

DECISION OF THE MANAGEMENT BOARD

On the implementing rules on the engagement and use of temporary agents 2(f)

The Management Board

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

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”) and in particular Article 68 thereof,

Having regard to the Staff Regulations of Officials of the European Union (Staff Regulations) and the Conditions of Employment of Other Servants of the European Union (CEOS), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68², and in particular Articles 2(f) and 56 of the CEOS,

Having regard to the Communication C(2014)6543 final of 26 September 2014 from Vice-President Šefčovič to the Commission on the guidelines on the implementation of Article 110(2) of the Staff Regulations with regard to the implementing rules applicable in the agencies, and in particular Point 2.B thereof,

Having regard to the agreement of the European Commission pursuant to Article 110(2) of the Staff Regulations (C(2015)1509) of 4 March 2015,

After consulting the Staff Committee,

¹ OJ L 331, 15.12.2010, p. 84.

² OJ L 56, 4.3.1968, p. 1, as last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013, OJ L 287, 29.10.2013, p.15.

Whereas:

- (1) Article 2 of the CEOS, as amended, has introduced in its paragraph (f) a new category of temporary staff which is exclusively engaged by the agencies of the Union.
- (2) Article 56 of the CEOS requires each agency to adopt, in accordance with Article 110(2) of the Staff Regulations, general provisions on the procedures governing the engagement and use of temporary staff referred to in Article 2(f) of the CEOS.
- (3) Taking into account the need to set out a consistent staff policy for temporary staff in Union agencies, it is necessary to lay down specific coherent rules for the engagement of such staff with a view to facilitating their mobility both within an agency and between agencies.
- (4) For the sake of clarity and legal certainty, with respect to temporary staff under Article 2(f) of the CEOS, ESMA's general implementing provisions on the procedure governing the engagement and use of temporary agents (ESMA/2012/MB/44) of 18 June 2012 should no longer apply,

Has adopted this decision:

Chapter I

General provisions

Article 1 – Scope

This Decision shall apply to temporary staff engaged pursuant to Article 2(f) of the CEOS (temporary staff 2(f)) by ESMA without prejudice to specific provisions concerning middle managers which are laid down in a separate Decision.³

Article 2 – Options for filling a post

1. A vacant post may be filled by internal mobility, by mobility between Union agencies or through engagement following an external selection procedure. The Authority Authorised to Conclude Contracts of employment (AACC) may establish an order of priority between those options.
2. Without prejudice to Article 3, each time the AACC decides to fill a post, the post shall be published internally in the agency.

³ ESMA/2011/MB/16/Rev1

Chapter II

Filling a post by means of internal mobility

Article 3 – Reassignment in the interest of the service

1. The AACC may fill a post in the interest of the service by reassignment of a member of temporary staff 2(f) of the agency in accordance with Article 7 of the Staff Regulations, applicable by analogy to the temporary staff pursuant to Article 10(1) of the CEOS.
2. The reassigned member of staff is assigned to the new post by written decision of the AACC, without impact on the current contract of employment with the agency.

Article 4 – Internal publication of a post

1. The AACC may also decide to fill a post following internal publication. The means of publication, whether by intranet, internal notice, or another means, shall ensure the transparency of the procedure.
2. The post shall be published at the range of grades within a function group (grade bracket) corresponding to the type of post⁴ to be filled.
3. The internal publication shall specify inter alia:
 - a) the function group, the type of post⁵ and grade bracket;
 - b) the type of duties to be performed;
 - c) the general conditions and qualifications required for the post (including those referred to in Article 12(2) of the CEOS);
 - d) the specific conditions required for the post;
 - e) the closing date for applications.

Article 5 – Eligibility

Internal mobility is reserved for temporary staff 2(f) who, on the closing date for applications and on the day of filling the post, are engaged within the agency in the function group and grade belonging to the grade bracket indicated in the internal publication.

⁴ And where relevant post title and/or job type.

⁵ See footnote 4.

Article 6 – Selection procedure in the case of internal publication

1. The AACC shall issue an internal notice describing the process applicable to all internal selection procedures.

However, the AACC may decide to apply a selection procedure that better suits the interest of the service. Such decision shall be justified and registered in a central record by the AACC.

2. The selected member of temporary staff 2(f) shall be assigned to the new post by written decision of the AACC without impact on his/her current contract of employment with the agency.

Chapter III

Filling a post by means of mobility between Union agencies

Article 7 – Interagency publication of a post

1. The AACC may also decide to advertise a vacant post for temporary staff 2(f) by means of interagency publication, with a view to attracting temporary staff 2(f) that are employed by all other agencies referred to in Article 1a(2) of the Staff Regulations. That publication may be done at the same time as or following the internal publication.
2. The interagency publication for the post shall be published at the same grade bracket as the internal publication. However, the upper grade of the bracket may be reduced to comply with constraints deriving from the agency's establishment plan.
3. Interagency publication shall specify inter alia:
 - a) the nature of the selection (interagency selection);
 - b) the function group, the type of post⁶ and grade bracket;
 - c) the type of duties to be performed;
 - d) the general conditions and qualifications required for the post (including those referred to in Article 12(2) of the CEOS);
 - e) the specific conditions required for the post;
 - f) the closing date for applications.

⁶ See footnote 4.

The elements in points (a) to (f) shall be the same as the elements indicated in the internal publication, without prejudice, as far as the grade is concerned, to Article 7(2). The closing date for applications may be also adapted if interagency publication takes place after internal publication.

Article 8 – Selection procedure

1. Article 6(1) shall apply mutatis mutandis to all interagency selection procedure.
2. The conclusion of contracts with staff in grades AD9 to AD12 pursuant to Article 55 of the CEOS in the framework of interagency mobility shall not be taken into account for calculating the total number of engagements in those grades referred to in the second paragraph of Article 53 of the CEOS.

Article 9 – Eligibility

1. Mobility between agencies shall be reserved for temporary staff 2(f) who, on the closing date for applications and on the day of filling the vacant post, are employed within their agency in a grade and function group corresponding to the published grade bracket and function group.
2. In addition, members of temporary staff 2(f) referred to in paragraph 1 should, as a general rule,
 - a) have at least two years' service within their agency before moving and any decision derogating from that principle shall be taken jointly by the two agencies concerned, having regard to the interest of the service of both agencies;
 - b) have successfully completed the probationary period provided for in Article 14 of the CEOS, in the relevant function group. Where, in exceptional circumstances, the agency engages a member of temporary staff 2(f) who does not meet that condition⁷, such member shall serve a full probationary period with the new agency in accordance with Article 14 of the CEOS and the new contract is not considered as a renewal of contract but an ex novo contract.

Article 10 – Contract and transfer of the personal file

1. The agency and the selected staff member shall conclude a contract of employment which ensures continuation of the person's employment and career in the category of temporary staff 2(f). That contract shall be concluded without interruption of the contract concluded with the agency of origin (the preceding contract) and shall fulfil the following requirements, in particular:
 - a) the same grade and the same seniority in the grade as the preceding contract;

⁷ That is to say has not successfully completed the probationary period.

- b) the same step and the same seniority in the step as the preceding contract.
2. As a general rule, the end dates of the contract concluded in accordance with paragraph 1 and of the preceding contract shall be the same. If the contract with the agency of origin was for an indefinite period, the member of temporary staff 2(f) shall also be engaged by the new agency for an indefinite period.

In the event that the preceding contract comes to its natural end on the day of the move, the duration of the contract concluded in accordance with paragraph 1 shall be the same as that the new agency would have set in case of a renewal of contract of one of its agents.

3. Without prejudice to Article 9(2)(b), the member of temporary staff 2(f) shall not serve a probationary period in the new agency.
4. The selected staff member shall take up duty in the new agency in principle three months after the job offer, unless it is otherwise agreed between the two agencies and the staff member concerned.
5. The agency of origin shall transfer the personal file to the new agency no later than 30 days after the date of the move.

Chapter IV

Filling a post through engagement following external selection

Article 11 – General provisions

1. The AACC may also decide to fill a post by engaging a successful candidate from an external selection procedure. To that end, the AACC may either select a candidate from an existing reserve list, in which case external publication of the vacant post is not required or may decide to organise an ex novo selection procedure, in which case the AACC shall launch an external publication procedure.

Before organising an ex novo selection procedure, the AACC shall examine the existing reserve list(s) in order to ascertain the need for a new selection.

2. If the AACC decides to organise an ex novo selection procedure, external publication may take place at the same time as internal and, if relevant, interagency publication or at a later stage.
3. Any selection procedure shall be organised at one single grade.
4. The selection procedure shall be carried out in accordance with the Annex.

Article 12 – Engagement

1. The AACC shall engage the member of temporary staff 2(f) by means of a contract concluded pursuant to Article 2(f) of the CEOS.
2. The contract referred to in paragraph 1 is always considered as the initial contract, even if the successful candidate from the external selection procedure is already a member of temporary staff 2(f) in the relevant function group or another function group. However, in the former case, the agency shall offer the person, in writing, the opportunity to be assigned to the post by means of mobility under the provisions of Article 6(2) or, subject to the establishment plan availabilities, Article 10 respectively, if the person prefers to ensure continuity of contracts.

Article 13 – Eligibility for external engagement

1. A member of temporary staff 2(f) may be engaged only on condition that he or she:
 - a) fulfils the requirements referred to in Article 12(2) of the CEOS;
 - b) possesses the minimum qualifications required by Article 5(3) of the Staff Regulations⁸, applicable by analogy to the temporary staff pursuant to Article 10(1) of the CEOS;
 - c) has been successful in a selection procedure set out in the Annex or, by way of derogation and where justified in the interests of the service, has passed a recruitment competition for officials organised by the European Personnel Selection Office (EPSO).
2. The grade of the selection⁹ must belong to the grade bracket of the internal publication of the post to be filled. It must also comply with the agency's establishment plan.

Article 14 – Grading

The member of temporary staff 2(f) shall be engaged in the function group and at the grade indicated in the selection notice.¹⁰

Article 15 – Probationary period

The member of temporary staff 2(f) shall serve a probationary period in accordance with Article 14 of the CEOS.

⁸ For the purposes of this Article, only diplomas that have been awarded in EU Member States or that are the subject of equivalence certificates issued by the authorities in the said Member States shall be taken into consideration. In the latter case, the AACC reserves the right to request proof of such equivalence.

⁹ The grade of the competition when the candidate is drawn from an EPSO reserve list for officials.

¹⁰ The grade of the competition when the candidate is drawn from an EPSO reserve list for officials.

Chapter V

Common provisions concerning the application of Article 8(1) of the CEOS

Article 16 – Duration of contracts

1. The Director of the agency shall establish the policy that the agency will apply on the duration of contracts, within the limits provided for in the CEOS. This policy shall be communicated to staff.
2. Where justified in the interest of the service, the AACC may decide to conclude contracts of a different duration to those set out in the policy referred to in paragraph 1. Those exceptions shall be recorded in the central record referred to in Article 6(1).
3. The policy referred to in paragraph 1 may contain provisions on temporary and specific needs. In particular, in duly justified cases, the AACC may decide to conclude contracts with a limited perspective in time. Such contracts are justified in particular for projects of limited duration, for cases where the agency needs to avail itself of up-to-date knowledge in a specific area (and accordingly, to renew staff) or for replacement of absences. In such cases, the AACC shall clearly inform the candidate, in the offer letter, contract, any potential renewal of contract and where relevant in the selection notice, that the contractual relationship with the agency has a limited perspective in time.

Such contracts may be concluded for a fixed period, or, only in duly justified cases, for a limited period. In the latter case, the contract is concluded for the duration of the particular task and shall be recorded in the central record referred to in Article 6(1).

Article 17 – Succession of contracts in case of interagency mobility

1. For the purposes of Article 8(1) of the CEOS the following principles shall apply:
 - a) without prejudice to Article 9(2)(b), all the contracts or renewals of contracts as temporary agent 2(f) are taken into account regardless of the agency granting the initial contract or the renewal;
 - b) a contract of employment concluded following interagency mobility shall not be considered as a renewal unless it ends at a later date than the previous contract, in which case it shall be treated as a renewal.

Chapter VI

Transitional and final provisions

Article 18 – Final provisions

1. The general implementing provisions on the procedure governing the engagement and use of temporary agents (ESMA/2012/MB/44) at ESMA of 18 June 2012 are no longer applicable to temporary staff 2(f).
2. The general implementing provisions in this Decision shall take effect on the day following that of their adoption.

Done at Paris on 23 September 2015

[Signed]

Steven Maijoor
Chair
For the Management Board

ANNEX

External selection procedure

Article 1 – General principles

1. An external selection procedure may be organised either to fill one or more similar posts or to constitute a reserve list of successful candidates.
2. The selection procedure shall be launched by publication of the selection notice, which specifies inter alia:
 - a) the nature of the selection (external selection to fill one or more similar post(s)/to constitute a reserve list), including the profile and the number of persons to be selected,
 - b) the function group, the type of post/post title and grade;
 - c) the type of tests;
 - d) the type of duties to be performed;
 - e) the general and specific conditions and qualifications required for the post;
 - f) the required knowledge of languages;
 - g) the closing date for applications;
 - h) the validity of the reserve list;
 - i) the agency or agencies involved.
3. The selection notice shall be published in all working languages of the agency¹¹ on the website of the agency or agencies concerned, on the EPSO website as well as, if appropriate, on internet job boards and/or in the international, local and specialist press. The Permanent Representations of the Member States to the European Union and representatives of Member States who sit on the Management Board of the agency or agencies concerned may also be used as communication channels.

Article 2 – The selection procedure

1. The selection procedure shall be conducted to the same standards of EPSO's competitions organised for officials with equivalent profiles and number of applicants.
2. When an agency or group of agencies is not in a position to meet the standards referred to in paragraph 1, the agency or group of agencies shall seek EPSO's

¹¹ If the working languages are not established, the selection notice shall be published in all official languages of the European Union.

endorsement of the selection procedure before launching it. EPSO shall respond within the deadline agreed with the agency or agencies concerned.

3. In both cases, the selection procedure shall rely, in addition to examination of the applications, on one or more written¹² and oral test(s). Such test(s) shall involve at least:
 - a) an anonymous qualifying part;
 - b) a part aimed at assessing the specific competencies required for the post(s);
 - c) a part aimed at assessing the general competencies required of European Union temporary staff 2(f).

The elements in points (a) to (c) may be grouped in one or more parts.

4. The selection procedure shall be conducted by a selection committee appointed by the AACC¹³ and composed of at least three members consisting of one chair and at least one member from the administration of the agency and one member designated by the Staff Committee.

In specific cases, in particular for selection procedures of experts, additional members may be designated from the agency or agencies concerned, from outside the agency or from outside the Union institutions.

The members¹⁴ of the selection committee shall be chosen from officials or temporary agents whose function group and grade is at least equal to that of the post to be filled. When there are no officials or temporary agents in the agency fulfilling the requirement of function group and grade, the authority or authorities authorised to conclude contracts of employment may decide to designate officials or temporary agents from another agency or institution who fulfils that condition.

5. The selection procedure shall be organised by one of the following entities:
 - a) EPSO¹⁵, at the request of one or more agencies;
 - b) Group of agencies¹⁶ ; or
 - c) One agency¹⁷ .

¹² If the AACC decides, in exceptional cases, not to organise a written test, that decision should be duly justified in the central record as referred to in Article 6(1).

¹³ In the case of a selection procedure organised by a group of agencies, a selection committee shall be designated by agreement between the authorities authorised to conclude contracts of employment of agencies concerned.

¹⁴ The names of the selection committee members shall be disclosed to the candidates invited to interview or made public before the selection tests via the same website or websites on which the selection notice is published.

¹⁵ This option is in particular appropriate for general profiles such as, but not limited to, human resources officers/assistants, EU lawyers/assistants, economists, IT officers/assistants, finance officers/assistants, secretary.

¹⁶ This option is in particular appropriate for specialist profiles common to several agencies, such as lawyers/assistants, programme officers/assistants, economists, researchers, in a particular area of agencies' activities.

Article 3 – Grading of the selection procedure

1. Admissible grades

Temporary staff 2(f) selection procedures shall be organised at one of the following grades:

- a) AST/SC 1 to AST/SC 2 for the function group AST/SC;
- b) AST 1 to AST 4 for function group AST; or
- c) AD 5 to AD 8 for function group AD.

2. Grade of the selection

Each time a selection procedure is organised, the AACC shall explain in writing the choice of the grade. Such explanation cannot refer to the place of assignment.

- 3. The selection notice shall require a minimum number of years of professional experience acquired after the award of the qualification certifying the completion of the level of studies required as a condition of eligibility for the selection procedure. That minimum requirement shall be set by reference to the latest competition organised by EPSO for a similar profile. In the absence of such reference, the minimum number of years of professional experience set out in Table 1 shall apply.

Table 1

Grade of engagement	Number of years of professional experience
AD 5	0 year
AD 6	3 years
AD 7	6 years
AD 8	9 years
AST 1	0 year
AST 2	3 years
AST 3	6 years
AST 4	9 years
AST/SC1	0 year

¹⁷ This option is in particular appropriate for specific profiles limited to the area of an agency's activity.

AST/SC2	4 years
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Any deviation from the requirements set out in subparagraph 1 of this paragraph shall be justified in writing and registered in the central record provided for in Article 6(1). This justification cannot refer to the place of assignment.

4. Highly specialised positions

- a) Subject to the limits established by Article 53 of the CEOS, and by derogation from the requirements of paragraph 1, an agency may engage a member of temporary staff 2(f) at grades AD 9, AD 10, AD 11, or on an exceptional basis at grade AD 12. Those engagements shall be exceptional and shall be duly justified by the agency or agencies in the central record referred to in Article 6(1). This justification shall, *inter alia*, give the reasons for requiring such a high grade. This justification cannot refer to the place of assignment.
- b) Engagement at the grades referred to in the subparagraph (a) shall require completed university studies of at least four years attested by a diploma¹⁸ and a minimum number of years of professional experience as set out in Table 2, both acquired in positions corresponding to the nature of duties of the vacant post(s).
- c) The minimum number of years of professional experience referred to in subparagraph (b) shall be acquired after the award of the qualification certifying the completion of the level of studies required as a condition of eligibility for the selection procedure.

Table 2

Grade of engagement	Number of years of professional experience
AD 9/10	12 years
AD 11/12	15 years

Any deviation from the requirements set out in subparagraphs (b) and (c) shall be justified in writing and registered in the central record provided for in Article 6(1). This justification cannot refer to the place of assignment.

¹⁸ Or completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university studies is at least three years.