

MANAGEMENT BOARD DECISION 12/2017 of 30 March 2017

on secondment of national experts to Frontex

THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation¹, in particular Article 62(2)(o) thereof,

Whereas:

- (1) National experts seconded to Frontex enable the Agency to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available by the staff of the Agency.
- (2) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies relating to the management of EU external borders by temporarily assigning experts from the EU Member States to the Agency. For the same reason, steps have to be taken to allow for engagement of experts from Schengen Associated Countries (SACs), candidate countries, and public intergovernmental organisations (IGOs).
- (3) National experts seconded from EU Member States, SACs, candidate countries, and IGOs to Frontex Headquarters (or to any of the places of employment of Frontex staff) are commonly referred to as Frontex Seconded National Experts (SNEs) and the maximum number of SNEs serving in Frontex Headquarters (and at any of the places of employment of Frontex staff) is established annually by a decision of the Management Board. Rules applicable to secondment of border guards or other relevant staff as national experts for deployment to European Border and Coast Guard teams are governed by specific provisions².
- (4) 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 local public administration or an IGO. The secondment of a 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.
- (5) 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 interest of Frontex.

¹ Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC (OJ L 251, 16.9.2016, p. 1).

² Management Board Decision No 25 of 28 November 2012 laying down rules on the secondment of national experts with the tasks and powers of the guest officers to Frontex.

- (6) 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.
- (7) In view of the new tasks of the Agency and of the foreseen significant increase of SNEs in Frontex, it is desirable to update the existing Rules applicable to SNEs namely in the areas of periods of secondment and to enable assignment of SNEs to shift work or standby duty work arrangements.

Frontex Staff Committee was consulted on the proposal on 15 March 2017.

HAS DECIDED AS FOLLOWS:

Chapter I General Provisions

Article 1 Scope and definitions

1. These Rules are applicable to national experts seconded to Frontex Headquarters or any of the places of employment of Frontex staff (hereinafter referred to as Seconded National Experts or SNEs).

Seconded National Experts are persons 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 particular fields.

For the purposes of this Decision, the public administration means all state administrative services at central, federal and regional level, comprising ministries, governmental and parliament services, courts, central banks, and administrative services of local authorities, as well as decentralised administrative services of a state and of its authorities.

The persons covered by these Rules must have worked for their employer on a permanent or contractual basis for at least 12 months before their secondment and must 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 employment and/or administrative status throughout the period of secondment and to inform Frontex 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. A termination of or a change in the SNE's employment and/or administrative status may lead to a termination of his secondment by Frontex, without notice, in accordance with Article 10(2)(c).

2. Notwithstanding the second subparagraph of paragraph 1, the Executive Director may, on a case-by-case basis, authorise the secondment of a SNE from an employer other than state public administration or an IGO if justified by the interests of Frontex in bringing in specific expertise as statutory measure, provided that the SNE's employer:

- o is an independent university or research organisation which does not set out to make profits for redistribution; or
- o 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:

- o it must be attached to a public administration, as defined in paragraph 1, and specifically it must have been created by national legislation or regulation;
- o its financial resources must come primarily from public funding;
- o any activities in which it competes against other private or public entities on the market must represent less than half of its activities.

The Executive Director clarifies, if necessary, the arrangements for implementing the different criteria and communicates them to the Permanent Representations of EU Member States, SACs and the IGOs concerned.

3. Except where the Executive Director grants a derogation by a reasoned decision, a SNE must be national of an EU Member State or of a SAC.
4. Frontex strives to ensure geographical and gender balance and compliance with principles of equal treatment and opportunities, in accordance with the principles set out in Article 1d and Article 27 of the Staff Regulations.
5. Any reference in these Rules to a person of the male sex is 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” mean SNEs to whom, by virtue of a bi-lateral agreement with their employer, Frontex is not liable to pay any of the allowances provided for in Chapter III of this Decision and does not cover any of the expenses provided for in this Decision, other than those related to the performance of SNE’s duties during their secondment.
2. Cost-free SNEs may be seconded from a public administration, as defined in Article 1(1), of EU Member States, of SACs or of a country with which the EU has entered into accession negotiations and which has concluded a specific working arrangement with Frontex on secondment of staff, or from IGO, as part of an arrangement and/or exchange programme with Frontex.
3. The Executive Director may authorise the secondment of cost-free SNEs on a case-by-case basis, taking into consideration their place of origin, the geographical balance and the work to be carried out.
4. Cost-free SNEs are to be taken into account in the maximum number of SNEs indicated annually in the establishment plan of Frontex adopted by the Management Board.

Article 3

Selection Procedure

1. SNEs are selected according to an open and transparent procedure, the practical details of which are decided by the Executive Director³.
2. Applications shall be forwarded by Permanent Representations of Members States, by SAC competent authorities and, where provided for in an Open call for Seconded National Experts, the diplomatic missions of the non-EU member countries whose nationals are eligible for the secondment and the administrations of the IGOs.
3. The secondment shall be authorised by the Executive Director 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-EU member countries whose nationals are eligible for the secondment and the IGOs.

³ Decision of the Executive Director No 2015/68 of 26 September 2015 establishing the procedure applicable to the selection and extension of the period of secondment of Seconded National Experts at Frontex.

Article 4
Period of secondment

1. The initial period of secondment may not be less than three months or more than three years. Secondment may be subsequently renewed up to a total period not exceeding five years. Exceptionally, at the request of the respective Director of Division and where the interests of service warrant it, the Executive Director may authorise one or more extensions of the secondment for maximum of three more years at the end of the five-year period.
2. The initial duration of secondment is specified in the exchange of letters referred to in Article 3(3). Any renewal, extension or change of the period of secondment are subject to an agreement of the respective national authorities confirmed by a new exchange of letters.
3. A SNE, who has already been seconded to Frontex, may be seconded to Frontex another time subject to the following conditions:
 - a. the SNE must continue to meet the conditions for secondment;
 - b. a period of at least three 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 three-year period referred to above.

The minimum period of three years referred to in point (b) does not need to be respected if the previous secondment lasted for less than five years, but in that case the new secondment may not exceed the unexpired part of the five-year period, without prejudice to the possibility of extending it by up to the additional three 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. Tasks and duties of a SNEs are described in the respective Open call. Any significant changes in the tasks, duties or in place of work of a SNE are subject to an agreement of the respective national authorities. SNEs may not perform middle or senior management duties nor deputise for their immediate superior.
2. A SNE may take a 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 Executive Director 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 Executive Director provides the SNE with clear and specific instructions for the missions or meetings in question. The Executive Director may delegate this power to the Division's Director concerned.

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

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

4. Frontex remains solely responsible for approving the results of any tasks performed by a SNE and for signing any official documents arising from them.
5. The SNE's employer and the SNE must (together with respective Frontex entity) ensure that there is no conflict of interest in relation to the SNE's duties while seconded to Frontex.

For this purpose Frontex informs the SNE and his employer before the start of the secondment about the intended duties and asks the SNE and his employer to confirm in writing that they are not aware of any reason why the SNE may not be assigned to those duties.

The employer and the SNE have to inform Frontex of any changes of circumstances during the secondment which could give a rise to any such conflict.

Frontex keeps a copy of all such exchanges of correspondence in its records as part of a personal file of the SNE.

6. Failure on the part of a SNE to comply with his obligations arising from this Decision entitles Frontex to terminate the secondment of the SNE pursuant to Article 10(2)(c).

Article 7 Rights and obligations

1. A Personnel Security Clearance Certificate of a SNE must be presented to Frontex prior to the start of a secondment⁴.

2. During the period of secondment:

- a. The SNE must carry out his duties and conduct 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. A SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside Frontex must seek for a prior authorisation according to respective Frontex rules on prior authorisation for statutory staff members. Before Frontex issues 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 refrains from any form of psychological or sexual harassment.
- d. The SNE may 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 who may, in particular, relieve the SNE of responsibility in this matter.

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.

⁴ In accordance with Frontex Security Notice No R-SN-2017-1 of 27 February 2017.

The SNE who intends to publish, 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 the European Union or 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, Frontex is deemed to have had no objections.

- g. All rights in any work done by the SNE in the performance of his duties are deemed to be 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.
3. Failure to comply with any of the provisions of paragraphs 1 during the period of secondment entitles Frontex to terminate the secondment pursuant to Article 10(2)(c).
 4. At the end of the secondment the SNE continues to have a duty of loyalty to Frontex and is 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 statutory staff of Frontex.
2. The SNE must produce evidence of a thorough knowledge of one of the EU languages and a satisfactory knowledge of another EU language to the extent necessary for the performance of his duties. A SNE from a non-EU member country must produce evidence of a thorough knowledge of one EU language necessary for the performance of his duties.

Article 9

Suspension of secondment

1. At the written request of Frontex, the SNE or his employer, and with the latter's agreement, Frontex may authorise a suspension of secondment and specify the terms applicable. During such suspensions:
 - a. the subsistence allowances referred to in Article 17 are 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 start of a secondment, the respective national public administration or IGO from which the SNE is to be seconded certifies that the SNE remains throughout the whole 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.
2. From the day on which their secondment starts, 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 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. In this case the SNE is responsible for one half of the relevant insurance premium and his contribution is to be deducted monthly from the subsistence allowances referred to in Article 17.

Article 12

Working time arrangements

1. The working time arrangements for SNEs are the same as those in force at Frontex.
2. The SNE serves on a full-time basis throughout the period of secondment. Following a duly justified request from a SNE, the Executive Director may allow the SNE to work part time, provided that the SNE's employer agrees to it and the arrangement is compatible with the interests of Frontex.
3. With the consent of the SNE's employer a SNEs may be assigned, because of the exigencies of the service or safety rules, to work regularly at night, on Saturdays, Sundays or public holidays or to remain on standby duty. The respective working time arrangements applicable to statutory staff apply by analogy to these SNEs.

Article 13

Sick leave

1. The rules in force at Frontex on absence due to sickness or accident apply to SNEs.
2. Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the payment of subsistence allowances referred to in Article 17 is automatically suspended.

Sick leave may not extend beyond the duration of the secondment of the SNE.
3. SNEs who are victims of a work-related injury which occurred during the secondment will continue to receive the subsistence allowance in full throughout the period during which they are unfit for work. These allowances may 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, apply to SNEs.
2. A leave of a SNE is subject to a prior authorisation by his immediate superior. In the event of an unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances are not to be paid to the concerned SNE for the duration of such an absence.
3. Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave in a 12-months period to visit his employer.
4. Days of annual leave not taken by the SNE 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. While on maternity leave, the SNE receives the subsistence allowances referred to in Article 17.
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 length of interruption of the secondment may be added to the end of the secondment if the interests of Frontex warrant it. Alternatively, a SNE may apply for a suspension of her secondment to cover the periods allowed for maternity leave. In that case, the provisions of Article 9 apply by analogy.

Article 16
Management and control

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

Chapter III
Allowances and Expenses

Article 17
Subsistence allowances

1. A SNE is entitled, throughout the period of the secondment, to a daily subsistence allowance and to 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 136.10 EUR; where the distance is 150 km or less, SNE receives 25 % of the daily subsistence allowance, which is 34.03 EUR.
2. The monthly subsistence 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	87.48
> 300	155.52
> 500	252.75
> 800	408.29

> 1300	641.60
> 2000	768.00

3. In a case of cost-free SNEs, the exchange of letters referred to in Article 3(4), stipulates that the allowances referred to in paragraphs 1 and 2 above are not to be paid by Frontex.
4. Subsistence 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 and understood as a remuneration paid by Frontex.

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

The SNE informs Frontex of any allowance similar to the subsistence allowances paid by Frontex which he has received from other sources. This amount is to be deducted from the subsistence allowances paid by Frontex. Following duly justified request from the employer, Frontex may decide not to make this deduction.
5. Daily 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 a SNE starts his secondment, the first 75 days of the subsistence allowances to which he is entitled will 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 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 shall be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE is obliged to return the amount of allowances corresponding to the remainder of that period.
7. Subsistence allowances shall be paid no later than on the 25th day of each month.
8. The amount of subsistence allowances shall be reviewed annually in line with the provision set for annual update of remuneration of statutory staff in Article 65 of the Staff Regulations. The update to subsistence allowances is to take place in the month following the publication of the update in the Official Journal of the EU. Corporate Governance shall be responsible for implementing this provision and new rates for subsistence allowances shall be published in an Administrative Notice by the Director of Corporate Governance.

Article 18
Place of origin

1. For the purposes of this Decision, a "place of origin" means the place where the SNE performed his duties for his employer immediately prior to the secondment. The place of secondment and the place of origin are defined in the exchange of letters mentioned in Article 3(4).
2. If, six months before his secondment to Frontex as a 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 an administration 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 cost-free SNEs, are entitled to a reimbursement of the costs of their travel between their place of origin and the place of secondment, as defined in Article 18, at the beginning and at the end of their secondment.

2. Travel expenses are reimbursed in accordance with relevant rules and condition in force at Frontex.
3. By way of derogation from paragraph 1, a 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 a reimbursement of 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 third party. The Permanent Representation concerned or, as the case may be, the SAC competent authority, IGOs or diplomatic missions of the non-EU member countries concerned inform Frontex to this effect.

Article 20
Missions and mission expenses

1. A 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.

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 Human Resources and Security Unit of Frontex on their first day of secondment to complete the required administrative formalities. SNEs take up duty on either the first or the sixteenth day of a month.
2. SNEs not seconded to Warsaw report to the appropriate Unit of Frontex.

Chapter IV
Complaints

Article 23

1. Without prejudice to the possibilities for instituting proceedings after taking up his position, under the condition and time limits laid down in Article 263 of the Treaty on the Functioning of the European Union, a SNE may submit a complaint to the Executive Director about an act adopted by Frontex under this Decision which adversely affects him, with the exception of decisions which are direct consequences of decisions taken by his employer.
2. 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 on the date on which the latter received such notification. The Executive Director 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

1. This decision enters into force on the day following the date of its adoption.
2. This Decision repeals and replaces Management Board Decision No 22/2009 of 25 June 2009 laying down rules on the Secondment of National Experts to Frontex as amended by Management Board Decision No 24/2013.

Done in Warsaw, 30 March 2017

For the Management Board


Marko Gašperlin
Chairperson