

## DECISION OF THE MANAGEMENT BOARD

### On Secondment of National Experts

#### The Management Board

**Having regard** to 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<sup>1</sup> (the “Regulation” and “ESMA”) and in particular Article 68(4)

#### Whereas:

- (1) Seconded National Experts (SNEs) should enable ESMA to benefit from the high level of their professional knowledge and experience, in particular in areas where such expertise is not readily available.
- (2) It is highly desirable to foster the exchange of professional experience in, and knowledge of, European policies by temporarily assigning experts from the members of the European System of Financial Supervision to ESMA, even for short periods. For the same reason, steps should also be taken to facilitate the use of experts drawn from the competent authorities of Member States of the European Free Trade Area (EFTA), candidate countries that have reached an agreement with the Commission on personnel matters, and public intergovernmental organisations (IGOs).
- (3) In order to ensure that ESMA's independence is not compromised by private interests, it should be stipulated that SNEs must come from a member of the European System of Financial Supervision or an IGO. The secondment of an SNE by another employer should be authorised only on a case-by-case basis.
- (4) In order to avoid any conflicts of interest, the rights and obligations of SNEs, as set out in this Decision, should ensure that they carry out their duties solely in the interests of ESMA.
- (5) It is desirable in the interests of administrative efficiency to provide transitional arrangements enabling secondment agreements entered into by ESMA's predecessor to be replaced with secondment agreements to which this Decision applies without ESMA having to undertake a selection procedure.

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<sup>1</sup> OJ L 331, 15.12.2010, p. 84.

- (6) It is desirable for working conditions and the granting of subsistence allowances to be in line with the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, but without actually assimilating SNEs to these categories.

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## TITLE 1 – SECONDED NATIONAL EXPERTS

### Chapter 1 – General provisions

#### Article 1 – Scope and definitions

- (1) These Rules shall apply to national experts seconded to the European Securities and Markets Authority (“SNEs” or “Seconded National Experts”).

Seconded National Experts are staff employed by a member of the European System of Financial Supervision (as specified in Article 2 of Regulation (EU) no 1095/2010 of the Council and Parliament 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 “Regulation” and “ESMA”), including those countries that have reached appropriate arrangements for participation in ESMA’s work within the meaning of Article 75 of the Regulation, or an IGO who are seconded to ESMA so that it can use their expertise in a particular field.

The persons covered by these Rules must have worked for their employer on a permanent or contract basis for at least 12 months before their secondment and shall remain in the service of that employer throughout the period of secondment.

The SNE's employer shall thus undertake to continue to pay his salary, to maintain his administrative status (permanent official or contract staff member) throughout the period of secondment and to inform ESMA of any change in the SNE's situation in this regard. The SNE's employer shall also continue to be responsible for all his social rights, particularly social security and pension.

The termination of or change in the SNE's administrative status (permanent official or contract staff member) may lead to the termination of his secondment, without notice, in accordance with Article 10(2)(c).

- (2) Notwithstanding the second subparagraph of paragraph 1, the Executive Director may, on a case-by-case basis, authorise the secondment of an SNE from another employer if the interests of ESMA warrant bringing in specific expertise as a temporary measure, provided that the SNE's employer:
- (a) is an independent university or research organisation which does not set out to make profits for redistribution; or
  - (b) is in fact part of the public sector. For the purposes of this Decision, to qualify as being part of the public sector the SNE's employer must meet the following conditions:
    - (i) it must be attached to a public administration (meaning all State administrative services at central, federal and regional level, comprising ministries, government and parliament services, the courts, central banks, and the administrative services of local authorities, as well as the decentralised administrative services of the State and of such authorities), and specifically it must have been created by legislation or regulation;

- (ii) any activities in which it competes against other private or public entities on the market must represent less than half of its activities.
- (3) Except where the Executive Director grants a derogation, an SNE must be a national of an EU or EFTA Member State or a country with which the Council has decided to open accession negotiations and which has concluded a specific agreement on staff secondments.
- (4) When a secondment is being planned, ESMA shall ensure the geographical and gender balance and compliance with the principle of equal opportunities, in accordance with the principles set out in Article 1d and Article 27 of the Staff Regulations.
- (5) Any reference in these Rules to a person of the male sex shall be deemed also to constitute a reference to a person of the female sex, and vice-versa, unless the context clearly indicates otherwise.

#### **Article 2 – Cost-free Seconded National Experts**

- (1) For the purposes of this Decision, “cost-free SNEs” means SNEs for whom ESMA does not pay any of the allowances provided for in Chapters III or cover any of the expenses provided for in this Decision, other than those related to the performance of their duties during their secondment.
- (2) Cost-free SNEs may be seconded from the employers set out in Article 1, subject to the same requirements for authorisation by the Executive Director where appropriate.
- (3) Cost-free SNEs shall be taken into account in ESMA’s annual decision on the final allocation of human resources and on its budget.

#### **Article 3 – Selection procedure**

- (1) SNEs shall be selected either through:
  - an open and transparent selection procedure taking into account ESMA’s rules governing the selection and engagement of ESMA’s staff, or
  - by direct agreement between ESMA and the respective SNE’s employer.
- (2) The secondment shall be authorised by the Executive Director and effected by an exchange of letters between the Executive Director and the employer.

#### **Article 4 – Period of secondment**

- (1) The initial period of secondment may not be more than two years. It may be extended once or more, up to a total period not exceeding four years. Exceptionally, at the request of the relevant service and where the interests of the service warrant it, the Executive Director may authorise one or more extensions of the secondment for a maximum of two more years at the end of the four-year period.
- (2) The initial duration of the secondment shall be specified in the exchange of letters referred to in Article 3(2). Any extension of the period of secondment shall be the subject of a new exchange of letters.



## **Article 5 – Place of secondment**

SNEs shall be seconded to ESMA's seat unless decided otherwise by the Executive Director.

## **Article 6 – Tasks**

- (1) SNEs shall assist ESMA's staff, performing the tasks assigned to them based on professional knowledge and experience. SNEs may not perform middle or senior management duties, even when deputising for their immediate superior.

Under no circumstances may an SNE on his own represent ESMA with a view to entering into commitments, whether financial or otherwise, or negotiating on its behalf.

An SNE may, however, represent ESMA in legal proceedings as co-agent with a member of ESMA's staff.

- (2) ESMA shall remain solely responsible for approving the results of any tasks performed by an SNE and for signing any official documents arising from them.
- (3) ESMA, the SNE's employer and the SNE must ensure that there is no conflict of interest in relation to the SNE's duties while seconded.

For this purpose, the service to which the SNE is to be seconded shall inform the SNE and his employer before the start of the secondment about the intended duties and ask them to confirm in writing that they do not know of any reason why the SNE should not be assigned to those duties.

The employer and the SNE shall also undertake to inform the Executive Director of any change of circumstances during the secondment which could give rise to any such conflict.

ESMA shall keep a copy of all such exchanges of correspondence in its records.

- (4) Where the service to which an SNE is to be seconded considers that the nature of its activities requires particular security precautions, security clearance shall be obtained prior to recruitment.
- (5) Failure on the part of the SNE to comply with his obligations arising from paragraphs 1 or 3 above shall entitle ESMA, if it sees fit, to terminate the secondment of the SNE pursuant to Article 10(2)(c).

## **Article 7 – Rights and obligations**

- (1) During the period of secondment:
  - (a) The SNE shall carry out his duties and conduct himself solely with the interests of the European Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside ESMA. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duties of loyalty to the European Union.

- (b) An SNE wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the European Union institutions or agencies shall be subject to the Commission's rules on prior authorisation for officials.<sup>2</sup> The service concerned shall consult the SNE's employer before issuing an authorisation.
- (c) The SNE shall refrain from any action or behaviour which might reflect adversely up on his position and from any form of psychological or sexual harassment.
- (d) The SNE shall not, in the performance of his duties, deal with a matter in which, directly or indirectly, he has any personal interests such as to impair his independence, and, in particular, family and financial interests. If he has occasion in the performance of his duties to deal with such a matter, he shall immediately inform his line manager, who will take any appropriate measure and may, in particular, relieve the SNE of responsibility in this matter.

The SNE may neither keep nor acquire, either directly or indirectly, in undertakings which are subject to the authority of ESMA or which have dealings with ESMA, any interests of such kind or magnitude as might impair his independence in the performance of his duties and shall comply with ESMA's internal rules of procedure concerning such interests.

The SNE shall declare any gainful activity performed in a professional capacity by his spouse, as defined by the Staff Regulations.

- (e) The SNE shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public. The SNE shall comply with the requirements of professional secrecy set out in Article 70 of the Regulation establishing ESMA.<sup>3</sup>
- (f) The SNE has the right to freedom of expression, with due regard for the principles of loyalty and impartiality.

The SNE who intends to publish or cause to be published, whether alone or with others, any text on a matter relating to the work of the European Union shall inform his line manager in advance. Where the line manager is able to demonstrate that the publication is liable seriously to prejudice the legitimate interests of the European Union, he shall inform the SNE of his decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the line manager shall be deemed to have had no objections.

- (g) All rights in any work done by the SNE in the performance of his duties shall be the property of ESMA.
- (h) The SNE shall reside at the place of secondment or at no greater distance therefrom as is compatible with the proper performance of his activities.

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<sup>2</sup> Article 12b of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

<sup>3</sup> OJ L 331, 15.12.2010, p.84

- (i) Based on his professional knowledge and experience, the SNE shall assist and tender advice to the superiors in ESMA to whom he is assigned and shall be responsible to his superiors for performance of the tasks entrusted to him.
- (2) Failure to comply with any of the provisions of paragraph 1 during the period of secondment shall entitle ESMA, if it sees fit, to terminate the SNE's secondment pursuant to Article 10(2)(c).
- (3) At the end of the secondment, the SNE shall continue to have a duty of loyalty to the European Union and be bound by the obligation to act with integrity and discretion in the exercise of new duties assigned to him and in accepting certain posts or advantages.

### **Article 8 – Professional experience and knowledge of languages**

- (1) To qualify for secondment to ESMA a national expert must have at least three years' experience of administrative, legal, scientific, technical, advisory or supervisory functions which can be regarded as equivalent to those of function groups AD or AST – this latter function group being taken into consideration only for highly specialised job profiles – as defined in the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities.
- (2) The SNE must produce evidence of a thorough knowledge of one of the Union languages and a satisfactory knowledge of another Union language to the extent necessary for the performance of his duties. An SNE from a non-member country must produce evidence of a thorough knowledge of one Union language necessary for the performance of his duties.

### **Article 9 – Suspension of secondment**

- (1) At the written request of the SNE or his employer, and with the latter's agreement, ESMA may authorise suspensions of periods of secondment and specify the terms applicable. During such suspensions:
  - (a) the subsistence allowances referred to in Article 17 shall not be payable;
  - (b) the travel expenses referred to in Article 20 shall be payable only if the suspension is at the Commission's request.
- (2) The period of suspension shall not be counted in the period of secondment as defined in Article 4.

### **Article 10 – Termination of periods of secondment**

- (1) Subject to paragraph 2, the expert's secondment may be terminated at the request of ESMA or the SNE's employer, subject to three months' notice, or at the SNE's request, subject to the same period of notice and with the agreement of ESMA and the SNE's employer.
- (2) In exceptional circumstances the secondment may be terminated without notice:
  - (a) by the SNE's employer, if the employer's essential interests so require;
  - (b) by ESMA and the employer acting jointly, at the request of the SNE addressed to both parties, if the SNE's personal or professional interests so require;



- (c) by ESMA in the event of failure by the SNE or his employer to respect their obligations under this Decision; ESMA shall immediately inform the SNE and his employer accordingly.

## **Chapter 2 – Working conditions**

### **Article 11 – Social security**

- (1) Before the period of secondment begins, the SNE's employer shall certify that he will remain, throughout the period of secondment, subject to the social security legislation applicable to the employer and is responsible for expenses incurred abroad. To this end, the SNE's employer shall provide ESMA with the certificate referred to in Article 11(1) of Council Regulation (EEC) No 574/72.<sup>4</sup>
- (2) From the day on which their secondment begins, SNEs shall be covered by ESMA against the risk of accident.
- (3) An SNE who cannot be covered by a public sickness insurance scheme may apply to have this risk insured by ESMA. The SNE shall pay half the relevant insurance premium and his contribution shall be deducted monthly from the subsistence allowances referred to in Article 17.

### **Article 12 – Working hours**

- (1) The working hours for SNEs shall be the same as those in force at ESMA.<sup>5</sup>
- (2) An SNE shall serve on a full-time basis throughout the period of secondment. Following a duly justified request originating from the service concerned, the Executive Director may allow an SNE to work part time, provided the SNE's employer agrees and the arrangement is compatible with the smooth running of the department.

### **Article 13 – Sick leave**

- (1) The rules in force at ESMA on absence due to sickness or accident shall apply to SNEs.<sup>6</sup>
- (2) Where the period of sick leave exceeds three months or the length of time worked by the SNE, whichever is longer, the subsistence allowances referred to in Article 17 shall be automatically suspended. This provision shall not apply in the event of illness linked to pregnancy.

Sick leave may not extend beyond the duration of the secondment of the person concerned.

- (3) SNEs who are the victim of a work-related injury which occurs during the secondment shall continue to receive the subsistence allowances in full throughout the period during which they are unfit for work. These allowances shall not, however, be paid beyond the end of the period of secondment.

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<sup>4</sup> OJ L 74, 27.3.1972, p. 1.

<sup>5</sup> Articles 55, 56 and 56c of the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.

<sup>6</sup> Articles 59 and 60 of the Staff Regulations and the provisions implementing these Articles shall apply *mutatis mutandis*.



#### **Article 14 – Annual and special leave**

- (1) SNEs shall be entitled to two-and-a-half working days of leave per whole month of service, giving 30 days per calendar year.
- (2) Leave shall be subject to prior authorisation by the service to which the SNE is seconded. In the event of unauthorised absence within the meaning of Article 60 of the Staff Regulations, subsistence allowances shall not be paid.
- (3) Upon a duly justified request from the SNE's employer, the SNE may be granted up to two days of special leave in a 12-month period to visit his employer.
- (4) Days of annual leave not taken by the end of the period of secondment shall be forfeited.
- (5) In the case of part-time work, the annual leave shall be reduced accordingly.
- (6) SNEs may be granted special leave in accordance with the rules in force at ESMA on special leave.

#### **Article 15 – Maternity leave**

- (1) The rules in force at ESMA on maternity leave shall apply to SNEs.<sup>7</sup> While on maternity leave the SNE shall receive the subsistence allowances referred to in Article 17.
- (2) Where the rules that are binding upon the SNE's employer provide for a period of maternity leave longer than that granted by ESMA, the secondment may, at the SNE's request, be interrupted for the period by which that leave exceeds the leave granted by ESMA.

A period equivalent to the break may be added to the end of the secondment if the interests of ESMA warrant it.

- (3) An SNE may, as an alternative, apply for a break in the secondment to cover the sum of the periods allowed for maternity leave. In that case, the second subparagraph of paragraph 2 shall apply.

#### **Article 16 – Management and control**

Day-to-day administrative and financial management, such as the calculation and payment of subsistence allowances and travel allowances, shall be the responsibility of the administration unit working closely with the service to which the SNE is assigned.

### **Chapter 3 – Allowances and expenses**

#### **Article 17 – Subsistence allowances**

- (1) An SNE shall be entitled, throughout the period of secondment, to a daily subsistence allowance and a monthly subsistence allowance equal to the amount established by the Commission each year.

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<sup>7</sup> Article 58 of the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.

- (2) These subsistence allowances shall be granted under the same conditions as the expatriation allowance for officials.<sup>8</sup>
- (3) In the case of cost-free SNEs, the exchange of letters referred to in Article 3(2) shall stipulate that these allowances will not be paid.
- (4) The subsistence allowances shall be subject to the weighting set by the Council pursuant to Article 64 of the Staff Regulations.
- (5) The adjustments to remuneration adopted by the Council pursuant to Article 65 of the Staff Regulations shall apply automatically to the subsistence allowances in the month following their adoption.
- (6) These allowances are intended to cover SNEs' living expenses in the place of secondment on a flat-rate basis and shall in no circumstances be construed as remuneration paid by ESMA.
- (7) Before the secondment, the SNE's employer shall certify to ESMA that during the secondment it will maintain the level of remuneration the SNE was receiving at the time of his secondment.
- (8) The SNE shall inform ESMA of any allowance similar to the subsistence allowances received from other sources. This amount shall be deducted from the subsistence allowances. Following a duly justified request from the employer, ESMA may decide not to make this deduction.
- (9) Subsistence allowances shall be payable for every day of the week, including during periods of mission, annual leave, special leave and holidays granted by ESMA.
- (10) When the SNE starts the secondment, the first 75 days of the subsistence allowances to which he is entitled shall be advanced in the form of a lump sum, and the allowances shall not be paid during the corresponding period. This lump sum shall be paid by the 25th day of the month for SNEs starting on the first day of the same month. For SNEs starting on the 16th day of the month, this lump sum shall be paid by the 10th day of the following month. If the secondment is ended during the first 75 days, the SNE shall return the amount corresponding to the remainder of that period.
- (11) Subsistence allowances shall be paid no later than the 25th day of each month.

#### **Article 18 – Possible reimbursement of remuneration**

- (1) If its interests so require, ESMA may reimburse all or part of the gross remuneration of an SNE during the period of secondment to his employer under an agreement to be concluded in advance and recorded in the exchange of letters provided for in Article 3(2).
- (2) The reimbursement of remuneration shall be authorised on a case-by-case basis by the Executive Director, taking into account the specific needs of the relevant service and, in particular, the need to use SNEs from Member States.
- (3) Expenses resulting from reimbursement shall be charged against the SNE allocation of ESMA's general budget.

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<sup>8</sup> Article 4 of Annex VII to the Staff Regulations and the provisions implementing this Article shall apply mutatis mutandis.



### **Article 19 – Place of origin**

- (1) For the purposes of this Decision, "place of origin" means the place where the SNE performed his duties for his employer at the time of his secondment. The place of secondment shall be ESMA's seat or the place decided by the Executive Director in accordance with Article 5. Both places shall be identified in the exchange of letters referred to in Article 3(2).
- (2) If, six months before his secondment to ESMA as an SNE, a national expert already has his main residence in a place other than that in which the employer's headquarters is located, the place of origin shall be deemed to be whichever of the places is closer to the place of secondment.

### **Article 20 – Travel expenses**

- (1) SNEs other than those seconded cost-free, shall be entitled to reimbursement of the cost of their travel between their place of origin and the place of secondment, as defined in Article 19, at the beginning and end of their secondment.
- (2) Travel expenses shall be reimbursed in accordance with the relevant rules and conditions in force at ESMA.<sup>9</sup>
- (3) By way of derogation from paragraph 1, an SNE who proves that he will be assigned to a place other than his place of origin at the end of the secondment shall be entitled to reimbursement of the travel expenses to that new place under the conditions laid down in paragraph 2. However, this reimbursement may not be more than the amount that would have been paid had the SNE returned to his place of origin.
- (4) ESMA shall not reimburse any expenses referred to in the preceding paragraphs if they have been met by the employer or any other body. The employer concerned shall inform the administration unit to this effect.

### **Article 21 – Missions and mission expenses**

- (1) SNEs may be sent on mission subject to the provisions of Article 6.
- (2) Mission expenses shall be reimbursed in accordance with the relevant rules and conditions in force at ESMA.<sup>10</sup>

### **Article 22 – Training**

SNEs shall be entitled to attend training courses organised by the European Supervisory Authorities if the interests of ESMA warrant it. The interests of the SNE, in particular with a view to his reinstatement into his original administration after the secondment, may be considered when a decision is taken on whether to allow him to attend a training course.

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<sup>9</sup> Article 7(1) and (2) of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

<sup>10</sup> Articles 11 and 12 of Annex VII to the Staff Regulations and the provisions implementing these Articles shall apply mutatis mutandis.

### **Article 23 – Appraisal**

SNEs or an SNE's employer may request an appraisal annually. The appraisal procedure set out in ESMA's decision on appraisal of staff shall apply by analogy.

### **Article 24 – Administrative provisions**

SNEs shall report to the human resources service on the first day of secondment to complete the requisite administrative formalities. They shall normally take up duty on either the first or the sixteenth day of the month.

## **Chapter 4 – Complaints**

### **Article 25 – Complaints**

- (1) Without prejudice to the possibilities for instituting proceedings after taking up his position, under the conditions and time limits laid down in Article 263 of the Treaty on the Functioning of the European Union, any SNE may submit a complaint to the Executive Director about an act adopted by ESMA under this Decision which adversely affects him, with the exception of decisions which are direct consequences of decisions taken by his employer.
- (2) The complaint must be lodged within two months. The period shall start to run on the date of notification of the decision to the person concerned, but in no case later than the date on which the latter received such notification. The Executive Director shall notify the person concerned of his reasoned decision within four months from the date on which the complaint was lodged. If at the end of that period no reply to the complaint has been received, this shall be deemed to constitute an implied decision rejecting it.

## **TITLE 2 – FINAL PROVISIONS**

### **Article 26 – Delegation**

- (1) The Executive Director may delegate the powers devolved to him pursuant to this Decision to one or more middle managers of his choice.
- (2) The employer concerned shall enjoy a close working relationship with ESMA throughout the SNEs' secondment. All correspondence and contacts between the SNE's employer and ESMA shall be directed to ESMA's human resources service.

### **Article 27 – Transitional arrangements**

- (1) This Decision does not apply in relation to individuals seconded to ESMA under a secondment agreement referred to in Article 77(1) of the Regulation establishing ESMA.<sup>11</sup>
- (2) The selection procedure required under Article 3(1) is not required if secondment agreements referred to in paragraph 1 are terminated and replaced with a secondment agreement to which this

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<sup>11</sup> OJ L 331, 15.12.2010, p.84



Decision applies and which relates to the same individual. The period of secondment under the initial secondment agreement shall count towards the limits set out in Article 4(1).

**Article 28 – Entry into force**

The decision of the Management Board ESMA/2011/MB/2 of 11 January 2011, on Seconded National Experts, is repealed.

This Decision shall take effect on the day following its adoption.

Done at Rome on 24 September 2014

A handwritten signature in blue ink, appearing to be 'S/M' with a flourish.

Steven Maijor  
Chair  
For the Management Board



Brussels,  
HR B.4/ D(2014)

**Subject: SNEs allowances as of 01/05/2014**

a) for the daily allowance:

- allowance to be paid by the Commission to SNEs according to Article 17.1 of the Commission Decision C(2008)6866 : 128,67€

b) for the monthly allowance to be paid by the Commission to SNEs according to Article 17.1 of the Commission Decision C(2008)6866 and according to Article 17.1 of the Commission Decision C(2006)2033 based on the distance between the place of origin/of recruitment and the place of secondment :

Distance between the place of origin/of recruitment and the place of secondment in km	Amount in euros
0-150	0
> 150	82,70
> 300	147,03
> 500	238,95
> 800	385,98
> 1300	606,55
> 2000	726,04