



## **DECISION OF THE GOVERNING BOARD OF THE FUEL CELLS AND HYDROGEN 2 JOINT UNDERTAKING**

### **laying down rules on the secondment of national experts to the FCH 2 JU**

THE GOVERNING BOARD,

Having regard to Council Regulation (EU) No 559/2014 of 6 May 2014 establishing the FCH 2 JU and in particular Article 7 thereof;

Whereas:

- (1) Seconded national experts (SNEs) should enable the FCH 2 Joint Undertaking 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 administrations of the Member States to the FCH 2 JU, even for short periods. For the same reason, steps should also be taken to facilitate the use of experts drawn from the administrations of Member States of the European Free Trade Area (EFTA) and public intergovernmental organisations (IGOs);
- (3) In order to ensure that the independence of the FCH 2 JU programme office which is composed of statutory staff 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;
- (4) In order to avoid any conflict of interests, 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 FCH 2 JU;
- (5) In view of their special status, it should be stipulated that SNEs acting alone will not exercise any of the responsibilities that belong to the FCH 2 JU by virtue of the powers conferred upon it, unless specially empowered to do so in writing by the Executive Director;

- (6) The Permanent Representations of the European Union Member States play a crucial role in implementing these Rules and should therefore enjoy a particularly close working relationship with the FCH 2 JU;
- (7) The FCH2 should disseminate information on the implementation of this Decision to the States Representatives Group.

HAS ADOPTED THIS DECISION:

## **Chapter I - General provisions**

### *Article 1* ***Scope and definitions***

1. These Rules shall apply to national experts seconded to the Fuel Cells and Hydrogen 2 Joint Undertaking (hereinafter referred to as SNEs or seconded national experts).

Seconded national experts are staff employed by a national, regional or local public administration or an intergovernmental organisation (IGO), who are seconded to the FCH 2 JU so that it can use their expertise in a particular field.

For the purposes of this Decision, the public administration means 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.

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 his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform the Executive Director of the FCH 2 JU (hereinafter referred to as "the Executive Director") 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 (permanent official or contract staff member) may lead to the termination of his secondment by the FCH 2 JU, without notice, in accordance with Article 10(2)(c).

2. An SNE must be a national of an EU or EFTA Member State. When a secondment is being planned, the FCH 2 JU 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.
3. 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 seconded national experts***

1. For the purposes of this Decision, “cost-free SNEs” means SNEs for whom the FCH 2 JU does not pay any of the allowances provided for in Chapters III I 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 public administration, as defined in Article 1(1), of an EU or EFTA Member State, or from an IGO, as part of an agreement and/or exchange programme with the FCH 2 JU.
3. In addition, 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 shall be taken into account in the staff establishment plan of the FCH 2 JU approved by the Governing Board in line with the annual budget.

#### *Article 3*

#### ***Selection procedure***

1. SNEs shall be selected according to an open and transparent procedure, the practical details of which shall be decided by the Executive Director.
2. Applications shall be forwarded by the Permanent Representations and, where provided for in the vacancy notice, by the EFTA Secretariat and the administrations of the IGOs.
3. The secondment shall be authorised by the Executive Director on the basis of the annual budget and establishment plan approved by the Governing Board as per article 15 of Financial Rules. The secondment shall be effected by an exchange of letters between the Executive Director and the Permanent Representation of the Member State concerned or, as the case may be, the EFTA Secretariat and the IGOs.
4. A copy of the rules applicable to national experts on secondment to the Joint Undertaking shall be attached to the exchange of letters.

5. In line with Articles 15 of Council Regulation 559/2014 and Article 20 of the Statutes, any vacancy notice related to an SNE post shall state the required conflict of interest clearance and confidentiality requirements as a condition for applying to such a post.

*Article 4*  
***Period of secondment***

1. The initial period of secondment may not be less than six months or more than two years. It may be renewed once or more, up to a total period not exceeding four years. Exceptionally, where the interests of the service warrant it, FCH 2 JU 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. The total period of engagement shall not exceed the lifetime of the Joint Undertaking.
2. The initial duration of the secondment shall be specified in the exchange of letters referred to in Article 3(3). Any extension of the period of secondment shall be the subject of a new exchange of letters.
3. An SNE who has already been seconded to the FCH 2 JU may be seconded to it another time subject to the following conditions:
  - a) the SNE must continue to meet the conditions for secondment
  - b) A period of at least six years must have elapsed between the end of the previous period of secondment and the new secondment. If at the end of the previous secondment the SNE received an employment contract with the FCH 2 JU, the duration of that contract shall be taken into account when calculating the six-year period referred above.

The minimum period of six years referred to at b) shall not be required if the previous secondment lasted for less than four years, but in that case the new secondment shall not exceed the unexpired part of the four-year period, without prejudice to the possibility of extending it by up to two more years, as provided for in paragraph 1.

*Article 5*  
***Place of secondment***

SNEs shall be seconded in Brussels where the seat of FCH 2 JU is located.

*Article 6*  
*Tasks*

1. SNEs shall assist FCH 2 JU temporary staff. They may not perform middle or senior management duties, even when deputising for their immediate superior.
2. An SNE shall take part in missions or external meetings only as part of a delegation led by an FCH 2 JU temporary staff member 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 shall give the SNE clear and specific written instructions on the position to be adopted during the missions or meetings in question.

Under no circumstances may an SNE on his own represent the FCH 2 JU with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.

An SNE may, however, represent the FCH 2 JU in legal proceedings as co-agent with a FCH 2 JU temporary agent.

4. The FCH 2 JU shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
5. The FCH 2 JU, 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 to the FCH 2 JU.

For this purpose, the FCH 2 JU 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 FCH2 shall keep a copy of such exchanges of correspondence in its records.

6. Failure on the part of the SNE to comply with his obligations arising from paragraphs 2, 3 or 5 shall entitle the FCH 2 JU, if it sees fit, 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 FCH 2 JU in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside the FCH 2 JU. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to the FCH 2 JU.
  - b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the FCH 2 JU shall be subject to the Joint Undertaking's rules on prior authorisation for the joint Undertaking's statutory staff<sup>1</sup>. The FCH 2 JU 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<sup>2</sup>.
  - 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 the Executive Director, 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 FCH 2 JU or which have dealings with the FCH 2 JU, any interests of such kind or magnitude as might impair his independence in the performance of his duties.

The SNE shall declare any gainful activity performed in a professional capacity by his spouse, as defined by the Staff Regulations.
  - e) The SNE shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.
  - f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

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

<sup>2</sup> Article 12a of the Staff Regulations and the provisions implementing this Article shall apply *mutatis mutandis*

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to his work on FCH 2 JU or any other EU matters, shall inform the Executive Director in advance. Where the Executive Director is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of FCH 2 JU or EU, 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 Executive Director 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 FCH 2 JU.
  - 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 FCH 2 JU 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 FCH 2 JU, 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 FCH 2 JU 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 FCH 2 JU 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 Union.
2. The SNE must produce evidence of a thorough knowledge of English as the main working language of the FCH 2 JU 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 or his employer, and with the latter's agreement, the FCH 2 JU may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:
  - a) the subsistence allowances referred to in Article 16 shall not be payable;
  - b) the travel expenses referred to in Article 18 shall be payable only if the suspension is at the FCH 2 JU'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 expert's secondment may be terminated at the request of the FCH 2 JU 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 FCH 2 JU 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 FCH 2 JU 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 the FCH 2 JU in the event of failure by the SNE or his employer to respect their obligations under this Decision; the FCH 2 JU shall immediately inform the SNE and his employer accordingly.

## **Chapter II - Working conditions**

*Article 11*  
***Social security***

1. Before the period of secondment begins, the employer from which the SNE is to be seconded shall certify that the SNE will remain, throughout the period of secondment, subject to the social security legislation applicable to the national, regional or local public administration or to the IGO that employs him and is responsible for expenses incurred abroad. To this end,



the SNE's employer shall provide the FCH 2 JU with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72<sup>3</sup>.

2. From the day on which their secondment begins, SNEs shall be covered by the FCH 2 JU against the risk of accident. The FCH 2 JU shall provide them with a copy of the terms of this cover.
3. An SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by the FCH 2 JU. The SNE shall pay half of the relevant insurance premium and his contribution shall be deducted monthly from the subsistence allowances referred to in Article 16.

*Article 12*  
**Working hours**

1. The working hours for SNEs shall be the same as those in force at the FCH 2 JU<sup>4</sup>.
2. An SNE shall serve on a full-time basis throughout the period of secondment. 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 FCH 2 JU.

*Article 13*  
**Sick leave**

1. The rules in force at the FCH 2 JU on absence due to sickness or accident shall apply to SNEs<sup>5</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 16 shall be automatically suspended.

Sick leave may not extend beyond the duration of the secondment of the person concerned.

3. 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.

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<sup>3</sup> OJ L 74, 27.3.1972, p. 1.

<sup>4</sup> Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

<sup>5</sup> Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

*Article 14*  
***Annual and special leave***

1. With the exception of the provisions relating to grade, the rules in force at the FCH 2 JU on annual and special leave, applicable to the JU staff, shall apply to SNEs<sup>6</sup>.
2. Leave shall be subject to prior authorisation by the department 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.
3. Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave by the FCH 2 JU 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.

*Article 15*  
***Maternity leave***

1. The rules in force at the FCH 2 JU on maternity leave shall apply to SNEs<sup>7</sup>. While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 16.
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 FCH 2 JU, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by the FCH 2 JU.  
  
A period equivalent to the break may be added to the end of the secondment if the interests of the FCH 2 JU warrant it.
3. An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.

### **Chapter III - Allowances and expenses**

*Article 16*  
***Subsistence allowances***

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

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<sup>6</sup> Articles 57 and 59a of and Annex V to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

<sup>7</sup> Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

On the date of entry into force of this Decision, the daily subsistence allowance shall be **131,76 €**.

The monthly subsistence allowance shall be paid in accordance with the following table:

Distance between the place of origin/of recruitment and the place of secondment in km	Amount in euros
0-150	<b>0 €</b>
> 150	<b>84,69 €</b>
> 300	<b>150,56 €</b>
> 500	<b>244,68 €</b>
> 800	<b>395,25 €</b>
> 1300	<b>621,10 €</b>
> 2000	<b>743,46 €</b>

2. These subsistence allowances shall be granted under the same conditions as the expatriation allowance for officials<sup>8</sup>.
3. In the case of cost-free SNEs, the exchange of letters referred to in Article 3(3) shall stipulate that these allowances will not be paid.
4. The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances in the month following their adoption.
5. 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 FCH 2 JU.

Before the secondment, the SNE's employer shall certify to the Head of Administration and Finance 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>8</sup> Article 4 of Annex VII to the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

The SNE shall inform the Head of Administration and Finance of any allowance similar to the subsistence allowances paid by the FCH 2 JU received from other sources. This amount shall be deducted from the subsistence allowances paid by the FCH 2 JU. Following a duly justified request from the employer, the FCH 2 JU may decide not to make this deduction.

6. 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 FCH 2 JU.
7. 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 25<sup>th</sup> day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16<sup>th</sup> day of the month, this lump sum shall be paid by the 10<sup>th</sup> day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.
8. Subsistence allowances shall be paid no later than the 25<sup>th</sup> day of each month.

*Article 17*  
***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 secondment shall be the place where the FCH 2 JU is located. Both places shall be identified in the exchange of letters referred to in Article 3(3).
2. If, six months before his secondment to the FCH 2 JU 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 18*  
***Travel expenses***

1. SNEs other than those seconded cost-free, shall be entitled to reimbursement of the cost of their travel between their place of origin and the place of secondment, as defined in Article 17, at the beginning and end of their secondment.

2. Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the FCH 2 JU<sup>9</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 reimbursement of the 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. The FCH 2 JU shall not reimburse any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body. The Permanent Representation concerned or, as the case may be, the EFTA Secretariat or IGOs shall inform the FCH 2 JU to this effect.

*Article 19*  
***Missions and mission expenses***

1. SNEs may be sent on mission subject to Article 6.
2. Mission expenses shall be reimbursed in accordance with the relevant rules and conditions in force at the FCH 2 JU<sup>10</sup>.

*Article 20*  
***Training***

SNEs shall be entitled to attend training courses organised by the FCH 2 JU if the interests of the FCH 2 JU 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 21*  
***Administrative provisions***

SNEs shall report to the Head of Finance and Administration on the first day of secondment to complete the requisite administrative formalities. They shall take up duty on either the first or the sixteenth day of the month.

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<sup>9</sup> Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

<sup>10</sup> Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

## **Chapter IV Complaints**

### *Article 22*

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 adopted by the FCH 2 JU under this Decision which adversely affects him, with the exception of 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 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**

### *Article 23*

The Permanent Representations, EFTA Secretariat and IGOs shall enjoy a close working relationship with FCH 2 JU throughout the SNEs' secondment. All correspondence and contacts between the SNE's employers, particularly those referred to in this Decision, shall be made via the Member State's Permanent Representation, if applicable by EFTA Secretariat or the IGOs.

### *Article 24*

#### ***Entry into force***

This Decision shall take effect on the date following its adoption.

Done at Brussels, on /date/,

For the Governing Board of the FCH 2 JU

Raphael Schoentgen