

ANCILLARY ACTIVITIES SCHEME UNIVERSITY OF TWENTE

Introduction

Many staff members at the UT combine their job at the university with a job or professional activities elsewhere. The UT is favourably inclined towards this. Ancillary activities can be an enhancement for the staff member and university alike: these often have a positive effect on the performance of the job, are important for the connection between the university and society, and may contribute to a positive reputation/profile. Besides, the UT wishes to create and encourage activity. Ancillary activities are an inextricable part of this. Proceeding from this fundamentally positive attitude the UT leaves room for ancillary activities. This room, however, is not unlimited. Where ancillary activities may affect the interests of the university (conflict of interest, undesired competition, damage to the university's reputation), a certain degree of regulation is necessary. Transparency, integrity and fairness are leading principles in this context.

Ancillary activities for a spin-off (a company that is set up to commercialise the knowledge developed at the university) call for special attention. For the UT, spin-offs are an important mechanism for knowledge valorisation and technology transfer. In theory, the involvement of staff in spin-offs is not a problem. On the contrary, it is often a condition for a successful spin-off process. Regulation of ancillary activities may not unnecessarily discourage or impede staff members in this regard. At the same time the involvement of staff in spin-offs involves risks: improper use of academic resources, market distortion, and damage to the reputation. This requires a careful weighing up of interests, the outcome of which must also be justifiable towards third parties (the business sector, society). In order to properly weigh up all the interests involved, this scheme contains a separate section on spin-offs with an elaboration of the general assessment criteria for ancillary activities tailored to the spin-off process. In addition, in order to promote the development of a common sense of values, an advisory committee has been set up where casuistry about ancillary activities in relation to spin-offs can be contributed to, assessed and evaluated.

With this scheme, article 1.14 of the Collective Labour Agreement (CAO) Dutch Universities is developed and implemented.

1. Definitions

Ancillary activities are understood to mean:

All paid and unpaid activities that are not part of the university position¹⁾, with the exception of clearly private affairs. It does not make any difference whether this concerns regular ancillary activities that take up much time, or ancillary activities on an ad hoc basis which do not involve a great deal of time. Nor is the extent of the employment contract relevant in this context.

Ancillary activities are for example: employment with another employer, a supervisory directorship or consultancy work for an external organisation; acting as director or associate of a legal entity which has regular contact or pursuant to its structure may have regular contract with the UT, activities as an entrepreneur or proprietor or start-up, or a professional practitioner.

¹⁾ Activities that can be performed as part of the academic job, are not ancillary activities. Any revenues from these activities accrue to the organisational unit where the staff member works.

Directorships and consultancy work directly related to the position and tasks in the context of contract research or education whereby by the UT itself is a contract partner and which are performed in the context of the employment, are not designated as ancillary activities. Lectures and other ad hoc activities performed in the context of the employment are not designated as ancillary activities, either, and need not be reported. It suffices if work arrangements are made about these duties with the immediate superior.

In the first place it is the responsibility of the staff member to assess whether certain activities fall under the ancillary activities as formulated by the UT. In case of doubt, it is recommended to report these.

2. Permission

Performing ancillary activities in the sense of this scheme requires the permission of the competent body (article 1.14 CAO NU). The starting point is that ancillary activities that are not inconsistent with the interests of the university, are allowed. If necessary the competent body may attach further conditions to granting permission.

In case of a change of circumstances, the competent body may attach conditions to previously granted permission, or withdraw its permission.

3. Competent body²⁾

For ancillary activities of deans, scientific directors of research institutes and directors of central departments the Executive Board acts as the competent body.

For ancillary activities of professors, programme directors, senior lecturers and other academic staff the dean of the faculty or the scientific director of the research institute where the person involved has been appointed, is the competent body.

For ancillary activities for educational and research support staff and administrative staff the dean of the faculty, the scientific director of the research institute or the director of the directorate/the service centre is the competent body.

²⁾ This scheme does not apply to members of the Executive Board. The Supervisory Council will make individual arrangements with them about the performance of ancillary activities and the conditions attached to these. These arrangements are based on the Legal Position Members of Executive Boards of Public Universities Decree (*Besluit rechtspositie leden van colleges van bestuur van openbare universiteiten*) (article 2 (2)).

4. Reporting

In the following situations the staff member is obliged to report ancillary activities to the competent body:

- (a) Prior to the commencement of employment.
- (b) If the intention exists to accept ancillary activities after starting employment.
- (c) On the annual stock-taking of ancillary activities, in connection with the annual performance appraisal.
- (d) In case of changes to the ancillary activities for which permission has already been granted.

When reporting ancillary activities, the staff member will provide information on:

- the nature of the ancillary activities
- the organisation for which the ancillary activities are performed
- the duration of the ancillary activities (ad hoc or permanent)
- the time to be spent on the ancillary activities
- the revenues from the ancillary activities

Reporting ancillary activities can be considered as a request for permission and takes place in the way set out by the Executive Board.

5. Assessment criteria

General

The competent body assesses the ancillary activities on the basis of the following criteria:

- (a) **Ancillary activities may not affect the performance of the job**
Starting point is that the staff member is able to (continue to) perform his/her job at the UT. This means that the ancillary activities may not involve so much time, attention and energy that they have a negative effect on the staff member's functioning. Also his/her contactability should be sufficiently guaranteed.
- (b) **Ancillary activities may not affect the interests of the UT**
Ancillary activities that involve the field of activity of the UT, may harm the scientific and professional interests of the UT (competitive disadvantage). In addition, it is conceivable that ancillary activities negatively influence the reputation of the UT.
- (c) **Ancillary activities may not be incompatible with the prestige of the job**
Ancillary activities that in the perception of the environment create an undesired picture, may have a negative effect on the staff member's performance and the performance of others filling a comparable position.

(d) **Each (semblance of) conflict of interest should be avoided**

In the contact with third parties, in performing ancillary activities a clear distinction should be made between the position as a private person and the position as a staff member of the UT. Failing to do so either consciously or unconsciously, may involve abuse of position.

Ancillary activities on behalf of third parties with which the UT maintains a professional relationship (supplier - client) are only allowed if and to the extent that any conflict of interest will be excluded in advance. It is not allowable that staff members who pursuant to their job are involved in the coming about of contracts between the UT and third parties, perform ancillary activities on behalf of these third parties.

Performing ancillary activities on behalf of the UT (the UT is client) is in principle not allowed.

(e) **The use of the university infrastructure for ancillary activities is only allowed if and to the extent that written permission has been given**

In performing ancillary activities the facilities and manpower of the UT may only be used if clear and controllable arrangements have been made in advance. The starting point is that all costs involved are to be passed on.

(f) **It is not allowed to perform ancillary activities within working hours**

Staff members are not allowed to perform ancillary activities within working hours. In so far as it is not against the interests of the unit, staff members may take up leave for performing ancillary activities at times at which they normally carry out duties for the UT. If due to the nature of the job the concept of working hours is difficult to use (board, management and senior academic staff), this criterion does not have to be taken into consideration.

Distinction for spin-offs

A spin-off process roughly follows 5 phases:

- **Research phase:** identification commercialisable research results.
- **Evaluation phase:** assessment of feasibility, decision-making and protection of rights.
- **Pre-start-up phase:** planning process and acquisition of resources.
- **Start-up phase:** transfer of intellectual property rights and actual start spin-off.
- **Growth phase:** business development and product development.

In the research phase, the evaluation phase and the pre-start-up phase the involvement of the staff member in the spin-off process is part of his/her job at the university. The superior is aware of this and makes arrangements (during the direct employee consultation and/or annual performance appraisal) with the staff member about the nature, extent and duration of his/her involvement. The superior informs the competent body in time and adequately about any relevant developments.

From the start-up phase the involvement of the staff member is considered as ancillary activities in the sense of this scheme. This means that permission of the competent body is required.

In order to assess how the ancillary activities for a spin-off relate to the university position and the interests of the UT, in this phase the superior and staff member must make clear arrangements about the following subjects:

- a. Separation of activities and responsibilities.
- b. Time spent.
- c. Use of university resources and the costs involved.
- d. Intellectual property.
- e. Positioning/profiling of the spin-off (in formation).
- f. Any supplier-client relationship with the UT.
- g. Consequences for the employment relationship.
- h. Timetable of the spin-off process.
- i. Periodical evaluations.

These arrangements are laid down in a document that is part of the report on ancillary activities.

Each spin-off process is characterised by its own dynamics. For this reason it is impossible to establish the boundaries in advance. The competent body will decide on a case-by-case basis having carefully considered the interest and the room the UT can and is willing to give to the staff member. The diagram below serves as a guideline for this.

	Duration	Time spent in relation to employment at UT	Use of university resources	Supplier- client relationship with UT
Research phase	Depends on assessment superior	Activities are part of the university position	Permitted	N.a.
Evaluation phase	Depends on assessment superior	Activities are part of the university position	Permitted	N.a.
Pre start-up phase	Depends on assessment superior	Activities are part of the university position	Permitted	N.a.
Commence-ment phase	Maximum 1 year. Extension possible provided university position and activities for spin-off can be properly separated.	Taking up leave, unpaid leave or (temporary) reduction of working hours	At integral cost price	Possible, provided there exists a strict separation of tasks and responsibilities
Growth phase	Maximum 1 year. Extension possible provided university position and activities for spin-off can be properly separated.	Reduction of working hours, if necessary arrangements on termination of employment	At integral cost price	Possible, provided there exists a strict separation of tasks and responsibilities

Advisory committee ancillary activities for spin-offs

If desired, the competent body can present casuistry on ancillary activities for a spin-off to an advisory committee set up for this purpose by the Executive Board. This committee will discuss, assess and evaluate the case presented.

6. Revenues

Revenues from ancillary activities in principle fully accrue to the staff member.

7. Procedure reporting ancillary activities and permission

After receiving notice of the ancillary activities, the superior of the staff member will give an advice. Subsequently the competent body will assess the ancillary activities reported against the assessment criteria laid down in this scheme.

Within 6 weeks after receiving the report, the competent body will decide whether the permission requested will be given. The staff member will be informed in writing of this decision.

If the competent body has the intention to attach conditions to the permission or refuse permission, the competent body will first consult with the staff member. Only after the staff member has been given the opportunity to bring forward his/her views, will the competent body take a decision.

Also if the intention exists to attach further conditions to permission already granted or to withdraw permission, the competent body will only take a decision after having given the staff member the opportunity to present his/her views.

The competent body will explain the reasons if a decision does not, or not fully, meet the request for permission.

Within 6 weeks after the date of it being taken pursuant to the General Administrative Law Act the staff member may file a notice of objection against a decision of the competent body with the Executive Board.

8. Publication

In accordance with the agreements with the Minister of Education, Culture and Science ancillary activities of professors for which permission has been granted, will be published in a manner to be decided by the Executive Board.

9. Hardship clause

It cannot be excluded that in special circumstances a strict application of this scheme will lead to an apparently unfair outcome. The power to deviate from this scheme in certain cases lies with the Executive Board.

10. Effective date

This scheme becomes effective on 1 January 2012.
