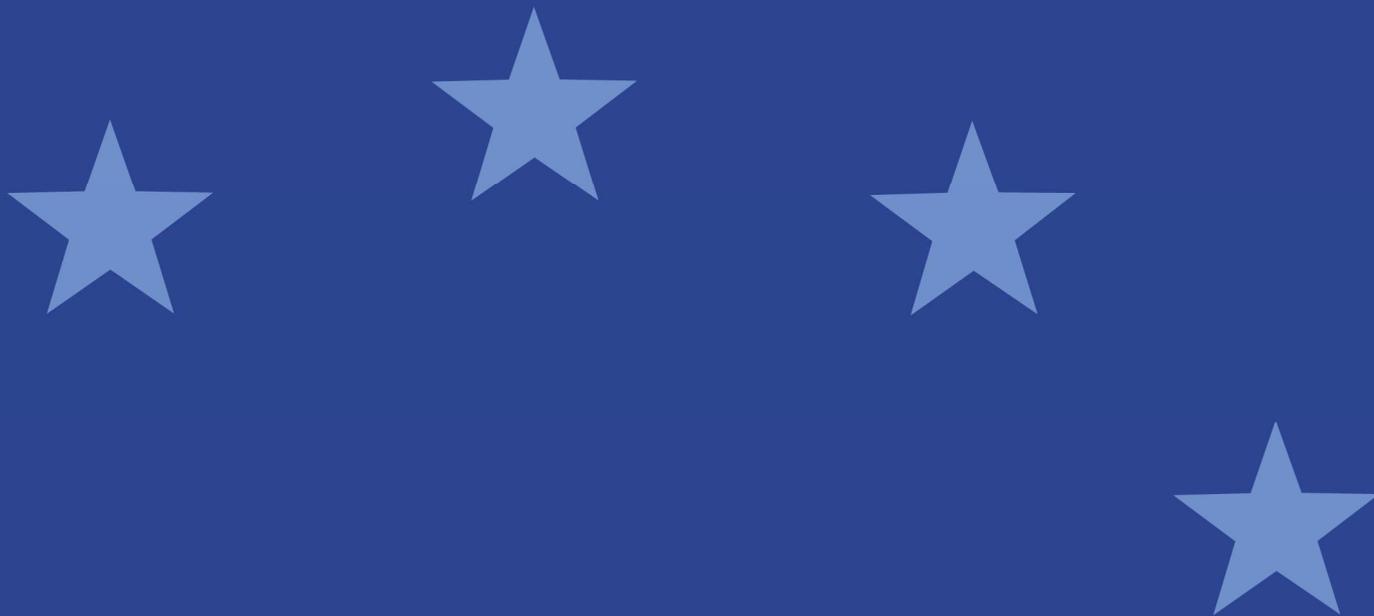




European Securities and
Markets Authority

Technical Specifications and monitoring

Temporary workers at ESMA
Invitation to tender n° OJ/27/04/2012 -PROC/2012/002



1.	Overview of this tender	4
1.1.	Description of the contract	4
1.2.	The cascading mechanism	5
1.3.	Timetable.....	7
1.2.	Participation in the tender procedure	7
1.3.	Participation of consortia	7
1.4.	Subcontracting	8
1.5.	Presentation of the tender	8
1.6.	Confirmation of offer submission.....	9
1.7.	Contacts between ESMA and the tenderers	9
1.8.	Division into Lots.....	10
1.9.	Variants	10
1.10.	Confidentiality and public access to documents	10
1.11.	Contractual details.....	11
2	Terms of reference	11
2.1	Introduction: Background to the invitation to tender.....	11
2.2	Description of the [goods/services] & scope of [the contract/Lot X]	11
2.3	Prices	15
3	Exclusion and selection criteria	16
3.1	Exclusion criteria.....	16
3.2	Selection criteria	17
4	Award of the contract	18
4.1	Technical proposal.....	19
4.2	Technical evaluation.....	19
4.3	Financial proposal	20

4.4	Choice of the selected tender	21
4.5	No obligation to award.....	21
4.6	Notification of outcome	21
List of Annexes _____		22
Annex I – Draft contract.....		23
Annex II – Exclusion criteria and non-conflict of interest declaration		24
Annex III – Legal entity form		26
Annex IV – Financial identification form.....		27
Annex V – Authorised signatory form.....		29
Annex VI – Financial proposal form		29
Annex VII – Confirmation of offer submission		31
Annex VIII – Tender submission checklist.....		32
Annex IX – Code of good conduct.....		34
Annex X – List of ESMA public holidays 2012		41
Annex XI – Guide des missions ESMA		42

Introduction to ESMA

The European Securities and Markets Authority, ESMA, is an independent EU Authority that contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).

ESMA's work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan-European reach.

Further information about the Authority can be found on the ESMA website www.esma.europa.eu.

The tender process

The purpose of competitive tendering for awarding contracts is two-fold:

- to ensure the transparency of operations;
- to obtain the desired quality of services, supplies and works at the best possible price.

The applicable regulations, namely directives **92/50/EEC**, **93/36/EEC** and **93/37/EEC**, oblige the ESMA to guarantee the widest possible participation, on equal terms in tender procedures and contracts

1. Overview of this tender

1.1. Description of the contract

The Agency intends to conclude framework contracts for the provision of temporary workers at its premises.

A framework contract is a legal agreement between two parties - in this case, ESMA and the Contractor. It acts as the basis for possible future purchase of services by the Agency. The framework contract contains, inter alia, a description of the scope of services that can be purchased by ESMA, methodology, timing and fees to be respected by the Contractor. It is a contract of a fixed duration but with no fixed value, only a maximum total value. The framework contract itself is not an order for services or supplies and does not constitute a financial commitment. Services are requested under “specific contracts” linked to particular activities, over a given period. Either format may be used for implementation of the framework contract indiscriminately, depending on the Agency’s needs. The specific contract to the draft framework contract may also be referred to as an “Order Form”.

Implementation of the framework contract

The framework contract should be signed for an initial one-year period, and should be renewable up to a maximum of three times, under the same conditions.

The Agency intends to issue individual and successive specific contracts over the period of

validity of the framework contract.

An individual specific contract shall be issued, signed and submitted to the Agency for each temporary worker required by ESMA prior to the starting date of the respective temporary worker.

The procedure for concluding a specific contract is as follows:

Step 1 ESMA will draw up a job description and/or a draft specific contract for each worker required over a given time period, and send them to the Contractor together with a budget, and time schedule, based on the tender specifications and the Contractor's technical and financial proposal;

Step 2 ESMA and the Contractor will discuss and agree on the budget and the details of the temporary worker. For each worker to be provided, the Contractor shall make available the number of candidates for an interview to be held at the Agency's premises by Agency staff members, following which the Agency will identify the candidate it wishes to employ. In all cases, the fees shall be those specified in the Framework contract, as specified under Annex I;

Step 3 ESMA will send a signed specific contract (pertaining to the preferred candidate) to the Contractor and the required worker shall commence his/her activities once the specific contract is signed by the Contractor and returned to the Agency, at the date indicated in the specific contract.

ESMA intends to start using temporary workers immediately upon signature of the framework contract, without this being binding on ESMA.

NB: No legal or financial commitment exists on behalf of either party until the specific contract is signed by both parties.

ESMA will sign multiple Framework Contracts with the successful tenderers (maximum three). The successful tenderers will be placed into a ranked list.

The Framework Contracts do not constitute orders.

Execution of the Framework Contracts will be performed through Specific Contracts. For signing Specific Contracts or Orders ESMA shall use the cascading mechanism.

1.2. The cascading mechanism

For every Specific Contract or Order the Agency shall apply the cascading system. The cascading mechanism is the mechanism applied for using multiple framework contracts. In general where more than one contractor is nominated, the following rules shall apply to requests for supply of Services.

(1) For each case, ESMA shall determine the specifications of the *Services* required, hereinafter referred as project, and the relevant response time. The Contractor shall make its offer in response to the Agency's specifications within this time limit.

(2) When requesting an offer to supply *Services*, ESMA shall initially address its request to the contractor who has been nominated in first place on the basis of the results of the evaluation of the call for tenders cited in the Contract. If this first contractor is in a position to submit a minimum of three CVs of a suitable quality fulfilling the relevant criteria and whose selected candidates successfully complete interviews contingently requested by ESMA, then it shall be awarded the specific contract in question.

(3) If the first contractor is unable to meet these criteria, then it shall be regarded as being unable to supply the Services requested. In this case, the Agency shall then address the same request to the contractor who has been nominated in the second place on the basis of the results of the evaluation of the call for tenders cited in the Contract. If this second contractor is in a position to meet the criteria for response time and specifications, then it shall be awarded the project in question.

(4) If this second contractor is unable to meet either of these criteria, then it shall be considered unable to supply the Services requested. In that event, the Agency shall then repeat this process with the contractor who has been nominated in third place.

(5) This process will terminate either with the award of the project in question to one of the contractors who has been nominated or with the failure to award the project to any contractor. In the event of failure the Agency may redefine the project or start the procedure again on the same project at a later time. The first contractor will always be consulted first. During the cascade mechanism the specifications may not change (e.g. profiles and/or technical annexes must remain the same).

As a rule, ESMA will send its request for temporary workers to the contractor at least ten working days prior to the foreseen starting date. ESMA will specify the job description, the required profiles and competences, and the expected contract duration (foreseen start and end date).

The contractor has 5 working days calculated from the day of ESMA's request (see above b)) to provide ESMA with CVs of candidates matching the requested profile. In exceptional cases, ESMA may grant the contractor additional response time.

A minimum of three and a maximum of five CVs of candidates shall be submitted. ESMA will have the right to invite one or more of the proposed candidates for interviews and tests at its premises. ESMA will inform the contractor of its decision concerning the proposed candidates within a reasonable timeframe prior to the planned starting date. However, it needs to be ensured by both parties that the specific contract will be provided by the contractor and signed by ESMA before the actual starting date of the temporary worker.

A focal point concerning the provision of temporary workers will have to be appointed from both parties (ESMA and contractor). The focal points need to be fluent in English. In addition, the contractor has to provide a contact who could respond to questions regarding national law.

1.3. Timetable

Activity	Date	Comments
Launching of tender	27/04/2012	Dispatch of contract notice to the OJ
Deadline for request of clarifications from ESMA	02/06/2012	
Site visit or clarification meeting (if any)	-	Not applicable to this tender
Last date on which clarifications are issued by ESMA	05/06/2012	
Deadline for submission of offers	12/06/2012	At 16:00 local time if hand delivered
Interviews (if any)	-	Not applicable to this tender
Opening session	19/06/2012	
Date for evaluation of offers	<i>[Opening date plus 1 week]</i>	Estimated
Notification of award to the selected Tenderer	<i>[Evaluation date plus 3 weeks]</i>	Estimated
Contract signature	<i>[Notification date plus 2 weeks]</i>	Estimated

1.4. Participation in the tender procedure

This procurement procedure is open to the natural or legal person wishing to bid for the assignment and established in the EU, the EEA or any other country covered by the WTO Government Procurement Agreement.

Tenderers must not be in any situation of exclusion under the exclusion criteria indicated in section 3.1 of these tender specifications and must have the legal capacity to allow them to participate in this tender procedure (see section 3.2.1).

Please note that any attempt by a tenderer to obtain confidential information, enter into unlawful agreements with competitors or influence the evaluation committee or ESMA during the process of examining, clarifying, evaluating and comparing tenders will lead to the rejection of his tender and may result in administrative penalties.

1.5. Participation of consortia

A consortium may submit a tender on condition that it complies with the rules of competition.

A consortium may be a permanent, legally-established grouping or a grouping which has been constituted informally for a specific tender procedure. Such grouping (or consortium) must specify the company or person heading the project (the leader) and must also submit a copy of the

document authorising this company or person to submit a tender. All members of a consortium (i.e., the leader and all other members) are jointly and severally liable to the Contracting Authority.

In addition, each member of the consortium must provide the required evidence for the exclusion and selection criteria (see section 3 of these tender specifications). Concerning the selection criteria 'technical and professional capacity', the evidence provided by each member of the consortium will be checked to ensure that the consortium **as a whole** fulfils the criteria.

The participation of an ineligible person will result in the automatic exclusion of that person. In particular, if that ineligible person belongs to a consortium, the whole consortium will be excluded.

1.6. Subcontracting

If subcontracting is envisaged, the tenderer must clearly indicate in the tender which parts of the work will be subcontracted. The total value of the subcontracted part of the services cannot represent the total value of the contract value.

Subcontractors must satisfy the eligibility criteria applicable to the award of the contract. If the identity of the intended subcontractor(s) is already known at the time of submitting the tender, all subcontractors must provide the required evidence for the exclusion and selection criteria.

If the identity of the subcontractor is not known at the time of submitting the tender, the tenderer who is awarded the contract will have to seek ESMA's prior written authorisation before entering into a subcontract.

Where no subcontractor is given, the work will be assumed to be carried out directly by the tenderer.

1.7. Presentation of the tender

Tenders must comply with the following conditions:

a) Double envelope system

Offers must be submitted in accordance with the **double envelope system**:

The outer envelope or parcel should be sealed with adhesive tape and signed across the seal and carry the following information:

- the project title: **Temporary workers at ESMA (OJ/27/04/2012 - PROC/2012/002)**
- the name of the tenderer;
- the indication "**Offer - Not to be opened by the internal mail service**";
- the address for submission of offers (as indicated in the invitation to tender letter)
- the date of posting (if applicable) should be legible on the outer envelope

The outer envelope must contain three inner envelopes, namely, Envelopes A, B and C.

The content of each of these envelopes shall be as follows:

1. Envelope A – Administrative documents

- The signed, dated and duly completed **Tender Submission Checklist** using the template in **Annex IX**;
 - The duly filled in, signed and dated **Exclusion Criteria and Non-Conflict of Interest Declaration(s)** as requested in section 3.1 and using the standard template in **Annex II**;
 - The duly filled in, signed and dated **Legal Entity Form(s)** as requested in section 3.2.1 and using the standard template in **Annex III** as well as the requested accompanying documents;
 - The duly filled in, signed and dated **Financial Identification Form** using the template in **Annex IV**;
 - Financial and economic capacity documents as requested in section 3.2.2;
 - The technical and professional capacity documents as requested in section 3.2.3;
 - A statement containing the name and position of the tenderer's **authorised signatory**; and
 - In case of consortia, a **consortium agreement** duly signed and dated by each of the consortium members specifying the company or person heading the project and authorised to submit a tender on behalf of the consortium (please see section 1.4 of these tender specifications).
2. Envelope B – Technical proposal
- One original (unbound, signed and clearly marked as “Original”) and four copies (bound and each marked as “Copy”) of the Technical Proposal, providing all information requested in section 4.
3. Envelope C – Financial proposal
- One signed original and four copies of the Financial Proposal, based on the format in found in **Annex VII**.

b) Language

Offers must be submitted in one of the official languages of the European Union. ESMA prefers, however, to receive documentation in English. Nonetheless, the choice of language will be not play any role in the consideration of the tender.

1.8. Confirmation of offer submission

In order to keep track of offers due to arrive, tenderers who do not hand deliver their offers are requested to complete and return the form found **Annex VIII**.

1.9. Contacts between ESMA and the tenderers

Contacts between ESMA and tenderers are prohibited throughout the procedure, except in the following circumstances:

1.9.1 Written clarification before the deadline for submission of offers

Requests for clarification regarding this procurement procedure or the nature of the contract should be done **in writing only** and should be sent by mail, fax or email to:

ESMA
Attn: Procurement Office
103, Rue de Grenelle 103
CS60747
75345 Paris cedex 07, France
email: procurement@esma.europa.eu

Each request for clarification sent to ESMA should indicate the publication reference and the title of the tender.

The deadline for clarification requests is indicated in the timetable under section 1.2. Requests for clarification received after the deadline will not be processed.

At the request of the tenderer, ESMA may provide any additional information or clarification resulting from the request for a clarification on the ESMA Procurement webpage.

ESMA may, on its own initiative, inform interested parties of any error, inaccuracy, omission or other clerical error in the text of the contract notice or in the tender specifications by publishing a corrigendum on its website.

Tenderers should regularly check the ESMA website for updates.

1.9.2 After the closing date for submission of tenders

If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the submitted tender must be corrected, the ESMA may contact the tenderer, although such contact may not lead to any alternation of the terms of the submitted tender.

1.9.3 Visits to ESMA premises

Not applicable

1.9.4 Interviews

Not applicable

1.10. Division into Lots

Not applicable

1.11. Variants

Not applicable

1.12. Confidentiality and public access to documents

All documents presented by the tenderer become the property of the ESMA and are deemed confidential.

In the general implementation of its activities and for the processing of tendering procedures in particular, ESMA observes the following EU regulations:

- Council Regulation (EC) No. 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents; and
- Council Regulation (EC) No. 45/2001 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.

The tender process will involve the recording and processing of personal data (such as a tenderer's name, address and CV). Such data will be processed pursuant to Regulation (EC) No. 45/2001.

Unless indicated otherwise, a tenderer's replies to questions and any personal data requested by ESMA are required to evaluate the tender in accordance with the tender specifications and will be processed solely for that purpose by ESMA. A tenderer is entitled to obtain access to their personal data on request and to rectify any such data that is inaccurate or incomplete.

1.13. Contractual details

A draft contract is attached to these technical specifications as **Annex I**.

ESMA wishes to conclude a service framework contract to provide on an ad hoc basis temporary workers for a period of four years. A framework contract will establish the terms governing specific contracts to be awarded during a given period; in particular, with regard to price.

Signature of the framework contract imposes no obligation on ESMA to order services. Only the implementation of the framework contract through specific contracts is binding for ESMA.

Each specific contract will contain details of deliverables and timelines for particular services to be provided.

2. Terms of reference

The terms of reference will become an integral part of the contract that may be awarded as a result of this tender procedure.

2.1. Introduction: Background to the invitation to tender

The European Securities and Markets Authority (ESMA) is a multi-cultural, multi-lingual European organisation. It currently has a staff of approximately 70 which should grow to approximately 250 persons in the coming years. In such a growth phase ESMA needs flexibility in its activity in order to face peaks of work.

The objective of the invitation to tender is to sign a contract with a provider that would provide ESMA with temporary workers, as a complement to its statutory staff, for the following reasons:

- to replace staff absent because of maternity leave, sickness or other reasons;
- to cope with peak periods which require additional workforce for a fixed period of time;
- to carry out, on a temporary basis, tasks which require specific competences which are not available within ESMA
- to support, on a temporary basis, administrative tasks within ESMA

Therefore, ESMA wishes to conclude cascading multiple framework contracts with tenderers.

2.2. Description of the services & scope of the contract

2.2.1. Contract objectives and scope

The overall objective of the assignment is to provide ESMA with the necessary temporary workers within a reasonable timeframe and in line with the requested competency profiles.

To this end the contractor shall comply with the relevant national law on employment, taxes, social and pension contributions. The tenderer will ensure the fulfillment of all legal and financial obligations towards the temporary worker, which include, in addition to the gross salary, all social and pension contributions foreseen by the national law for the employer.

Working at ESMA, the temporary worker shall work subject to the ESMA holidays calendar, which differ from the French holidays calendar. The temporary worker shall be covered by the 'ESMA guide to missions' rules when going on business trips during their assignment at ESMA. They should in these cases respect the procedures for travelling on business trip within ESMA.

The list of public holidays shall be sent by ESMA to the tenderer every year in order to be efficient when recruiting a temporary worker.

Language requirements for temporary workers requested by ESMA are: English (mandatory unless the job does not require it), and French (optional, depending on activity). For specific activities, the knowledge of other languages might also be required.

Temporary workers are subject to the same code of conduct as ESMA employees as defined in annex IX.

2.2.2. Security and safety

- The contractor is responsible for performing the services stipulated in the contract in a manner which will not impede the smooth running of ESMA's operations and infrastructure. The contractor must take every precaution to avoid damage to buildings and property and must immediately report any anomalies which are potentially damaging to persons, premises and property of any kind.
- Services must be performed under the contractor's responsibility and direction, in accordance with the cleaning instructions in these tender specifications.
- The personnel of the temporary worker company has to respect all the obligations coming from the internal security and safety organization and procedures, and paying attention to avoid to trigger false alarms. If someone from the personnel of the temporary worker company will trigger a false alarm, the cost, approximately € 200, will be charged to the cleaning company. All the ESMA internal regulations and procedures concerning safety and security have to be respected and the cleaning company is obliged to consult it before to start the work in ESMA premises.
- The contractor must, furthermore, provide ESMA with details of its staff which ESMA needs for security purposes under its rules of procedure, and must notify ESMA of any changes to this information within three days. Before starting the work, the contractor has to provide a list giving the surname and first name, nationality, date of birth, full address, and type of work permit (if appropriate) of each person on the contractor's staff, proposed to perform the services.
- ESMA will, at its earliest convenience, issue entry permits, enabling the staff of the temporary worker company to have access to the buildings covered by this contract.
- Each person will be given a badge which he/she must wear in a visible manner whilst in the buildings. Badge holders must abide by all instructions given by ESMA, notably concerning entry to certain floors. ESMA reserves the right to deny entry, for their own reasons, to anyone acting for the contractor.

- All workers, overseers, instructors and other persons acting for the contractor must sign in, whenever they enter or leave the building, in an ad hoc register left at reception”

2.2.3. Description of the work/tasks

A non-exhaustive frame of the activities for which ESMA might request temporary workers in the context of this assignment may include the following: secretarial support; filing and archiving; general administrative support; data input; support to the organisation of meetings, conferences, and events; correspondence with external contractors; software development; financial clerical assistants; legal support, Human Resources assistance, drivers, receptionists, IT helpdesk, building maintenance, hostess.

As examples, three possible profiles for temporary workers are provided below

	Secretary
Overall purpose of the activity:	To provide secretarial and administrative support within a Department / Section of ESMA.
Main tasks:	-Reception, registration, distribution and follow up of Department’s correspondence; - Organisation of missions, including travel arrangements and accommodation; - Organisation of meetings; -Drafting of documents, including minutes of meetings; -Filing and archiving; -Data input in computerised databases; -Follow up of emails and agenda of the relevant managers.
Education:	Successfully completed an advanced level of secondary education, preferably in the field of administration.
Work experience:	Previous experience in secretarial and administrative support functions is advantageous.
Computer skills:	Very good knowledge of the main office tools (Word, Excel, Outlook). Knowledge of databases and SAP is advantageous
Language skills:	Very good command of both written and spoken English. Knowledge of German and/or French is advantageous.

	Helpdesk assistant
Overall purpose of the activity:	To provide technical support to ESMA staff, e.g. as regards computer networks, systems, software, telecommunications and building maintenance.
Main tasks:	-To ensure the availability of technical facilities support for meetings; -To manage the local telephone exchange including user support, troubleshooting, telephone installation; - To perform internal office moves, modification of office lay out, packing and moving of office contents when required.
Education:	Successfully completed secondary education.
Work experience:	Previous experience in one or more of the above fields is essential.

Language skills:	Working knowledge of written and spoken English. Fluency in German is mandatory.
------------------	--

	Financial assistant
Overall purpose of the activity:	To provide administrative support within the Finance Department of ESMA.
Main tasks:	-Preparation of payments; -Entry of payment data in electronic databases; -Filing invoices and payment records; -Filing bank statements;
Education:	Successfully completed an advanced level of secondary education, preferably in the field of finance.
Work experience:	Previous experience in the field of finance is advantageous.
Computer skills:	Very good knowledge of the main office tools (Word, Excel, Outlook). Knowledge of databases and SAP is advantageous
Language skills:	Very good command of both written and spoken English.

2.2.4. Deliverables, reporting and project schedule

Defined in each specific contract.

2.2.5. Duration of the contract

The framework contract should be signed for an initial one-year period, and should be renewable up to a maximum of three times, under the same conditions e.g. four years in total.

ESMA intends to issue individual and successive specific contracts over the period of validity of the framework contract.

An individual specific contract shall be issued, signed and submitted to ESMA for each temporary worker required by ESMA prior to the starting date of the respective temporary worker.

2.2.6. Place of performance of the contract

The place of execution will be ESMA premises. All temporary workers will work in ESMA premises, currently at 103, rue de Grenelle -75007 Paris, France. In exceptional cases, at the demand of ESMA and following agreement from the worker, temporary workers might be requested to go on business trips.

2.2.7. Reference documents

- List of ESMA holidays 2012 (Annex X)
- Guide to missions (Annex XI)

2.3. Prices

2.3.1. Currency of tender

Prices must be quoted in Euro.

The cost of the project is in a price band between 800000€ and 5000000€

The Financial Proposal Form in Annex VII must be used to submit a tender.

2.3.2. All-inclusive prices

Prices submitted in response to this tender must be inclusive of all costs involved in the performance of the contract (e.g. to include delivery, supply and installation, maintenance, travel, subsistence, etc). No expenses incurred in the performance of the services will be reimbursed separately by ESMA.

2.3.3. Price revision

Prices submitted in response to this tender shall be fixed and not subject to revision.

Costs involved in preparing and submitting a tender

ESMA will not reimburse any costs incurred in the preparation and submission of a tender. Any such costs must be paid by the tenderer.

2.3.4. Protocol on the Privileges and Immunities of the European Union

ESMA is, as a rule, exempt from all taxes and duties, and in certain circumstances is entitled to a refund for indirect tax incurred, such as value added tax (VAT), pursuant to the provisions of articles 3 and 4 of the Protocol on Privileges and Immunities of the European Union. Tenderers must therefore quote prices which are exclusive of any taxes and duties and must indicate the amount of VAT separately.

2.3.5. Payments

Payment for temporary workers will happen quarterly, after the execution of services (terme echu). The Contractor will send at the latest 3 months after the end of each quarter a single invoice for all temporary workers at ESMA accompanied with timesheets of temporary workers.

2.3.6. Financial guarantees

Not applicable

3 Exclusion and selection criteria

3.1 Exclusion criteria

Tenderers shall be excluded from participation in procurement procedure if they are in any of the following situations:

- a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- c) have been guilty of grave professional misconduct proven by any means which ESMA can justify;
- d) have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of France or those of the country where the contract is to be performed;
- e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) following another procurement procedure or grant award procedure financed by the Community budget, they have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

In addition to the above, contracts may not be awarded to tenderers who, during the procurement procedure for this contract:

- are subject to a conflict of interest;
- are guilty of misrepresentation in supplying the information required by ESMA as a condition of participation in the procurement procedure or fail to supply this information.

Declaration and means of proof

All tenderers must certify that they are not in any of the situations listed above by completing and signing the attached Exclusion Criteria & Non-Conflict of Interest Declaration in **Annex II**.

The tenderer to whom the contract is to be awarded shall provide in addition, within 15 days following the notification of award and preceding the signature of the contract, the following documentary proofs to confirm the declaration referred to above:

- For points a), b) and e), a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied.
- For point d) a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

3.2 Selection criteria

Tenderers must submit evidence of their legal, economic, financial, technical and professional capacity to perform the contract.

3.2.1 Legal capacity

Requirement

A tenderer is asked to prove that they are authorised to perform the contract under the national law as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation or entry in the VAT register.

Evidence required

The tenderer shall provide a duly filled in and signed Legal Entity Form (see **Annex III**) accompanied by the documents requested therein.

(Where the tenderer has already signed another contract with ESMA, they may provide instead of the legal entity file and its supporting documents a copy of the legal entity file provided on that occasion, unless a change in his legal status occurred in the meantime).

3.2.2 Economic and financial capacity

Requirement

The tenderer must be in a stable financial position and have the economic and financial capacity to perform the contract.

Evidence required

Proof of economic and financial capacity shall be furnished by the following documents:

- balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed (where publication of the balance sheet is required under the company law of the country in which the economic operator is established);
- a statement of overall turnover and turnover concerning services/supplies covered by the contract during the last three financial years.

If, for some exceptional reason which ESMA considers justified, the tenderer is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which ESMA considers appropriate.

The Centre reserves the right to request any additional documentary evidence it deems necessary or useful in order to verify a tenderer's economic and financial standing.

3.2.3 Technical and professional capacity

Requirement(s)

The tenderer's technical capacity will be evaluated on the following criteria:

- Suitability of the organisation and staffing structure available for the activities
- Ability to provide relevant administrative support (management of leave, absences, time sheets, etc. of temporary workers).
- Suitability of the staff responsible for ESMA.
- Capability to source temporary workers.
- Ability to provide a sufficient number of temporary workers to accommodate the Agency's needs.
- Ability to provide temporary workers with different levels of education, work experience and skills.
- Ability to provide temporary workers with different relevant language skills.
- Capability to assess the competencies and skills of the temporary workers.
- Experience in the provision of temporary workers.
- References in relation to similar projects.

Evidence required

The following documents or information must be presented as evidence of compliance with the technical and professional criteria

Evidence of the tenderer's technical competence must be furnished by means of a declaration of the main services provided by the tenderer in the past three years, detailing:

- Indication of the number of temporary workers provided in the last year;
- Indication of the average number of available temporary workers during the last Year;
- The type of profiles provided for temporary workers;
- The language skills of the workers provided;
- Recipients, public or private, of the services provided and the dates;
- The provider's organisational internal structure, the number of employees and the number of managerial staff over the past three years;
- CVs and references of the relevant employees (including managerial staff)
- Any other additional information that the tenderer deems relevant and useful in order to enable the evaluation concerning the above mentioned criteria.

The tenderer should, upon request, be able to provide evidence of these services in the form of certificates issued or countersigned by public authorities, or declarations of performance by private purchasers.

The tenderer must be registered in a relevant commercial or trade register.

Evidence of the tenderer's professional competence must be furnished by the following reference:

4 Award of the contract

Offers are opened and evaluated by a committee, possessing the technical and administrative capacities necessary to give an informed opinion on the offers. The committee members are nominated on a personal basis by the ESMA under guarantee of impartiality and confidentiality. Each of them has equal voting rights.

Only the tenders meeting the requirements of the exclusion and selection criteria will be evaluated in terms of quality and price.

4.1 Technical proposal

The assessment of technical quality will be based on the ability of the tenderer to meet the purpose of the contract as described in the terms of reference. To this end, the technical proposal shall contain the following information to allow evaluation of the tender according to the technical criteria mentioned in section 4.2:

- A description of the key areas where the contractor provides temporary workers;
- A description of the selection and recruitment methods of the contractors for temporary workers;
- A number and description of profiles available at the time of responding to the tender
- A set of example of CVs for the following profiles (chosen at random for the evaluation reasons):

Secretaries
Finance Officer
IT Helpdesk
Specialist in financial markets

- Documents defining methodologies of recruitment
- A presentation of the company.

The information in the technical proposal must be consistent with the terms of reference and must be signed by the tenderer.

4.2 Technical evaluation : award criteria

The quality of technical offers will be evaluated in accordance with the award criteria listed below.

Only tenders scoring 70 points or more (of a maximum of 100) points against the technical award criteria will have their financial proposal evaluated.

Offers scoring less than 60% for any award criterion will be deemed to be of insufficient quality and eliminated from further consideration.

The assessment of the technical quality will be based on the ability of the tenderer to meet the purpose of the contract as described in the terms of reference.

- Quality of the Internal Selection process and procedure for the provision of temporary Workers : 0-50;
- Quality of contractor reference persons for ESMA. working at the contractor : 0-20;
- Quality of backup system of temporary workers in case of absence : 0-30;

Evidences

Technical proposal shall contain the following information to allow evaluation of the offers according to the award technical criteria :

- The methods and means to establish a sufficient pool of candidates

(e.g. existing pool of candidates, advertisement in newspapers, Internet and other means, etc.). The selection methods for temporary workers prior to proposing profiles to ESMA (e.g. assessment of CVs interviews and tests concerning language and computer skills, etc). Specify the minimum number of candidates that will be made available for interviews at ESMA, for each requested profile, to allow the Agency to have a sufficient range of options;

References of similar past assignments. Any elements of the terms of reference on which remarks, comments or suggestions are deemed necessary by the tenderer;

- Description of the profiles and CVs of the possible focal points;
- The backup policy for temporary workers in case of absence.

4.3 Financial proposal

The tenderer will have to propose a coefficient per pay group.

Pay Group	Coefficient proposed
Pay group 1 Work that does not require on-the-job training, or that only requires brief on-the-job training.	-----
Pay group 2 Work requiring on-the-job training beyond the training on the job required in pay group 1 and a job familiarisation.	-----
Pay group 3 Work requiring knowledge and skills which are provided by vocational training. The knowledge and skills may also have been acquired by several years of work experience in pay group 2.	-----
Pay group 4 Work requiring knowledge and skills which are provided by a vocational training course lasting at least three years as well as several years of work experience.	-----
Pay group 5 Work requiring knowledge and skills which are provided by a vocational training course lasting at least three years. In addition special skills are required that are provided by additional	-----
Pay group 6 Work requiring a master craftsman and/or technician training or comparable qualifications.	-----
Pay group 7 Work requiring several years of work experience in addition to the characteristics of pay group 6.	-----
Pay group 8 Work requiring a degree from a university for applied sciences	-----

<p>Pay group 9 Work requiring a degree from a university, or work requiring a degree from a university for applied sciences plus several years of work experience.</p>	<p>-----</p>
--	--------------

4.4 Choice of the selected tender

The contract will be awarded to the tenderer offering the best value for money, taking into account the awarding criteria listed above. No award criteria and sub-criteria other than those detailed above will be used to evaluate the offer.

The weighting of quality and price will be applied as follows:

<p>Score for tender X</p>	<p>= $\frac{\text{cheapest coeff of tender X}}{\text{of tender X}}$ x 40</p>	<p>+ $\frac{\text{Total quality score of tender X}}{100}$ x 60</p>
---------------------------	---	---

4.5 No obligation to award

Completing the procedure of the call for tenders in no way imposes on the ESMA an obligation to award the contract. The ESMA shall not be liable for any compensation with respect to tenderers whose offers have not been accepted, nor shall ESMA be liable when deciding not to award the contract.

4.6 Notification of outcome

Each tenderer will be informed in writing about the outcome of the call for tender. If tenderers are notified that a tender has not been successful, tenderers may request additional information by fax or mail. At the discretion of ESMA, this information can be given in a follow-up letter providing further details in writing, such as the name of the tenderer to whom the contract is awarded and a summary of the characteristics and relative advantages of the successful tender. However, ESMA would like to stress that it is not free to disclose any information affecting the commercial interests of other tenderers.

List of Annexes

Annex I – Draft contract

Annex II – Exclusion criteria and non-conflict of interest declaration

Annex III – Legal entity form

Annex IV – Financial identification form

Annex V – Authorised signatory form

Annex VI – Financial proposal form

Annex VII – Confirmation of offer submission

Annex VIII – Tender submission checklist

Annex IX – Code of Good Conduct

Annex X – List of ESMA public holidays 2012

Annex XI – Guide des missions



Annex I – Draft contract

Annex II – Exclusion criteria and non-conflict of interest declaration*TO BE COMPLETED AND SIGNED BY THE TENDERER*

The signed: _____ under-

- in his/her own name (if the economic operator is a natural person or in case of own declaration of a director or person with powers of representation, decision making or control over the economic operator)

or

- representing (if the economic operator is a legal person)

official name in full (only for legal person):

official legal form (only for legal person):

official address in full:

VAT registration number:

declares that the company or organisation that he/she represents he/she:

- a) is not bankrupt or being wound up, is not having its affairs administered by the courts, has not entered into an arrangement with creditors, has not suspended business activities, is not the subject of proceedings concerning those matters, and is not in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
- b) has not been convicted of an offence concerning professional conduct by a judgment which has the force of *res judicata*;
- c) has not been guilty of grave professional misconduct proven by any means which the contracting authorities can justify;
- d) has fulfilled all its obligations relating to the payment of social security contributions and the payment of taxes in accordance with the legal provisions of the country in which it is established, with those of the country of the contracting authority and those of the country where the contract is to be carried out;
- e) has not been the subject of a judgement which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- f) is not a subject of the administrative penalty for being guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or failing to supply an information, or being declared to be in serious breach of his obligation under contract covered by the budget.

In addition, the undersigned declares on their honour:

- g) they have no conflict of interest in connection with the contract; a conflict of interest could arise in particular as a result of economic interests, political or national affinities, family or emotional ties or any other relevant connection or shared interest;
- h) they will inform the contracting authority, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest;
- i) they have not made and will not make any offer of any type whatsoever from which an advantage can be derived under the contract;
- j) they have not granted and will not grant, have not sought and will not seek, have not attempted and will not attempt to obtain, and have not accepted and will not accept any advantage, financial or in kind, to or from any party whatsoever, constituting an illegal practice or involving corruption, either directly or indirectly, as an incentive or reward relating to award of the contract;
- k) that the information provided to ESMA within the context of this invitation to tender is accurate, sincere and complete;
- l) that in case of award of contract, they shall provide the evidence that they are not in any of the situations described in points a, b, d, e above.

For situations described in (a), (b) and (e), production of a recent extract from the judicial record is required or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. Where the Tenderer is a legal person and the national legislation of the country in which the Tenderer is established does not allow the provision of such documents for legal persons, the documents should be provided for natural persons, such as the company directors or any person with powers of representation, decision making or control in relation to the Tenderer.

For the situation described in point (d) above, recent certificates or letters issued by the competent authorities of the State concerned are required. These documents must provide evidence covering all taxes and social security contributions for which the Tenderer is liable, including for example, VAT, income tax (natural persons only), company tax (legal persons only) and social security contributions.

For any of the situations (a), (b), (d) or (e), where any document described in two paragraphs above is not issued in the country concerned, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

By signing this form, the undersigned acknowledges that they have been acquainted with the administrative and financial penalties described under art 133 and 134 b of the Implementing Rules (Commission Regulation 2342/2002 of 23/12/02), which may be applied if any of the declarations or information provided prove to be false.

Full name

Date

Signature

Annex III – Legal entity form

Please download and complete the appropriate legal entity form:

For individuals:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_indiv_en.pdf

For private companies:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_privComp_en.pdf

For public entities:

http://ec.europa.eu/budget/library/contracts_grants/info_contracts/legal_entities/legEnt_public_en.pdf



Annex IV – Financial identification form

Please download and complete the financial identification form available at:
http://ec.europa.eu/budget/library/contracts_grants/info_contracts/financial_id/fich_sign_ba_gb_en.pdf



Annex V – Authorised signatory form

Address and contact details

Tenderer Name	
Address	
Post Code	
Tel	
Fax	
Email	
Web Site (if applicable)	
Legal Status	
Contact person for this tender	
Legal signatory(ies)	

Annex VI– Financial proposal form

Company: _____
Date: _____
Signature: _____

The tenderer will have to propose a coefficient per pay group.
 We will then calculate the average of coefficients and the lowest one will be the one that we will choose.

Pay Group	Coefficient
Pay group 1 Work that does not require on-the-job training, or that only requires brief on-the-job training.	-----
Pay group 2 Work requiring on-the-job training beyond the training on the job required in pay group 1 and a job familiarisation.	-----
Pay group 3 Work requiring knowledge and skills which are provided by vocational training. The knowledge and skills may also have been acquired by several years of work experience in pay group 2.	-----
Pay group 4 Work requiring knowledge and skills which are provided by a vocational training course lasting at least three years as well as several years of work experience.	-----
Pay group 5 Work requiring knowledge and skills which are provided by a vocational training course lasting at least three years. In addition special skills are required that are provided by additional	-----
Pay group 6 Work requiring a master craftsman and/or technician training or comparable qualifications.	-----
Pay group 7 Work requiring several years of work experience in addition to the characteristics of pay group 6.	-----



<p>Pay group 8 Work requiring a degree from a university for applied sciences</p>	<p>-----</p>
<p>Pay group 9 Work requiring a degree from a university, or work requiring a degree from a university for applied sciences plus several years of work experience.</p>	<p>-----</p>



Annex VII – Confirmation of offer submission

In order to keep track of offers due to arrive, tenderers who do not hand deliver their offers are requested to complete and return this form by fax or email.

Title: Temporary workers at ESMA

Publication Reference: OJ/27/04/2012 -PROC/2012/002

Attn: ESMA, Attention to the Procurement Office

Email: procurement@esma.europa.eu

I have submitted an offer for this call on ____/____/____ using the following delivery service:

- Registered mail
- Express mail
- Courier Service
- Other _____

Tenderer name:

email:

Telephone number:

Annex VIII – Tender submission checklist

The checklist must be used to ensure that you have provided all the documentation for this tender and in the correct way. This checklist should be signed and included in **Envelope A** of your offer.

You must submit your offer in one outer envelope which contains 3 separate inner envelopes clearly marked **Envelopes A, B** and **C**.

Please Tick ✓ the boxes provided

Envelope ‘A’ – Administrative documents – must contain

- The duly completed, signed and dated **Exclusion Criteria and Non-Conflict of Interest Declaration**.
- The duly completed, signed and dated **Legal Entity Form(s)**
- The duly completed, signed and dated **Financial Identification Form**
- The **economic and financial capacity documents** requested in section 3.2.2
- The **technical and professional capacity documents** requested in section 3.2.3.
- The duly completed **Authorised Signatory Form**
- In the case of consortia, a **consortium agreement** and any other documents as requested in section 1.4
- This **tender submission checklist**, completed, signed and dated.

Envelope ‘B’ – Technical proposal – must contain

- One original signed copy and 4 copies of the **technical proposal**.

Envelope ‘C’ – Financial proposal – must contain

- One original signed copy and 4 copies of the **financial proposal**.

You should also ensure that:

- Your offer is formulated in one of the official languages of the European Union.
- Both the technical and financial proposals of the offer are signed by the tenderer or his duly authorised agent.
- Your offer is perfectly legible in order to rule out any ambiguity.
- Your offer is submitted in accordance with the double envelope system as detailed in section 1.6.1.
- The outer envelope bears the information detailed in section 1.6.1.

Name: _____
Signature: _____
Date: _____

Annex IX – Code of Good Conduct

Code of Good Administrative behaviour

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/EC¹ (the “Regulation” and “ESMA”)

Having regard to the provisions on openness in the Treaties, in particular Article 1 of the Treaty on European Union and Article 24 of the Treaty on the Functioning of the European Union,

Having regard to the own initiative inquiry of the European Ombudsman into the existence and the public accessibility in the different Community institutions and bodies of a Code of good administrative behaviour for agents or other servants in their relations with the public,

Whereas

(1) The Amsterdam Treaty explicitly introduced the concept of openness into the Treaty on European Union, by stating that it marks a new stage in the process of creating an ever closer union in which decisions are taken as openly as possible and as closely as possible to the citizen.

(2) In order to bring the administration closer to the citizens and to guarantee a better quality of administration, a Code should be adopted which contains the basic principles of good administrative behaviour for agents and other servants of ESMA when dealing with the public.

(3) Considering it therefore desirable to adopt the following Code and to make it publicly available.

1) Has adopted this decision:

Article 1 – General provision	34
Article 2 – Personal scope of application	34
Article 3 – Material scope of application	34
Article 4 – Lawfulness	34
Article 5 – Absence of discrimination	34
Article 6 – Proportionality	35
Article 7 – Absence of abuse of power	35
Article 8 – Impartiality and independence	35
Article 9 – Objectivity	35
Article 10 – Legitimate expectations and consistency	35
Article 11 – Fairness	35
Article 12 – Courtesy	36
Article 13 – Reply to letters in the language of the citizen	36
Article 14 – Acknowledgement of receipt and indication of the competent agent or other servant	36
Article 15 – Obligation to transfer to the competent service of ESMA	36
Article 16 – Right to be heard and to make statements	36
Article 17 – Reasonable time-limit for taking decisions	36
Article 18 – Duty to state the grounds of decisions	37
Article 19 – Indication of the possibilities of appeal	37

¹ OJ L 331, 15.12.2010, p. 84.

Article 20 – Notification of the decision or recommendation	37
Article 21 – Data protection	37
Article 22 – Requests for information	37
Article 23 – Requests for public access to documents	38
Article 24 – Keeping of adequate records	38
Article 25 – Public access to the Code	38
Article 26 – Right to complain to the European Ombudsman	38
Article 27 – Revision	38
Article 28 – Entry into force	38

Article 1 – General provision

In its relations with the public, any agent and other servant of ESMA shall respect the principles which are laid down in this Decision and which constitute the Code of good administrative behaviour (the ‘Code’).

Article 2 – Personal scope of application

The Code shall apply to all agents and other servants to whom the Staff Regulations and the Conditions of employment of other servants apply in their relations with the public.

ESMA will take the necessary measures to ensure that the provisions set out in this Code also apply to other persons working for it, such as persons employed under private law contracts, experts on secondment, trainees or other relevant persons.

The public refers to natural and legal persons, whether they reside or have their registered office in a Member State or not.

Article 3 – Material scope of application

This Code contains the general principles of good administrative behaviour, which apply to all relations of ESMA’s agents and other servants with the public, unless they are governed by specific provisions.

The principles set out in this Code do not apply to the relations between ESMA and its agents and other servants. Those relations are governed by the Staff Regulations and the Conditions of Employment of Other Servants.

Article 4 – Lawfulness

The agent or other servant of ESMA shall act according to law and apply the rules and procedures laid down in Union legislation. The agent or other servant of ESMA shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

Article 5 – Absence of discrimination

In dealing with requests from the public and in taking decisions, the agent or other servant of ESMA shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

If any difference in treatment is made, the agent or other servant of ESMA shall ensure that it is justified by the objective relevant features of the particular case.

The agent or other servant of ESMA shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

Article 6 – Proportionality

When taking decisions, the agent or other servant of ESMA shall ensure that the measures taken are proportional to the aim pursued. The agent or other servant shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

When taking decisions, the agent or other servant of ESMA shall strike a fair balance between the interests of private persons and the general public interest.

Article 7 – Absence of abuse of power

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. 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

The agent or other servant of ESMA shall be impartial and independent. The agent or other servant shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

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.

Article 9 – Objectivity

When taking decisions, the agent or other servant shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

Article 10 – Legitimate expectations and consistency

The agent or other servant of ESMA shall be consistent in his own administrative behaviour as well as with the administrative action of ESMA. The agent or other servant shall follow ESMA's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case.

The agent or other servant shall respect the legitimate and reasonable expectations that members of the public have in the light of how ESMA has acted in the past.

Article 11 – Fairness

The agent or other servant of ESMA shall act fairly and reasonably.

Article 12 – Courtesy

The agent or other servant of ESMA shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the agent or other servant shall try as much as possible to be helpful and to reply to the questions which are asked.

If the agent or other servant is not responsible for the matter concerned, he shall direct the citizen to the appropriate agent or other servant.

If an error occurs which negatively affects the rights or interests of a member of the public, the agent or other servant shall apologise for it.

Article 13 – Reply to letters in the language of the citizen

The agent or other servant shall ensure that every citizen of the Union or any member of the public who writes to ESMA in one of the Treaty languages receives an answer in the same language.

Article 14 – Acknowledgement of receipt and indication of the competent agent or other servant

Every letter or complaint to ESMA shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period.

The reply or acknowledgement of receipt shall indicate the name and the telephone number of the agent or other servant who is dealing with the matter, as well as the service to which he or she belongs.

No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

Article 15 – Obligation to transfer to the competent service of ESMA

If a letter or a complaint to ESMA is addressed or transmitted to a unit or sector which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent service of ESMA.

The service which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the agent or other servant to whom the file has been passed.

Article 16 – Right to be heard and to make statements

In cases where the rights or interests of individuals are involved, the agent or other servant shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected.

Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

Article 17 – Reasonable time-limit for taking decisions

The agent or other servant shall ensure that a decision on every request or complaint to ESMA is taken within a reasonable time limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply to answering letters from members of the public.

If a request or a complaint to ESMA cannot, because of the complexity of the matters which it raises, be decided upon within the above-mentioned time-limit, the agent or other servant shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time.

Article 18 – Duty to state the grounds of decisions

Every decision or recommendation of ESMA which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

The agent or other servant shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.

If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the agent or other servant shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.

Article 19 – Indication of the possibilities of appeal

A decision or recommendation of ESMA which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision or recommendation. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time limits for exercising them.

Article 20 – Notification of the decision or recommendation

The agent or other servant shall ensure that decisions or recommendations which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.

The agent or other servant shall abstain from communicating the decision to other sources until the person or persons concerned have been informed.

Article 21 – Data protection

The agent or other servant who deals with personal data concerning a citizen shall respect the principles laid down in Regulation (EC) No 45/2001 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.

The agent or other servant shall in particular avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorized persons.

Article 22 – Requests for information

The agent or other servant shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. The agent or other servant shall take care that the information communicated is clear and understandable.

If an oral request for information is too complicated or too comprehensive to be dealt with, the agent or other servant shall advise the person concerned to formulate his demand in writing.

If, because of its confidentiality, an agent or other servant may not disclose the information requested, he or she shall, in accordance with 0 of this Code, indicate to the person concerned the reasons why he cannot communicate the information.

Further to requests for information on matters for which he has no responsibility, the agent or other servant shall direct the requester to the competent person and indicate his name and telephone number. Further to requests for information concerning another Union institution or body, the agent or other servant shall direct the requester to that institution or body.

Where appropriate, the agent or other servant shall, depending on the subject of the request, direct the person seeking information to the unit or sector responsible for providing information to the public.

Article 23 – Requests for public access to documents

Further to requests for access to documents of ESMA, the agent or other servant shall give access to these documents in accordance with the decision on access to ESMA documents.

If the agent or other servant cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

Article 24 – Keeping of adequate records

ESMA's units and divisions shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

Article 25 – Public access to the Code

ESMA will take the necessary measures in order to ensure that this Code enjoys the widest possible publicity amongst the citizens. It will in particular make it available on its Internet site and will provide a copy of this Code to any citizen who requests it.

Article 26 – Right to complain to the European Ombudsman

Any failure of an agent or other servant to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 228 of the Treaty on the Functioning of the European Union and the Statute of the European Ombudsman.

Article 27 – Revision

Within two years of entry into force of this Decision, the Executive Director shall review the implementation of this Decision and submit a report to the European Ombudsman.

Article 28 – Entry into force

This decision enters into force on the day after its adoption.

Done at Paris on 11 January 2011
[]
Vice-Chair
For the Management Board

Annex X – List of ESMA Public Holidays 2012

The public holidays in 2012 for ESMA shall be as follows:

2 January	Monday, the day following New Year's Day
5 April	Maundy Thursday/Holy Thursday
6 April	Good Friday
9 April	Easter Monday
1 May	Tuesday, Labour Day
9 May	Thursday, anniversary of the declaration made by President Robert Schuman in 1950
17 May	Thursday, Ascension Day
18 May	Friday, the day following Ascension Day
28 May	Whit Monday
15 August	Wednesday, Assumption Day
1 November	Thursday, All Saints' Day
2 November	Friday, All Souls' Day
24 December to 31 December	Monday (6 end-of-year days) to Monday
Total:	18 days

Annex XI – Guide des Missions

GUIDE TO MISSIONS

The provisions of this Guide apply to missions by staff at ESMA.

Information on the protection of personal data: the arrangements for managing missions have been notified to the Data Protection Officer in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000.

Introduction

What are missions? Whenever staff are required to undertake a return journey to the mission destination, departing from the staff's place of employment (city, conglomerate) at ESMA for the requirements of the service, this constitutes a mission. Every mission requires a travel order.

II. Who does what?	40
III. I am going on mission – what do I need to do?	41
IV. Travel order	42
V. Advances on mission expenses	43
VI. Transport	44
VII. Daily subsistence allowances	47
VIII. Accommodation	48
IX. Expenses paid by organisers; accommodation and meals provided by others	49
X. Duration of a mission	49
XI. Changes to a mission	50
XII. Missions combined with absence for personal reasons	51
XIII. Mission interrupting a period of leave	51
XIV. Statement of expenses	51
XV. Gifts or payments offered to staff	52
XVI. Safety on mission and on the roads	52
XVII. Travel insurance and assistance	52
XVIII. Passengers' rights	52
XIX. Medical aspects of missions	53

Who does what?

1. **Members of staff going on mission:** with the help of the travel agency and, where necessary, the Staff Payment Office, staff members going on mission must submit to their immediate superiors and authorising officers **the person delegated to authorise missions**, a mission programme which allows them to carry out their professional engagements in the most cost-effective manner. In particular, they must inform authorising officers of any possible alternatives in terms of means of transport, the conditions and rates applicable, the price of the proposed journey and the travelling time, and of any exceptional arrangements involving extra costs, so that authorising officers can give their informed consent. Priority should be given to public or shared transport² (train, shuttle, official/hire car with driver) in view of its low environmental impact, especially for transfers to air-

² ESMA strongly advises staff against using their own cars when going on mission.

ports/railway stations. Staff going on mission must inform the travel agency what the precise mission arrangements are and how flexible the tickets need to be.

2. The **immediate superior** decides whether the mission is politically and administratively appropriate and certifies that the declaration of expenses is accurate.

3. The **authorising officer** certifies the political and administrative appropriateness of the mission and approves the costs involved, confirming that the mission itinerary serves its purpose in the most cost-effective manner, taking account, among other things, of the means of transport to be used, the travel time, the fare conditions, notably with regard to ticket flexibility, and the interests of the service. The authorising officer must check that staff members going on mission pay the travel agency for any additional costs related to detours made for private reasons and notified to the authorising officer.

4. The **Staff Payment Office (authorising officer by delegation for mission payments)** is available to advise authorising officers and staff going on mission before any decision is taken. It is the Staff Payment Office's duty to inform the authorising officer in good time of any matter of importance which might compromise sound financial management of appropriations. It may therefore ask the authorising officer to review a decision taken in advance and reconfirm it.

5. The **approved travel agency** is required to provide the member of staff travelling on mission with all the information necessary for organising the trip so that the official engagements of which it has been informed by the staff member can be performed in the most cost-effective manner and to issue transport tickets at the best available market price in the light of the details with which it has been provided.

6. The ESA wishes to reduce CO₂ emissions and therefore encourages the use of public or shared transport whenever possible, taking account, among other things, of the environmental impact, and strongly encourages the use of videoconferencing possibilities.

III. I am going on mission – what do I need to do?

Before departure

- ➔ Submit and sign a travel order. Have it signed by your immediate superior and, where necessary, by the relevant authorising officer.
- ➔ Book your tickets through the travel agency approved by ESMA
- ➔ Book accommodation if needed.
- ➔ Find out what the relevant safety and insurance rules are.
- ➔ For more information, contact the Staff Payment Office.

While on mission

- ➔ If you have an accident, after ensuring immediate assistance for personal health and safety needs,, immediately contact the travel insurance call centre (see Section XVII and annex 3).

On return

- ➔ Complete a statement of expenses as soon as possible and sign it. Have it signed by the line immediate superior and by the authorising officer and send it immediately, and at the latest within three

months of returning from mission (see Section XIV), to the Staff Payment Office, together with all tickets and boarding cards and any originals of supporting documents relating to expenses. In the exceptional case that tickets, boarding cards and any original supporting documents have been lost or stolen, the staff member going on a mission shall confirm this in writing and provide other evidence for expense claims.

IV. Travel order

7. Travel orders authorise staff to travel outside their place of employment for the requirements of the service. They should contain full details of the planned mission. They must specify in particular the place³, purpose and programme of the mission, itineraries⁴, the means of transport used, the rate communicated and, where appropriate, the conditions applied, the expected cost, any detours or parts of the journey made for private reasons and any additional costs.
8. In the interests of sound financial management, the financial section must contain precise details.
9. Travel orders must provide authorising officers with the information they need to sign them in full knowledge of the facts. When completing a travel order, you must give details of any exceptional arrangements involving extra costs and inform the authorising officer accordingly so that he or she can authorise them where they are justified by the requirements of the service. Any exceptional arrangements made for private reasons must be paid for by the staff member to the travel agency direct.
10. For any training missions (team building, seminars, etc.) for which the costs of transport, meals and accommodation are borne by the Institution and for which participants incur no other charge, one travel order signed by the relevant authorising officer may be submitted for all participants. No daily subsistence allowances are payable in respect of such missions.

Signing travel orders

11. Notwithstanding the derogations referred to at 1.4, travel orders must be signed by the staff member going on mission, his or her immediate superior and the authorising officer before the expenditure is committed and before the staff member departs. Any financial commitment (such as booking a hotel or ticket) entered into by members of staff going on mission without the agreement of the authorising officer will be borne by them and, if necessary, deducted from their salaries.
12. The procedures for signing travel orders are subject to the Internal Rules on the Implementation of the Budget of ESMA, which may be amended each year.
13. For missions the costs of which are met by a Unit other than that of the staff member concerned, travel orders should be signed by:
 - the immediate superior in the member of staff's own Unit, and
 - the authorising officer in the Unit which is responsible for the mission being carried out.
14. The signing of the travel order by the authorising officer entitles the staff member to reimbursement of the costs subject to the rules in force.

³ That is, the relevant town or city.

⁴ The distance between the place of employment and the mission location is calculated on the basis of the official national rail route or the most direct flight.

Passports and visas

15. The cost of the visas and related costs only are reimbursed on presentation of supporting documents. The costs of obtaining a passport and other related expenses, such as for photographs, are not reimbursed.

Authorising expenditure and exceptions

16. It is up to authorising officers to manage the resources for which they are responsible. In particular, they must evaluate whether or not missions and requests for exceptions submitted by staff going on mission are justified in the event of any exception to the general rules applicable, having regard to the requirements of the service and in conformity with the financial rules, in particular on economy and cost effectiveness. They may, where necessary, consult the Staff Payment Office.

17. The Staff Payment Office must inform the authorising officer in good time of any matter of importance which might compromise sound management of appropriations and must draw the authorising officer's attention to the different options allowing the needs of the departments to be met and to the costs involved in each case.

Registration fees for congresses, conferences, seminars, etc.

18. Registration fees for seminars, conferences, congresses, etc. attended at the request of a Unit in the interests of the service are reimbursed.

19. The finalised programme, detailed invoice and proof of payment must be attached to the statement of expenses.

20. Registration fees for seminars, conferences, congresses, etc. for personal professional training purposes are not considered to be mission expenses and must be charged to the appropriations for "training courses and traineeships".

21. Applications for the reimbursement of registration fees for conferences at the place of employment should be sent to the relevant Service within ESMA.

Corporate Credit Card and Advances on mission expenses

22. The credit card which the ESMA will provide free of charge to staff going on mission should be the preferred means of paying for mission expenses (hotels, restaurants, congresses, conferences, local transport, taxis, etc.). Payments using the card are debited 60 days after the end of the month in which the payment was made from the account into which the cardholder's salary is paid and mission expenses reimbursed.

A credit limit of EUR 5 000 has been placed on use of the card. This limit may be increased temporarily on application by the card holder, stating reasons, to the Head of the Corporate Support Unit. When mission expenses incurred using the corporate credit card are reimbursed, the exchange rates applied are automatically increased by the rate applied by the issuing bank to ensure that staff are paid an amount approximating as closely as possible to that debited by the credit card company.

Credit cards are issued after a contract has been signed between the staff member going on mission and the credit card issuer selected by the ESMA. The Head of the Corporate Support Unit must approve each request. The card issuer must process personal data in accordance with the national legislation transposing Directive 95/46/EC and demonstrate to the Commission departments and the individual staff members concerned that this is the case.

The staff member remains directly liable for any amounts not paid to the card issuer.

23. Staff members may request an advance for any mission for which they expect to bear expenses of more than EUR 1000.

24. In no circumstances can advances exceed 80% of the estimated total expenditure indicated in the travel order.

25. Any sums paid by way of an advance will be deducted from the amounts reimbursed to cover mission expenses.

Advances not used

26. If an advance has been paid to a member of staff for a mission that is subsequently cancelled, the amount of the advance is to be automatically deducted from a subsequent salary payment.

V. Transport

General rules

27. Staff travelling on mission must use the most appropriate and cost-effective means of transport for achieving the purposes of the mission in the interests of the service. Particular attention should be paid to the degree of flexibility required for the tickets booked through the travel agency in view of the direct bearing this has on the rates applied. For missions that are organised well in advance and are unlikely to be cancelled, staff should book their tickets at the earliest opportunity in order to take advantage of the best rates offered by the travel agency.

28. All travel is deemed to start at the place of employment at ESMA. If a staff member undertakes a business trip immediately before and/or after a private journey in Europe, ESMA reimburses two out of the three journeys involved provided costs are not higher than the cheapest single return to/from ESMA. If costs are higher, then prior approval from the Executive Director is required.

29. The staff member arranges and pays for the third leg (if applicable) of the journey.

30. Travel expenses incurred for the purposes of a mission are reimbursed exclusively on the basis of the cost of the most appropriate and cost-effective means of transport between the place of employment and the place(s) of mission. Reimbursement will take account of the times of meetings and will be based on the best rates available from the preferential rates negotiated and other fares available through the approved travel agency.

31. For members of staff with a disability recognised by the Agency’s medical service, their circumstances will be taken into account in determining the most appropriate means of transport and the terms of travel. The latter also applies, subject to prior approval, to staff members whose mobility is limited due to e.g. injury or pregnancy.

32. In all cases, it is up to line managers to designate the most suitable staff member for each mission, taking account of the conditions in which it will be performed.

33. All tickets should preferably be issued electronically.

Approved travel agency

34. The travel agency assists staff going on mission in organising their missions as efficiently as possible at the best conditions available on the market.

35. The approved travel agency must provide the different rates available, taking account of the requirements of the mission as indicated by the member of staff going on mission, so that the staff member concerned and the authorising officer can reach a decision in full knowledge of the facts. No one may be obliged to spend the weekend preceding or following the mission at the place of mission for the sole purpose of obtaining a cheaper ticket. The approved agency must provide any information, verbally or in writing, needed for the organisation of the mission and will deliver tickets and other documents as quickly as possible.

36. Staff going on mission who use another travel agency will be reimbursed no more than the amount equal to the best rate available from the approved agency. In cases of force majeure, costs over and above the approved agency’s rates will be reimbursed where the relevant authorising officer has granted a derogation.

Travel by rail

37. Travel expenses are reimbursed on presentation of supporting documents on the basis of the first-class rail fare, including the cost of seat reservations and any supplements. Any rail ticket that cannot be reimbursed and has not been issued to a named traveller can be used by a member of staff other than the person for whom it was reserved provided that this is mentioned in both files.

Travel by air

38. Air travel is booked:

- in economy class or equivalent, at the lowest available rates, taking into account the times of meetings and/or special features of the mission, for all segments that involve less than four hours continuous flying time.
- in business or equivalent, at the lowest available rates, taking into account the times of the meetings and /or special features of the missions, if the journey includes at least one segment involving at least four hours continuous flying time, after approval of the Executive Director.

Overbooking

39. If boarding is denied, staff members are required to take all possible measures so that the agency will be able to take action against the airline concerned (see Section XVIII – Rights of passengers).

Travel by car

40. The use of a car is authorised where, in view of the specific features of the mission, it improves the cost effectiveness of travel and/or of the mission itself, particularly where the vehicle is shared by a number of colleagues.

Car hire

41. Staff going on mission may reserve hire cars directly with a hire company. The category of vehicle must correspond to the requirements of the mission, taking account of the number of passengers, the distance to be travelled and the place of mission.

42. Should it prove necessary to hire a car in the course of a mission, staff on mission may hire directly from one of the hire companies.

Private car

43. The Agency strongly advises staff against using their own cars when going on mission.

44. Members of staff who choose to use their own cars for mission-related travel remain fully liable for any accidents involving their vehicle and for any traffic offences. The Agency will not accept any requests for compensation or reimbursement.

45. Members of staff going on mission are required to use appropriate, safe and properly serviced vehicles and to comply with the relevant safety rules: rest times, highway code, etc.

Travel by private car for professional reasons

46. Where use of a private car is necessary for professional reasons, travel costs are reimbursed on the basis of the first-class rail fare. However, when staff members carry out missions in special circumstances where there are definite disadvantages to any alternatives, authorising officers may decide to grant the staff members concerned a kilometre allowance⁵. In such cases, other expenses (motorway tolls, parking, ferry crossings, etc.) can also be reimbursed on presentation of the corresponding supporting documents.

Travel by private vehicle for personal reasons

47. Use of any private vehicle (car, motorbike, plane, etc.) is reimbursed up to the price of the most suitable means of transport. If several people travel together in one vehicle, only the person in charge of the vehicle will receive travel expenses. Where the use of a vehicle for personal reasons lengthens the mission, subsistence costs (daily subsistence allowances and accommodation costs) will be calculated on the basis of the duration of the journey using the most suitable means of transport.

Travel by boat

48. The appropriate class and cabin supplements will be authorised in accordance with the needs of the service and in line with the length and cost of the trip and considerations of cost effectiveness.

⁵ The current rate is EUR 0.22 per kilometre.

Shuttles and taxis

49. While ESMA encourages the use of public transport, taxi may be used whenever (in line with point 79) time and/or safety reasons need to be taken into account for the successful completion of the mission. The staff is encouraged to take a prudent decision in the choice of transport.
50. Airport transfers are reimbursed on request at the price of the shuttle service or on presentation of supporting documents.
51. Public transport expenses and taxi fares are reimbursed upon presentation of original receipts or invoices.

Parking

52. Parking expenses are reimbursed on the same terms as expenses on taxis.

Unused tickets

53. Air tickets must be cancelled immediately by calling or sending an e-mail to the travel agency (see annex 3).
54. Unused or partially used (non-electronic) rail tickets must be returned to the travel agency as quickly as possible. The documents concerned should be handed in to the travel agency in return for a receipt (do not send tickets by mail), which should be attached to the statement of mission expenses.
55. Partially used rail tickets must be cancelled at the station where the journey is interrupted and the fact that they have not been used should be indicated on them.
56. If staff have not been able to cancel unused tickets, the application for reimbursement must be justified and countersigned by the authorising officer.

VI. Daily subsistence allowances

57. (See tables in Annex 1)

Calculation

58. Daily subsistence allowances are calculated according to the actual length of the trip:
 - six hours or less: 20% of the daily allowance and any transport costs on the basis of supporting documents, up to EUR 0.22/km if a private car is used or the first-class rail fare if the staff member travels by train;
 - more than six hours but not more than twelve hours: half the daily allowance;
 - more than twelve hours, but not more than twenty-four hours: the daily allowance;
 - each successive 12-hour period: half the daily allowance.
59. The daily allowance rates are subject to periodic review.

60. The following give entitlement to daily allowances:

- days spent at the place of mission between meetings, where justified by the requirements of the mission and where cost-effective.

Expenses covered

61. The daily subsistence allowance is paid as a flat-rate amount and covers breakfast and the two main meals, and any other personal daily expenses, including local transport.

62. Any other expenses incurred in the interests of the service (e.g. photocopies, telephone calls, Internet, costs of exchange transactions, inter-city travel, etc.) or in the event of force majeure or delays will be reimbursed on the basis of a decision signed by the authorising officer and accompanied by the relevant supporting documents.

Long-stay missions

63. A mission lasting more than four consecutive weeks in the same place is regarded as a long-stay mission. For such missions, daily ceiling amount and maximum hotel prices may be reduced by one quarter on the prior decision of the authorising officer.

VII. Accommodation

General rules

64. Accommodation costs are reimbursed together with the daily subsistence allowance.

65. Wherever possible, staff should book accommodation through the hotel database (Annex 2). If necessary, they can seek assistance from the travel agency. Accommodation is reimbursed within the ceilings laid down (Annex 1).

66. Staff going on mission are required to stay in facilities formally serving that purpose. Evidence of payment (hotel bills or equivalent) must comply with local tax legislation.

67. Such evidence must be attached to the statement of expenses and must state separately any breakfast taken as breakfast is, by default, covered by the daily subsistence allowance.

Exceptions concerning hotel expenses

68. Any costs in excess of the ceiling must be justified by the authorising officer.

Accompanied travel

69. If staff going on mission share their hotel room with someone not involved in the mission, they must ask for the single room rate to be indicated on the hotel bill. Failing this, 25% of the price of the double room will be deducted from the amount billed.

Cancellation

70. In the event of the cancellation, postponement or alteration of a reservation, staff must inform the approved travel agency or hotel chain concerned *immediately in writing* (fax or e-mail) (see Section XI).

71. Where cancellation fees are due as a result of negligence on the part of the member of staff concerned, he or she will be liable for the expenses incurred, except in the case of a duly substantiated decision by the authorising officer.

VIII. Expenses paid by organisers; accommodation and meals provided by others

72. Before the mission, the authorising officer must check that there are no potential conflicts of interest and confirm accordingly on the travel order. Tickets must be provided to the staff going on mission by the organisers or paid for directly by the staff member concerned. In the latter case, staff should be aware that they make such payments at their own risk and that the Agency cannot reimburse such costs if the organisers fail to do so.

73. If a Community Institution, an administration or an outside organisation covers the costs of meals, accommodation and/or subsistence, this should be mentioned on the travel order and without fail on the statement of expenses (indicating the number of meals/overnight stays provided per place of mission). In such cases, the daily allowance will be reduced accordingly. The allowance is reduced by 30% for each meal provided, and by 15% for breakfast⁶. In exceptional cases, the authorising officer by delegation may decide, in agreement with the member of staff concerned, not to grant a daily allowance.

74. Any fees paid by an outside organisation should be declared on the travel order and/or the statement of expenses and will be deducted from the balance for the mission (see also Section XV on gifts). The authorising officer must certify that the mission has been carried out. To this end, all relevant documentary evidence⁷ must be enclosed with the statement of expenses.

IX. Duration of a mission

75. The duration of a mission is calculated from the time of departure of the means of transport used to the actual time of arrival on return to the place of employment.

76. Travel must be organised so that the mission lasts as short a time as possible given the means of transport used and is as cost-effective as possible.

77. The daily allowance is to be calculated on the basis of official published timetables, the starting and finishing times of meetings and the means of transport and type of tickets used and adjusted for incurred delays.

78. Solely for the purpose of settling mission expenses, one hour is added to departure and arrival times for train journeys, two hours before take-off and one hour after landing for journeys by air, and three hours before take-off and two hours after landing for intercontinental flights.

79. In the case of a one-day mission, the duration of the mission should not, in principle, exceed 12 hours.

80. Similarly, the total working day (on mission and at the office) on the day of departure and the day of return should not exceed 12 hours.

81. Staff going on mission cannot be obliged, either at the place of employment or at the place of mission, (not including the extra time added for the purposes of calculating the allowances) to:

⁶ If colleagues treat one another to meals on a private basis, this does not have to be declared.

⁷ Examples of relevant documentary evidence would be: the invitation from the organisers, with their full contact details, the official programme of the event, the list of participants, an attendance certificate, a letter of thanks from the organisers or, in the absence of any other supporting document, a solemn statement signed by the member of staff concerned.

- leave their place of employment or place of mission before 07.00 (station or other transport type) or before 08.00 (airport);
- arrive at the place of mission after 21.00;
- arrive at the place of employment after 23.00 (airport, station or other transport type).

82. To avoid early morning travel, staff may commence their mission on the day before.

83. If a flight or train is available following the end of the mission, the staff member is expected to return on the same day if the total amount of mission hours including return travel does not exceed 12 hours.

84. If the duration of the mission is extended for personal reasons (leave, weekend, public holiday, etc.), substitute times will be applied automatically for the outgoing and/or return journey.

85. The substitute timetables will be calculated on the basis of the most appropriate and most cost-effective means of transport for the normal purpose of the mission.

X. Changes to a mission

Before you leave

Cancellation

86. If a mission is cancelled, the staff member going on a mission ensures that the operational initiator:

- cancels the tickets and hotel reservations immediately by phone and confirms in writing (e-mail, fax, etc.) as soon as possible either via the approved travel agency or by contacting the transport companies and hotels concerned. Failure to do so will result in any costs incurred by the Agency being charged to you. Any rail ticket that cannot be reimbursed and has not been issued to a named traveller should not be sent back to the travel agency but should be attached to the statement of expenses for the cancelled mission;
- sends a cancellation signed by the authorising officer to the Staff Payment Office;
- indicates any cancellation fees.

Changes to the dates of the mission

87. If any changes are to be made to the dates specified in the original travel order, a new travel order must be issued.

88. Otherwise, and especially where the changes were unexpected, the mission dates must be altered in the statement of expenses as laid down in Section XI.

During the mission

Extension

89. Missions may have to be extended on account of unforeseen circumstances.

90. If the duration of the mission initially indicated on the travel order is extended, leading to additional costs, this should be mentioned on the statement of expenses.

Interruption or modification in the interests of the service (recall)

91. All expenses incurred in relation to the mission will be reimbursed.

Interruption or modification for personal reasons

92. All costs will be met by the member of staff concerned.

Interruption or extension for reasons of force majeure

93. Costs incurred as a result of illness, accident, natural disasters, early return from mission or travel assistance will be covered by insurance (when applicable).

XI. Missions combined with absence for personal reasons

94. An ad hoc signature by the authorising officer is required if a mission is to be combined with absence for personal reasons of more than three calendar days as a result of leave, a weekend, non-working days or public holidays.

XII. Mission interrupting a period of leave

95. Where justified in the interests of the service, as substantiated by the authorising officer, all the costs associated with the interruption of or recall from leave will be borne by the Institution and treated in the same way as a mission.

96. If you are called back from leave, no daily allowance will be paid at your place of employment and accommodation expenses will not be paid. However, if your own residence is temporarily unavailable, you can make a formal declaration to that effect and, if the declaration is accepted by the authorising officer, accommodation expenses may be paid.

XIII. Statement of expenses

97. Immediately on your return from mission, you must draw up a statement of mission expenses which will be signed by the immediate superior, and, where necessary, by the authorising officer. Under no circumstances may this signature be made conditional on the submission of a mission report or any other formality required by an internal circuit. The supporting documents must be sent without delay to the Staff Payment Office. In the exceptional case that tickets, boarding cards and any original supporting documents have been lost or stolen, the staff member going on a mission shall confirm this in writing and provide other evidence for expense claims.

98. Unless the authorising officer issues a derogation in accordance with Section III, any statement of expenses submitted more than **3 months** after the date of return from the mission will not be reimbursed. Following a reminder from the Staff Payment Office, any advances or travel expenses already paid will be deducted from your salary.

99. Statements of expenses should be completed carefully and correctly.

100. Original supporting documents to be attached to the statement of expenses:

- tickets;
- hotel bills or equivalent;
- derogations, if any;
- requests for car hire and car hire contract;
- any other proof of expenditure for which reimbursement is requested.

101. For missions by air, original boarding cards must be attached to statements of expenses. Passenger receipts will be required if a detour has been made for private reasons, if you have paid for the air ticket yourself and in the case of any dispute with an airline.

102. Failure to comply with these provisions will delay reimbursement of the expenses incurred. The actual routes and departure and arrival times of the transport used should be indicated.

XIV. Gifts or payments offered to staff

103. In any event, any fees or other payments received must be declared (on the travel order and/or the statement of expenses) and will be deducted from the total mission expenses payable or from your salary.

XV. Safety on mission and on the roads

104. Staff are reminded that, when travelling on mission, they are solely responsible for their own safety and for the safety of their personal effects and the money in their possession.

105. You should therefore take all necessary precautions, e.g. by not carrying more cash than is absolutely necessary. You are advised to use a credit card and should visit the "Travel Advice" pages, to learn more about safety requirements in the countries to which you will be travelling. It is also a good idea to contact the Delegation in the country you will be visiting and follow their advice.

106. The best way to travel is by public or shared transport (train, shuttle, official car or hired car with driver), although staff needs to consider the safety of such means of transport. The Agency strongly advises staff against using their own cars when going on mission (see Section VI). If you do use your own car when on mission, you must use appropriate, safe and properly serviced vehicles and must comply with the relevant safety rules (rest times, highway code, etc.).

XVI. Travel insurance and assistance

107. If you encounter a problem during a mission, after ensuring immediate assistance for personal health and safety needs, please contact our insurers (see Annex 3), who are on hand 24 hours a day, and follow their instructions.

XVII. Passengers' rights⁸

108. If you are denied boarding, your flight is cancelled or you experience other problems, you should follow the procedure set out below:

⁸ Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 (http://europa.eu.int/comm/transport/air/rights/info_en.htm), which entered into force on 17 February 2005.

109. The first step is to contact a representative of the airline (usually at the airport office) who will record in writing your right to compensation; this will be paid immediately or within 7 days at the latest, in cash, by bank transfer or by cheque. Staff on mission are not permitted to accept travel vouchers. This compensation is in addition to being placed on the next available flight or to a voucher for a night in a hotel and a meal as appropriate. Under no circumstances may staff travelling on mission volunteer to take a later flight at the airline's expense if they have the option of leaving at the time originally planned.

110. If the delay in boarding threatens the normal completion of the mission, you must decide whether or not to continue the mission.

111. Your statement of expenses must include the amount of compensation received (from which any extra costs to the Agency will be deducted), as well as any nights in a hotel or any meals paid for by the airline; these will be taken into account when settling the mission expenses.

112. If the airline does not honour its obligations, you must, if possible, obtain a signed acknowledgment in writing of this refusal addressed to the Staff Payment Office which, with the assistance of the travel agency, will ensure that the appropriate steps are taken.

XVIII. Medical aspects of missions

Ill health during your mission

113. Notwithstanding point 106, if, for reasons of ill health, you are unable to carry out your mission, are obliged to extend it or are unable to return to your place of employment, you must inform your immediate superior by the quickest possible means, giving your exact address and details of how you can be contacted directly.

114. In the event of hospitalisation during a mission, daily mission allowances will no longer be paid; however, the hospitalisation costs will be reimbursed under the sickness insurance scheme.

Missions to the tropics

115. Staff travelling on mission to the tropics or to certain other countries are advised to make sure that their vaccination certificates are up to date, as it is often very difficult or even impossible to carry out vaccinations in time when they are requested at the last minute or just a few days before departure.

Missions to countries where hygiene is a problem

116. Travellers to countries where hygiene is a problem are advised, as a rule, to drink only water purified using sterilising tabs or from sealed bottles.

117. Staff should also be careful not to use unsterilized water for cleaning teeth or dentures.

118. Staff should not drink unsterilized milk or eat yoghurts or unwashed (or poorly washed) fruit or vegetables.

Staff with health problems or allergies and expectant mothers

119. Staff with health problems or allergies and expectant mothers should draw attention to their condition before having vaccinations of any kind or taking medication to protect against malaria.