59 and 60 of the Staff Regulations and the implementing provisions for this article apply *mutatis mutandis*.

Article 12 - Annual and special leave

1. SNEs shall be subject to the rules on annual and special leave applying to officials at the EESC.
2. Leave is subject to prior authorisation by the department to which an SNE is assigned. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid.
3. Upon a duly substantiated request by an SNE's employer, the EESC may grant the SNE up to two days of paid special leave in a twelve-month period in order to visit their employer.
4. Days of annual or special leave not taken by the end of the secondment shall be forfeited.

Article 13 - Maternity leave

1. SNEs shall be subject to the rules on maternity leave in force at the EESC⁵. While on maternity leave, SNEs shall receive the subsistence allowances provided for under Article 15.
2. Where the rules to which an SNE's employer is subject provide for a period of maternity leave longer than that granted by the EESC, the secondment shall, at the SNE's request, be interrupted for the period by which that maternity leave exceeds that granted by the EESC.

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

3. An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.
4. Days of maternity leave not taken by the end of the secondment shall be forfeited.

Article 14 - Management and control

Management of leave, working time and absences shall be the responsibility of the directorate or service to which the SNE is assigned, with control being centralised in the relevant service in the Directorate for Human Resources and Internal Services. Financial management operations, such as calculation and payment of subsistence and travel allowances, shall be the responsibility of the relevant department of the Directorate for Finance, Budget and Accounting.

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Article 58 of the Staff Regulations and the implementing provisions for this article apply *mutatis mutandis*.

Chapter III

Allowances and expenses

Article 15 - Subsistence allowances

- 1 SNEs shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance.

At the date when this decision takes effect:

- the daily subsistence allowance shall be EUR 127.65;
- the monthly subsistence allowance shall be paid in line with the following table:

Distance between the place of origin and the place of secondment (km)	Amount in EUR
Monthly subsistence allowance:	
0 - 150	0
> 150	82.04
> 300	145.87
> 500	237.05
> 800	382.92
> 1300	601.73
> 2000	720.27

2. These subsistence allowances shall be paid subject to the same criteria as officials' expatriation allowance⁶.
3. The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances granted to SNEs in the month following their adoption. The relevant department of the Directorate for Finance, Budget and Accounting shall be responsible for implementing this provision.
4. These allowances are intended to cover an SNE's subsistence expenses in the place of secondment on a flat-rate basis. The allowances may in no circumstance be construed as remuneration paid by the EESC.
5. Prior to any secondment, the employer shall guarantee to the Directorate for Human Resources and Internal Services that they will maintain, throughout the secondment, the level of remuneration the SNE was receiving at the time they were seconded. SNEs shall inform the Directorate for Human Resources and Internal Services of any payments received from other sources for this purpose. Any such amounts shall be deducted from the subsistence

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Article 4 of Annex VII to the Staff Regulations and the implementing provisions for this article apply *mutatis mutandis*.

allowances paid by the EESC. The EESC may, at the duly substantiated request of the employer, decide not to deduct these amounts.

6. Subsistence allowances shall be payable for all days of the week, including during periods of mission, annual leave, special leave and holidays granted by the EESC.
7. When the SNE starts the secondment, the first 75 days of the subsistence allowances to which they are entitled shall be advanced in the form of a lump sum and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum will be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.
8. The subsistence allowances shall be paid by the 25th day of each month at the latest.

Article 16 – Place of origin

1. For the purposes of this decision, the place of origin shall be the place where the SNE was performing their duties for the employer at the time of the secondment. The place of secondment shall be Brussels
2. If, on a date six months before their secondment to the EESC as an SNE, a national expert already has their principal residence in a place different from that in which the employer's head office is located, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

Article 17 - Travel expenses

1. SNEs shall be entitled to reimbursement of the cost of their travel between the place of origin and place of secondment, as set down in Article 16, at the beginning and end of their secondment.
2. Travel expenses shall be reimbursed in accordance with the relevant rules and conditions at the EESC.
3. By way of derogation from paragraph 1, SNEs who prove that at the end of the secondment they will be posted to a place other than their place of origin shall be entitled to reimbursement of the travel expenses to that place up to the limits set out in paragraph 2. The reimbursement may not, however, exceed the sum to which they would have been entitled had they returned to their place of origin.

4. The EESC shall not reimburse any expenses referred to in the preceding paragraphs if they are being met by the employer or any other body. For this purpose the SNE's employer shall declare any such payments or reimbursements to the EESC or certify that no such payments or reimbursements have been made.

Article 18 - Missions and mission expenses

1. An SNE may be sent on mission subject to the provisions of Article 4.
2. Mission expenses shall be reimbursed in accordance with the rules and conditions relating to the payment of mission expenses in force at the EESC.

Article 19 - Training

SNEs shall be entitled to attend training courses organised by the EESC, if the interests of the EESC warrant it. The reasonable interests of the SNE, in particular in the light of their reintegration into their administration of origin following secondment, may be considered when a decision is taken on whether to permit them to attend a training course.

Article 20 - Administrative provisions

The SNE shall report to the appropriate department of the Directorate for Human Resources and Internal Services on the first day of the secondment to complete the relevant administrative formalities. They shall take up duty on either the first or the sixteenth day of the month.

Chapter IV

Complaints

Article 21

Without prejudice to the possibilities of instigating proceedings subject to the conditions and timeframes laid down in Article 230 of the EC Treaty, after starting their secondment any SNE may submit to the secretary-general a complaint against an act by EESC services adversely affecting them under this Decision, except decisions which are direct consequences of decisions taken by their 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 Secretary-General shall notify the person concerned of their 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.

Chapter V

Final provisions

Article 22 – Entry into force

1. This decision shall come into force on 1 January 2012. It shall repeal EESC Decision No. 104/09A of 18 February 2009 laying down rules on the secondment of national experts to the EESC.
2. From that date onwards it shall apply to:
 - all SNEs starting their secondment,
 - all current secondments of SNEs, with the exception of:
 - Articles 15 and 17, which shall apply only at the request of the parties concerned, submitted within three months of the adoption of this decision, in place of the provisions of Articles 14 to 17 of EESC Decision 104/09A of 18 February 2009, and
 - Article 12, which shall apply as of 1 January 2013.
3. National experts currently on secondment who ask to take advantage of the provisions of Article 15 shall not receive the monthly subsistence allowance referred to in Article 15(1) above if they benefited when they started their secondment under the provisions of Article 17 of EESC Decision No. 104/09A of 18 February 2009 laying down rules on the secondment of national experts. However, they shall benefit under the provisions of the same Article 17 when their secondment ends.
4. National experts currently on secondment who do not wish to take advantage of the provisions of Articles 15 and 17 shall continue to benefit under the provisions of Articles 14 to 17 of EESC Decision No. 104/09A of 18 February 2009 laying down rules on the secondment of national experts.
5. EESC Decision No. 104/09A of 18 February 2009 laying down rules on the secondment of national experts shall be repealed. However, the provisions of Articles 11 and 14 to 17 of that Decision shall continue to apply in the cases stipulated in paragraphs 2 to 04.

Done at Brussels, 7 June 2012.

The Secretary-General,

[SIGNED]

Martin WESTLAKE