

Sectoral Scheme on Ancillary Activities for Dutch Universities 2024

TU/e

EINDHOVEN
UNIVERSITY OF
TECHNOLOGY

DATE

January 2024



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This Scheme is based on Article 1.14 of the Collective Labour Agreement for Dutch Universities (CAO NU), and is part of the CAO NU as an annex thereto in accordance with Article J.3 of the CAO NU.

Effective date 1 January 2024, adopted on 20 December 2023.

Artikel 1 – Definitions

1. *Employee in question*: For the purposes of this Scheme, an employee in question is understood to be:
 - a. an employee of the university, with the exception of a student assistant or an employee on an on-call contract who is also enrolled as a student;
 - b. a person with no employment contract with the university but whom the university has appointed as professor or professor by special appointment;
 - c. any other person to whom this Scheme has been declared applicable by the Executive Board of the university.
2. *Ancillary activities*: all work or other activities performed by an employee in question that do not fall under the position of and/or duties assigned to an employee in question at the university, regardless of:
 - a. the full-time equivalent (FTE) under the employment contract with the university;
 - b. the time spent on the ancillary activities;
 - c. whether the employee in question receives any earnings from the ancillary activities; or
 - d. whether the activities are performed during or outside of working hours.
3. *Reportable ancillary activities*: any ancillary activities of an employee in question that are subject to a reporting obligation under this Scheme and that are not within scope of Article 4 of this Scheme.
4. *Earnings from ancillary activities*: remuneration received by an employee in question in exchange for ancillary activities performed. This is also understood to include deferred income and financial interests. Reimbursements of expenses incurred and the maximum tax-exempt volunteering allowances do not qualify as earnings from ancillary activities.

Article 2 - Scope

1. This Scheme applies to all employees in question as defined in Article 1.1 of this Scheme, regardless of whether they fall into the category of academic staff (wetenschappelijk personeel, wp) or support and administrative staff (ondersteunend en beheerspersoneel, obp).
2. This Scheme applies to all employees in question, regardless of the FTE they work at the university. Even if the main position of an employee is a position outside the university, this main position is nonetheless covered by the definition of 'ancillary activities'.

Article 3 – Reporting ancillary activities

1. An employee in question is obliged to report any ancillary activities as referred to in Article 1.3 in accordance with the university's administrative procedure as referred to in Article 6. Such reportable ancillary activities must be reported to the university in writing and/or electronically upon entering the university's employment.

2. If an employee in question does not perform any (reportable) ancillary activities, they must explicitly declare this.
3. An employee in question is obliged to notify the university in writing and/or electronically of the start, changing or ending of reportable ancillary activities as early as possible prior to the start, changing or ending thereof.
4. Candidates for the position of professor or professor by special appointment must disclose their current activities, including any ancillary activities, as well as any financial stakes or interests. It is not necessary to disclose financial stakes and interests that concern investments, shares or share portfolios held through a publicly traded fund, except where these qualify as a substantial interest or where control is exercised by any other means. The Executive Board of the university may decide to also declare this obligation applicable to other positions, except where such an obligation already arises from other legislation and/or regulations and/or codes of conduct.

Article 4 – Ancillary activities not subject to reporting obligation

1. An employee in question is not obliged to report ancillary activities if all of the following conditions are satisfied:
 - a. the ancillary activities have not relation whatsoever to the work they perform at the university; and
 - b. it is completely clear that these ancillary activities cannot harm the university's academic, organisational and/or business interests in any way whatsoever; and
 - c. the ancillary activities do not in any way impede an effective and full performance of their job at the university; and
 - d. the activities are performed outside of working hours; and
 - e. the ancillary activities do not lead to any earnings being awarded for these activities with the proviso that the reimbursement of expenses incurred or a maximum tax-exempt volunteering allowance do not qualify as earnings from ancillary activities.
2. The Executive Board may decide that reporting ancillary activities is not mandatory if an employment contract or stay at the university is for a period of no more than six months.

Article 5 – Permission for and acceptance of reportable ancillary activities

1. An employee in question may not perform any reportable ancillary activities without prior written permission from the university.
2. The university will grant permission for the performance of reportable ancillary activities, except if there are objective reasons as referred to in Section 7:653a of the Dutch Civil Code (BW) that justify refusing this permission. This will in any case apply in the case of any ancillary activities:
 - a. which harm the university's academic, organisational and/or business interests in any way whatsoever, such as by undermining trust in the university's academic integrity and protection of business secrets; or
 - b. which impede the effective and full performance of their job at the university, such in terms of the health and safety of an employee in question or violation of the Working Hours Act (Arbeidstijdenwet); or
 - c. where there is (or appears to be) a conflict of interests where the personal interests of an employee in question are directly contrary to the interests of the university or those of any of its affiliated institutions; or

- d. where there are any other objective reasons justifying the refusal of permission for ancillary activities, such to be substantiated by the university.
3. The university may impose conditions with regard to the permission for the performance of reportable ancillary activities, including among other things:
 - a. that the university will be entitled to all or part of the earnings from the ancillary activities;
 - b. reduction of the FTE under the employment contract with the university;
 - c. offsetting time spent on ancillary activities against holiday entitlement in excess of the statutory entitlement;
 - d. only granting the permission for a specific period;
 - e. requiring an employee in question to pay compensation to the university if any facilities or capacity of the university are used in any way in performing ancillary activities.
 4. Depending on which category earnings from ancillary activities fall into, either the university or the employee in question is entitled to them, or the earnings are divided between both these parties:
 - a. the employee in question is entitled to earnings from ancillary activities that are clearly not related to the employee's position at the university;
 - b. with regard to earnings from ancillary activities that arise directly or indirectly from their position at the university, following consultations on this matter between an employee in question and the university, the university/department is entitled to all or part of these earnings or the employee in question is entitled to these earnings.

The university is also entitled to any earnings that relate to activities that fall under the position of and/or duties assigned to an employee in question, but which are received from an entity other than the university.

5. The following categories of reportable ancillary activities may be accepted by an employee in question before reporting them and before permission has been granted:
 - a. selected public offices, such as municipal council member, provincial council member, water authority board member, member of the House of Representatives or Senate member;
 - b. positions in the judiciary;
 - c. the position of professor at an academic hospital.

Where any ancillary activity could impede the full performance of the job at the university, permission will only be granted if the university and the employee in question make agreements on reducing the FTE under their employment contract and/or their duties at the university.

6. If circumstances change or new insights arise, the university may withdraw its permission for reportable ancillary activities, subject to due observance of Articles 5.2 and 5.5, by giving the employee in question written notice of this withdrawal and the reasons for it.

Article 6 – Administrative procedure for reporting, granting permission, registration and public disclosure

1. For the purposes of establishing the details and enabling the implementation of this Scheme, the university will adopt a detailed procedure or detailed administrative rules as to how reportable ancillary activities are to be reported, how the university grants permission and how these activities are registered and published. The detailed procedure or the detailed administrative rules will also stipulate which officials are responsible for granting permission on behalf of the university.

2. When reporting ancillary activities, employees in question will consent to the public disclosure of these activities and will provide at least the following information:
 - a. the nature of the ancillary activities to be performed;
 - b. the entity or organisation for which the ancillary activities are to be performed;
 - c. the time to be spent on the ancillary activities;
 - d. if any earnings will be received from the ancillary activities.
3. Any permission from the university will be documented and communicated to the employee in question in writing or electronically.
4. Each professor or professor by special appointment is to mention their reportable ancillary activities for which permission has been granted on their publicly accessible profile page on the university website, stating in any case the nature of the activities and for which entity or organisation these are performed. This information will also be accessible through a public register of ancillary activities¹.
5. In derogation of the provisions of Article 6.4, the university may grant an exemption from the obligation to publish the details of ancillary activities if there are compelling reasons for not doing so, such as where this would pose a threat to the personal privacy of the employee or would be incompatible with the interest of the Dutch state or the need to protect knowledge.
6. In consultation with its local consultative bodies, the university may also oblige all its academic staff (wp) and/or senior support and administrative staff (obp) to state their reportable ancillary activities on their publicly accessible profile page on the university website.

Article 7 – Decision, permission and enforcement

1. Within six weeks of receiving a report, the university will decide whether it grants permission for the performance of the reportable ancillary activities, and if so, whether it attaches any conditions to this permission. Provided that it states the reasons for doing so, the university may extend this period by six weeks.
2. If an employee in question fails to comply with this Scheme, the university may take one or measures, such as:
 - a. attaching further conditions to the permission it granted for the performance of reportable ancillary activities;
 - b. withdrawing the permission it granted;
 - c. instructing the employee in question to cease their ancillary activities;
 - d. imposing sanctions under employment law, such as a warning or reprimand, suspension or disciplinary leave of absence, deducting holiday entitlement in excess of the statutory entitlement, demotion, transfer or dismissal.
3. Any measures imposed and the reasons for doing so are to be documented and communicated to the employee in question in writing or electronically.

¹ 1 Based on the details of the design of the public register of ancillary activities, this final sentence will be rephrased if necessary

Article 8 – Periodic declaration on reportable ancillary activities

1. In the annual performance interview or another (assessment) interview, the university will discuss with each employee in question whether the registration of their reportable ancillary activities is still up to date or needs to be updated.
2. To maintain an up-to-date overview of the ancillary activities, the university may require an employee in question to declare that they are not performing any reportable ancillary activities without permission from the university and that the registered overview of reportable ancillary activities is still up to date, or that they are not performing any reportable ancillary activities whatsoever.
3. Furthermore, the university is authorised to actively investigate ancillary activities performed by employees in question, such as by means of spot checks.

This translation of the Sectoral Scheme on Ancillary Activities 2024 is meant as a service to non-Dutchspeaking employees of universities. However, in case of a difference of interpretation, this translation cannot be used for legal purposes. In those cases, the Dutch text of the ‘Sectorale regeling nevenwerkzaamheden Nederlandse Universiteiten’ 2024 is binding.

Each university is to post its own version of the ‘Frequently Asked Questions by Employees’, tailored to its own procedure or administrative rules, on its website as explanatory information along with the text of this Scheme.

Annex to Sectoral Scheme on Ancillary Activities for Dutch Universities 2024

Frequently Asked Questions by Employees

Each university is to post its own version of these ‘Frequently Asked Questions by Employees’, tailored to its own procedure or administrative rules, on its website.

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1. What are ancillary activities?

All work and other activities that do not fall under “the position of and/or duties assigned to” an employee at the university are ancillary activities. These activities are not performed under the responsibility of the university. In addition, the activities of a self-employed professional, for example, or those of a director and major shareholder (DGA) of a private limited company (BV), a partner in a general partnership (VOF) or a director of a foundation, public limited company (NV) or BV may qualify as ancillary activities.

2. What is covered by “the position of and/or duties assigned to” an employee?

Within the university, the duties assigned to you are based on your job profile under the University Job Classification System (UFO), your duties as laid down by the university and/or other agreements made. The duties and activities you are required to perform are based on what you can be reasonably be instructed to do by the university. If you have questions about the duties that have been assigned to you or your UFO profile, you can turn to your supervisor.

Examples of activities that may be part of your job include: participating in an academic committee or consultative body, internally or externally serving as an editor or chief editor and reviewing articles, a professor who writes for a newspaper/magazine/journal, or an expert who gives their opinion on a TV program, including when they do so on behalf of the university and not in a private capacity. Such activities are examples of duties arising from the UFO profile for the position of professor (“disseminating scientific knowledge and insights”). This also applies to the UFO profiles for the positions of associate professor (UD) and full professor (UHD), and partly also to lecturers in higher job levels. However, there can sometimes be ‘grey areas’. Therefore, in case of doubt, you should report the activity, so that the Dean (if you are part of academic staff) or Director (if you are part of support and administrative staff) and/or the HR department can help identify any potential risks with respect to conflicts of interest or academic integrity. If you have been instructed to perform an activity, it is part of your job and thus not an ancillary activity.

3. I spend more time on work activities outside the university than I spend on my job at the university; so which of these two qualifies as ancillary activities?

The activities you perform outside the university qualify as your ancillary activities under the Sectoral Scheme on Ancillary Activities. Examples including working as a lawyer or accountant. Therefore, you must report the activities you perform outside the university as ancillary activities and request permission to perform them. If you are a professor (or if you work at a university that has made it mandatory for staff in certain other positions to report ancillary activities and you hold such a position), you must publish the position you hold outside the university on your publicly accessible web page. This may seem counter-intuitive, as a position outside the university may be your main activity and thus your main position. This is the case, for example, for a professor by special appointment whose main position is outside the university. However, obtaining permission and publishing ancillary activities is essential for safeguarding the (academic) integrity of the university and the employee in question. For these activities, you must comply with the provisions of the Scheme and, if applicable, request permission and publicly disclose them.

4. When does an investment in a company qualify as a substantial interest?

If at least 5% of the shares in a company are owned by you yourself, or jointly by you and a life partner who qualifies as a tax partner (fiscally partner), you have a substantial interest. Even if you and your tax partner own less than 5% of the shares, you may nonetheless have a substantial interest. This is the case, for example, if any of your or your tax partner’s parents, children or grandchildren (or any of their tax partners) own at least 5% of the shares in the company.

5. Am I required to report all ancillary activities?

As a rule, you should report all ancillary activities. Only ancillary activities that meet all the conditions set out in Article 4.1 or 4.2 of this Sectoral Scheme on Ancillary Activities are exempt from the reporting obligation. One of the conditions set out in Article 4.1 is that you do not receive any earnings from your ancillary activities. If you do receive earnings from your ancillary activities, you must report this to the university (Article 6.2). Such earnings are understood to also include any deferred income, such as income from financial stakes or interests. It is not necessary to disclose financial stakes and interests that concern investments, shares or share portfolios held through a publicly traded fund. Reimbursements of expenses incurred and the maximum tax-exempt volunteering allowances do not qualify as earnings from ancillary activities.

Examples of ancillary activities that do not have to be reported include: sitting on the board of an amateur sport club or on a school board. If you are unsure whether certain ancillary activities must be reported, you should ask your supervisor. NB: In addition, a university may designate certain categories of ancillary activities that are deemed to be within scope of Article 4.1 of this Sectoral Scheme on Ancillary Activities, and which therefore do not have to be reported.

6. I am employed at the university for a period not exceeding 6 months, do I have to notify the university authorities of my ancillary activities?

Yes, you must notify the university of your ancillary activities if these activities:

- a. May be detrimental to the academic, organizational and/or business interests of the university or;
- b. May hinder the proper and full performance of your university position or;
- c. May not be in keeping with the status of the institution or;
- d. May result in any conflict of interests with university activities.

You are personally responsible for deciding whether these conditions apply. If you are in doubt, you would be well advised to contact your manager or university contact person.

Only ancillary activities that meet all the conditions set out in Article 4.1 or 4.2 of this Sectoral Scheme on Ancillary Activities are exempt from the reporting obligation.

7. I receive earnings from ancillary activities; can I keep those earnings?

That depends on which category the earnings fall into. Depending on this categorisation, the university is entitled to the earnings, you as an employee are entitled to them, or the earnings are divided between the university and you. The categorisation of earnings from ancillary activities is based on whether the activities relate to and/or arise from your position at the university. This is provided for in Article 5.4. The university is also be entitled to any earnings that relate to activities that do not fall under the position of and/or duties assigned to an employee in question (see the answer to question 2 above), but which are received from an entity other than the university.

8. I receive no earnings from my ancillary activities; am I required to report the ancillary activities?

As a rule, you should report all ancillary activities, even if you receive no earnings from such activities. Only ancillary activities that are exempt from the reporting obligation do not have to be reported. This exemption applies to ancillary activities that meet all the conditions set out in Article 4.1 or 4.2 of this Sectoral Scheme on Ancillary Activities. The mere fact that you receive no earnings from ancillary activities does not exempt you from the obligation to report such activities. This is because regardless of whether you receive earnings from ancillary activities, there may be other factors affecting the university's academic or other interests or affecting an effective performance of you job, such as the fact that the ancillary activities take up too much of your time, that require the reporting of such activities. In addition, when you establish a legal entity or are involved in another organisation as a Management Board or Supervisory Board member or shareholder, you may be obliged to report these ancillary activities, as they may involve deferred income or a possible conflict of interests.

9. How do I request permission for the performance of ancillary activities or changes to these activities?

Via TU/e InSite.

The employee is obliged upon starting employment or prior to accepting new ancillary activities to notify his or her manager of these ancillary activities. This notification should include:

1. A description of the ancillary activities and/or position;
2. The name of the organization and the place where the ancillary activities are performed;
3. The start date of the ancillary activities;
4. The period in which the ancillary activities are performed or the period of appointment;
5. An estimate of the amount of time taken up by the ancillary activities and an indication whether they take place within or outside working hours;
6. Whether any remuneration or other financial interest is involved.

Your manager will test whether the activities notified impinge on the present and future proper and independent performance of university duties and any related income. Your manager then advises the managing director about these aspects.

The managing director takes a final decision and informs the employee by email.

Ancillary activities cannot be approved retroactively. The start date of the ancillary activities takes effect when the final decision to grant permission is made by the managing director.

Regarding the refusal of permission to perform ancillary activities, the employee may submit a dispute to the Arbitration Committee TU/e on the basis of article H4 paragraph 2 CAO NU. A dispute can only be submitted after the employee has demonstrably consulted this subject with his/her line manager and they have not reached an agreement.

10. When an employee in question enters the employment of the university or starts working there, how does the procedure around reporting and permission start?

The employee's manager informs the candidate in the final stage of the selection procedure of the Sectoral Scheme on Ancillary Activities and the procedure mentioned above at point 9.

In addition, prior to their appointment, candidates for the position of professor or professor by special appointment must disclose their ancillary activities, as well as any financial stakes or interests (Article 3.4). When an employment contract, appointment or other agreements on the work to be performed are offered, the new employee in question must be informed that they are obliged to request permission for any ancillary activities in accordance with the university's procedure. If there will be any changes to ancillary activities, the employee in question must always report these on their own initiative.

11. I do lots of small jobs; surely it's impossible to ask for permission every single time?

In the interest of safeguarding the university's academic integrity, it is essential that you report any ancillary activities you perform as transparently as possible. For this reason, it is essential that you request permission for all ancillary activities, including minor jobs. If you regularly do such small jobs

that are not part of your regular duties at the university, you may in consultation with the university opt for requesting general permission once for all such jobs, so that you are not required to report each activity.

In that case, you should ensure that your public disclosure of these ancillary activities makes sufficiently clear whether there are any possible conflicts of interest with external clients. When your ancillary activities are discussed in the annual performance interview or another assessment interview, you should then retrospectively disclose the ancillary activities you performed. However, as a general rule, you should report ancillary activities in advance whenever possible and you should always keep your publicly accessible profile page on the university website up to date.

12. What sanctions can be imposed under the Sectoral Scheme on Ancillary Activities for non-compliance with the Scheme?

As a rule (based on the principles of good employer ship and good employee ship), everyone should adhere to the obligations under the Scheme. In exceptional situations where the rules are deliberately not complied with, sanctions can be imposed. Whether a sanction is imposed depends on the nature and seriousness of the violation of the Scheme and the circumstances that played a role in this. The principles of good employer ship and good employee ship are also relevant in this respect.

Examples of possible sanctions include:

- warning or reprimand;
- suspension or disciplinary leave of absence;
- deducting holiday entitlement in excess of the statutory entitlement (if prohibited activities were performed during working hours);
- demotion;
- transfer;
- dismissal.

The examples above are not intended as an exhaustive list of the sanctions that can be imposed, and it is up to the university to determine the seriousness of the violation and whether a sanction is justified and proportionate in the situation concerned.

13. Sometimes it can take a while before permission is granted for ancillary activities. Will a sanction be imposed if I already performed ancillary activities pending the decision but ultimately do not receive permission to perform the ancillary activities?

There will usually be sufficient time to request permission before you start with the ancillary activities. If that is not the case, no blame will be attached to the employee in question if they start with the ancillary activities pending the permission, except if it was already evident to the employee from a discussion or emails, etc. that permission was not going to be granted. When an employee in question is informed of the decision to refuse permission, they must immediately cease the ancillary activities.