



Brussels, 28 April 2009

**EUROPEAN DATA PROTECTION SUPERVISOR DECISION OF 28 APRIL 2009
LAYING DOWN RULES ON THE SECONDMENT OF NATIONAL EXPERTS TO
THE EDPS**

and replacing European Data Protection Supervisor decisions on the subject

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The European Data Protection Supervisor,

having regard to the Treaty establishing the European Community,

Whereas :

- 1) Seconded National Experts (SNEs) should enable the EDPS 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 EDPS experts from the European Union Member States.
- 3) The rights and obligations of SNEs set out in this Decision should ensure that they carry out their duties solely in the interest of the EDPS.
- 4) 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 EDPS for the exercise of his public law prerogatives.
- 5) Daily and monthly allowances should be reviewed taking account of changes in the basic salaries of Community 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 EDPS, hereinafter referred to as Seconded National Experts ("SNE"), by a national, regional or local public authority.
2. The persons covered by these Rules must have worked for their employer on a permanent or contract basis for at least 12 months before their secondment and shall remain in the service of that employer throughout the period of secondment and shall continue to be paid by that employer.
3. Except where the EDPS grants a derogation, an SNE must be a national of a EU Member State. The EDPS shall take account of geographical and gender balance and the principle of equal opportunities when accepting SNEs.
4. Secondment shall be effected by an exchange of letters between the EDPS and the Office of the Permanent Representative of the Member State concerned or the employer, as the case may be. A copy of the rules applicable to national experts on secondment to the EDPS shall be attached to the exchange of letters.
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

Period of secondment

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.

1. 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 the period of secondment.
2. An SNE who has already been seconded to the EDPS may be seconded a second time subject to any relevant internal rules laying down maximum periods during which such persons may be present in the EDPS, and subject further to the following conditions:
 - a) the SNE must continue to meet the conditions for secondment ;

- b) a period of a 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 received a contract with the EDPS, the six-years period shall begin to run from the expiry of that contract.

The condition in point (b) shall not prevent the EDPS from accepting the secondment of an SNE whose initial secondment has lasted for less than four years, but only in case the new secondment shall not exceed the unexpired part of the four-year period.

Article 3 *Duties*

1. SNEs shall assist EDPS officials or temporary agents, performing the tasks assigned to them based on their professional knowledge and experience.
2. An SNE shall take part in missions or external meetings only if accompanying an EDPS official or temporary agent, or acting alone as an observer or for information purposes.
3. However, the EDPS may give a specific mandate for one or more missions to the SNE after having ensured that there is no potential conflict of interest. Under no circumstances may an SNE on his own represent the EDPS with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.
4. An SNE may however represent the EDPS in legal proceedings as co-agent with an official and may as such act on his behalf.
5. The EDPS shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
6. Every effort must be made by the EDPS departments concerned, by the SNE's employer and by the SNE to avoid any conflict of interest or appearance of such conflict in relation to the SNE's duties while seconded to the EDPS. For this purpose, the department to which it is intended to assign the SNE shall provide the SNE and the employer with full information about the intended duties a reasonable time before the start of the secondment, and shall ask the SNE and the employer to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties. The SNE shall be asked in particular to declare any potential conflict between his family circumstances and the proposed duties while on secondment. In particular, he shall declare the professional activities of close family members or any important financial interests of his own, or of those persons.
7. 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, or appearance of conflict, to the Human Resources Unit of the EDPS.
8. The Human Resources Unit of the EDPS shall keep all such exchanges of correspondence in its records.

9. Where the EDPS considers that the nature of the activities of an SNE require particular security precautions, security clearance shall be obtained prior to recruitment.
10. Failure on the part of the SNE to comply with his obligations arising under the provisions of paragraphs 2, 3 or 4 shall entitle the EDPS, if he sees fit, to terminate the secondment of the SNE under the terms of Article 7.

Article 4
Rights and obligations

1. During the period of secondment :
 - a) the SNE shall carry out his duties and shall conduct himself solely with the interests of the Communities in mind. He shall neither seek nor take instructions from any Government, authority, organisation or person outside the EDPS. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to the Communities. He shall not undertake any activities for his employer, for governments or for other persons, private companies or public bodies.
 - b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the EDPS shall be subject to the EDPS's rules on prior authorisation for officials. The EDPS shall consult the SNE's employer before issuing an authorisation.
 - c) the SNE shall refrain from any action or behaviour which might reflect adversely upon his position.
 - 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 it falls in the performance of his duties to deal with such a matter, he shall inform the EDPS immediately who shall take any appropriate measure, and may, in particular, relieve the SNE from responsibility in this matter.
 - 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 to the principles of loyalty and impartiality.

The SNE who intends to publish or cause to be published, whether alone, or with others, any matter dealing with the work of the Communities shall inform the EDPS in advance. Where the EDPS is able to demonstrate that the matter is liable seriously to prejudice the legitimate interests of the Communities, the EDPS shall inform the official 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 EDPS shall be deemed to have had no objections.

- g) all rights in any work done by the SNE in the performance of his duties shall be the property of the Community ;
 - h) the SNE shall reside at the place of secondment or at no greater distance there from as is compatible with the proper performance of his activities ; and
 - i) based on his professional knowledge and experience, the SNE shall assist and tender advice to the superiors in the EDPS to whom he is assigned and shall be responsible to his superiors for performance of the tasks entrusted to him.
2. Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle the EDPS, if he sees fit, to terminate the secondment of an SNE pursuant to Article 7.
 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 and the acceptance of certain appointments or benefits.

Article 5

Professional experience and knowledge of languages

1. To qualify for secondment to the EDPS 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 of officials of the European Communities and in the conditions of employment of other servants of the European Communities. The employers from which the SNE has to be seconded shall supply the EDPS, before the secondment, with a statement of the expert's employment over the previous twelve months.
2. An SNE must have a thorough knowledge of one Community language and a satisfactory knowledge of a second language, for the performance of his duties. An SNE from a non-member country must have a thorough knowledge of one Community language for the performance of his duties.

Article 6

Breaks in periods of secondment

At the written request of the SNE or his employer, and with the latter's agreement, the EDPS may authorise breaks in period of secondment and specify the terms applicable.

1. During such breaks :
 - a) the allowances referred to in Article 14 shall not be payable ;
 - b) the expenses referred to in Articles 18 and 19 shall be payable only if the break is at the EDPS's request ;
 - c) any reimbursement of remuneration of the SNE's employer under Article 16 shall be automatically suspended.

- d) The period of suspension shall not be counted in the period of secondment as defined in Article 2.

Article 7

Termination of periods of secondment

1. Subject to paragraph 2, the secondment may be terminated at the request of the EDPS or of the SNE's employer, on the party concerned giving three month's notice to the other party. It may also be terminated on giving the same notice at the SNE's request, subject to the agreement of the EDPS 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 the EDPS and the employer acting jointly, on request by the SNE to both parties, if the SNE's personal or professional interests so require ;
 - c) by the EDPS in the event of a failure by the SNE or his employer to respect his obligations under this Decision.

In the event of termination under point (c), the EDPS shall immediately inform the SNE and his employer.

Chapter II

Working conditions

Article 8

Social security

1. Before the period of secondment begins, the national civil service from which the SNE is to be seconded, shall certify to the EDPS that he 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.
2. Before the period of secondment begins, the SNEs shall provide the EDPS with the certificate referred to in Article 11(1) of Council Regulation (EEC) N° 574/72¹.
3. From the day on which their secondment begins, SNEs shall be covered by the EDPS against the risk of accident. The EDPS shall provide them with a copy of the terms of this cover on the day on which an SNE reports to the appropriate department of the EDPS to complete the administrative formalities of secondment.

¹ JO L 74 du 27.3.1972, p.1.

4. An SNE who cannot be covered by a public sickness insurance scheme can apply to have this risk insured by the EDPS. The SNE shall pay half the relevant insurance premium and his contribution shall be deducted monthly from the allowances referred to in Article 14.

Article 9
Working hours

1. The working hours for SNEs shall be the same as those in force at the EDPS.
2. The SNE shall serve on a full-time basis throughout the period of secondment. Subject to compatibility with the interest of the EDPS, the EDPS may authorise the use of part-time working by an SNE after agreement by his employer. In this case, the amount of annual leave shall be reduced accordingly.
3. Where part-time working is authorised, the SNE must work every month at least half of the normal working time.
4. An SNE may work flexible hours only if authorised to do so by the EDPS service to which he is assigned. Such authorisation shall be communicated for information to the Personal and Administration unit of the EDPS.

Article 10
Sick leave

1. In the event of absence from work for reasons of sickness or accident, the SNE shall notify the Personal and Administration' service as soon as possible, stating his present address. He shall produce a medical certificate if absent for more than three days and may be required to undergo a medical examination arranged by the EDPS.
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 produce a medical certificate for any further absence due to sickness.
3. Where the period of sick leave exceeds three month or the period of service performed by the SNE, whichever is longer, the allowances referred to in Article 14 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. 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 secondment.

Article 11
Annual and special leave

1. With the exception of the provisions relating to grade, the rules in force at the EDPS on annual and special leave, applicable to officials, shall apply to SNE.
2. Leave is subject to prior authorisation by the EDPS to which the SNE is assigned.
3. Upon a duly justified request from the SNE's employer, up to two days of paid special leave in a 12-month period may be granted by the EDPS on a case-by-case basis.
4. Days of annual leave not taken by the end of the secondment shall be forfeited.

Article 12
Maternity leave

The rules in force at the EDPS on maternity leave shall apply to SNE. While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 14.

1. Where the relevant rules binding the employer of SNE grant a longer period, a break in the secondment under the provisions of Article 7 shall be applied for the period exceeding that granted by the EDPS.

A period equivalent to the break shall be added to the end of the secondment if the interest of the EDPS warrants it.

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

Article 13
Management and control

Management and control of leave, working time and absences shall be the responsibility of the EDPS.

Chapter III

Allowances and Expenses

Article 14

Subsistence allowances

1. An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance. the daily allowance shall be 122,97 EUR.
2. If the SNE has not received removal expenses from any sources, an additional monthly allowance shall be paid as shown in the table below :

Distance between the deemed residence and the place of secondment (km)	Amount in EUR
0 – 150	0
> 150	76.74
> 300	136.42
> 500	221.71
> 800	358.14
> 1300	562.80
> 2000	673.67

3. Subsistence allowances shall be payable for periods of mission, annual leave, special leave and holidays granted by the EDPS, unless otherwise indicated.
4. For the purpose of this paragraph, circumstances arising from work done by SNEs for a state other than that of the place of secondment shall not be taken into account.
5. When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he is entitled shall be advanced in the form of a lump sum and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum 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.
6. The SNE shall inform the EDPS of any similar payments received from other sources. Any such amounts shall be deducted from the corresponding allowance paid by the EDPS pursuant to paragraph 1.
7. Daily and monthly allowances shall be reviewed each year without retroactive effect taking account of changes in the basic salaries of Community officials at Brussels.
8. The daily and monthly allowances are intended to cover on a flat rate basis the living expenses of SNEs in the place of secondment, and shall in no circumstances be construed as remuneration paid by the EDPS.

The daily and monthly allowances shall be paid by the 25th day of each month.

Article 15
Deemed residence

1. For the purposes of this Decision, the deemed residence shall be the place where the SNE performed his duties for his employer at the time of his secondment. The place of secondment shall be the place where the EDPS is located. Both places shall be identified in the exchange of letters mentioned in Article 1 (4).
2. The deemed residence shall be considered to be the place of secondment in the following cases :
 - a) where, during the three years ending six months before the start of the secondment, either the SNE's habitual residence or his main occupation was at a place situated 150 km or less from the place of secondment ; or
 - b) where at the time of the EDPS's request for the secondment, the place of secondment is the principal residence of the SNE's spouse or of any of his dependent children ; for this purpose, residence at 150 km or less from the place of secondment is to be treated as residence at that place.
3. Circumstances arising from work done by the SNE for a State other than that of the place of secondment, shall not be taken into account for the purpose of paragraph 3 (a).

Article 16
Travel expenses

1. An SNE shall be entitled to reimbursement of travel expenses in accordance with the following rules :
 - a) He shall be entitled on his own account :
 - i. from the place of the deemed residence to the place of secondment at the beginning of the period of secondment ;
 - ii. from the place of secondment to the place of the deemed residence at the end of the period of secondment ;

Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the EDPS.

2. Unless the journey is made by air, the amount reimbursed shall be a flat rate, limited to the cost of the seconded-class rail fare, without supplements. This shall also apply to journeys made by car.

Air travel expenses shall be reimbursed up to actual cost of a reduced-price economy class ticket, on production of tickets and boarding cards. Such reimbursement shall be granted only where the standard rail journey exceeds 500 km or where the standard route involves a sea crossing.

3. By way of derogation from paragraph 1, SNEs who prove that they have changed the place at which they will be primarily employed after the end of the secondment shall be entitled to reimbursement of the travel expenses to that place up to the limits set out in paragraphs 1 and 2. The reimbursement may not involve the payment of a sum higher than that to which he is entitled in case of return to the deemed residence.
4. The EDPS shall not reimburse any expenses referred to in the preceding paragraphs where they have actually been met or reimbursed by the employer. For this purpose the SNE shall declare any such payments or reimbursements to the EDPS

Article 17
Missions and mission expenses

1. An SNE may be sent on mission subject to Article 3.
2. Mission expenses shall be reimbursed in accordance with the rules and conditions relating to the payment of mission expenses in force at the EDPS.

Article 18
Training

SNEs shall be entitled to attend training courses organised by the EDPS, if the interests of the EDPS warrant it. The interests of the SNE in attending, in particular with a view to his reinstatement into his original administration after the secondment, shall be considered when a decision is taken on whether to permit attendance.

Article 19
Administrative provisions

1. The SNE shall report to the EDPS on the first day of the secondment to complete the relevant administrative formalities. He shall take up duty on either the first or the sixteenth day of the month.

Chapter IV

Complaints

Article 20

1. Any SNE may submit to the Human Resources Unit of EDPS responsible for appeals under the Staff Regulations a complaint against an act under this Decision by EDPS 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 Head of Personnel 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.²"

Chapter V

Final Provisions

Article 21

The Decision shall take effect on the same day of its adoption and replaces Decision of 30 June 2006.

It shall apply to all new secondments and all renewals of secondment starting on or after the date on which it takes effect.

Done at Brussels, 28 April 2009.

For the EDPS

(signed)

Peter HUSTINX
Supervisor

² 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 EC Treaty.