

**DECISION OF THE ADMINISTRATIVE BOARD OF**

**20 March 2007**

**RULES APPLICABLE TO DETACHED NATIONAL EXPERTS ON SECONDMENT TO THE  
EUROPEAN MARITIME SAFETY AGENCY**

THE ADMINISTRATIVE BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY,

Having regard to the Treaty establishing the European Community;

Having regard to the European Parliament and Council Regulation 1406/2002, of 27 June 2002, setting up a European Maritime Safety Agency (hereafter EMSA or the Agency);

Having regard to the Commission Decision C (2006) 2033 of 1 June 2006 concerning the amendment of decision C(2004) 577 of 27 February 2004, laying down rules on the secondment of National Experts to the Commission.

Having regard to the adoption by the Council on 19 December 2006 an adjustment of 2.3% to the salaries and pensions of Community officials and other servants of the European Communities and as a consequence, Seconded National Experts should receive an adjustment of 2.3%.

Whereas:

- (1) Seconded National Experts (SNE) should 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.
- (2) This Decision should foster the exchange of professional experience in, and knowledge of, European policies by temporarily assigning to the Agency experts from the Member States.
- (3) SNEs should be drawn from Government or State departments in Member States but may also be seconded from the private or voluntary sector, the EEA, candidate countries, international organisations or from third countries.
- (4) The rights and obligations of SNEs set out in this Decision should safeguard that they carry out their duties solely with the interest of the Agency in mind.
- (5) In view of the temporary nature of their work and their particular status, it should be provided that SNEs should not take responsibility on behalf of the Agency for the exercise of its public law prerogatives.

HAS DECIDED AS FOLLOWS:

## Chapter I: General Provisions

### *Article 1 Scope*

1. The present rules are applicable to national experts on secondment to EMSA and to national and international civil servants and private sector employees temporarily serving with the EMSA. Experts called for brief consultations ("meeting experts") are covered by the rules on the reimbursement of travel, subsistence and miscellaneous expenses for persons outside the EMSA and are excluded under the rules for national experts.
2. The seconded national experts covered by these rules shall remain in paid employment in an international, national, regional or local administration or in a salaried position in a private-sector firm throughout the period of secondment.
3. Except where the Executive Director grants a derogation, seconded national experts shall be nationals of a Member State of the Community. EMSA shall take account of geographical and gender balance and the principle of equal opportunities when accepting SNEs into its departments.
4. Derogations shall not be required for SNEs from countries belonging to the European Economic Area (EEA) who are seconded under the terms of agreements signed with these countries and under the ad hoc conditions laid down therein.
5. Secondment shall be implemented by an exchange of letters between the Executive Director and the employer. The exchange of letters shall indicate the names of the individuals authorised to lay down detailed arrangements for secondment under these rules. Any letter extending, breaking or terminating the period of secondment shall be sent by the Administration Unit.

### *Article 2 Cost-free seconded national experts*

National civil servants may be seconded as cost-free SNEs for up to the maximum duration of 4 years in the context of bilateral agreements between the Director-General and the employer concerned. Such agreements require the prior approval of the Administrative Board and must indicate the number of SNEs involved and the proposed duties to be performed. These conditions shall also apply to cost-free SNEs from countries belonging to the European Economic Area (EEA) and to candidate countries.

### *Article 3 Private-sector seconded national experts*

The secondment of private-sector SNEs, shall be permitted only where the interests of EMSA warrant the temporary contribution of specific knowledge.

Such secondments shall be authorised on a case-by-case basis by the Executive Director.

### *Article 4 Period of secondment*

1. National experts shall not be seconded for less than three months or more than four years.
2. The probable period of secondment shall be fixed at the outset in an exchange of letters between the EMSA and the employer.
3. By way of derogation, granted by the Executive Director, a national expert who has already served on secondment for a total period of four years may, in response to a

reasoned request from a unit, be seconded a further time subject to the following conditions:

- (a) the SNE must continue to meet the conditions for secondment; and
- (b) a period of at least six years must have elapsed between the end of the previous period of secondment and the submission of an application for a new secondment; if, at the end of a four-year secondment, the national expert receives a direct contract with EMSA, the six year period shall begin to run on expiry of this contract. This provision shall not prevent EMSA from accepting the secondment of a SNE whose initial secondment has lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period.

*Article 5  
Duties*

1. The seconded national expert shall assist the EMSA's staff and carry out the duties assigned to him/her in the context of a predetermined work programme or job description.
2. A seconded national expert shall be excluded from any official act whereby the EMSA exercises its public law prerogatives. Nor shall he enter into a commitment on the EMSA's behalf.
3. A seconded national expert may work in any field where his services are deemed necessary provided there is no conflict with the interests of the EMSA.

*Article 6  
Level, professional experience and knowledge of languages*

1. To qualify for secondment to the Agency a national expert must have at least three years full time experience of administrative, 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.
2. A seconded national expert must have a thorough knowledge of one Community language and a satisfactory knowledge of a second language where this is necessary for the performance of his duties.

*Article 7  
Social Security*

1. A national expert on secondment from a national or international civil service:  
Before the period of secondment begins, the civil service from which the national expert is to be seconded shall certify to EMSA that, throughout the period of secondment, he will remain subject to the social security legislation applicable to that civil service and will assume responsibility for expenses incurred abroad.
2. A national expert on secondment from the private sector:  
Before the period of secondment begins, the expert's employer shall provide EMSA with the certificate referred to in Article 11(1) of Council Regulation (EEC) N° 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) N° 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ L 74 of March 1972).
3. From the day on which their secondment begins, seconded national experts are covered by the EMSA against the risk of accident. The Agency will provide them

with a copy of the terms of this cover on the day on which the expert reports to the personnel department to complete the administrative formalities of the secondment.

#### *Article 8*

##### *Breaks in or termination of periods of secondment*

1. EMSA may authorise breaks in periods of secondment and specify the terms applicable. During such breaks:
  - (i) the allowances referred to in Article 15 and 16 shall not be payable.
  - (ii) the expenses referred to in Articles 19 and 20 shall be reimbursed only if the break is at the EMSA's request.
  - (iii) any reimbursement of remuneration to the national expert's employer under Article 17 shall be automatically suspended during the break.
2. Periods of secondment may be terminated if the interests of the EMSA or the national expert's employer so require or for any other sufficient cause.

### **Chapter II**

#### **Rights and obligations of a National expert on secondment**

#### *Article 9*

##### *Rights and obligations*

1. A seconded national expert shall carry out his/her duties and conduct himself solely with the interests of the EMSA in mind.
2. A seconded national expert shall abstain from any action, and in particular any public expression of opinion, which may reflect on his position.
3. A seconded national expert who, in the performance of his/her duties, is called upon to pronounce on a matter in the handling or outcome of which he/she has a personal interest such as to impair his independence shall inform the Head of Unit to which he is assigned.
4. A seconded national expert shall exercise the greatest discretion with regard to all facts and information coming to his/her knowledge in the course of or in connection with the performance of his duties; he/she shall not in any form disclose to any unauthorised person any document or information not already made public. He/she shall continue to be bound by this obligation after his/her secondment period has terminated.
5. A seconded national expert shall not, whether alone or together with others, publish or cause to be published any matter dealing with the work of the Communities and/or the EMSA without obtaining permission in accordance with the conditions and rules in force at the EMSA. Permission shall be refused only where the proposed publication is liable to prejudice the interests of the Communities and/or the EMSA.
6. All rights in any work done by a seconded national expert in the performance of his/her duties shall be the property of the EMSA.
7. A seconded national expert shall reside at his/her place of secondment or at no greater distance there from as is compatible with the proper performance of his/her duties.
8. A seconded national expert shall assist and tender advice to the superiors to whom he/she is assigned; he/she shall be responsible to them for the performance of the task entrusted to him/her.

### **Chapter III: Working conditions of Seconded National Experts**

#### *Article 10 Working Hours*

1. A seconded national expert shall be bound by the rules on hours of work in force at the EMSA.
2. However, a seconded national expert may be authorised to work part-time.

#### *Article 11 Sick leave*

1. In the event of absence for reasons of sickness or accident, the SNE shall notify his or her Head of unit as soon as possible, stating his or her present address. He or she shall produce a medical certificate if absent for more than three days and may be required to undergo a medical examination arranged by EMSA.
2. If such absence due to sickness or accident of not more than three days exceeds a total of twelve days over a period of twelve months, the SNE shall be required to produce a medical certificate for any further absence due to sickness.
3. Where the period of sick leave exceeds one month or the period of service performed by the SNE whichever is longer, the allowances referred to in Article 15 paragraph 1, shall be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy. Such leave may not extend beyond the duration of the secondment of the person concerned.
4. However, SNEs who are the victim of a work related injury which occurs during the secondment shall continue to receive the allowance in full throughout the period during which they are unfit for work up to the end of the duration of the secondment.

#### *Article 12 Annual leave, special leave and holidays*

1. SNEs shall be entitled to two-and-a-half working days of leave per whole month of service (30 days per calendar year).
2. Leave is subject to prior authorisation by the Head of Unit to which the SNE is assigned.
3. SNEs may, on reasoned application, be granted special leave in the following cases:
  - marriage of the SNE: two days;
  - serious illness of spouse: up to three days;
  - death of spouse: four days;
  - serious illness of a relative in the ascending line: up to two days;
  - death of a relative in the ascending line: two days;
  - birth of a child: ten days;
  - serious illness of a child: up to two days;
  - death of a child: four days;
  - adoption of a child : 20 weeks, or 24 weeks in the case of adoption of a disabled child.
4. Upon a duly justified request of the SNEs employer, up to 2 days of paid special leave in a 12 month period may be granted by EMSA on a case by case basis.

5. However, provisions concerning travelling time, age and category are not applicable to SNEs.
6. Days of annual leave not taken by the end of the secondment shall be forfeited.

*Article 13  
Maternity leave*

1. A SNE who is pregnant shall be granted maternity leave of twenty weeks, during which period she shall receive the allowances fixed on the basis of Article 15.
2. A SNE who is breast-feeding may on request, on the basis of a medical certificate attesting the fact, be granted a special leave for a maximum of four weeks running from the end of her maternity leave, during which period she shall receive the allowances fixed on the basis of Article 15.
3. Where the national legislation of the employer of the SNE grants a longer period, a break in the secondment shall be applied for the period exceeding that granted by EMSA.  
  
A period equivalent to the break shall be added to the end of the secondment if the interests of EMSA warrant it.
4. A SNE may, as an alternative, apply for a break in the secondment to cover the whole of the periods allowed for maternity and breast-feeding leave. In that case, the second sub-paragraph of paragraph (3) above shall apply.

*Article 14  
Management and control*

Management and control of leave, working time and absences shall be the responsibility of the Unit in charge of Human Resources.

## Chapter IV: Allowances and Expenses

### Article 15 Subsistence allowances

1. A SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance. Where the distance between the place of deemed residence and the place of secondment is 150 km or less, the daily allowance shall be 29,44 €; where the distance is more than 150 km, the daily allowance shall be 117,74 €.

If the SNE has not received removal expenses from any source, an additional monthly allowance shall be paid as shown in the table below:

Distance between place of recruitment and place of secondment (km)	Amount in €
0 - 150	0,00
> 150	75,68
> 300	134,54
> 500	218,65
> 800	353,20
> 1300	555,03
> 2000	664,37

This allowance shall be paid monthly in arrears. In the case of cost-free SNEs, the exchange of letters referred to in Article 1, paragraph 5, will stipulate that these allowances shall not be paid.

2. These allowances shall be payable for periods of mission, annual leave, special leave and holidays granted by EMSA.
3. Seconded National Experts who during the three years ending six months before the secondment did habitually reside or carry on their main occupation at a distance of 150 km or less from the place of secondment shall receive a daily allowance reduced by 75%.

For the purpose of this provision, circumstances arising from work done by Seconded National Experts for a State other than that of the place of secondment or for an international organisation shall not be taken into account

4. When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he or she is entitled shall be advanced in the form of a lump sum and the allowances shall not be paid during the corresponding period. If the secondment is ended during the first 75 days, the SNE is obliged to return the amount corresponding to the remaining part of that period
5. The SNE shall inform the Executive Director of any similar payments received from other sources. Any such amounts shall be deducted from the corresponding allowance paid by EMSA pursuant to paragraph (1) above.
6. These daily and monthly allowances may be subject to revision without retroactive effect on the initiative of EMSA, on the basis of the adaptation of the basic salaries of Community officials.

*Article 16  
Additional flat-rate allowance*

1. Except where the place of recruitment of the Seconded national expert is 150 km or less from the place of secondment, he shall, where appropriate, receive an additional flat-rate allowance equal to the difference between the gross annual salary (less family allowances) paid by his employer plus the subsistence allowances paid by the EMSA and the basic salary payable to an official in step 1 of Grade AD6 or Grade AST4, depending on the category to which he is assimilated.
2. These allowances shall be adjusted once a year without retroactive effect on the basis of the adaptation of the basic salaries of Community officials.

*Article 17  
Possible reimbursement of remuneration*

1. If its interests so require, the Agency may reimburse all or part of the net remuneration of a Seconded National Expert during the period of secondment to his or her employer under an agreement to be concluded in advance and recorded in the exchange of letters provided for in Article 1, paragraph 5.
2. The reimbursement of remuneration shall be authorised on a case-by-case basis by the Executive Director, taking into account the specific needs of the Service and, in particular, the need to use SNEs from all Member States.
3. Expenses resulting from the reimbursement will be charged against the SNE allocation of the Agency.

*Article 18  
Place of residence*

1. For the purposes of these Rules, the place of the deemed residence shall be the place where the SNE performed his or her duties for the employer immediately prior to the secondment. The place of secondment shall be the place where EMSA is located. Both places shall be identified in the exchange of letters mentioned in Article 1(5).
2. If, on secondment to EMSA as a SNE, a national expert is already on secondment on behalf of his or her employer in a place different from that in which the latter's head office is located, the place of deemed residence shall be whichever of the two is closer to the place of secondment.
3. The deemed residence shall be the place of secondment:
  - a) where during the three-years ending six months before the start of the secondment, either the SNE's principal residence or his or her principal professional activity was at a place situated 150 km or less from the place of secondment; or
  - b) where at the time of EMSA's request for the secondment, the place of secondment is the principal residence of the SNE's spouse or of any of his or her dependent children.

For the purposes of this provision, residence at 150 km or less of the place of secondment is to be treated as residence at that place.

Circumstances arising from work done by the SNE for another State, or for an international organisation, shall not be taken into account for the purpose of this provision.



*Article 19*  
*Travel expenses*

1. A SNE whose place of the deemed residence is more than 150 km from the place of secondment is entitled to reimbursement of travel expenses:
  - a) For himself/herself
    - from the place of the deemed residence to the place of secondment at the beginning of the period of secondment
    - from the place of secondment to the place of the deemed residence at the end of the period of secondment
  - b) for his or her spouse and dependent children, provided that they live with the SNE and that the removal is to be reimbursed by EMSA;
    - at the beginning of the secondment, on removal from the deemed residence to the place of secondment;
    - at the end of the secondment, from the place of secondment to the deemed residence.
2. Unless the journey is made by air, the amount reimbursed shall be a flat-rate, limited to the cost of the second-class rail fare, without supplements. This shall also apply to journeys made by car. Air travel may be reimbursed up to actual cost of a reduced-price ticket (PEX or APEX), on production of tickets and boarding cards, but only where the standard rail journey exceeds 500 km or where the standard route involves a sea crossing.
3. By way of derogation from the first paragraph, 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 above limits. The reimbursement may not involve the payment of a sum higher than that to which he or she is entitled in case of return to the place of recruitment.
4. If the SNE has effected his removal from his place of recruitment to his place of secondment, he will be entitled each year to a flat-rate payment equal to the cost of a return journey from his place of secondment to his place of recruitment for himself, his spouse and any dependent children on the basis of the conditions in force at the Commission.

*Article 20*  
*Removal expenses*

1. Unless the second sub-paragraph of Article 15(3) applies, a SNE may remove his or her personal effects from the deemed residence to the place of secondment, at the EMSA expense and after obtaining its prior authorisation, pursuant to any internal rules in force at the time concerning reimbursement of removal costs if the following conditions are met:
  - a) the SNE's initial period of secondment must be for two years;
  - b) the SNE's deemed residence must be 100 km or more from the place of secondment;
  - c) the removal must be completed within six months of the starting date of the secondment;
  - d) the authorisation must be requested at least two months before the intended date of removal;
  - e) the removal costs are not being met by the employer (in the event of partial reimbursement by the employer a corresponding amount shall be deducted from the reimbursement by EMSA);

- f) the SNE must produce originals of estimates, receipts and invoices to EMSA and a certificate from the employer confirming that the employer is not reimbursing removal costs (or stating what part of the costs the employer is paying).
2. Subject to paragraphs (3) and (4) below, where the removal to the place of secondment has been reimbursed by EMSA, the SNE shall be entitled at the end of the secondment, after prior authorisation, to reimbursement of removal costs from the place of secondment to the deemed residence, pursuant to any internal rules in force at the time concerning reimbursement of removal costs, subject to conditions (1)(d) to (f) above and the following further conditions:
    - a) the removal cannot take place earlier than three months before the end of the secondment;
    - b) the removal must be completed within six months following the end of the secondment.
  3. A SNE whose secondment is terminated at his or her request or at the employer's request within two years from the start of the secondment shall not be entitled to reimbursement of removal costs to the deemed residence.
  4. Where the SNE proves that his or her principal place of employment after the end of the secondment has changed, removal costs to the new place of employment may be reimbursed but only up to the amount which would have been paid in the case of removal to the deemed residence.  
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*Article 21*  
*Missions and mission expenses*

1. A SNE may be sent on mission subject to Article 5 of these Rules.
2. Mission expenses shall be reimbursed in accordance with the rules and conditions relating to the payment of mission expenses in force at EMSA.

*Article 22*  
*Training*

SNEs shall be entitled to attend training courses organised by EMSA. The reasonable interests of the SNE to attend, in particular in view of the SNE's professional career after the secondment, have to be considered when deciding on the permission to attend courses.

*Article 23*  
*Administrative provisions*

A seconded national expert shall present himself to the Human Resources Department of the Agency on the first day of his secondment to complete the relevant administrative formalities. A SNE shall take up duty either the first or the sixteenth day of the month.

## **Chapter V Final provisions**

*Article 24*  
*Entry into force*

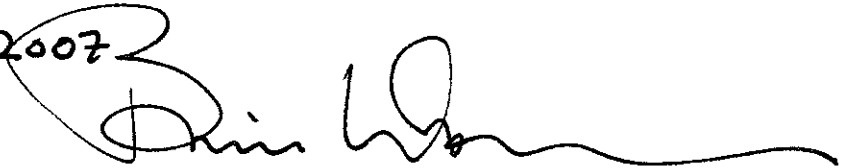
These rules shall enter into force on 1 February 2007. The Rules applicable to National Experts on secondment to the European Maritime Safety Agency adopted by the Administrative Board on 24 November 2006 are withdrawn as from the same date.

*Article 25  
Amendments*

In case of revision of the allowances specified in the equivalent rules applicable to national experts on secondment to the European Commission<sup>1</sup> the Executive Director may decide to amend the allowances provided for in Article 15 accordingly. Each revision to these allowances shall be notified to the Administrative Board in writing.

Any other amendment to the present rules are to be adopted by the Administrative Board ."

Done at Lisbon on 20<sup>th</sup> March 2007



Brian Wadsworth  
Chairman of the Administrative Board

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<sup>1</sup> Commission Decision C (2006) 2033 of 1 June 2006