



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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Change history and approval routing sheet

Person	Role [drafter, reviewer, approver]	Version	Date	Signature
R.Vasileva Hoff	Drafter	1	15.12.14	
Management Team	Reviewer	V 0.1	10.02.2015	
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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 at providing 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 TA, CA, SNEs, on-site consultants, temporary workers (interim staff) 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. Due to his/her particular position in ESMA's governance, there are a number of specific arrangements for the Chair and the Executive Director. In particular, in sections 7.5, 7.6, 7.8, 7.9, 7.10, 8.3, 10, 11.1 and 12 where an action must be taken in respect of the Executive Director or the Chair, 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 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 experts¹ (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.²
6. All emails to the ESMA Ethics Officer should be sent to the following email address: 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:³
 - Serving the public interest;

¹ ESMA/2014/MB/67

² See Decision of the Management Board ESMA/2014/MB/60

³ "Managing conflict of interest in the public service" OECD (2003)

- 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.

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 policy shall supersede the Ethics Guide of 23 May 2012 (ESMA/2012/INT/42). However, all permissions granted in accordance with the Ethics Guide, 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 Ethics Guide do not need to be re-submitted unless there is any substantive change in the spouse's professional situation.

4. Legal basis

- Regulation (EU) No 1095/2010 establishing a European Securities and Markets Authority, (hereinafter "ESMA") 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 Communities⁴, in particular, Articles 11, 54, 81 and 124 thereof ("CEOS");
- The Decision on SNEs, Article 7 thereof;

⁴ 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), as amended.

- The Financial Regulation applicable to the General Budgets of the European Communities as well as the detailed rules of application of the Financial Regulation⁵.

5. Reference documents

- European Commission's Practical Guide to Staff Ethics and Conduct.
- ESMA conflict of interests policy for non-staff⁷.

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).

⁵ Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002.

⁶ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 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.

⁷ ESMA/2014/MB/60

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 Decision.
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 Col 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, 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 member 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, whilst already detailed, is not exhaustive.

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 Art 1(2) and (3) Regulation (EU) No 1095/2010), 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 purpose of this policy, personal insurance policies, collective investment funds⁸ or deposits contracted as a regular customer are not regarded as economic and financial interests.

Memberships

25. Member 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;
26. 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.

Employment, consultancy

27. 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 Art 1(2) and (3) Regulation (EU) No 1095/2010), 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

⁸ 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.

methods thereof.

Intellectual property rights

28. 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

29. 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 assets 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.

30. It is essential to highlight that **members of ESMA staff bear responsibility for disclosing their private interests.**

31. All the declarations shall be made by completing the corresponding templates, which are listed below and available on the Ethics' intranet corner:

- Template 1: Confidentiality undertaking;
- Template 2: Initial declaration of interests;
- 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: Authorisation to engage in an outside activity / public office, whenever gainful or not, or to carry out an assignment outside the Union;
- Template 7: Authorisation to make publication or speech, whenever gainful or not;
- Template 8: Request for clearance to deal in financial instruments.

7.1. Confidentiality and commitment

Need for confidentiality and commitment declaration

32. Members of ESMA staff are subject to strict professional secrecy obligations under Article 16 of the Staff Regulations/CEOS as well as under the ESMA Regulation⁹, sectoral legislation or confidentiality agreements, as applicable.

⁹ 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

33. The decision of the Management Board of ESMA on professional secrecy¹⁰ summarises these obligations and notes that 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.

Process

34. 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.
35. This declaration is collected:
- by HR for TA, CA, SNEs and trainees;
 - by the Facility Management for interim staff, on-site consultants and any employee of contractor that is given an access badge.
36. The confidentiality and commitment declaration shall be made in writing using Template 1.
37. The declarations of the Chair and the Executive Director shall be made public via ESMA’s website.

7.2. Declaration of interests

Need for declaration of interests

38. 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.
39. 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.

¹⁰ ESMA/2011/MB/4

40. Article 7 of the Decision on SNEs imposes similar obligations.
41. 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.
42. The declaration of interests (initial and annual) is the declaration whereby members of ESMA staff¹¹:
- 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.

Process

43. The initial declaration of interests shall be made in writing using Template 2.
44. The annual declaration of interests shall be made in writing using Template 3.
45. The initial declaration of interests shall be collected by HR before recruitment by ESMA and then submitted to the Direct Manager and to the Ethics Officer.
46. The annual declaration of interests shall be submitted directly to Ethics Officer during the first quarter of each year.
47. The declaration of interests of the Chair and the Executive Director shall be made public via ESMA’s website.
48. 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 under section 8.2.

¹¹ On-site consultants, interim staff and trainees are not subject to this declaration obligation

49. 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.
50. 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 requiring management and no preventive measure could be taken, the Ethics Officer will initiate the management and resolution process (section 10).
51. For the list of financial assets, two types of analysis could be performed, one systematic review and one risk-based analysis. Systematic review: the declarations shall be checked to verify non-authorised financial assets are not held. Risk-based analysis: principally for resource reasons, ESMA shall apply a risk-based methodology: the portfolio of specific staff members are analysed to see if they present a risk, rather than a systematic analysis of each member of ESMA staff. In practice, the risk population should be selected as follows:
- ESMA's top management (Chair and Executive Director): their portfolio should be systematically checked, as any conflict, or perception of a risk, could represent a threat to the reputation of ESMA;
 - members of ESMA staff working in areas dealing with the direct supervision of entities, because of their specific access to sensitive information on directly supervised entities.
52. Systematic and risk-based analyses involve comparisons between declarations from one year to another, where applicable.
53. The results of the screening are presented in a report to the Executive Director after the closing of the collection exercise.

7.3. Ad-hoc declarations of interests¹²

Need for ad-hoc declaration of interests

54. 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. In such a case, the ad-hoc declaration shall be used. 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.

Process

¹² On-site consultants, interim staff and trainees are not subject to the obligation to fill in this declaration

55. The ad-hoc declaration of interests shall be submitted to ESMA's Ethics Officer. It shall be made in writing using the Template 4.
56. 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 real conflict of interests be identified requiring management, the Ethics Officer will initiate the management and resolution process (section 10).
57. 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 hospitality¹³

Gifts

58. 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, etc, does not go over EUR 50) shall either be refused, given to charity organisations or for charity purposes or destroyed.
59. Gifts that have merely symbolic value may be shared with members of ESMA staff. Any sum of money must always be refused.

Hospitality

60. 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, offers of working lunches or dinners in which a member of ESMA staff participates in the exercise of his/her duties can be accepted provided that they do not exceed a cumulative value of EUR 50 from a single source in one year. When participating in conferences or other public, work-related events members of ESMA staff can accept working lunches or dinners.

7.5. Gainful employment of spouses/partners¹⁴

Need for declaration for gainful employment of spouses/partners

61. 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 in order to prevent any appearance of a conflict of interests, which could arise because of the two persons'

¹³ On-site consultants, interim staff and trainees are not subject to the obligation to fill in this declaration

¹⁴ On-site consultants, interim staff and trainees are not subject to the obligation to fill in this declaration

respective professional activities. In this respect, unmarried, legally recognised partners are regarded as spouses.

62. Article 7 of the Decision on SNEs imposes similar obligation.

Process

63. The declaration of gainful employment of spouses/partners shall be submitted to ESMA's Ethics Officer. It shall be made in writing using Template 5.

64. 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 of the concerned staff member.

65. If the Ethics Officer considers that the nature of the spouse's employment is incompatible with the activities of the member of ESMA staff, he/she 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, once it is established, to transfer the staff member to another post, or take any other measure appropriate to prevent or resolve the conflict.

66. Where a request concerns the Executive Director or the Chair, the Ethics Officer shall systematically forward the request to the Management Board, which shall take a decision within 10 days using the feedback form.

67. 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.

68. 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 employment¹⁵

Need for a request for outside activities

69. It is fundamental to ensure that members of ESMA staff ask for prior authorisation to take on outside activities¹⁶ going beyond what can be considered to be a hobby, paid or unpaid, in order to ensure the members of ESMA staff, and thereby ESMA, respect independence and integrity.

¹⁵ On-site consultants, interim staff and trainees are not subject to this obligation

¹⁶ Commission Decision C (2013) 9037 of 16 December 2013 defines outside activities as "any other activity, paid or unpaid, that is of an occupational character or goes otherwise beyond what can be reasonably considered a leisure activity".

Criteria for assessment of a request on outside activities

70. In order for an outside activity to be allowed, such activity should not:

- be so time consuming as to impact negatively on the work of the concerned staff member at ESMA, or constitute a job in itself;
- give rise to any possible appearance of a conflict of interests or be in some other way discreditable, so as to risk bringing ESMA into disrepute.

71. Furthermore, the amount of remuneration should be modest. The maximum net annual remuneration a member of ESMA staff may receive for any authorised external activities undertaken outside ESMA is EUR 4500 (after taxes). Anything over this amount must be turned over to ESMA. The ceiling of EUR 4500 (after taxes) does not apply to requests of leave on personal grounds and retirement in the interests of the service in accordance with the Staff Regulation.

72. 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.

73. In assessing requests for authorisation under Article 12b of the Staff Regulations¹⁷, account shall be taken of the aspects mentioned above. In practice, while respecting these conditions, members of ESMA staff are, for example, likely to be authorised to carry out voluntary work, charity work, or limited teaching activities.

74. Members of ESMA staff are not allowed, however, to carry out any of the following types of activity (the list is not exhaustive):

- outside work, whether paid or unpaid, in a professional or similar capacity (e.g. architect, lawyer, economist, accountant, computer expert, engineer, interpreter, doctor, translator, consultant etc.)
;
- work in commercial companies, even if it is unpaid and the role is merely nominal (such as non-executive director, unpaid adviser, etc.);
- teaching or other pedagogical work, whether paid or not, for more than 100 hours per academic year, unless the Executive Director deems such work beneficial to ESMA.

¹⁷ Article 7 of the Decision on SNEs refers to Article 12b of the Staff Regulations

75. Permission to engage in outside activities is likely to be refused or be subject to additional conditions beyond staff members' continuing obligations under the Staff Regulations/CEOS where there is a reasonable probability that members of ESMA staff would be brought into a situation of conflict of interests through their specific knowledge if they take on the proposed occupational activity. Decisions on granting permission will take into account, amongst other matters:

– the extent to which there is evidence of a real risk that the proposed activities could adversely affect ESMA; and

– the existence of ongoing obligations under the Staff Regulations/CEOS, in particular the duty to behave with integrity and discretion as regards accepting appointments and benefits, and to refrain from unauthorised disclosure of information received in the line of duty, and ESMA's ability to bring disciplinary proceedings against former staff.

Process

76. 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.

77. The request for engaging in outside activities shall be made using Template 6.

78. Such request may include a request for special leave in accordance with Article 11 of the EC decision C(2013) 9037 of 16.12.2013.¹⁸

79. In general, unless the circumstances require otherwise, 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. 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.

80. The required opinions shall be based on the principles of assessment described in section 8.2. If information provided in the form is deemed insufficient, further details will be requested from the member of ESMA staff.

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

¹⁸ Article 11 states that: "Where unpaid activities are of benefit of the European Union, the appointing authority may grant special leave amounting to half the number of working days involved up to a maximum of twelve days per year."

82. 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.
83. Where a request concerns the Executive Director or the Chair, the Ethics Officer shall systematically forward the request to the Management Board, which shall take a decision within two months of receiving the request.
84. Any permission granted under Article 12b of the Staff Regulations shall be valid for a maximum of one year from the date of the decision, or a lesser period, which will be stated in the decision. If a member of ESMA staff wishes to extend or renew the permission, he/she must submit a new application. A member of ESMA staff shall notify ESMA of any changes in a permitted outside activity or assignment, which occur after the staff member has sought the permission of ESMA. Permission may be withdrawn if the activity or assignment no longer meets the above mentioned conditions for engaging in external activities.

7.7. Publications and speeches

Need for authorisation of publications and speeches

85. Article 17a of the Staff Regulations grants the right to freedom of expression “with due respect to the principles of loyalty and impartiality.”
86. Article 7 of the Decision on SNEs provides for a similar provision.
- 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.
87. 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.
88. Publications and speeches that are part of staff members’ regular duties in ESMA are not concerned with the present provision.
89. However, if the publication (including its writing/preparation) or speech could be considered as an outside activity, notably, if under contract, and/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).

Process

90. The request for publication or prior authorisation to deliver speeches¹⁹ shall be made using Template 7.
91. The procedure of prior authorisation shall include an opinion from the Head of Unit, 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, in electronic form.
92. 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 reply is received within this time limit, it shall be deemed that there are no objections to the publication/speech.
93. 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.
94. 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. Blogs are subject to the same principles as publications.

Limitations on the freedom of expression

95. 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.

Remuneration

¹⁹ In this context the delivery of speeches is considered outside the scope of the staff duties

96. 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.
97. Royalties received for publications, to which ESMA raised no objections, are not subject to the net annual ceiling of EUR 4500 that applies to work members of the staff are authorised to undertake outside ESMA.

7.8. Dealing in financial instruments (clearance process)

Need for clearance permission

98. The holding and dealing in some financial instruments may be a source of conflict if they present an interest in the subject matter of ESMA: e.g. procurement or breach of union law case.
99. However, holding of economic and financial interests²⁰, 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.
100. 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.
101. 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.
102. 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.

Additional information to be provided

103. 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:

²⁰ See the definition of economic and financial interests in Section 6.3 of this policy.

- 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.

104. 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 year after the termination of their employment with ESMA.

Process

105. The requests for clearance shall be submitted to the Ethics Officer by email using Template 8.
106. Upon receiving the request, the Ethics Officer will, where necessary, send an e-mail to the relevant Head of Unit/Department indicating that a colleague intends to buy/sell financial instruments, providing the list of financial instruments. The Head of Unit/Department shall in principle respond within 24 hours, the e-mail will clearly indicate that silence will be treated as consent, indicating whether they would see a reason for not dealing in one or several of the instruments under request, in particular whether ESMA holds confidential information relating to the financial instruments.
107. The Ethics Officer shall take a decision on whether to grant clearance on the basis of information provided from the middle managers on whether ESMA holds confidential information relating to the financial instruments.
108. 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).
109. The Ethics Officer will normally not give clearance to dispose of financial assets within three months of acquisition.
110. Where a request is submitted by the Executive Director or the Chair, the Ethics Officer shall systematically send an e-mail to the relevant Head of Unit/Department indicating that a colleague intends to buy/sell financial instruments, providing the list of financial instruments. The Head of Unit/Department shall in principle respond within 24 hours, the e-mail will clearly indicate that silence will be treated as consent, indicating whether they would see a reason for not dealing in one or several of the instruments under request, in particular whether ESMA holds

confidential information relating to the financial instruments.

The Ethics Officer shall 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.

111. The Management Board shall respond to the Executive Director or the Chair within five working days using the feedback form at the end of Template 8, indicating the deadline for trading (usually 48 hours).
112. Statistics on clearance forms received will be presented on an annual basis in an activity report to the Executive Director.
113. In addition to personal dealing, a member of ESMA staff should recognise the scope for criticism if a person closely connected to him/her is found to have benefited improperly from dealing in financial instruments.

7.9. Activities whilst on leave on personal grounds

114. Without prejudice to the regular process to request authorization 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. The principles regarding the permission for engaging in outside activities shall apply.
115. Article 40 of the Staff Regulations prohibits a staff member on leave on personal grounds from engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his/her Institution and which could lead to the existence or possibility of a conflict with the legitimate interests of ESMA.
116. A change of activity during the leave will require the submission of a new declaration.
117. Before a member of ESMA staff on leave on personal grounds has been reintegrated, the Ethics Officer shall examine and advise the Executive Director whether the concerned member of ESMA has any personal interests such as to impair his/her independence or any other conflict of interests. To that end, the member of ESMA shall submit the declaration of interests provided in Template 3.
118. Where a request is submitted by the Chair or the Executive Director, the Ethics Officer shall systematically forward the request to the Management Board, which shall assess whether the Chair or the Executive Director has any personal interests such as to impair his/her independence or any other conflict of interests.

7.10. Activities after leaving ESMA

119. Article 70 of ESMA Regulation states that the obligation on professional secrecy applies to members of ESMA staff, including SNEs, and will remain applicable even after their duties have ceased.
120. In addition, Article 16 of Staff Regulations states that staff members continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.
121. The relevant Head of Unit/Department may adopt any of the following measures when notified about a staff member leaving ESMA to be employed in an entity under direct supervision of ESMA or whose activities are directly related to ESMA's activities, in order to prevent any possible conflict of interest:
- a) adopt organisational measures to separate the staff member from any information or activity related to the entity by which the staff member will be employed;
 - b) propose to the Executive Director to anticipate, as an exceptional measure, the effective date when the staff shall physically leave ESMA.
122. Upon leaving ESMA, members of ESMA staff shall sign a declaration acknowledging their awareness of their continuing obligations to ESMA, in particular the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits. For a period of two years following their departure, they shall be required to inform ESMA if they wish to take on an occupational activity, gainful or not.²¹
123. In addition, senior staff members (comprising of the Chair, the Executive Director, the Heads of Unit/Department and the Team Leader of the Communication Unit), shall be prohibited, during the 12 months after leaving ESMA, and other staff during 6 months after leaving ESMA, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

Process

124. The declaration template shall be provided and the completed declarations shall be collected by Human Resources as part of the Termination of Service process and submitted to the Ethics Officer for review.
125. If a new occupational activity is taken up, within two years after leaving ESMA, and is related to

²¹ On-site consultants, interim staff and trainees are not subject to this obligation.

the work carried out by the staff member during the last 3 years of service and could lead to a conflict with the legitimate interests of ESMA, the Ethics Officer, may, having regard to the interest of the service and after consulting the Joint Committee, once it is established, propose to the Executive Director to either forbid the staff member from undertaking it or give an approval subject to any condition the Executive Director thinks fit.

126. ESMA shall notify the decision of the Executive Director within 30 working days of the submission of the completed declaration. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.
127. Where a declaration concerning an occupational activity after leaving ESMA concerns the Executive Director, it shall be systematically forwarded to the Chair who will 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 take a decision 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.
128. The Chair or the Vice Chair, or the Management Board as the case may be, shall notify the Executive Director 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.

8. Screening process

8.1. Screening of declarations

129. 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

130. The screening shall be made according to the following criteria:
 - 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 or her;
 - 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 or she is required to take on or perform in that meeting;
 - In the case of outside activities: In line with Article 12.b of the Staff Regulations permis-

sion to engage in outside activities (see section 7.6) shall be refused only if the activity or assignment in question is such as to interfere with the performance of the staff member's duties or is incompatible with the interests of ESMA.

8.3. Outcome of the screening: authorisation, preventive measure or conflict management

131. 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.
132. 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.
133. 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.
134. 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).
135. In case a potential conflict of interest concerning the Chair or the Executive Director is identified, the Management Board shall examine whether any preventive measure can be envisaged.
136. Further to that, the Management Board shall then hear the Executive Director or the Chair. 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.

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

137. 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

138. Where a conflict has been identified and it 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.
139. 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.
140. In the case where a situation falling within this Section concerns the Executive Director or the Chair, 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.
141. 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. Breach of trust

11.1. Overview

142. 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 of declaring in a complete and timely manner the interests which may impair his/her independence. The Executive Director shall consider possible application of the Administrative Enquiries and Disciplinary Procedures.
143. Where the breach of trust concerns the Chair or the Executive Director, the Management Board shall consider possible application of the Administrative Enquiries and Disciplinary Procedures.

11.2. Disciplinary measures

144. Disciplinary measures will be taken in respect of members of ESMA staff in accordance with the Staff Regulations and the ESMA's policy on administrative inquiries and disciplinary procedures, when adopted.
145. In addition, in case of criminal offence (for example in the case of insider trading), penal

sanctions may apply.

11.3. Review of output

146. 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.

The above-mentioned review shall be led:

- by the Executive Director in the case of a breach by a member of ESMA staff;
- by the Management Board in the case of a breach by the Chair or by the Chair in the case of a breach by the Executive Director.

12. Granting of waivers

147. 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.
148. 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 Exception²². 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.
149. In the case where the involvement of the Chair or the Executive Director in a particular task is considered essential and where no suitable alternative individual is found, the Executive Director or the Chair may request a waiver from the Management Board. Should a waiver be granted, the Executive Director or the Chair shall be allowed to take part in the discussions, and in the drafting phase of the output.
150. Waivers shall be recorded in the register of exception.
151. 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.

13. Procurement

152. The principles aimed at identifying and managing conflicts of interests in a procurement process

²² ESMA/2013/ED/55 (rev 1)

are described in details in ESMA's Internal Procurement Procedure²³. This procedure foresees in particular the collection of declarations from tenderers and staff members involved in procurement. The declarations are screened by an Evaluation Committee designated for each procurement procedure.

14. Selection and recruitment procedures

153. Selection procedures should follow an open and transparent call for applications, based on clear and objective eligibility and selection criteria.
154. Before recruitment, in line with Articles 11 of the Staff Regulations, ESMA shall examine whether the candidate has any private interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform ESMA of any actual or potential conflict of interest (in accordance with section 7.2).
155. The recruitment policy and guidelines foresee that declarations of absence of conflict of interest are collected from candidates selected for recruitment as well as from participants to a recruitment panel.
156. During the recruitment, in line with Article 1d of the Staff Regulations and as envisaged in ESMA's recruitment guidelines (ESMA/2013/68, as they may be updated), selection board members must stay impartial, neutral and take into consideration the principles of non-discrimination, equal treatment, sound management, independence and impartiality.
157. Notwithstanding these rules, the following principles under ESMA's code of good administrative behaviour also apply in the context of recruitment:
 - Article 7 – Absence of abuse of power whereby *“the agent or other servant of ESMA shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.”*
 - Article 8 – Impartiality and independence whereby *“The agent or other servant of ESMA shall not be guided by any outside influences of whatever kind, including political influences, or by personal interests. The agent or other servant shall abstain from being involved in the taking of a decision on a matter concerning his or her own interests, or those of his or her family, relatives, friends and acquaintances.”*

15. Communication and awareness aspects

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

²³ ESMA-2014-INT-30

159. 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.
160. The conflict of interests policy will also be explained on the intranet of ESMA.

16. Sensitive information

161. 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.
162. 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 Directive²⁴ and Regulation²⁵. It constitutes a criminal offence in France, carrying penal sanctions.
163. Members of ESMA staff shall act in respect of sensitive information in accordance with Information Security Acceptable Use Policy²⁶ forming part of the Information Security Policies.

17. Missions

164. 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, and bear in mind section 7.4 concerning the acceptance of gifts.
165. 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.
166. Any travel, accommodation or other mission costs paid by the organiser or sponsor should be in line with ESMA's missions guide.

²⁴ Directive 2014/57/EU on criminal sanctions for market abuse

²⁵ Regulation (EU) No 596/2014 on market abuse

²⁶ ESMA-2014-INT-131

167. Seconded National Experts (SNEs) should also be aware of specific rules regarding their conduct on mission adopted by the Management Board.²⁷

18. Contacts with stakeholders

168. 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.

169. Further to ESMA's approach to contact with stakeholders, it is essential that members of ESMA staff inform their hierarchy of forthcoming meetings with relevant stakeholders. Members of ESMA staff should also keep a record of their contacts, and debrief colleagues and their hierarchy on the outcome of meetings and any follow-up required. These records may be reviewed periodically to assess the range of stakeholder contact on policy and supervisory issues.

170. To ensure respect for the principle of transparency, ESMA shall publish the agendas of the Chair and the Executive Director on its website, indicating their participation in different conferences as well as meetings with the press and other institutions and relevant activities.

19. Actions in the case of illegal activities

171. Pursuant to Article 22a of the Staff Regulations, members of ESMA staff are obliged to report to their superior or the Executive Director, or if they consider it useful, the Chair or OLAF, any information received in the course of or in connection with the performance of our duties which gives rise to the assumption of possible illegal activities, including fraud or corruption, detrimental to the interests of the Union, or of conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations incumbent on members of ESMA staff.

172. In reporting suspected illegal activities, members of ESMA staff do not need to prove that the presumption of illegal activity is correct, but should reasonably believe it to be the case. Illegal activities should be understood to cover issues, such as leaking of sensitive information, misuse of resources, fraud and corruption.

173. When such information is received from a whistle-blower, OLAF or ESMA must:

— inform the whistle-blower within 60 days of how much time is needed to take appropriate action; and

²⁷ See Management Board decision ESMA/2014/MB/67 (or any decision which may update or replace it in future)

– take appropriate action within the period of time indicated.

174. If no appropriate action is taken within that time, the member of staff may turn to another EU institution – the President of the Council, the European Parliament or the Court of Auditors, or the Ombudsman. Given the duties of discretion and loyalty, this should be an option of last resort, justifiable only if the staff member concerned honestly and reasonably believes that the information disclosed, and any allegation contained in it, are substantially true and he or she allowed ESMA or OLAF a reasonable period of time to take appropriate action. If such an external disclosure is necessary, it is advisable to let the facts speak for themselves. The duties of discretion and loyalty imply that reporting serious wrongdoing beyond these other EU institutions (for example, to the press) is not permitted.
175. Any whistle-blower who complies with these conditions will be protected from adverse consequences. This covers the identity of the whistle-blower, as well as the mobility and staff report of the person concerned. Naturally, in order for ESMA to be able to apply such protective measures, the person concerned will need to identify him/herself to the Institution, and to observe the whistleblowing procedure.
176. Members of ESMA staff should also be aware that Article 22 of the Staff Regulations states that they could be required to make good, in whole or in part, any damage suffered by the Union as a result of serious misconduct in connection with the performance of your duties. Such financial liability could be invoked if members of staff have caused serious financial damage or are guilty of deliberate misconduct or gross negligence.

20. Protection of personal data

177. Without prejudice to Regulation 1095/2010, ESMA shall process all data contained in the declarations and documents pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 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.
178. The purpose of the data processing is to safeguard the independence of ESMA and its constituent bodies.
179. The legal basis for data processing is provided under section 4 of this policy.
180. The Executive Director is the data controller in accordance with Article 2(d) of Regulation (EC) No 45/2001.
181. 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.
182. 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.

183. The conservation period of declarations and documents per category of data subjects shall be:
- For the Chair and Executive Director, 5 years after the discharge for the budgetary year in which the Chair and Executive Director terminate their mandate at ESMA;
 - For ESMA staff, 5 years after the discharge for the last budgetary year in which they worked for ESMA;
 - For declarations submitted in the context of grants and procurement, 5 years after the discharge for the budgetary year in which the contract or grant was terminated.
184. Without prejudice to the management of breach of trust described under section 11, 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 11 (breach of trust) of this policy, the data subject will be notified.
185. Data subjects also are entitled to have recourse at any time to ESMA's Data Protection Officer (dpo@esma.europa.eu) and/or the European Data Protection Supervisor (<http://www.edps.europa.eu>).

21. Activity reporting

Report on annual declarations

186. Once annual declarations have been collected, the Ethics Officer will provide a report to the Executive Director presenting the analysis of collected declarations of interests and lists of financial assets. The report will provide in particular:
- Statistical distribution of staff members having declared financial assets;
 - Type of interests declared, in particular financial instruments.

187. The report will take into account the undertaken analyses referred to in section 7.2.

Activity reporting

188. The Ethics Officer will inform the Executive Director of the activities undertaken for Ethics and conflict of interest management, in particular:

- Conflicts of interests managed, real or potential;
- Requests for undertaking outside activities and for publications/speeches;
- Requests for clearance.

The report shall be submitted by 31 May each year.

22. Records

189. 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.
190. When statistics are produced, they are anonymised to the extent possible.

23. Integrity

23.1. ESMA staff an “ambassador” for ESMA

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.

191. 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.
192. 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, 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.
193. 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”*.

23.2. Contacts with the media

194. Members of ESMA staff shall refer all press enquiries to the Communications Team in order for ESMA to:
- maintain a consistent line when dealing with press or other media enquiries;



- minimise the risk to ESMA and its reputation; and
- minimise any risk to individual employees.

195. Only members of ESMA staff working in the Communications Team and those expressly authorised by the Communications Team, should speak to the media.
196. If a staff member receives a media enquiry, he/she should not comment on it, but politely and firmly refer the journalist to the Communications Team. Members of ESMA staff shall also contact the Communications Team to inform them of the enquiry without exception.
197. Members of ESMA staff should remember that the press may be present at external conferences or events and that anything said could be reproduced in writing and, hence, need to be particularly careful regarding any statements they make.
198. For more information members of ESMA staff should check the following link: [2013-Comms-64 rev ESMA Media Handling Procedure](#).

24. Right to Appeal

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

25. Final provisions

200. The policy will be reviewed every 3 years after taking effect, as necessary.
201. The policy is approved by the Executive Director on 12 May 2017.
202. The policy shall take effect on 12 May 2017.

[signed]

Executive Director