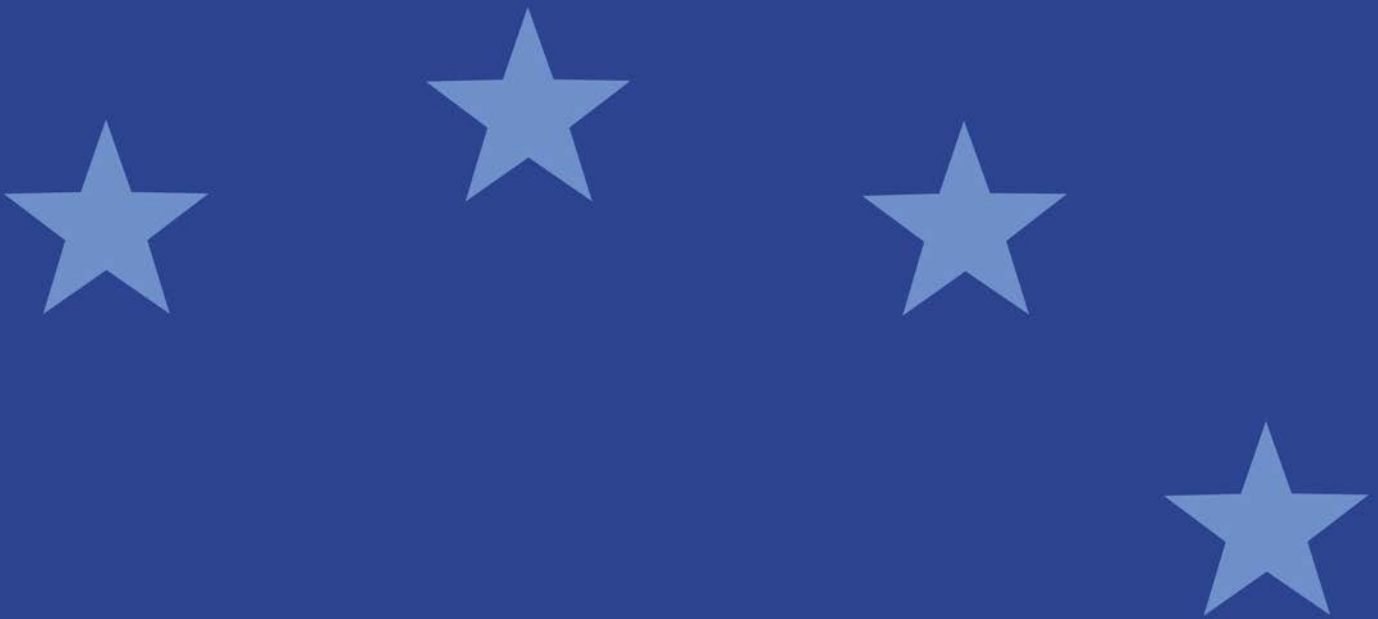




European Securities and  
Markets Authority

# Conflict of interests and ethics

**Policy - ESMA Staff**



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## 1 Document information and approval

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Person	Role	Version	Date	Signature
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Krista Zarina	Drafter	V 4.1	30.09.2020	
Sophie Vuarlot-Dignac	Reviewer	V 4.2	26.10.2020	
Staff Committee	Reviewer	V 4.3	19.11.2020	
ESMA Vice-Chair	Reviewer	V 4.3	30.11.2020	
Management Board	Approver	V 5.0	11.12.2020	[signed]

## 2 Introduction

1. Independence and high standards of professional conduct are crucial for ESMA's performance and reputation. When conflicts of interests are not properly identified and managed, they can seriously endanger the integrity and credibility of an organisation. Defining an effective policy approach to dealing with conflict of interests is therefore essential. The present policy aims to provide guidance on the management of conflicts of interests to ESMA staff.
2. The policy applies to ESMA staff during their time at ESMA, as well as after.
3. **"ESMA staff"** in this document is broadly understood to include Temporary Agents, Contract Agents, Seconded National Experts (SNEs) and trainees. When a specific category of staff is not covered by a declaration requirement, or is the subject of a specific resolution procedure, it will be specified. In this respect, trainees are subject to more limited declaration requirements, namely only the initial confidentiality and commitment declaration and the one regarding prior authorization to deal in financial instruments. Due to their particular position in ESMA's governance, senior managers are subject to a number of specific arrangements: these apply to the ESMA Chair, the Executive Director, the Chair of the CCP Supervisory Committee and the two independent members of the CCP Supervisory Committee established pursuant to

Article 24a of Regulation (EU) No 648/2012. Where an action must be taken in respect of any of the senior managers, the underlying facts need to be systematically forwarded to the Management Board and should any action be needed, a decision will be taken by the Management Board. In the circumstance where the underlying facts relate to the ESMA Chair, the Management Board shall be chaired by the Vice Chair of ESMA.

4. This policy shall apply to SNEs in accordance with and within the scope of the Decision of the Management Board on secondment of national experts<sup>1</sup> (the “Decision on SNEs”). The relevant rules and procedures shall be adapted, where necessary.
5. Please note that there is a specific Conflict of Interests Policy for non-staff.<sup>2</sup> Title III of the Conflict of Interest Policy for non-staff, which sets out specific procedures for identifying and handling potential conflict of interests at the Board of Supervisors, the Management Board and the CCP Supervisory Committee, is also applicable to ESMA senior managers who have voting rights in those decision-making bodies, namely ESMA Chair as well as the Chair and the two independent members of the CCP Supervisory Committee.
6. All emails to the ESMA Ethics Officer should be sent to the following email address: [ethics@esma.europa.eu](mailto:ethics@esma.europa.eu).

### 3 Purpose and scope

7. The immediate objective of an effective conflict of interests policy should be to maintain the integrity of official policy and administrative decisions and of public management generally, recognising that an unresolved conflict of interests may result in abuse of public office.
8. When addressing the effective management of conflict of interests, the following core principles apply<sup>3</sup>:
  - Serving the public interest;
  - Supporting transparency and scrutiny;
  - Promoting individual responsibility and personal example;
  - Promoting a service culture in which conflicts of interests are properly identified and resolved or managed in an appropriately transparent and timely way.

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<sup>1</sup> ESMA/2014/MB/67.

<sup>2</sup> Please see Board of Supervisors' Decision ESMA40-134-3263 on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff.

<sup>3</sup> See OECD, *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences*, 2003 (or <http://www.oecd.org/gov/ethics/managingconflictinterestinthepublicservice.htm>).

9. The objective of the document is to present a policy on the management of conflicts of interests, whether **real or potential**: their prevention, identification, and resolution in an appropriately transparent and timely way. The prevention is based on the definition of activities that might cause conflicts of interests as well as on the general awareness raising. By describing the types of interests that create or may create conflicts, this policy doesn't aim at restricting the activities of members of ESMA staff, but at raising awareness, fostering transparency and inviting to declare, when there may be a possible source of conflict. Indeed the identification of conflicts of interests relies on a set of declarations, to be filled in by those involved in the activities of ESMA and disclosed as appropriate, and the screening process of these declarations. The resolution is based on transparent consequences linked to the interests declared and an enforcement procedure to deal with the most serious cases of breach of these rules. When it comes to the implementation of the procedure, there is no one-size-fits-all. **The approach is tailored to the type of risk** identified as well as the role and position in the organisation of the individual concerned.
10. The other objective of the document is to provide guidance regarding ethics issues and to set standards regarding the appropriate behaviour expected from ESMA staff.
11. This amended policy shall supersede the previous versions of the policy. However, all permissions granted in accordance with these policies, including in respect of outside activities, will remain in place. In addition, declarations for gainful employment of spouses/partners of members of ESMA staff already submitted in accordance with the previous policies do not need to be re-submitted unless there is any substantive change in the spouse's professional situation.

## 4 Legal basis

As may be further amended, repealed or replaced:

- Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, (the "ESMA Regulation") and in particular Article 68(1) and Article 70 thereof;
- The Staff Regulations of Officials of the European Communities in particular, Articles 11, 11a, 12, 12b, 13, 15, 16, 17 and 17a thereof ("the Staff Regulations") and conditions

of employment of other servants of the European Communities<sup>4</sup>, in particular, Articles 11, 54, 81 and 124 thereof (“CEOS”);

- Management Board Decision ESMA/2014/MB/67 ([“Decision on SNEs”](#)), Article 7;
- Commission Decision C(2013) 9051 of 16.12.2013 on leave;
- Commission Decision C(2018) 4048 of 29.06.2018 on outside activities and assignments and on occupational activities after leaving the Service;
- Commission Decision C(2017) 5323 of 27.9.2017 on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel, Guide to missions and authorised travel; and
- The Financial Regulation applicable to the General Budget<sup>5</sup> of the European Communities as well as the detailed rules of application of the Financial Regulation<sup>6</sup>, as implemented by the Management Board Decision on the Financial Regulation of ESMA.

## 5 Reference documents

As may be further amended, repealed or replaced:

- [Board of Supervisors Decision ESMA40-134-3263 on Independence and Decision-Making Processes for avoiding Conflicts of Interest \(Conflict of Interest Policy\) for Non-Staff;](#)
- [Management Board Decision ESMA/2011/MB/6, Code of Good Administrative Behaviour;](#)
- [Procedure for management of exceptions and non compliance, ESMA/2013/ED/55;](#)
- [Management Board Decision ESMA64-87-170, Decision on the conduct of administrative inquiries and disciplinary procedures;](#)
- [Information Security Acceptable Use Policy, ESMA/2014/INT/131;](#) and

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<sup>4</sup> Regulation No 31 (EEC), 11(EAEC), laying down the Staff Regulations and Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community laid down by Council Regulations No 31 (EEC) and No 11 (EAEC) of 18.12.1961, OJ 45, 14.6.1962.

<sup>5</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, OJ L 193, 30.7.2018, p. 1–222.

<sup>6</sup> Commission Decision (EU) 2018/1520 of 9 October 2018 repealing Delegated Regulation (EU) No 1268/2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union, OJ L 256, 12.10.2018, p. 67–83.



- [Stakeholder meetings procedure, ESMA/2016/INT/075.](#)

## 6 Definition of conflict of interests

### 6.1 General definition

12. When a member of ESMA staff is carrying out the tasks conferred upon him/her by ESMA, his/her conduct and decision-making has to be irreproachable and guided by the following principles:

- **Independence:** conduct and decision-making should be determined by the need to serve the common good and the interests of the Union, and never by any other interests whether private or otherwise or as a result, for example, of political pressure. In particular, a member of ESMA staff shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.
- **Impartiality:** in any decisions a member of ESMA staff is called upon to make, their approach should be unbiased.
- **Objectivity:** when drawing conclusions, these should be balanced and based on a thorough analysis of the facts and the legal background.
- **Loyalty:** loyalty towards ESMA is essential for maintaining its independence and achieving its mission.

13. A **conflict of interests** means a conflict between the public duty and private interests of an individual or interests of his/her close family members, in which an individual has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities, or could compromise his/her impartiality, objectivity or independence (for example from another Institution or public body).

14. A **potential conflict** arises where an individual has private interests which are such that a conflict of interests would arise if the individual were to become involved in relevant (i.e. conflicting) official responsibilities in the future.

15. **Interests of close family members** means interests (as defined above) held by spouses/partners or family members dependent on persons subject to this policy.

16. In the context of the above definitions, “**private interests**” are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the individual. A conflict of interests may involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to influence improperly the individual’s performance of his/her duty.

17. **Sensitive information** means classified information (including “ESMA restricted” and “ESMA confidential” information) obtained while working at ESMA either as regards the policy making or supervisory process, recruitment, a procurement process, or a Breach of Union Law procedure.

## 6.2 Prohibited interests

18. For the purposes of this policy, the following interests shall always be considered as creating a conflict of interests and are thus strictly prohibited:
- the holding of any financial instrument relating to financial market participants that are subject to ESMA’s direct supervision;
  - membership in a managing body or equivalent structure meaning any participation in the internal decision-making (e.g. board membership, directorship) of any financial market participant directly supervised by ESMA, or a trade association of such persons;
  - employment or consultancy, meaning any form of regular, occasional or ad hoc occupation or business, part-time or full-time, paid or unpaid, including self-employment, in or to any financial market participant directly supervised by ESMA, or a trade association of such persons. This includes also services provided on an honorary basis (i.e. for free or without the payment of fees or emoluments) and any advice related to products, their development and/or assessment methods thereof.
19. For the purpose of this policy, interests in respect of personal insurance policies, collective investment funds, investment portfolios where full discretion is given to the investment manager or deposits contracted as a regular customer are not regarded as prohibited interests.

## 6.3 Types of interests that can create a conflict situation

20. By describing the different types of interests, and unless explicitly provided for, this policy does not aim at forbidding members of ESMA staff to undertake the listed activities or restrain their freedom.
21. The purpose of describing in details the different types of interests that can create a conflict of interests aims at raising awareness amongst members of ESMA staff. By encouraging members of ESMA staff to be transparent about their interests, when these have a potential to be perceived as conflicting with their current duties, the policy aims at fostering a prompt resolution. **It does not mean that each of the following interests taken individually would be considered as creating a conflict for all individuals at all times.** It also means that the following list, while detailed, is not exhaustive.

### 6.3.1 Economic and financial interests

22. Any financial interest meaning any economic stake or share in a body, in particular in any financial market participant, carrying out any of the activities falling under ESMA's scope of action (as defined in Article 1(2) and (3) of the ESMA Regulation), including the stocks, equities or bonds thereof, or of one of its subsidiaries or of a company in which it has a holding. This also includes any financial interest in a company that is participating in a procurement process organised by ESMA.
23. Any other interests which procure pecuniary benefits.
24. For the avoidance of doubt, this includes investments in virtual currencies, unless they are purchased for immediate use as a payment method.
25. For the purpose of this policy, personal insurance policies, collective investment funds<sup>7</sup>, investment portfolios where full discretion is given to the investment manager or deposits contracted as a regular customer are not regarded as economic and financial interests.

### 6.3.2 Memberships

26. Memberships of a managing body or equivalent structure meaning any participation in the internal decision-making (e.g. board membership, directorship) of a public or private entity carrying out any of the activities falling under ESMA's scope of action.
27. Other memberships or affiliations meaning any membership or affiliation not falling under the previous paragraph and relevant for the purposes of the present policy, to any body carrying out any of the activities on which ESMA's outputs impact, including professional organisations.

### 6.3.3 Employment, consultancy

28. Employment or consultancy, meaning any form of regular, occasional or ad hoc occupation or business, part-time or full-time, paid or unpaid, including self-employment, in or to any legal or natural person carrying out any of the activities falling under ESMA's scope of action (as defined in Article 1(2) and (3) of the ESMA Regulation), or a trade association of such persons. This includes also services provided on an honorary basis (i.e. for free or without the payment of fees or emoluments) and any advice related to products, their development and/or assessment methods thereof.

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<sup>7</sup> The reason for exclusion of personal insurance policies and collective investment funds is that persons investing through such schemes have no influence over the investment strategy or choice of investment.

#### 6.3.4 Intellectual property rights

29. Intellectual property rights meaning rights on the subject matter granted to creators and owners of works that are the result of human intellectual creativity and may lead to a financial gain.

## 7 Declarations

30. Declarations serve the purpose of identifying potential or actual conflicts of interests and promoting a culture of transparency. They serve as a basis for the screening process. To this end, they are collected on a regular basis (for example the annual declaration of interests by staff) or on an ad-hoc basis, for example when a member of ESMA staff becomes aware that he/she is at risk of a conflict of interests.
31. As regards declarations submitted by ESMA Chair, the Executive Director, the Chair and the two independent members of the CCP Supervisory Committee, the Ethics Officer will always refer the matter to the Management Board for decision in case of actual or potential conflicts of interests. Where no conflict of interest arises, the Ethics Officer may take a decision without referring the matter to the Management Board. All decisions of the Ethics Officer can be made available to the Management Board upon request.
32. It is essential to highlight that members of ESMA staff bear responsibility for disclosing their private interests.
33. Declarations shall be made via the [paperless tool](#) by completing the corresponding templates:
- Template 3: Annual declaration of interests;
  - Template 4: Declaration in the event of an ad-hoc conflict of interests;
  - Template 5: Gainful employment of spouse;
  - Template 6: Prior authorisation to engage in an outside activity/public office, whether gainful or not, or to carry out an assignment outside the Union;
  - Template 7: Prior authorisation to make a publication or speech, whether gainful or not; and
  - Template 8: Request for clearance to deal in financial instruments.
34. Regarding requests for clearance to deal in financial instruments, declarations shall be made by completing Template 8, which is available on the [Ethics' intranet corner](#).

35. The templates to be completed upon joining ESMA are made available upon request at [ethics@esma.europa.eu](mailto:ethics@esma.europa.eu). In addition, members of staff may also consult the templates to be completed upon joining ESMA on the [Ethics' intranet corner](#):

- Template 1: Confidentiality undertaking; and
- Template 2: Initial declaration of interests.

## 7.1 Confidentiality and commitment

36. Members of ESMA staff are subject to strict professional secrecy obligations while working at ESMA and after having left, under Article 16 and 17 of the Staff Regulations/CEOS as well as under Article 70 of the ESMA Regulation, sectoral legislation or confidentiality agreements, as applicable.

37. In particular, in performing their duties members of ESMA staff are expected to:

- observe absolute confidentiality concerning ESMA's affairs, other than as required to perform your usual duties;
- keep information confidential, even if it is favourable and not adverse to the financial market participant concerned;
- take particular care in casual, social or other contact with journalists, financial market participants and individuals and other people operating in the financial markets; and
- seek guidance if uncertain as to whether confidential information can be disclosed.

### 7.1.1 Process

38. The confidentiality and commitment declaration is signed upon joining ESMA. It is a declaration whereby members of ESMA staff agree and acknowledge their obligations regarding information obtained in the course of the work carried out for ESMA.

39. This declaration is collected:

- by the Ethics Officer for senior managers;
- by HR for other Temporary Agents and for Contract Agents, SNEs and trainees;

40. The confidentiality and commitment declaration shall be made in writing using Template 1.

41. The declarations of the ESMA Chair, the Executive Director, the Chair and the two independent members of the CCP Supervisory Committee shall be made public via ESMA's website.

## 7.2 Declaration of interests

42. Article 11 of the Staff Regulations requires the successful candidates to provide information of any potential or actual conflict of interests they may have before recruitment by ESMA.
43. Article 11a of the Staff Regulations states that members of staff are under the obligation to refrain from dealing, directly or indirectly, with matters in which they have private interests which are such as to impair their independence.
44. Where a successful candidate has previously been employed at or provided consultancy services to an entity supervised by ESMA during the year of or before joining ESMA, such candidate shall not be given tasks related to the exercise of direct supervisory activities in respect of the entity at which the candidate was previously employed or provided consultancy services for a period of at least one year (i.e. a “cooling off” period). By way of exception, when due to the structure of the supervisory teams it is not possible to detach completely that staff member from activities directly related to the entity at which the candidate was previously employed, the Head of Unit/Department shall adopt the necessary arrangements, in writing, to manage any potential conflict.
45. The declaration of interests (initial and annual) is the declaration whereby members of ESMA staff<sup>8</sup>:
- confirm they are aware of their obligation under the policy to declare those interests that may be a source of conflict;
  - confirm that they do not have any prohibited interest (as referred to in section 6.2);
  - declare any interest, past or present, that fall in any of the types of interest mentioned in section 6.3 of this policy, including any financial interests.

### 7.2.1 Process

46. The initial declaration of interests shall be made before recruitment by ESMA in writing using Template 2. HR will collect the declaration and then submit it to the staff member’s manager and to the Ethics Officer. The Ethics Officer will collect the initial declarations of senior managers and may seek the opinion of the ESMA Chair, or of the ESMA Vice-Chair in case the initial declaration of interests relates to the post of ESMA Chair.
47. Staff members shall submit the annual declaration of interests to ESMA’s Ethics Officer via the paperless tool using Template 3, during the first quarter of each year.

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<sup>8</sup> Trainees are not subject to this obligation.

48. The declaration of interests of the ESMA Chair, the Executive Director, the Chair and the two independent members of the CCP Supervisory Committee shall be made public via ESMA's website.
49. Upon receipt, the Ethics Officer shall screen the declaration of interest in order to assess if a conflict of interests exists, according to the principles described in section 8.2.
50. The Ethics Officer shall check that the forms are duly signed and complete. The list of declarations received shall be checked against the most recent list of staff members.
51. In case a potential conflict of interests is declared, the Ethics Officer will examine whether any preventive measure is possible (section 8.3). Should a conflict of interests be identified as a result of the screening process and no preventive measure could be taken, the Ethics Officer will initiate the management and resolution process (section 10).
52. For the list of financial assets, the declarations shall be systematically checked to verify that non-authorised financial assets are not held.
53. Systematic analyses involve comparisons between declarations from one year to another, where applicable.
54. The results of the screening are presented in the annual activity report to the Executive Director.

### **7.3 Ad-hoc declarations of interests<sup>9</sup>**

55. After submission of the annual declaration of interests, it may occur that members of ESMA staff become aware of a source of conflict of interests not previously declared, for instance on the occasion of a meeting and the discussion of a particular agenda point or in the context of intended future employment. In such a case, an ad-hoc declaration shall be made. This allows minimising the reporting burden on this category of members of ESMA staff and processing on ESMA's side, whilst ensuring transparency and monitoring.
56. Potential conflicts of interests may also arise in the context of recruitment, when ESMA staff participate in a Selection Board and turn out to know at least one candidate in a personal capacity or in a close professional relationship. All Selection Board members are prompted by HR to complete a specific declaration (Declaration of absence of conflict of interests).

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<sup>9</sup> Trainees are not subject to this obligation.

### 7.3.1 Process

57. Except for declarations made in the context of Selection Boards, the ad-hoc declaration of interests shall be submitted to ESMA's Ethics Officer via the paperless tool using Template 4.
58. In case of a potential conflict of interests, the Ethics Officer shall examine, together with the member of staff, whether preventive measures can be taken. The Ethics Officer may consult the manager of the staff member for that purpose. Should a conflict of interests be identified, the Ethics Officer will initiate the management and resolution process (section 10).
59. In case of declarations made by Selection Board members, the Ethics Officer will make an assessment of the situation described in each declaration, having regard to the dedicated Guidelines.<sup>10</sup> Where the Ethics Officer assesses that the nature of the situation would not support the concerned member's continued participation in the Selection Board for all candidates, the Ethics Officer will refer the matter to the Executive Director who will decide whether the member can remain in the Selection Board for all candidates, may remain in the Selection Board subject to specific restrictions or needs to be replaced.
60. An overview of the screened specific declarations received is presented on an annual basis in an activity report to the Executive Director.

## 7.4 Gifts and hospitality<sup>11</sup>

### 7.4.1 Gifts

61. As a general rule all gifts that have more than merely symbolic value (i.e. value which for each gift, such as diaries, calendars, small desk items, a box of chocolates, a bottle of wine, does not go over EUR 50) shall either be refused, given to charity organisations or for charity purposes or destroyed.
62. Gifts that have merely symbolic value may be shared with members of ESMA staff. Any sum of money must always be refused.

### 7.4.2 Hospitality

63. Hospitality offers such as invitations to entertainment, cultural or sporting events that are offered to a member of ESMA staff are gifts in kind and shall, as a general rule, be refused. However, occasional invitations to working lunches or dinners in which a

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<sup>10</sup> Guidelines on completing the Declaration of absence of conflict of interests for Selection Boards (ESMA-40-134-2206) available on the Ethics and Integrity intranet page at <https://intranet.esma.europa.eu/lex/Pages/Ethics-and-Integrity.aspx>

<sup>11</sup> Trainees are not subject to this obligation.



member of ESMA staff participates in the exercise of his/her duties can in principle be accepted, for example in a canteen or local restaurant. In the case of a local restaurant, members of ESMA staff are expected to split the bill and request reimbursement from ESMA. When participating in conferences or other public, work-related events members of ESMA staff can accept working lunches or dinners, which as such are not prejudicial to the interests and public image of ESMA.

64. As a general rule staff members should keep in mind that there is no such a thing as a free lunch. In any case of doubt, staff members are invited to consult their hierarchy or the Ethics Officer.
65. Gifts and hospitality motivated solely by a family relationship or personal friendship, or in a context not related in any way to the staff member's duties do not, in principle, fall under the provisions of Article 11 of the Staff Regulations. However, even here situations may arise when acceptance can be perceived as compromising the staff member's independence.

#### 7.4.3 Missions

66. If members of ESMA staff are going on mission to speak at a conference, they may not under any circumstances accept any remuneration that is offered in exchange for any work done.
67. If an event is sponsored by a private company, industry association or similar, the Head of Unit/Department shall assess whether the "sponsorship" dominates the event, on a case-by-case basis. If a member of ESMA staff wishes to go on a mission, where the "sponsorship" of a private company, industry association or similar dominates the event, he/she shall provide a written justification beforehand to his/her Head of Unit/Department. If the Head of Unit/Department decides that participating in such event is in the interest of the service, mission expenses shall be covered by ESMA.
68. Any travel, accommodation or other mission costs paid by the organiser or sponsor should be in line with ESMA's missions guide<sup>12</sup>.
69. SNEs should also be aware of specific rules regarding their conduct on mission adopted by the Management Board.<sup>13</sup>

### 7.5 Gainful employment of spouses/partners<sup>14</sup>

70. Under Article 13 of the Staff Regulations, members of staff are under the obligation to inform ESMA if their spouse is "in gainful employment" (i.e. is doing paid work). This is

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<sup>12</sup> Commission Decision C(2017) 5323 of 27.9.2017 on the general provisions for implementing Articles 11, 12 and 13 of Annex VII to the Staff Regulations of Officials (mission expenses) and on authorised travel, Guide to missions and authorised travel.

<sup>13</sup> Please see the Decision on SNEs, Article 7.

<sup>14</sup> Trainees are not subject to this obligation.

in order to prevent any appearance of a conflict of interests, which could arise because of the two persons' respective professional activities. In this respect, unmarried, legally recognised partners are regarded as spouses.

### 7.5.1 Process

71. The declaration of gainful employment of spouses/partners shall be submitted to ESMA's Ethics Officer via the paperless tool using Template 5.
72. Upon receiving the declaration, the Ethics Officer will provide feedback, in general, within 10 days using the feedback form. If necessary, the Ethics Officer may consult the Head of Unit/Department of the concerned staff member.
73. If the Ethics Officer considers that the nature of the spouse's employment is incompatible with the activities of the member of ESMA staff, the Ethics Officer shall notify the Executive Director of his/her concerns. In this case, if ESMA staff is unable to give an undertaking that his/her spouse's activity will cease within a specified period, the Executive Director may decide, after consulting the manager of the concerned staff member and the Joint Committee<sup>15</sup>, once it is established, to transfer the staff member to another post, or take any other measure appropriate to prevent or resolve the conflict.
74. Where a request concerns the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee, the Ethics Officer shall systematically forward the request to the Management Board, which shall take a decision within 10 days using the feedback form.
75. Decisions taken shall be recorded by the Ethics Officer. An overview of the decisions taken is presented on an annual basis in an activity report to the Executive Director.
76. An individual should also declare any substantive change in his/her spouse's professional situation to the Ethics Officer.

## 7.6 Outside activities whilst in active employment<sup>16</sup>

77. It is fundamental to ensure that members of ESMA staff ask for prior authorisation to take on outside activities<sup>17</sup>. ESMA has adopted by analogy the rules of Commission Decision C(2018) 4048 on outside activities and assignments and on occupational activities after leaving the Service. The Commission Decision sets out the obligations

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<sup>15</sup> This Joint Committee is an internal ESMA committee (see Section 2 of Annex II to the Staff Regulations). It is not the same as the Joint Committee of the ESAs.

<sup>16</sup> Trainees are not subject to this obligation.

<sup>17</sup> Commission Decision C(2018) 4048 of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service defines outside activities "as referred to in Article 12b of the Staff Regulations means any activity, paid or unpaid, that: (i) is not part of the staff member's duties at the Commission, including those covered by a mission order or an authorisation to travel for work-related reasons such as giving a speech or a presentation, and (ii) cannot reasonably be considered a hobby or leisure activity."

regarding and the criteria for the assessment of a request for outside activities and can be found in Annex I.

78. For the avoidance of any doubt, certain outside activities can be by nature in the interest of the service (such as FSAPs). This is to be assessed on a case-by-case basis by the relevant manager. In that case, they are to be treated as missions. Only where the manager deems these outside activities not to be in the interest of the service, they shall be submitted to the Ethics Officer, using Template 6.

### 7.6.1 Process

79. The request shall be submitted to the Ethics Officer, acting on a basis of a delegation from the Executive Director, for the review and the approval of requests for outside activities. The Ethics Officer shall consult the Executive Director where necessary.

80. The request for engaging in outside activities shall be made via the paperless tool using Template 6.

81. Any request shall be submitted two months before the member of the staff plans to start the activity in question, to allow sufficient time for the processing of the request.

82. Before taking his/her decision, the Ethics Officer shall assess each case on its own merits with regard to the type of work proposed and shall take into account the opinion of the relevant Head of Unit/Department and of the HR Team Leader, provided in advance.

83. The required opinions shall be based on the principles of assessment described in Commission Decision C(2018) 4048. If information provided in the form is deemed insufficient, further details will be requested from the member of ESMA staff.

84. The Ethics Officer shall respond to the concerned member of ESMA staff within a month of receiving the request.

85. In case of an approval of the request the Ethics Officer may make the approval subject to reasonable and proportionate conditions, in view of the intended activity during the period requested.

86. Where a request concerns the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee, the Ethics Officer shall systematically forward the request to the Management Board, which shall take a decision within two months of receiving the request.

## 7.7 Activities whilst on leave on personal grounds<sup>18</sup>

87. Without prejudice to the regular process to request authorisation for leave on personal grounds, a member of ESMA staff intending to undertake occupational activities whilst on leave shall submit a separate request in accordance with section 7.6 and Commission Decision C(2018) 4048, which sets out the rules on leave on personal grounds in “Title Three” and can be found in Annex I.
88. Where a request is submitted by the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee, the Ethics Officer shall systematically forward the request to the Management Board, which shall assess whether the ESMA Chair, the Executive Director or the Chair or one of the independent members of the CCP Supervisory Committee has any personal interests such as to impair his/her independence or any other conflict of interests.

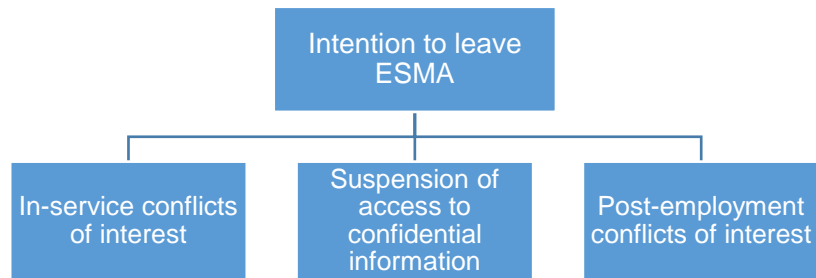
## 7.8 Activities after leaving ESMA<sup>19</sup>

89. Article 70 of the ESMA Regulation states that the obligation on professional secrecy applies to members of ESMA staff and shall remain applicable even after their duties have ceased.
90. Article 16 of the Staff Regulations imposes a continuous obligation of staff members to act with integrity, also post-service, and sets forth an obligation (also for two years after leaving service) to notify ESMA about his/her future occupational activities. Furthermore, it imposes a lobby ban on senior managers vis-à-vis ESMA staff for 12 months as of leaving ESMA. Where conflict of interests concerns require so, ESMA may decide on a case-by-case basis to apply a lobby ban to other staff members of ESMA for a period of time proportionate for the conflict of interest concerns identified.
91. In addition, ESMA has adopted by analogy Commission Decision C(2018) 4048, which sets out the rules on activities after leaving ESMA in “Title Four” and can be found in Annex I.
92. The overall process when a staff member intends to leave ESMA and take up a new occupational activity is outlined as follows:

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<sup>18</sup> Trainees are not subject to this obligation.

<sup>19</sup> Trainees are not subject to this obligation.



### 7.8.1 Intention to leave ESMA

93. Conflicts of interest requirements apply when staff are planning to leave ESMA, in particular the requirement not to deal with a matter in which, directly or indirectly, a staff member has any personal interest such as to impair his/her independence<sup>20</sup>. Should they have any doubt, staff members are invited to check with the Ethics Team who can advise them in full confidentiality. In addition, staff must behave with integrity and discretion in any recruitment phase or negotiations concerning their prospective post-employment occupational activities, with due regard to their confidentiality obligations. It is important that staff are vigilant as regards possible risks of perceived lack of independence in carrying out their ESMA duties, and avoid endangering trust in ESMA's performance of its tasks.

94. Once a staff member intends to take up a new occupational activity, he/she must inform ESMA as soon as possible if the intended occupational activity could in any way create a conflict with ESMA's legitimate interests. This would be timely, for example, upon reception of a job offer or when negotiations of the prospective contract are in the final stage<sup>21</sup>. In any case, at the latest 30 working days before starting the envisaged occupational activity a staff member must submit a formal declaration to ESMA<sup>22</sup>.

### 7.8.2 In-service conflicts of interest

95. An actual or potential conflict of interest arises when the intended new job could affect the staff member's independence or perceived independence in carrying out his/her role at ESMA before leaving.

96. An *ad hoc* assessment is conducted for each leaving staff member, taking into account the nature of the staff's current role, his/her seniority, and the nature and role of the potential future employer. ESMA may either authorise such intended occupational activity, or where conflict of interest issues arise - authorise it subject to conditions or prohibit taking up such activity<sup>23</sup>. Any such restrictions or prohibition shall not exceed a maximum of two years as of leaving ESMA.

<sup>20</sup> Article 11a(1) of the Staff Regulations

<sup>21</sup> *Ibid.*

<sup>22</sup> Article 16 of the Staff Regulations

<sup>23</sup> *Ibid.*

97. Preventive measures might be applied in accordance with sections 8.3 (Outcome of the screening) and 10 (Management and resolution process) of this policy.

### 7.8.3 Suspension of access to confidential information

98. Where in-service conflict of interests concerns arise pursuant to section 7.8.2 above, ESMA will consider as a matter of urgency whether access to confidential information by the staff member concerned must be suspended.

99. Suspending access to confidential information involves suspending access to or use of some or all of the following tools or systems:

#### **Tools & Systems**

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ESMA internal applications and document management system;

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Business applications and systems.

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### 7.8.4 Post-employment conflicts of interest

100. For two years after leaving a staff member must notify ESMA about any new intended occupational activity. ESMA may either authorise such intended occupational activity, or where conflict of interest issues arise - authorise it subject to conditions or prohibit taking up such activity<sup>24</sup>. Any such restrictions or prohibition shall not exceed a maximum of two years as of leaving ESMA.

### 7.8.5 Guiding principles for assessing conflicts of interest

101. This section intends to provide further guidance and enhanced clarity for ESMA staff members while retaining the baseline approach to assess each situation case-by-case.

102. When carrying out the conflict of interests assessment of the intended future occupational activity of a staff member of ESMA, the following factors set out in the Commission Decision C(2018) 4048 (please see Annex 1) should be taken into account:

- any relation between the occupational activity and the work carried out by the former staff member during the last three years of service;

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<sup>24</sup> Article 16 of the Staff Regulations

- whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service;
- whether the occupational activity would risk harming the reputation of the former staff member and ESMA, for example by retroactively casting doubt on the former staff member's impartiality while he or she was still in service, thereby tarnishing ESMA's image;
- the quality of a future employer (for example whether it is a public authority or a private/commercial company) or the situation of self-employment;
- whether the envisaged activity would involve representing outside interests vis-à-vis the institution;
- whether or not the envisaged activity is remunerated.

103. No conflict of interest can in principle arise from any of the situations listed below:

- The staff member will remain in the service of the EU; or
- The staff member will remain in a public authority in the EEA or in an international organisation; or
- The staff member's activities will not in any way be directly related to their current role (e.g. staff member's future role will not be in, or principally providing services to, the financial services sector, or will not be with an ESMA service provider connected to the staff member's ESMA role, or the staff member would assume a role as an academic); or
- The staff member does not have access to non-public information (including on individual institutions, on policy development, or on ESMA service providers) that would be directly relevant for the future occupational activity.

104. A conflict of interest is likely to arise in case a staff member involved in the supervision or enforcement of entities directly supervised by ESMA would anticipate taking up a position with one of these entities. Therefore, such moves would in principle be prohibited for a period up to two years for such staff member who has dealt directly with the supervision or enforcement of his/her intended prospective employer over the preceding three years. The application and the length of such prohibition would remain subject to case-by-case assessment, having due regard to the appropriateness and proportionality in each individual case, particularly, taking into account the role, seniority, both at ESMA and with the entity concerned, and the length of service<sup>25</sup> at ESMA of the staff member concerned. It is furthermore expected that prohibitions of

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<sup>25</sup> The length of service during which the staff member concerned worked in supervision or enforcement areas.

one to two years are likely to be used principally in relation to senior staff and staff in managerial positions.

105. Taking into account ESMA's role in regulating and supervising financial institutions, positions are most likely to give rise to conflicts also where they are in the following kinds of organisations:

- Relevant financial market participants authorised or recognised in the EEA, where the staff member's ESMA tasks over the preceding three years included, for example, CCPs, depositaries, stock-exchanges, listed credit institutions, fund managers or investment firms;
- Private sector organisations which represent the interests of such financial market participants, such as industry associations, or which advise and represent them, such as consultancies;
- Private sector organisations which are directly linked with the staff member's tasks, such as where a staff member is directly involved in the selection of a supplier or involved in a procurement process organised by ESMA.

106. The level of conflict of interest is likely to be most significant where:

- the staff member has a senior role at ESMA and influence over decision-making at ESMA;
- the staff member's future professional activities can be expected to have a material impact on the organisation's activities, e.g. where they will be in a senior management, senior adviser or senior control function position;
- the staff member has knowledge of confidential information on individual financial market participants, in particular through direct supervision or enforcement, as well as through certain convergence work (e.g. participation in CCP colleges or Voluntary Supervisory Colleges, involvement in stress testing). In addition, knowledge of confidential information might be obtained where a mediation or breach of Union law investigation leads to an individual decision addressed to a financial market participant;
- the scale of the organisation's activities in the EEA is significant;
- the scale of the influence of the organisation on industry practices and policy making is material, for example the organisation is an influential financial services lobbying body;
- the staff member is involved in the selection or management of commercial providers of services to ESMA or is involved in a legal dispute or seriously conflictive relationship with another entity.

107. Notifications are assessed case-by-case. Where conflicts with ESMA's interests are identified, the relevant decision-maker adopts a decision which is based on an



appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions, and the need to respect the fundamental right to engage in work and to pursue a freely chosen or accepted occupation. Guiding principles set out in this section, as well as peculiarities of each individual case, including the reasons for leaving ESMA (for example, termination of contract at the end of probationary period), will be duly considered.

## 7.8.6 Process

### In-service conflicts of interest

108. Where the intended occupational activity of the staff member could raise conflict of interest concerns and the staff member is not ready yet to submit the formal declaration, then that intended activity must be declared to the Ethics Officer in accordance with section 7.3 (Ad-hoc declarations of interests) by filling out Template 4.
109. The formal declaration of intended occupational activity by the staff member (declaration) must be submitted to his/her line manager. The line manager shall immediately forward the notification to the Ethics Officer with his/her assessment of whether the prospective occupational activity could raise any conflicts taking into account the staff member's tasks and activities at ESMA. The Ethics Officer will provide the necessary recommendations.
110. Within maximum two working days as of receipt of the declaration (also ad hoc declaration), the Executive Director (or in the case of senior managers the Chair or the Vice-Chair<sup>26</sup>) will decide if the staff member's access to confidential information should be cut-off with immediate effect and will inform the staff member concerned. Where a decision is taken by the Chair or the Vice-Chair, the Management Board will also be informed accordingly. The cut-off, if any, will be effected in liaison with relevant staff at ESMA (organisation of meetings, etc..) and the ICT Unit.
111. Within 30 working days of the receipt of the declaration, based on the assessment of the line manager and the recommendations of the Ethics Officer, the Executive Director will decide if the staff member's intended occupational activity presents any conflict of interest and if so, what restrictions or prohibition should apply.
112. In case the declaration concerns senior managers, the Chair or the Vice-Chair<sup>27</sup> will assess if the intended occupational activity in principle does not raise conflict of interest concerns pursuant to paragraph 103. Where the intended occupational activity corresponds to situations listed in paragraph 103, the Chair or the Vice-Chair<sup>28</sup> will take a decision and inform the Management Board accordingly. Where the intended

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<sup>26</sup> for matters related to the Chair

<sup>27</sup> For matters related to the Chair

<sup>28</sup> For matters related to the Chair

occupational activity does not correspond to situations listed in paragraph 103, the matter will be referred to the Management Board for decision.

113. The Chair or the Vice-Chair, or the Management Board, or the Executive Director, as the case may be, must notify the staff member concerned of the decision taken within 30 working days of the submission of the completed declaration. The Ethics Officer shall be copied in all correspondence. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance of the proposed occupational activity after leaving ESMA.

#### Post-service conflicts of interest

114. After having left ESMA, any post-service declaration must be submitted to the Ethics Officer. Upon receipt thereof, the Ethics officer will assess the declaration and, in case of actual or potential conflict with the legitimate interests of ESMA, will escalate the matter to the Executive Director with recommendations on the way forward.
115. The Ethics Officer or, in case of conflict, the Executive Director, shall inform the staff member of the decision taken, within 30 working days of the submission of the completed declaration.
116. Where a declaration concerning an occupational activity after leaving ESMA concerns the Executive Director, the CCP Supervisory Committee Chair or one of its independent members, it shall be systematically forwarded to the Chair who will assess if the intended occupational activity in principle does not give rise to conflict of interest concerns pursuant to paragraph 103 and take a decision accordingly. Where a declaration concerning an occupational activity after leaving ESMA concerns the Chair, it shall be systematically escalated to the Vice Chair of ESMA who will assess if the intended occupational activity in principle does not give rise to conflict of interest concerns pursuant to paragraph 103 and take a decision accordingly. Where a decision is taken by the Chair or the Vice-Chair, the Management Board will be informed accordingly. Where a potential conflict of interests is identified by the Chair or the Vice Chair, the matter shall be referred to the Management Board for decision.
117. The Chair or the Vice Chair, or the Management Board as the case may be, shall notify the Executive Director, the CCP Supervisory Committee Chair or one of its independent members, or the Chair respectively of the decision they have taken, within 30 working days of the submission of the completed declaration. The Ethics Officer shall be copied in all correspondence. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance of the proposed occupational activity after leaving ESMA.
118. Where a potential or actual conflict of interest is identified in relation to the intended post-service activity of staff members, decisions imposing restrictions or prohibitions are adopted after consultation of the Joint Committee and after having heard the staff member concerned.

119. Upon leaving ESMA, the staff member must also submit a declaration reaffirming, *inter alia*, his/her confidentiality undertaking and duty to act with integrity and discretion also after leaving ESMA.

## 7.9 Publications and speeches<sup>29</sup>

120. Article 17a of the Staff Regulations grants the right to freedom of expression “with due respect to the principles of loyalty and impartiality.”
121. If a member of ESMA staff wants to publish, either on his/her own or with other parties, a document, such as an article or a book, on anything dealing with the work of ESMA or the Union, he/she must obtain a prior authorisation from ESMA.
122. These rules also apply to speeches (including those given at conferences or other similar events) and any form of public or private communication outside the scope of the staff duties, where they relate to ESMA or Union matters and are or may be published.
123. Publications and speeches that are part of staff members’ regular duties in ESMA are not concerned with the present provision.
124. However, if the publication (including its writing/preparation) or speech could be considered as an outside activity, notably, if under contract, or would entitle a member of the staff to any financial payment, he/she must ask ESMA for prior authorisation to accept it (see section 7.6).

### 7.9.1 Process

125. The request for publication or prior authorisation to deliver speeches<sup>30</sup> shall be made via the paperless tool using Template 7.
126. The procedure of prior authorisation shall include an opinion from the Head of Unit/Department, an authorisation from the Ethics Officer, acting on the basis of a delegation from the Executive Director, and a notification to the Communication Team Leader before publication. In this respect, the individual must provide ESMA with any relevant information, in particular a copy, in electronic form, of the document he/she intends to publish. This must be accompanied by a summary and the proposed disclaimer<sup>31</sup>, in electronic form.
127. Where it could be demonstrated that the matter is liable to prejudice seriously the legitimate interests of the Union, the concerned member of ESMA staff has to be informed, in general, within 30 working days of the decision of the Ethics Officer. If no

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<sup>29</sup> Trainees are not subject to this obligation.

<sup>30</sup> In this context the delivery of speeches is considered outside the scope of the staff duties.

<sup>31</sup> This could for example have the following form: “The opinions stated by the author are personal and do not bind ESMA”.

reply is received within this time limit, it shall be deemed that there are no objections to the publication/speech.

128. However, the lack of a reaction does not prejudice the possible application of relevant provisions such as Article 12 of the Staff Regulations, if the publication turns out to contain material which is, for example, defamatory or insulting. Nor does it preclude the possible application of Article 24 of the Staff Regulations, if other staff members request assistance against what they may see as defamatory statements in the work. The author remains personally responsible for the published material.

129. These rules and procedures also apply to speeches and any form of public or private communication outside the scope of the staff duties, where they relate to ESMA or Union matters and are or may be published.

130. Blogs are subject to the same principles as publications.

### 7.9.2 Limitations on the freedom of expression

131. While the Staff Regulations (Article 17a(1)) grant officials and other staff the right to freedom of expression, when it comes to professional activity this is subject to the following conditions being met:

- members of ESMA staff must show restraint and caution in expressing opinions, especially when these obviously diverge from well-known policies of ESMA and such opinions should be expressed as personal views with a clear disclaimer to this extent; this is particularly so if the individual occupies a management post;
- as a general rule, members of ESMA staff should refrain from tackling professional issues linked to specific files they are in charge of, if outside their working environment.

### 7.9.3 Remuneration

132. If the publication (including its writing/preparation) or speech would entitle the member of ESMA staff to any financial payment, this must be mentioned when applying for prior authorisation to accept it.

133. Royalties received for publications, to which ESMA raised no objections, are not subject to the net annual ceiling of EUR 10 000 that applies to the activities members of the staff are authorised to undertake outside ESMA.

## 7.10 Dealing in financial instruments (clearance process)

134. The holding and dealing in some financial instruments<sup>32</sup> may be a source of conflict if they present an interest in the subject matter of ESMA.
135. However, holding of economic and financial interests<sup>33</sup>, such as holding of shares or bonds, is in principle allowed and should be declared on an annual basis. In addition to the declaration obligation, dealing in financial instruments require prior authorisation.
136. Members of ESMA staff should not begin that process of dealing in financial instruments until they have received clearance. Beginning the process of dealing includes calling a broker and putting them on standby to deal in specific instruments. It also includes taking decisions on dealing on behalf of others.
137. Members of ESMA staff may also transfer as a gift to a spouse or minor child financial instruments that they already hold. Such dealing does not require clearance.
138. In certain circumstances, a member of ESMA staff may be given clearance to sell (but not purchase) instruments when they would otherwise be prohibited from doing so. An example of these circumstances would be pressing financial commitment on the part of the staff member, which could not otherwise be satisfied. The decision on whether the circumstances fall into this category is made by the middle manager of the concerned staff member in consultation with the Ethics Officer.
139. In the case of adverse developments which may jeopardize the orderly functioning and integrity of financial markets or the stability of the financial system in the Union, ESMA or NCAs may adopt specific measures and undertake actions to prevent or mitigate the negative impact on the market and/or financial system. When such measures or actions are being discussed or considered by ESMA, specific restrictions could apply, including a temporary ban in dealing in financial instruments. Should such restrictions apply, they cannot last longer than the measures or actions referred to above and should be in any case reviewed at least every month.

### 7.10.1 Additional information to be provided

140. In order to monitor compliance with this policy, a staff member may be individually requested by the Ethics Officer, with the agreement of the Executive Director, to provide one or more of the following documents:

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<sup>32</sup> As defined in Article 4(1)(15) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ L 173, 12.6.2014, p. 349–496.

<sup>33</sup> Please see the definition of economic and financial interests in section 6.3.

- their bank accounts, including shared accounts, custody accounts and accounts with stockbrokers;
- any powers of attorney which third parties have conferred on them in connection with their bank accounts, including custody accounts;
- any general instructions or guidelines given to third parties to whom responsibility for managing their investment portfolio has been delegated;
- any sale or purchase of assets or rights at their own risk and for their own account, or conducted by them at the risk and for the account of others;
- statements for the abovementioned accounts;
- their dealings in relation to retirement plans.

141. Members of ESMA staff shall keep records for the previous and current calendar years of the above and may be subject to the above request for a period of two years after the termination of their employment with ESMA.

#### 7.10.2 Process

142. The requests for clearance shall be submitted to the Ethics Officer by using Template 8.

143. Upon receiving the request, the Ethics Officer will send an e-mail with the list of financial instruments to all Heads of Unit/Department, indicating that a colleague intends to buy/sell these financial instruments. The e-mail will clearly indicate that silence will be treated as consent. The addressees shall respond within 24 hours, indicating whether they would see a reason for prohibiting the dealing in one or several of the instruments under request, in particular whether ESMA holds confidential information relating to the financial instruments.

144. The Ethics Officer shall take a decision on whether to grant clearance on the basis of information provided from the Heads of Unit/Department on whether ESMA holds confidential information relating to the financial instruments.

145. The Ethics Officer shall respond to the concerned member of ESMA staff within two working days using the feedback form at the end of Template 8, indicating the deadline for trading (usually 48 hours).

146. The Ethics Officer will normally not give clearance to dispose of financial assets within three months of acquisition.

147. In case potential measures or actions addressing adverse developments are discussed or considered by ESMA, as referred to in paragraph 139 above, the Ethics Officer could propose specific restrictions to be put in place for the Executive Director's

consideration. The Ethics Officer will ensure that those staff considering dealing in financial instruments are made aware of any temporary restrictions as well as of when the restrictions are no longer applicable.

148. Where a request is submitted by the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee, the Ethics Officer shall follow the same process as set out in paragraph 143 above. The Ethics Officer shall then forward the request and the responses of the Heads of Unit/Department to the members of the Management Board. The Management Board shall take a decision on whether to grant clearance on the basis of the information provided by the Heads of Unit/Department.
149. The Management Board shall respond to the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee within five working days using the feedback form at the end of Template 8, indicating the deadline for trading (usually 48 hours).
150. Statistics on clearance forms received will be presented on an annual basis in an activity report to the Executive Director.
151. In addition to personal dealing, a member of ESMA staff should recognise the scope for criticism if a person closely connected to him/her, including close family members, is found to have benefited improperly from dealing in financial instruments.

## **8 Screening process**

### **8.1 Screening of declarations**

152. Upon receipt, the Ethics Officer shall screen the relevant declarations in order to assess potential conflicts of interests, in line with principles described under section 8.2.

### **8.2 Principles of assessment of interests**

153. The screening shall be made according to the following criteria.
154. Interests can only be assessed by considering whether the specific interests declared by a member of ESMA staff are compatible with the tasks to be assigned by ESMA to him/her.
155. In the case of a declaration made in the context of a meeting, having regard to the items on the agenda of that meeting of the group where the member of ESMA staff participates and the role and function that he/she is required to take on or perform in that meeting;



### **8.3 Outcome of the screening**

156. As an outcome of the screening, the Ethics Officer may decide to authorise an activity, where applicable, suggest preventive measures to prevent a conflict of interests, or move to the management and resolution process.
157. In case a potential conflict of interests is identified, the Ethics Officer shall examine whether any preventive measure can be envisaged, having consulted with the Head of Unit/Department regarding the concerned member of ESMA staff. The Ethics Officer shall send his/her screening results to the Executive Director with, where relevant, a proposal for a preventive or corrective measure.
158. The Executive Director shall then hear the member of the staff concerned. After this, he/she shall take a decision within 10 working days. The Executive Director may take any measure considered appropriate to ensure the potential conflict of interest in question does not occur. Any preventive measure taken to address potential conflicts of interests shall be recorded by the Ethics Officer.
159. Where a conflict of interest is identified as a result of the screening process and no preventive measure could be found, the Ethics Officer shall initiate the management and resolution process (section 10).
160. In case a potential conflict of interest concerning the ESMA Chair, the Executive Director or the Chair or one of the independent members of the CCP Supervisory Committee is identified, the Management Board shall examine whether any preventive measure can be envisaged.
161. Further to that, the Management Board shall then hear the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee. After this, the Management Board shall take a decision within 10 working days and may take any measure considered appropriate to ensure the potential conflict of interest in question does not occur. Any preventive measure taken to address potential conflicts of interests shall be recorded by the Ethics Officer.
162. Where a conflict of interest is identified as a result of the screening process and no preventive measure could be found, the Management Board shall initiate the management and resolution process (section 10).

## **9 Additional checks**

163. Whilst the screening of declarations serves as a basis to identify conflicts of interests, the Executive Director may decide to proactively conduct ad-hoc checks either at random, or on particularly sensitive issues (risk-based approach) or on the basis of allegations.



## 10 Management and resolution

164. Where a conflict has been identified and cannot be resolved by preventive measures, the Ethics Officer shall initiate the management and resolution process, forming a panel for that purpose, composed of the Ethics Officer, the Head of Unit/Department of the individual concerned (unless the latter is conflicted, in which case another Head of Unit/Department shall be appointed by the Executive Director) and a representative of the Staff Committee. The Executive Director may take any appropriate measure to remedy an actual conflict of interest taking into account the opinion of the panel.
165. Any change regarding interests already declared shall result in a swift update of the annual declaration of interests, which shall be submitted to the Ethics Officer without delay.
166. In the case where a situation falling within this section concerns the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee, the Management Board shall initiate the management and resolution process. The Management Board may take any appropriate measure to remedy an actual conflict of interest.
167. The procedure laid down in this section is without prejudice to disciplinary measures that may be taken by the Executive Director in accordance with the Staff Regulations.

## 11 Granting of waivers

168. When a member of ESMA staff has a potential conflict of interests excluding him or her from performing a task and his or her expertise is considered essential for the completeness of certain outputs, the availability of alternative experts in the field shall be considered.
169. In exceptional cases, when the involvement of a member of ESMA staff in a particular task is considered essential and where no suitable alternative individual is found, the concerned person may request a waiver from the Executive Director in accordance with the Internal Procedure on Exception<sup>34</sup>. Should a waiver be granted, the concerned member of ESMA staff shall be allowed to take part in the discussions, and in the drafting phase of the output.
170. In the case where the involvement of the ESMA Chair, the Executive Director or the Chair or one of the independent members of the CCP Supervisory Committee in a particular task is considered essential and where no suitable alternative individual is found, the Executive Director or the ESMA Chair, the Chair or one of the independent

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<sup>34</sup> ESMA/2013/ED/55 (rev 1).

members of the CCP Supervisory Committee may request a waiver from the Management Board. Should a waiver be granted, the Executive Director, the ESMA Chair or the Chair or one of the independent members of the CCP Supervisory Committee shall be allowed to take part in the discussions, and in the drafting phase of the output.

171. Waivers shall be recorded in the register of exception.
172. Statistics on waivers under this section shall be presented by the Ethics Officer on an annual basis in an activity report to the Executive Director.

## **12 Activity reporting**

173. The Ethics Officer shall inform the Executive Director of the activities undertaken for ethics and conflict of interest management, in particular reporting on the declaration received as set out in section 7.
174. Regarding the conflicts of interests managed, real or potential, the activity report shall include an analysis of the collected (annual and ad-hoc) declarations of interests and lists of financial assets, setting out the statistical distribution of staff members having declared financial assets and the type of interests declared, in particular financial instruments.
175. Other activities and checks performed regarding conflicts of interests and ethics, such as in recruitment procedures and regarding whistleblowing, shall also be recorded in the activity report.
176. The activity report shall be submitted by 31 May each year.

## **13 Ethics and integrity**

177. Members of ESMA staff should act as ambassadors for ESMA and display appropriate behaviour in their professional contacts. ESMA staff is encouraged to speak in public about their work. In such cases, ESMA staff should make their presentation relevant to the audience, tailoring it to their needs and degree of knowledge and relating it, where possible, to their daily lives.
178. Members of ESMA staff shall avoid discussing any issue which is still at the preparation or discussion stage and on which ESMA has not adopted an official position. When expressing their private views in public, it shall be made absolutely clear that they are expressing personal opinions that may not necessarily reflect the views of ESMA.
179. Members of ESMA staff shall be aware that their actions displayed to the external world will influence the image people form of ESMA and its staff. The Staff

Regulations/CEOS, in combination with the Code of Good Administrative Behaviour<sup>35</sup>, provide a set of core principles to guide staff in how they carry out their tasks and behave. These principles include discretion, circumspection, loyalty, objectivity and impartiality.

180. Article 17a of the Staff Regulations states that “an official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality”. This right, however, should be understood together with the obligations laid down in articles 11 and 12 of the Staff Regulations regarding the “duty of loyalty to the Communities” and the obligation to refrain from “any action or behaviour that might reflect adversely upon [ESMA’s] position”.

## 14 Contacts with stakeholders

181. Members of ESMA staff have wide discretion in deciding whom to meet, and ESMA should remain an open and accessible institution. Indeed, contacts with stakeholders are a part of ESMA’s everyday work. It is important that members of ESMA staff are in contact with a wide variety of interest groups and listen to their views. However, members of ESMA staff should not be unduly influenced by any one stakeholder or group of stakeholders or give the impression that they favour the advice of one stakeholder over another.
182. For further information on the requirements of recording meetings with stakeholders, ESMA staff should consult the Stakeholder Meetings Procedure<sup>36</sup>.

## 15 Sensitive information

183. Members of ESMA staff shall not under any circumstance make a profit or derive any other private interest or assist others in making a profit or derive any other private interest from confidential or unpublished information that comes into their possession in the performance of their duties.
184. Members of ESMA staff shall be aware that insider dealing (profiting through the acquisition or sale of securities from non-public information, or encouraging others to do so) is illegal. Insider dealing is defined in the Market Abuse Directive<sup>37</sup> and Regulation<sup>38</sup>. It constitutes a criminal offence in France, carrying penal sanctions.

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<sup>35</sup> Please see Management Board Decision ESMA/2011/MB/6, Code of Good Administrative Behaviour.

<sup>36</sup> ESMA/2016/INT/075.

<sup>37</sup> Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse, OJ L 173, 12.6.2014, p. 179–189.

<sup>38</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014, p. 1–6.

185. Members of ESMA staff shall act in respect of sensitive information in accordance with Information Security Acceptable Use Policy<sup>39</sup> forming part of the Information Security Policies.

## 16 Breach of trust

### 16.1 Overview

186. A breach of trust occurs when ESMA is aware, or is made aware, that a member of ESMA staff has failed, intentionally or through negligence, to fulfil his/her obligations under the Staff Regulations, by for example not declaring in a complete and timely manner the interests which may impair his/her independence. The Executive Director shall consider the possible application of the Administrative Enquiries and Disciplinary Procedures<sup>40</sup> taking into account the materiality of the breach.

187. Where the breach of trust concerns the ESMA Chair, the Executive Director or the Chair or one of the independent members of the CCP Supervisory Committee, the Management Board shall consider the possible application of the Administrative Enquiries and Disciplinary Procedures.

### 16.2 Disciplinary measures

188. Disciplinary measures shall be taken in respect of members of ESMA staff in accordance with the Staff Regulations and the Administrative Enquiries and Disciplinary Procedures.

189. In addition, in case of criminal offence (for example in the case of insider trading), penal sanctions may apply.

### 16.3 Review of output

190. If a member of ESMA staff is found to be in breach of the present policy, a review of the draft instruments, documents or decisions for which that person has been (solely or jointly) responsible will be requested to clarify whether, and if appropriate the extent to which, that member of ESMA staff influenced the outputs adopted by ESMA.

191. The above-mentioned review shall be led:

- by the Executive Director in the case of a breach by a member of ESMA staff;

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<sup>39</sup> ESMA/2014/INT/131.

<sup>40</sup> Please see Management Board Decision ESMA64-87-170, Decision on the conduct of administrative inquiries and disciplinary procedures.

- by the Management Board in the case of a breach by the ESMA Chair, the Executive Director, the Chair or one of the independent members of the CCP Supervisory Committee.

## 17 Protection of personal data

192. Without prejudice to the ESMA Regulation, ESMA shall process all data contained in the declarations and documents pursuant to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
193. The purpose of the data processing is to safeguard the independence of ESMA and its constituent bodies.
194. The legal basis for data processing is provided under section 4 of this policy.
195. The Executive Director is the data controller in accordance with Article 3(8) of Regulation (EU) 2018/1725
196. The nature of interests to be declared, the obligation to do so, as well as possible consequences of not declaring them and the publication of declarations are explained in the present policy.
197. The recipients of the declarations and documents are the persons and bodies identified in the present document. Furthermore, declarations and documents may be transferred to bodies in charge of a monitoring or inspection task in conformity with Union Law, including the European Court of Auditors, the Internal Audit Service, OLAF, the European Ombudsman and the European Data Protection Supervisor.
198. The conservation period of declarations and documents per category of data subjects shall be:
- For all ESMA Staff members, 5 years after the receipt of the relevant document;
  - For declarations submitted in the context of grants and procurement, 5 years after the contract or grant was terminated.
199. Without prejudice to the management of breach of trust described under section 16, data subjects with active ESMA involvements have a right to access their data and to update or correct it at any time. In case ESMA has knowledge of information that is not consistent with the declared interest, or in case of failure to submit a declaration, the data subject concerned will be contacted with the purpose to update the declaration

on the missing information. In case an internal procedure is opened as referred to in section 16 of this policy, the data subject will be notified.

200. Questions regarding the nature as well as any further element of this processing operation can be sent to the following email address: [ethics@esma.europa.eu](mailto:ethics@esma.europa.eu).

201. Data subjects also are entitled to have recourse at any time to ESMA's Data Protection Officer ([dpo@esma.europa.eu](mailto:dpo@esma.europa.eu)) and/or the European Data Protection Supervisor (<http://www.edps.europa.eu>).

## 18 Records

202. Records collected by the Ethics Officer will be stored in electronic form. In each case, data should be kept in a secure area, either a locked cupboard or a restricted folder on the server.

203. When statistics are produced, they are anonymised to the extent possible.

## 19 Communication and awareness aspects

204. Upon adoption, the policy will be published on the intranet of ESMA, and will be communicated to its target audience.

205. The conflict of interest policy will be presented to new staff members of ESMA on the occasion of the induction session, participation will be mandatory. For existing staff members, regular training sessions will be provided to keep them acquainted.

206. The conflict of interests policy will also be explained on the intranet of ESMA.

## 20 Right to Appeal

207. Article 90 (on appeals, requests and complaints) of the Staff Regulations is applicable to the procedures laid down in this policy.

## 21 Final provisions

208. The policy will be reviewed every 5 years after taking effect, as necessary.

209. The policy is approved by the Management Board on 11 December 2020 and repeals the previous Conflict of interests and ethics policy (ESMA40-134-2158).

210. The policy shall take effect on 23rd December 2020.



For the Management Board

[signed]

Executive Director

Verena Ross

# Annex I



Brussels, 29.6.2018  
C(2018) 4048 final

**COMMISSION DECISION**

**of 29.6.2018**

**on outside activities and assignments and on occupational activities after leaving the  
Service**



## COMMISSION DECISION

of 29.6.2018

### on outside activities and assignments and on occupational activities after leaving the Service

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) It is necessary to give guidance on the application of the Staff Regulations of Officials (the 'Staff Regulations'), and the Conditions of Employment of Other Servants of the European Union (the 'CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, namely, the second and fourth paragraphs of Article 11, Article 11a, Article 12, Article 12b, Article 15, Article 16, Article 17, Article 17a, Article 19, Article 55(1) of the Staff Regulations, Articles 13(2) and 40 of Annex VIII to the Staff Regulations, and Articles 11, 17, 81 and 91 of the CEOS.
- (2) The Commission adopted on 5 March 2008 [Sec(2008) 301] a Communication on enhancing the environment for professional ethics in the Commission.
- (3) The Commission adopted on 16 December 2013 Decision C(2013) 9037<sup>2</sup> on outside activities and assignments to take into account the considerably strengthened provisions on activities involving lobbying and/or advocacy with respect to conflict of interest introduced in the Staff Regulations on 1 January 2014, while respecting the principle of proportionality.
- (4) When issuing a decision on outside activities and assignments and on occupational activities after leaving the service, the Appointing Authority should pay due regard to the principle of proportionality. Therefore, its decisions should not entail limitations that are not necessary and that would not genuinely meet the objective of protecting the interests of the institution as defined in the Staff Regulations and CEOS.
- (5) The practical application of the previous rules on outside activities and assignments has shown that certain provisions need to be adapted in the light of changing circumstances and that they require a number of clarifications.
- (6) Prior permission from the Appointing Authority is required to engage in outside activities during active service.
- (7) Staff members in active service regularly request permission to engage in outside activities which will clearly not interfere with the performance of their duties and are clearly not incompatible with the interests of the institution. In such cases, prior permission can therefore be deemed to be granted.

<sup>1</sup> OJL 56, 4.3.1968, p. 1.

<sup>2</sup> C(2013)9037 of 16.12.2013, Administrative Notice No 78-2013 of 19 December 2013.

- (8) At the same time, certain outside activities, by their very nature, are liable to interfere with the performance of the staff member's duties and/or are incompatible with the interests of the institution and should therefore be prohibited.
- (9) Certain activities, notably commercial activities giving rise to modest revenues, are prohibited under the previous rules. Experience has shown that the compatibility with the performance of the staff member's duties and the interest of the service of such activities should be subject to case-by-case analysis rather than a blanket ban. Any such analysis should take account of the changes that have occurred in the statutory composition of the Commission's staff.
- (10) The maximum remuneration a staff member may earn when engaging in an outside activity should be reviewed, given that the ceiling for such remuneration was not reviewed at the time of adoption of Decision C(2013) 9037 and remains the same as the one defined by Decision C(2004) 1597 of 28 April 2004.
- (11) The fact that staff members sometimes need to engage in outside activities in order to maintain their professional skills and/or upgrade their qualifications, as required by the interests of the service, should be formally recognised.
- (12) All the actors involved in the procedure shall act with celerity so as to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation.
- (13) Staff members leaving or having left active service are subject to Article 16 of the Staff Regulations, which requires them to inform the institution of their intention to engage in an occupational activity, whether gainful or not, during the first two years of leaving the service.
- (14) Practice has shown that the concept of 'occupational activity' in the meaning of Article 16 of the Staff Regulations requires clarification.
- (15) The obligations of staff members or former staff members benefiting from an invalidity allowance or invalidity pension should be clarified.
- (16) Staff members who intend to perform an activity whether in service, on leave on personal grounds or after having left the service have to be reminded of all relevant provisions of the Staff Regulations which apply to the concerned activity, in addition to the provision requiring that the Appointing Authority is informed or notified of the activity.
- (17) Special advisers are not covered by the present Decision.
- (18) For reasons of clarity, legal certainty and transparency, Commission Decision of 16.12.2013 on outside activities and assignments and occupational activities after leaving the service should be replaced by this Decision.

HAS DECIDED AS FOLLOWS:

## TITLE ONE: SCOPE AND DEFINITIONS

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

This Decision shall apply to all Commission staff covered by the Staff Regulations or by the CEOS,<sup>3</sup> with the exception of special advisers. For seconded national experts (SNEs), the Commission Decision C(2008)6866 of 12 November 2008, and in particular Article 7 thereof, applies.

For the purposes of this Decision, the following definitions shall apply:

- (a) An ‘outside activity’ as referred to in Article 12b of the Staff Regulations means any activity, paid or unpaid, that:
  - (i) is not part of the staff member’s duties at the Commission, including those covered by a mission order or an authorisation to travel for work-related reasons such as giving a speech or a presentation, and
  - (ii) cannot reasonably be considered a hobby or leisure activity.
- (b) An ‘assignment outside the Union’ as referred to in Article 12b of the Staff Regulations means a one-off task, paid or unpaid, that meets the conditions laid down in points (a) (i) and (ii) of this Article.
- (c) An ‘occupational activity’ as referred to in Article 16 of the Staff Regulations means any professional activity, whether gainful or not, other than the activities meeting the conditions set out in Article 20(3).
- (d) ‘Structural part-time work’ means part-time work pattern imposed to a contract agent upon hiring and not covered by Article 55(a) of the Staff Regulations.

## TITLE TWO: STAFF MEMBERS IN ACTIVE SERVICE, STAFF MEMBERS SECONDED IN THE INTEREST OF THE SERVICE

### *Article 2* *General principles*

1. Pursuant to Article 12b of the Staff Regulations, a staff member wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the outside activity or assignment in question would interfere with the performance of the staff member’s duties or is incompatible with the interests of the institution.
2. Permission to engage in an outside activity or an assignment shall not relieve the staff member, as regards the activity for which the permission is granted, of the other obligations under the Staff Regulations, for instance, those provided for in Article 17 regarding the unauthorised disclosure of information received in the line of duty, Article 55 obliging the staff member to be at all times at the disposal of the institution and Articles 11 and 11a related to situations of conflict of interest. In

<sup>3</sup> Officials, temporary agents and contract agents.

addition, an authorisation for any outside activity does not mean that the staff member can disregard any national laws on the activity in question.

3. The staff member may not make use in his or her outside activity or assignment (i) of his or her status or of material or (ii) data to which he or she has access as a staff member and which has not yet been made public or is not accessible to the public.
4. The Appointing Authority, when considering whether to permit an outside activity or assignment, shall take into account the statutory link between the applicant and the institution, the nature of his or her duties and the level of his or her responsibilities. It may prohibit the activity or permit it subject to any restrictions it deems appropriate.

#### *Article 3*

##### *The need for prior permission*

Without prejudice to the provisions of Article 4, all staff members, whether in active service at the Commission or seconded in the interest of the service, shall obtain prior permission from the Commission to engage in an outside activity or an assignment. In order to allow the Appointing Authority to assess the activity under Article 12b of the Staff Regulations, staff members must submit an application accompanied by supporting documents that includes an indication of the expected remuneration, if any.

#### *Article 4*

##### *Activities for which prior permission is deemed to be granted*

1. By way of derogation from Article 3, staff members are not obliged to submit an application for activities that meet the conditions laid down in this Article, as they are deemed not to interfere with the performance of the staff member's duties and are deemed compatible with the interests of the institution.
2. Provided that they fall within the scope of this Decision as defined in Article 1, prior permission shall be deemed to be granted for activities meeting the following cumulative conditions:
  - (a) they are unpaid or do not generate revenues;
  - (b) they are neither pursued in a professional capacity nor are performed for a commercial entity;
  - (c) they are performed outside the working hours agreed with the line manager of the staff member concerned or are covered by a duly approved leave or recuperation;
  - (d) the impartiality and objectivity of the staff member while performing his duties are not compromised, or may not appear to be compromised in the eyes of third parties, because of interests which diverge from those of the institution;
  - (e) the outside activity or assignment has not a negative impact on the reputation and/or on the trustfulness of the institution;
  - (f) the other obligations laid down in the Staff Regulations are complied with.
3. As example, the following activities are in principle deemed to fulfil the mandatory conditions set out above for the prior permission to be considered granted:



- any unpaid activity that has no link with the activities of the European Union, is carried out in a purely private capacity and is undertaken from time to time only, upon need, in particular:
  - (i) charitable and humanitarian activities;
  - (ii) activities relating to sport or wellbeing;
  - (iii) activities deriving from political, religious, trade unionist and/or philosophical convictions;
  - (iv) craftwork, artistic or cultural activities;
- unpaid teaching activities unless they are performed for a commercial entity;
- the mere ownership of assets or holdings, or the management of the personal or family fortune, whether in a private capacity or as a shareholder of a company, but not running a business;
- the mere membership of a professional order or association, unless the code of conduct of the order or association conflicts with the staff member's obligations under the Staff Regulations.

*Article 5  
Prohibited Activities*

Permission for paid outside activities or assignments shall be refused if:

- (a) the activity in question is performed during the working hours agreed with the line manager of the official concerned and is not covered by a duly approved leave or recuperation ; and/or
  - (b) the activity in question is such as to interfere with the performance of the staff member's duties; and/or
  - (c) the activity in question is incompatible with the interests of the institution, for example because it:
    - (i) is detrimental to the reputation of the institution; and/or
    - (ii) damages public trust in the neutrality and objectivity of the institution; and/or
    - (iii) gives rise to an actual conflict of interest;
- and/or
- (d) the activity in question, by itself or combined with other authorised outside activities, gives rise to remuneration which exceeds the ceiling referred to in Article 7(1).

*Article 6  
Activities to be assessed on a case-by-case basis*

Permission to engage in outside activities which do not fall under Article 4 or 5 shall be assessed on a case-by-case basis by the Appointing Authority.

*Article 7*  
*Maximum net remuneration*

Without prejudice to Article 15 of the Staff Regulations, the annual ceiling for net remuneration which a staff member may receive for all his or her assignments or outside activities combined, including any fees received but after deduction of taxes or other duties linked to these activities, shall be EUR 10 000 per calendar year.

Reimbursements of reasonable expenses (such as transport and lodging) and royalties received for publications, artistic proceeds or intellectual property rights shall not be taken into account when calculating the maximum net annual remuneration.

The concept of maximum net annual remuneration does not include revenue received in the exercise of a public office or resulting from the authorised acceptance of a prize or award within the meaning of Article 8.

*Article 8*  
*Prizes and awards*

1. Staff members who, by reason of an authorised outside activity or assignment, are selected for a prize or an award which does not constitute a gift or favour within the meaning of Article 11, second paragraph, of the Staff Regulations<sup>4</sup>, are required to apply for permission to accept and receive it.
2. Permission shall be refused only if accepting the prize or award is incompatible with the interests of the institution or could impair, or appear to impair, the staff member's impartiality.

*Article 9*  
*Part-time work at the request of the staff member*

1. Staff members working part-time at their own request shall not engage in any paid outside activities, pursuant to Article 3, third paragraph, of Annex IVa of the Staff Regulations.
2. Staff members working part-time at their own request may engage in unpaid outside activities during the part of the time they are not working for the institution, in which case Articles 1 to 6 and 8 apply.
3. Staff members who have been authorised to work part-time to hold a public office, may take on unpaid or paid outside assignments and activities directly related to the public office concerned, subject to the conditions set out in Article 14.

*Article 10*  
*Structural part-time work*

Articles 1-4, 5 (a) to (c), 6 and 8 apply to staff members employed on structural part-time basis. When required, such staff members shall request prior permission and in principle, receive permission to engage in an outside activity or assignment, whether paid or not.

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<sup>4</sup> See Communication of 7 March 2012 from Vice-President SEFCOVIC to the Commission on Guidelines on gifts and hospitality for the staff members.

*Article 11*

*Staff members who need to maintain their professional skills and/or upgrade their qualifications*

Staff members shall in principle receive permission to exercise an outside activity or assignment, whether paid or not, if it is required in the interest of the service that they maintain their professional skills and/or upgrade their qualifications. Articles 1-4, 5 (a) to (c), 6 and 8 apply to such staff members.

*Article 12*

*Parental and family leave*

1. Staff members benefiting from parental or family leave may engage in unpaid outside activities only, whereby Articles 1- 6 and 8 apply.
2. During parental or family leave, paid activities are allowed only in the circumstances provided for in Article 10 and 11.

*Article 13*

*Procedures for obtaining permission - Withdrawal*

1. Where required, applications for obtaining permission, together with the relevant supporting documents, shall be submitted to the Appointing Authority at least two months before the activity or the assignment is due to commence.
2. An application shall be submitted to the Appointing Authority for any new activity or assignment and for any change in the activity or assignment.
3. A new application shall likewise be made if a staff member changes posts, to assess whether the new duties and the activity or assignment are compatible with the criteria set out in Article 12b of the Staff Regulations.
4. The Appointing Authority may withdraw its permission in exceptional circumstances only, on justified grounds and after informing the staff member. If the Appointing Authority withdraws its permission to carry out a given outside activity before the expiry date of the period of validity, if any, the staff member shall be granted an appropriate period to take any measures necessary to adapt to the new situation.

*Article 14*

*Public office*

Articles 1 to 8 continue to apply where staff members who benefit from Article 15 of the Staff Regulations engage in activities other than those directly related to the public office mandate.

### TITLE THREE: STAFF MEMBERS ON LEAVE ON PERSONAL GROUNDS

#### *Article 15*

##### *Activities and assignments*

1. Under Article 40(1a) of the Staff Regulations, Article 12b of the Staff Regulations shall continue to apply during a period of leave on personal grounds. Accordingly, staff members on leave on personal grounds must request prior permission for any outside activity or assignment at any time during the period of leave, except in the cases listed under Article 4, paragraphs 2 and 3 applied *mutatis mutandis*.
2. Under Article 40(1a) of the Staff Regulations, staff members shall not be granted permission to engage in an occupational activity or assignment, whether gainful or not, which involves lobbying or advocacy vis-à-vis the institution and which could lead to a conflict of interest, or the possibility of such a conflict, with the legitimate interests of the institution.
3. In other cases than those covered by paragraph 2, permission shall, in principle, be granted except where the outside activity or assignment could give rise to a conflict of interest or be incompatible with the interests of the institution. If a potential conflict of interest is identified or a detrimental effect on the interests of the institution is shown, the Appointing Authority may authorise the activity in question while imposing appropriate restrictions or not grant such an authorization.

#### *Article 16*

##### *Remunerated tasks for the Commission during leave on personal grounds*

1. A staff member on leave on personal grounds may not receive remuneration for tasks carried out for the Commission. Reimbursement of expenses is not counted as remuneration in this context.
2. 'Task' for the purposes of this Decision means:
  - (a) any direct contract, other than a contract concluded under the conditions of employment of other servants, between the staff member on leave on personal grounds and the Commission;
  - (b) any relationship with a company in which the staff member holds a substantial direct or indirect financial interest and which entertains a contractual relationship with the Commission
3. Notwithstanding the general prohibition provided for in paragraph 1, the Appointing Authority may, in agreement with the Director-General for Human Resources and Security, grant an exception if the staff member takes leave on personal grounds to follow his or her spouse who is also a staff member of the European Union. This exception shall, however, not be made for tasks consisting of a contractual relationship between the Commission and a company in which the staff member who is on leave on personal grounds holds a substantial direct or indirect financial interest.
4. In cases where the exception under paragraph 3 is granted, the remuneration to which the tasks give rise shall not exceed the remuneration the staff member would have received had he or she been in active service. This may be increased to cover



reasonable professional costs which the staff member incurs through his or her new activity.

5. Working as an employee or sub-contractor for a company with which the Commission has a contractual relationship, and provided the staff member has no direct or indirect substantial financial interest in that company, shall be declared as an outside activity pursuant to Article 15 of this Decision. The Appointing Authority shall make a case-by-case assessment.

#### *Article 17*

##### *Procedure for granting permission to engage in outside activities and assignments during leave on personal grounds*

1. Decisions on requests for permission to engage in an activity during leave on personal grounds are taken by the Appointing Authority, in agreement with the Director-General for Human Resources and Security.
2. Applications must be submitted to the Appointing Authority at least two months before the beginning of the activity or the assignment. The permission is valid for the period which is set out in the application, and should not be longer than 12 months.

In addition,

- (a) the staff member shall sign a declaration confirming he or she is fully aware of his or her obligations under the Staff Regulations. The staff member shall declare therein that the provisions of Article 11a have at all times been complied with, including when negotiating the terms and conditions of the envisaged activity while being in active employment;
- (b) for every additional activity, a new application needs to be submitted at least two months before the beginning of the activity or the assignment;
- (c) for every extension or renewal of the activity or assignment, a new application must be submitted at least two months before the expiry of the current permission. A new application must also be made for each change in the activity or assignment - in which case the Appointing Authority shall decide whether to maintain the permission or withdraw it;
- (d) in the event of non-renewal or withdrawal of permission, the Appointing Authority may give the staff member an appropriate period of time to take the necessary measures to adapt to the situation.

#### *Article 18*

##### *Reinstatement in the Commission upon return from leave on personal grounds*

Upon reinstatement in a post at the Commission following leave on personal grounds, a staff member shall complete a specific form declaring any personal interest. In particular, the declaration shall include any family or financial interest, such as to impair his or her independence or any other actual or potential conflict of interest relevant to the post in which he or she is being reinstated. Should a conflict of interest be confirmed in a reasoned opinion, the Appointing Authority shall take the measures referred to in Article 11a (2) of the Staff Regulations.

**TITLE FOUR: STAFF MEMBERS LEAVING OR HAVING LEFT THE  
COMMISSION SERVICE**  
**(including staff members receiving an invalidity allowance or an allowance provided for  
in Annex IV to the Staff Regulations)**

*Article 19*

*Obligations of integrity and discretion unlimited in time*

Under Article 16, first paragraph, of the Staff Regulations, staff members who have left the service continue, without any limit in time, to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits.

Under Article 17, second paragraph, of the Staff Regulations, staff members who have left the service shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or accessible to the public.

*Article 20*

*Obligations under Article 16 of the Staff Regulations*

1. Under Article 16, second paragraph, of the Staff Regulations, all staff members, including former staff members, must inform the Commission beforehand of their intention to engage in an occupational activity, whether gainful or not, by using a specific form. This obligation applies for two years after leaving the service. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict of interest with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him or her to undertake it or give its approval subject to any conditions it thinks fit. Moreover, the staff member shall declare in the specific form that, the provisions of Article 11a have at all times been complied with, including when negotiating the terms and conditions of the envisaged activity while being in active employment.
2. Taking up employment at a European Union institution or body in the meaning of the Treaty on European Union and/or the Staff Regulations does not trigger the obligation to inform the Commission, as described in paragraph 1, as engaging in this activity does not lead to leaving the service of the Union for the purpose of applying Article 16, second paragraph, of the Staff Regulations. This is without prejudice of Article 40 of Annex VIII of the Staff Regulations.
3. The activities expressly listed as examples under Article 4, paragraph 3, do not constitute occupational activities within the meaning of Article 16, second paragraph, of the Staff Regulations provided that:
  - (a) they do not give rise to lobbying or advocacy vis à vis staff of their former institution;
  - (b) are not remunerated;
  - (c) are carried out in the staff member's personal capacity.
4. The occupational activities which are not in any way directly related to the work of the former staff member in the Commission, cannot by their very nature, give rise to a conflict of interest with the legitimate interests of the Commission. They shall

however be notified to the Appointing Authority using the specific form referred to in paragraph 1.

*Article 21*

*Information on occupational activities pursuant to Article 16 of the Staff Regulations*

1. When leaving the service of the Commission the staff member must sign a declaration confirming that he or she is aware of the obligations under Article 16, second paragraph, of the Staff Regulations.
2. On the basis of the specific form referred to in Article 21(1), the Appointing Authority shall assess whether the notified activity could lead to a conflict with the legitimate interests of the institution. When assessing the possibility of any actual or potential conflict of interest, the Appointing Authority takes into account factors such as:
  - (a) any relation between the occupational activity and the work carried out by the former staff member during the last three years of service;
  - (b) whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service;
  - (c) whether the occupational activity would risk harming the reputation of the former staff member and the Commission, for example by retroactively casting doubt on the former staff member's impartiality while he or she was still in service, thereby tarnishing the Commission's image;
  - (d) the quality of a future employer (for example whether it is a public authority or a private/commercial company) or the situation of self-employment;
  - (e) whether the envisaged activity would involve representing outside interests vis-à-vis the institution;
  - (f) whether or not the envisaged activity is remunerated.
3. The Appointing Authority defines an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions and the need to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation. In particular, the Appointing Authority may, during the two year period after the staff member has left the service:
  - (a) prohibit the former staff member from dealing with files, cases or matters related to the work carried out by him or her during his or her last three years of service, including related or subsequent cases and/or court proceedings; and/or
  - (b) impose a 'cooling off period' excluding the former staff member from, for example, professional contacts with former colleagues or from representing opposing parties.
4. Staff members shall inform the Commission of their intention to engage in an occupational activity at least 30 working days before the envisaged starting date. Staff members shall not start the activity before receiving either explicit or implicit acceptance, whichever comes first.
5. The Appointing Authority shall, within 30 working days after being informed of the occupational activity, notify its decision, after consulting the Joint Committee as



provided in Article 16, second paragraph of the Staff Regulations. Failure by the Appointing Authority to notify its decision within the 30 day period constitutes implicit acceptance of the occupational activity. If a declaration submitted by the applicant is incomplete, the Commission shall request additional information and the 30 day period is suspended until the requested information is provided.

6. For former senior officials<sup>5</sup>, the Appointing Authority shall, in principle, prohibit them during the first 12 months after leaving the service from engaging in lobbying or advocacy, vis-à-vis staff of their former institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service. This is without prejudice to a possible “cooling off period” as in paragraph 3b).
7. The Commission shall publish information annually on how the provisions regarding former senior officials are implemented, including a list of the cases assessed having due regard to the rules on the protection of personal data as contained in Regulation (EC) No 45/2001 of 18 December 2000.

#### *Article 22*

##### *Recipients of an invalidity allowance under Article 78 of the Staff Regulations*

1. The recipient of an invalidity allowance<sup>6</sup> shall sign a declaration confirming that he or she has full knowledge of his or her obligations.
2. The recipient may not be given an assignment of any kind, paid or unpaid, by the Commission.
3. If the recipient intends to engage in employment, whether gainful or not, which does not fall under paragraph 2, and at the request of the person concerned:
  - (a) the Appointing Authority shall, under Article 15 of Annex VIII to the Staff Regulations, require the recipient to undergo a medical assessment to ascertain whether he or she still satisfies the requirements for payment of the invalidity allowance.
  - (b) if this medical assessment is positive, and if the person concerned is or intends to engage in gainful employment, the Appointing Authority shall assess whether, under Article 13(2) of Annex VIII, such employment is consistent with the current basis for granting the invalidity allowance.
  - (c) Any income from such activity shall comply with Article 13(2) of Annex VIII to the Staff Regulations. This provision states that any income from such gainful employment which, in combination with the invalidity allowance, exceeds the final total remuneration received while in active service as determined on the basis of the salary scale in force on the first day of the month in which the allowance is to be paid shall be deducted from the invalidity allowance.

<sup>5</sup> The term ‘senior officials’ refers to officials occupying functions corresponding to the basic post of Director-General in grades AD16 or AD15 as well as those occupying functions corresponding to the basic post of Director in grades AD15 or AD14. Basic post in this context, and in accordance with Annex 1 of the Staff Regulations, means all positions falling within the function group of Director-General or Director, as the case may be.

<sup>6</sup> For the purpose of this provision, the term ‘invalidity allowance’ also covers ‘invalidity pension’.

- (d) If the Appointing Authority considers that the envisaged employment is consistent with the current basis for granting the invalidity allowance, it shall subsequently assess on a case by case basis whether the activity in question, gainful or not, is compatible with the conditions of application of Article 12b of the Staff Regulations.
4. Once the recipient of an invalidity allowance reaches pensionable age, he or she shall be subject to Article 16 of the Staff Regulations and the relevant provisions of this Decision from the date of retirement, if he or she has been in active service at any time during the last three years preceding the date of retirement.

*Article 23*

*Staff members to whom Articles 41 (non-active status), Article 42c (leave in the interest of the service), and Article 50 (retirement in the interests of the service) apply: applicability of Article 16 of the Staff Regulations*

1. Staff members to whom Articles 41 and 50 of the Staff Regulations apply shall comply with the obligations under Article 16 of the Staff Regulations and the relevant provisions of this Decision applied by analogy, until the end of the period of entitlement to the allowance as defined by Articles 41 and 50 of the Staff Regulations.
2. Staff members to whom Article 42c of the Staff Regulations applies shall comply with the obligations under Article 12b of the Staff Regulations and the provisions of Title Three of this Decision. When the period of entitlement to the allowance as defined by Article 42c has ended, the staff member is subject to Article 16 of the Staff Regulations and the relevant provisions of this Decision.
3. Remuneration received by staff members from any new employment during the period of entitlement to the allowance provided by Articles 41, 42c and 50 of the Staff Regulations shall be deducted from that allowance, if the remuneration and allowance together exceed the total remuneration last received by the staff member. This calculation is based on the table of salaries applicable on the first day of the month for which the allowance is to be paid.

*Article 24*

*Activities for or assignments by the Commission*

1. The Commission may ask a former staff member to carry out activities for its benefit. A procedure under Article 16 of the Staff Regulations is not required in such cases.
2. In principle, such activities exclude remuneration of any kind other than reimbursement of any expenses reasonably incurred by the former staff member. An agreement is concluded between the Commission and the former staff member.
3. Paid activities are authorised on an exceptional basis only and are generally subject to the following cumulative conditions, for which the Commission must provide evidence:
  - (a) the activities are in the Commission's general interest;
  - (b) they meet a specific need requiring knowledge that is not available other than through the former staff member in question.

Any payment made by the Commission may not exceed the difference between the total annual amount of the last salary when the former staff member was still in service and his retirement pension in the year in question. Annual remuneration is established on the basis of the salary table applicable on the first day of the month in which the salary is paid. The reimbursement of expenses for which the former staff member has provided supporting documents shall not be taken into account for this purpose.

4. The Commission must conclude a contract with the former staff member.

Nevertheless, the Commission shall not conclude any contract, paid or unpaid or otherwise, with former temporary agents or former contract agents as long as they are in receipt of unemployment allowance from the Union Budget.

## TITLE FIVE: FINAL PROVISIONS

### *Article 25* *Disciplinary measures*

Infringements of the rules on outside activities and assignments and occupational activities carried out after leaving the service expose staff members and former staff members to the risk of disciplinary penalties under Article 86 and Annex IX of the Staff Regulations.

### *Article 26*

Eighteen months after the date at which this Decision will take effect, the Commission shall undertake a review of its implementation, in particular with respect to Article 4.

### *Article 27* *Repeal*

Commission Decision C(2013)9037 is repealed.

### *Article 28* *Day of taking effect*

**This Decision enters into force on the date of the adoption and shall take effect on 1 September 2018.**

Done at Brussels, 29.6.2018

*For the Commission*  
*Günther OETTINGER*  
*Member of the Commission*