

EBA DC 304

13 December 2019

## Decision of the Management Board on the Secondment of National Experts

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### The Management Board

**HAVING REGARD** to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), hereinafter referred to as “EBA” or the “Authority”, and in particular Article 68(4) therein;

**HAVING REGARD** to Regulation (EU) 2018/1717 of the European Parliament and of the Council of 14 November 2018 amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority;

**HAVING REGARD** to the Staff Regulations of Officials of the European Union (‘the Staff Regulations’) and the Conditions of Employment of Other Servants of the European Union (‘CEOS’), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/681;

**HAVING REGARD** to the Decision on the Secondment of National Experts EBA/DC/2016/135 of 16 February 2016,

After consulting the Staff Committee,

#### Whereas:

1. Seconded national experts (SNEs) should enable the EBA 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 experts from the members of the European System of Financial Supervision to the EBA, even for short periods. For the same reason, steps should also be taken to facilitate the use of experts drawn from the competent authorities of Member States of the European Free Trade Area (EFTA), candidate countries that have reached an agreement with the Commission on personnel matters, and public intergovernmental organizations (IGOs).
3. In order to ensure that the EBA's independence is not compromised by private interests, it should be stipulated that SNEs must come from a member of the European System of Financial

Supervision or a public IGO. The secondment of an SNE by another employer should be authorised only on a case-by-case basis.

4. In order to avoid any conflicts of interest, the rights and obligations of SNEs, as set out in this Decision, should ensure that they carry out their duties solely in the interests of the EBA.

It is desirable for working conditions and the granting of subsistence allowances to be in line with the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, but without actually assimilating SNEs to these categories.

5. In light of the Authority's relocation to Paris, the EBA's seat has changed and this must be reflected in this decision.
6. With experience, the EBA has found that there is a need for the Executive Director to be able to authorise the secondment of cost-free SNEs on a case-by-case basis in the interest of the service. In this regard, a procedure should be implemented to allow this.

HAS ADOPTED THIS DECISION:

## Title I - Seconded National Experts

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### Chapter 1 – General provisions

#### Article 1 – General principles

1. These Rules shall apply to national experts seconded to the EBA (hereinafter referred to as "SNEs").

SNEs are staff employed by: a) a member of the European System of Financial Supervision (as specified in Article 2 of Regulation (EU) no 1093/2010), b) a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement on staff secondments for participation in EBA's work within the meaning of Article 75 of the Regulation, c) a public IGO, who are seconded to EBA so that it can use their expertise in a particular field.

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.

The SNE's employer shall thus undertake to continue to pay his salary, to maintain the SNE's administrative status throughout the period of secondment and to inform the EBA of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension.

The termination of or change in the SNE's administrative status may lead to the termination of his secondment, without notice, in accordance with Article 10(2) (c).

2. Notwithstanding the second subparagraph of paragraph 1, the Executive Director of the EBA may, on a case-by-case basis, authorise the secondment of an SNE from another employer if the

interests of the EBA warrant bringing in specific expertise as a temporary measure, provided that the SNE's employer:

- is an independent university or research organisation which does not set out to make profits for redistribution; or
  - is in fact part of the public sector. For the purposes of this Decision, to qualify as being part of the public sector the SNE's employer must meet the following conditions:
    - it must be attached to a public administration (meaning all State administrative services at central, federal and regional level, comprising ministries, government and parliament services, the courts, central banks, and the administrative services of local authorities, as well as the decentralised administrative services of the State and of such authorities), and specifically it must have been created by legislation or regulation;
    - any activities in which it competes against other private or public entities on the market must represent less than half of its activities.
3. Except where the Executive Director grants a derogation, an SNE must be a national of an EU or EFTA Member State or a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement on staff secondments with the EBA.
  4. When a secondment is being planned, the EBA shall ensure the geographical and gender balance and compliance with the principle of equal opportunities, in accordance with the principles set out in Article 1d and Article 27 of the Staff Regulations.

The Executive Director shall monitor compliance and, in the event of a serious imbalance at the EBA, shall take the necessary corrective measures to ensure balanced representation of SNEs.

5. Any reference in these Rules to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.

## **Article 2 – Cost-free SNEs**

1. For the purposes of this Decision, “cost-free SNEs” means SNEs for whom the EBA does not pay any of the allowances provided for in Chapter III or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment.
2. Cost-free SNEs may be seconded from the employers set out in Article 1, subject to the same requirements for authorisation by the Executive Director where appropriate, as part of an agreement and/or exchange programme with the EBA.
3. In addition, the Executive Director may authorise the secondment of cost-free SNEs on a case-by-case basis and in the interest of the service, taking into consideration their place of origin, the Department in question, the geographical balance and the work to be carried out. In this case, there shall not be an open procedure and the secondment shall be solely authorised and

implemented by an exchange of letters between the EBA's Executive Director and the cost-free SNE's employer.

4. Cost-free SNEs shall be taken into account in the EBA's annual decision on the final allocation of human resources and on its budget.

### **Article 3 – Selection procedure**

1. SNEs shall be selected according to an open and transparent procedure, taking into account the EBA's rules governing the selection and engagement of the EBA's staff.
2. The secondment shall be authorised by the EBA's Executive Director and implemented by an exchange of letters between the EBA's Executive Director and the SNE's employer.

### **Article 4 – Period of secondment**

1. The initial period of secondment may not be less than six months and more than two years. It may be extended up to a total period not exceeding four years. Exceptionally, at the request of the relevant service and where the interests of the service warrant it, the Executive Director may authorise one or more extensions of the secondment for a maximum of two more years at the end of the four-year period.
2. The initial duration of the secondment shall be specified in the exchange of letters referred to in Article 3. Any extension of the period of secondment shall be the subject of a new exchange of letters.

### **Article 5 – Place of secondment**

SNEs shall be seconded to the EBA's seat, unless decided otherwise by the Executive Director.

### **Article 6 – Tasks**

1. SNEs shall assist the EBA's staff, performing the tasks assigned to them based on professional knowledge and experience. SNEs may not perform middle or senior management duties, even when deputising for their immediate superior.

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

An SNE may, however, represent the EBA in legal proceedings as co-agent with a member of the EBA's staff.

2. The EBA shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
3. The EBA, the SNE's employer and the SNE must ensure that there is no conflict of interest in relation to the SNE's duties while seconded.

For this purpose, the service to which the SNE is to be seconded shall inform the SNE and his employer before the start of the secondment about the intended duties and ask them to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties.

The employer and the SNE shall also undertake to inform the Executive Director of any change of circumstances during the secondment which could give rise to any such conflict.

The EBA shall keep a copy of all such exchanges of correspondence in its records.

4. Where the service to which an SNE is to be seconded considers that the nature of its activities requires particular security precautions, security clearance shall be obtained prior to recruitment.
5. Failure on the part of the SNE to comply with his obligations arising from paragraphs 1 or 3 shall entitle the EBA, if it deems appropriate, to terminate the secondment of the SNE pursuant to Article 10(2)(c).

#### **Article 7 – Rights and obligations**

1. During the period of secondment:
  - a) The SNE shall carry out his duties and conduct himself solely with the interests of the European Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside the EBA. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to the European Union.
  - b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the EBA shall be subject to the relevant rules on prior authorisation for staff members<sup>1</sup>. The service concerned 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 and from any form of psychological or sexual harassment.
  - d) The SNE shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interests such as to impair his independence, and, in particular, family and financial interests. If he has occasion in the performance of his duties to deal with such a matter, he shall immediately inform his line manager, who will take any appropriate measure and 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 the EBA or which have dealings with the EBA, any interests of such kind or magnitude as might impair his independence in the performance of his duties and shall comply with the EBA's internal rules of procedure concerning such interests.

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

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<sup>1</sup> Article 12b of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

- 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. The SNE shall comply with the requirements of professional secrecy and with the EBA's internal rules.
- f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to the work of the European Union shall inform his line manager in advance. Where the line manager is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of the European Union, he shall inform the SNE of his decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the line manager 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 EBA.
  - h) The SNE shall reside 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 shall assist and tender advice to the superiors in the EBA 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 EBA, if it sees fit, to terminate the SNE's secondment pursuant to Article 10(2) (c).
  3. At the end of the secondment the SNE shall continue to have a duty of loyalty to the European Union and 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 the EBA 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 and the Conditions of Employment of Other Servants of the European Communities.
2. The SNE must produce evidence of an excellent knowledge of English as this is the working language of the EBA and a satisfactory knowledge of another European Union language to the extent necessary for the performance of his duties.
3. An SNE from a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement on staff secondments must produce evidence of an excellent knowledge of English as this is the working language of the EBA and a satisfactory



knowledge of another European Union language to the extent necessary for the performance of his duties

#### **Article 9 – Suspension of secondment**

1. At the written request of the SNE, the EBA or the SNE's employer, and with the latter's agreement, the EBA may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:
  - a) the subsistence allowances referred to in Article 17 shall not be payable;
  - b) the travel expenses referred to in Article 20 shall be payable only if the suspension is at the EBA's request.
2. The period of suspension shall not be counted in the period of secondment 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 the EBA 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 the EBA 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 EBA and the SNE's 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 the EBA in the event of failure by the SNE or his employer to respect their obligations under this Decision; the EBA shall immediately inform the SNE and his employer accordingly.

### **Chapter 2 – Working conditions**

#### **Article 11 – Social security**

1. Before the period of secondment begins, the SNE's employer shall certify that he will remain, throughout the period of secondment, subject to the social security legislation applicable to the employer and is responsible for expenses incurred abroad. To this end, the SNE's employer shall provide the EBA with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/722<sup>2</sup>.
2. From the day on which their secondment begins, SNEs shall be covered by the EBA against the risk of accident.
3. An SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by the EBA. The SNE shall pay half the relevant insurance premium and his

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<sup>2</sup> OJ L 74, 27.3.1972, p. 1.

contribution shall be deducted monthly from the subsistence allowances referred to in Article 17.

#### **Article 12 – Working hours**

1. The working hours for SNEs shall be the same as those in force at the EBA<sup>3</sup>.
2. An SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request originating from the service concerned, the Executive Director may allow an SNE to work part time, provided the SNE's employer agrees and the arrangement is compatible with the smooth running of the department and with the interest of the service.

#### **Article 13 – Sick leave**

1. The rules in force at the EBA on absence due to sickness or accident shall apply to SNEs<sup>4</sup>.
2. Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the subsistence allowances referred to in Article 17 shall be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy.
3. 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 subsistence allowances in full throughout the period during which they are unfit for work. These allowances shall not, however, be paid beyond the end of the period of secondment.

#### **Article 14 – Annual and special leave**

1. SNEs shall be entitled to two-and-a-half working days of leave per whole month of service, giving 30 days per calendar year.
2. Leave shall be subject to prior authorisation by the service to which the SNE is seconded. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid for that period.
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-month period to visit his employer.
4. Days of annual leave not taken by the end of the period of secondment shall be forfeited.
5. In the case of part-time work, the annual leave shall be reduced accordingly.
6. SNEs may be granted special leave in accordance with the rules in force at the EBA on special leave.

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<sup>3</sup> Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

<sup>4</sup> Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.



### Article 15 – Maternity leave

1. The rules in force at the EBA on maternity leave shall apply to SNEs<sup>5</sup>. While on maternity leave the SNE shall receive 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 the EBA, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by the EBA.
3. A period equivalent to the break may be added to the end of the secondment if the interests of the EBA warrant it.
4. 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 paragraph (2) shall apply.

### Article 16 – Management and control

Day-to-day administrative and financial management, such as contract management and the calculation and payment of subsistence allowances and travel allowances, shall be the responsibility of the Human Resources Unit working closely with the service to which the SNE is assigned.

## Chapter 3 – Allowances and expenses

### Article 17 – Subsistence allowances

1. An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance equal to the amount established by the Commission each year.
2. These subsistence allowances shall be granted under the same conditions as the expatriation allowance for the EBA staff members<sup>6</sup>.
3. In the case of cost-free SNEs, the exchange of letters referred to in Articles 2 (3) shall stipulate that these allowances will not be paid.
4. The subsistence allowances shall be subject to the correction coefficient of the EBA's seat pursuant to Article 64 of the Staff Regulations.
5. The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances starting from the month following their adoption.
6. These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and shall in no circumstances be construed as remuneration paid by the EBA.
7. Before the secondment, the SNE's employer shall certify to the EBA that during the secondment it will maintain the level of remuneration the SNE was receiving at the time of his secondment.

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<sup>5</sup> Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

<sup>6</sup> Article 4 of Annex VII to the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

8. The SNE shall inform the EBA of any allowance similar to the subsistence allowances received from other sources. This amount shall be deducted from the subsistence allowances. Following a duly justified request from the employer, the EBA may decide not to make this deduction.
9. Subsistence allowances shall be payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by the EBA.
10. 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 shall 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.
11. Subsistence allowances shall be paid no later than the 25th day of each month.

#### **Article 18 – Possible reimbursement of remuneration**

1. If its interests so require, the EBA may reimburse all or part of the gross remuneration of an SNE during the period of secondment to his employer under an agreement to be concluded in advance and recorded in the exchange of letters provided for in Article 3 (2).
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 relevant service and, in particular, the need to use SNEs from Member States.
3. Expenses resulting from reimbursement shall be charged against the SNE allocation of the EBA's general budget.

#### **Article 19 – Place of origin**

1. For the purposes of this Decision, "place of origin" means the place where the SNE performed his duties for his employer at the time of his secondment. The place of origin and place of secondment, as defined in Article 5, shall be identified in the exchange of letters referred to in Articles 2 (3) and 3 (2).

If, six months before his secondment to the EBA as an SNE, a national expert already has his main residence in a place other than that in which the employer's headquarters is located, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

#### **Article 20 – Travel expenses**

1. An SNE, other than those seconded cost-free, shall be entitled for himself, to compensation for the cost of their travel expenses between their place of origin, as defined in Article 19, and the place of secondment at the beginning and end of their secondment.

2. Travel expenses shall be compensated in accordance with the relevant rules and conditions in force at the EBA<sup>7</sup>.
3. By way of derogation from paragraph 1, an SNE who proves that he will be assigned to a place other than his place of origin at the end of the secondment shall be entitled to compensation for the travel expenses to that new place under the conditions laid down in paragraph 2. However, this compensation may not be more than the amount that would have been paid had the SNE returned to his place of origin.
4. The EBA shall not compensate for any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body. The employer concerned shall inform the Human Resources Unit to this effect.

#### **Article 21 – Missions and mission expenses**

1. SNEs may be sent on mission subject to Article 6.
2. Mission expenses shall be paid or reimbursed in accordance with the relevant rules and conditions in force at the EBA<sup>8</sup>.

#### **Article 22 – Training**

SNEs shall be entitled to attend training courses organised by the European Supervisory Authorities if the interests of the EBA warrant it. The interests of the SNE, in particular with a 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 23 – Appraisal**

An SNE or an SNE's employer may request an appraisal annually. The appraisal procedure set out in the EBA's decision on the appraisal of staff shall apply by analogy.

#### **Article 24 – Administrative provisions**

SNEs shall report to the Human Resources Unit on the first day of secondment to complete the requisite administrative formalities. They shall normally take up duty on either the first or the sixteenth day of the month.

### **Chapter 4 – Complaints**

#### **Article 25 – Complaints**

1. Without prejudice to the possibilities for instituting proceedings after taking up his position, under the conditions and time limits laid down in Article 263 of the Treaty on the Functioning of the European Union, any SNE may submit a complaint to the Executive Director about an act

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

<sup>8</sup> Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.

adopted by the EBA 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 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 Executive Director 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.

## TITLE II – Final Provisions

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### Article 26 – Delegation

1. The Executive Director may delegate the powers devolved to him pursuant to this Decision to one or more middle managers of his choice.
2. The employer concerned shall enjoy a close working relationship with the EBA throughout the SNEs' secondment. All correspondence and contacts between the SNE's employer and EBA shall be directed to the EBA's Human Resources Unit.

### Article 27 – Entry into force

This decision repeals the previous decision EBA DC 135 of 16 February 2016. It shall take effect on the day following that of its adoption.

Done in Paris on 13 December 2019.

[signed]

José Manuel Campa  
Chairperson  
For the Management Board