

## MANAGEMENT BOARD DECISION 27/2017

of 27 September 2017

laying down rules on the secondment of national experts with the tasks and powers of the Members of the Teams to Frontex

### THE MANAGEMENT BOARD

Having regard to the European Border and Coast Guard Regulation (hereafter “Regulation”)<sup>1</sup>, in particular Article 58(4) thereof,

Whereas:

- (1) Frontex is required to contribute to the European Border and Coast Guard Teams (EBCGT) with competent border guards and other relevant staff seconded by the Member States to Frontex in accordance with Article 20(11) of the Regulation.
- (2) The Management Board should, pursuant to Article 58(4) of the Regulation, adopt the provisions applicable to such seconded border guards (hereinafter referred to as “Seconded Members of Teams” or “STM”).
- (3) STMs should not be assimilated into the regular Seconded National Experts (SNE) category due to their particular tasks and powers as Members of Teams pursuant to the Regulation and due to the maximum length of their secondments.
- (4) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies and practices related to the management of the external borders by temporarily assigning experts from the border guard service(s) of Member States to Frontex as STMs.
- (5) In order to enable Frontex to benefit from the most suitable experts for its operational requirements at the EU external borders, STMs must have appropriate training and experience for performing the tasks derived from the Schengen Borders Code<sup>2</sup>.
- (6) In order to avoid any conflict of interest, the rights and obligations of STMs, as set out in this Decision, should ensure that they carry out their duties with the interests of Frontex in mind.
- (7) The participation of Member States in joint operations on the territory of third countries is on voluntary basis and is confirmed prior to any deployment of STMs.
- (8) In case this Decision does not cover a particular situation, the general Frontex Rules<sup>3</sup> on secondment of national experts to Frontex (SNE rules) apply.

### HAS DECIDED AS FOLLOWS:

#### *Article 1* *Scope and definition*

1. This Decision defines the conditions of secondment and of deployment applicable to the border guards and other relevant staff, with the tasks and powers of members of the teams as defined in Article 40 of the Regulation and who are seconded to Frontex in accordance with Article 20 of the Regulation.
2. For the purpose of this Decision, seconding Member State means the home Member State of the STM.

<sup>1</sup> Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard (OJ L 251, 16.9.2016, p. 1).

<sup>2</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 77, 23.3.2016, p. 1).

<sup>3</sup> Management Board Decision 12/2017 of 30 March 2017 on Secondment of national experts to Frontex.

3. For the purpose of this Decision, deployment means the assignment of STMs to Frontex joint operations, pilot projects or rapid interventions in order to perform operational duties defined in the respective operational plan or project plan.
4. The employer of the STM thus undertakes to continue to pay his or her salary, to maintain his or her administrative status throughout the period of secondment and to inform Frontex of any statutory change in this regard. The employer of the STM also continues to be responsible for all his or her social entitlements, particularly in regard to social security and pension. The termination of, or change in, the STM's administrative status may lead to the termination of his or her secondment to Frontex, without prior notice.

*Article 2*  
**Selection procedure**

1. The selection of STMs is to be carried out by Frontex in an open and transparent manner. The detailed selection procedure is established by a Decision of the Executive Director. Frontex launches a Call for Secondment of STMs at least once per year, in which the selection procedure is communicated to the Member States.
2. In order to qualify for secondment to Frontex, the border guards and other relevant staff must have performed at the national level tasks deriving from the Schengen Borders Code for a minimum period of three years preceding the envisaged secondment.
3. STMs are selected according to the profiles of the EBCGT, in accordance with Frontex operational requirements.

*Article 3*  
**Secondment**

1. The secondment is agreed upon between Frontex and the seconding Member State by an exchange of letters between the Executive Director and the employer of the STM via NFPOC.
2. In accordance with the Regulation, such secondment may be for 12 months or more but in any event shall not be for less than three months.
3. Once the secondment agreement is concluded, the selected STMs are included in the EBCGT pool as a Frontex contribution and are deployed by Frontex.

*Article 4*  
**Deployment**

1. The deployment of STMs to an operational area must be possible from the start of the period of secondment and during the entire period of secondment, as defined in the secondment agreement.
2. During the secondment, a STM may be re-deployed by Frontex to different operational areas and different operational activities, respecting the profile of the STM and without the obligation for Frontex to consult the seconding Member State in this regard.
3. Frontex informs the seconding Member States accordingly regarding the re-deployment.
4. STMs may not be deployed to operational activities hosted by their home Member States.
5. In case of deployment in a third country, it will be carried out in line with the provisions laid down in Article 54 of the Regulation.

*Article 5*  
**Tasks and powers of seconded team members**

The tasks and powers of STMs are defined in Article 40 of the Regulation. More detailed operational instructions are defined in the relevant operational plans.

*Article 6*  
**Conflict of interests**

1. Frontex, the seconding Member State and the STM must ensure that there is no conflict of interest in relation to the STMs duties while seconded to Frontex.
2. Upon confirmation of the secondment and during Annual Bilateral Talks, the seconding Member State must inform Frontex of any specific restrictions that might exist regarding the deployment of its STM.

3. The seconding Member State and the STM have to inform Frontex of any change of circumstances during the secondment, which could be grounds for a conflict of interest.
4. Frontex keeps a copy of all such exchanges of correspondence in its records.

*Article 7*  
***Rights and obligations***

During the period of secondment:

1. The STMs carry out their duties and conducts themselves with the interests of Frontex in mind. He or she will neither seek nor take instructions from any government, authority, organisation or person outside of Frontex, except those that are explicitly stipulated in the Operational Plan. He or she carries out the duties assigned to him or her objectively, impartially and in keeping with his or her duty of loyalty to Frontex.
2. The STM has the right to freedom of expression, with due regard for the principles of loyalty and impartiality. A STM who intends to publish or cooperates to publish, whether alone or with others, any text on a matter relating to the work of Frontex, shall comply with the existing Frontex procedure.
3. The Frontex Code of Conduct<sup>4</sup> applies to the STM for the whole duration of the secondment, including periods of leave, and, in particular, the STM is required to refrain from any action or behaviour which might reflect adversely upon his or her position.
4. At the end of the secondment, the STM continues to be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him or her.

*Article 8*  
***Termination of periods of secondment or deployment***

1. Subject to paragraph 2 below, the secondment of the STM may be terminated at the request of Frontex or the employer of the STM, subject to a two-week notice period, or at the request of the STM, subject to the same period of notice and the agreement of Frontex and the employer of the STM.
2. In exceptional circumstances the secondment may be terminated without notice:
  - a. by the STM's employer, if the employer's essential interests so require;
  - b. by Frontex and the STM's employer acting jointly, at the request of the STM addressed to both parties, if the STM's personal or professional interests so require;
  - c. by Frontex in the event of a failure by the STM or his employer to respect their obligations under this Decision or in case of serious sickness or other similar medical cases; Frontex communicates immediately the termination to the relevant Member State and notifies the respective STM in this respect.

*Article 9*  
***Allowances and Expenses***

1. Frontex reimburses fully the costs of accommodation, transportation and other eligible costs incurred by the STM directly linked to the deployment. The maximum levels of these costs are the same as those in the mission rules<sup>5</sup> in force in Frontex for its own staff members. The other eligible costs referred to in this paragraph are defined in the detailed rules referred to in paragraph 5 below.
2. Alternatively Frontex may cover the costs of accommodation and transportation by reserving and booking those services itself and paying directly to the relevant service provider. Frontex decides on whether to use this alternative or not on the basis of criteria defined in the detailed rules referred to in paragraph 5 below.
3. The STM is entitled to a daily subsistence allowance, the level of which is determined in accordance with the mission rules in force in Frontex for its own staff members.

The daily subsistence allowance is intended to cover the STM's living expenses in the place of deployment on a flat-rate basis. The daily subsistence allowance must in no circumstances be construed as remuneration paid by Frontex.

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<sup>4</sup> ED Decision 32/2017 of 10 April 2017 adopting the Code of Conduct applicable to all persons participating in Frontex Operational Activities.

<sup>5</sup> Commission Decision of 18 November 2008 laying down general implementing provisions adopting the Guide to Missions for officials and other servants of the European Commission (C(2008) 6215), applicable in Frontex by Management Board Decision 12/2014 of 21 May 2014 adopting by analogy the European Commission implementing rules.

The STM is to inform Frontex of any allowance similar to the daily subsistence allowance paid by Frontex but received from any other sources. This amount is to be deducted from the daily subsistence allowances paid by Frontex. Following a duly justified request from the seconding Member State, Frontex may decide not to make this deduction.

The daily subsistence allowance is payable for every day of the week, including the compensatory time off granted by Frontex in accordance with Article 12 below.

4. The reimbursements and other payments to the STM pursuant to this Article are paid in Euros regardless of the place of the deployment or the currency in which the concerned costs occurred.
5. Detailed rules for the proper application of this Article are adopted in a Decision of the Executive Director.

#### *Article 10* **Social security and accident insurance**

1. Before secondment begins, the seconding Member State certifies that the STM remains, throughout the period of secondment, subject to social security legislation applicable to the public administration that employs him or her and is responsible for expenses incurred because of their being abroad.
2. As regards additional health care related to the STM's deployment, Frontex covers the additional costs which are not covered by the national social security of the seconding Member State or other similar sources, in accordance with the SNE Rules.
3. STMs are covered against the risk of accident by insurance provided by Frontex.

#### *Article 11* **Working hours**

As regards the working hours, the Staff Regulations<sup>6</sup> will be applied by analogy to the STMs, when integrating them into the working schedule of the concerned operational plans.

#### *Article 12* **Annual Leave Compensation**

1. Two days of compensatory time off (CTO) is granted to a STM by Frontex per each deployment month, in order to compensate for forfeited national annual leave rights. The CTO may be granted in advance, however, not for the first month. The earned CTO days may be taken cumulative after the first deployment month.
2. CTO cannot be taken during the three working days preceding the end of the period of secondment.
3. The use of CTO is subject to prior authorisation by Frontex.
4. In cases where the CTO is taken in advance and the secondment or deployment is terminated earlier than the initially agreed end date and the spent CTO days exceed the earned CTO days, the entitlements referred to in Article 9(3) for the exceeding CTO days are deducted accordingly.
5. National annual leave and other national official holidays are managed by the seconding Member State and cannot be taken by the STM during the period of secondment.
6. Earned CTO days not taken by the end of the secondment are forfeited.
7. In case of unauthorised absence, the entitlements based on this Decision for the duration of such an absence are deducted. Frontex informs the seconding Member States accordingly and has the right to take other measures deemed to be appropriate.
8. In case of sickness, the rules in force in Frontex apply, by analogy where possible, without prejudice to obligations pursuant to the national law of the seconding Member State. In such case, the STM has to inform Frontex as soon as possible.
9. Sick leave does not extend the duration of the secondment of the STM concerned.
10. If the certified sick leave of an STM exceeds 20 cumulative days in a six-month period of secondment, Frontex has the right to terminate the secondment of the STM concerned.
11. Uncertified sick leave may not exceed six days, or three working days in a row, during a six-month period of secondment.

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<sup>6</sup> Council Regulation (EEC, Euratom, ECSC), No 259/68 of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ L 56/01, 4.3.1968, as last amended.

12. In case of serious sickness, which requires medical interventions and/or long recovery periods, the secondment of the STM may be terminated.
13. Frontex may exceptionally grant special leave in justified cases.
14. Frontex does not grant either maternity or paternity leave, nor does it offer the STM the possibility to work part-time during his or her period of secondment to Frontex.
15. Frontex, if so requested, notifies the seconding Member States regarding the days of leave taken by the STM during his or her secondment to Frontex.

*Article 13*  
**Training**

STMs are required to attend training courses organised by Frontex if the interests of Frontex warrant it.

*Article 14*  
**Communication**

All communications between Frontex and the seconding Member State for the purpose of this Decision shall be performed via the National Points of contact.

*Article 15*  
**Repeal**

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

*Article 16*  
**Entry into force**

This Decision enters into force on the day following the day of its adoption.

Done in Tallinn, 27 September 2017

For the Management Board

  
Marko Gašperlin

Chairperson