

DECISION OF THE MANAGEMENT BOARD

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”), in particular Articles 45a and 47 thereof,

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 right to good administration enshrined in the Charter of Fundamental Rights of the European Union, in particular Article 41 thereof,

Having regard to the own initiative inquiry of the European Ombudsman into the existence and the public accessibility in the different EU 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) By entry into force of the Lisbon Treaty the Charter of Fundamental Rights of the European Union acquired the same legal value as the Treaties. The Charter explicitly provides for the right to good administration as a fundamental right of every person when dealing with the institutions, bodies, offices and agencies of the Union.
- (3) 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 ESMA staff members when dealing with the public.
- (4) The model Code of good administrative behaviour proposed by the European Ombudsman in 2001 has been updated in 2015 to reflect the latest legislative and practical developments.
- (5) Considering it therefore desirable to adopt the following revised Code and to make it publicly available.

Has adopted this decision:

¹OJ L 331, 15.12.2010, p. 84.



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Article 1 – General provision

In its relations with the public, ESMA staff members 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 statutory ESMA staff members 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 ESMA’s non-statutory staff members, such as persons employed under private law contracts, experts on secondment, trainees or other relevant persons.

For the purposes of this Code, “ESMA staff member” shall mean both, statutory and non-statutory staff members.

The term “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 staff members 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 staff members. Relations with statutory staff members are governed by the Staff Regulations and the Conditions of Employment of Other Servants. Relations with non-statutory staff members are governed by the relevant applicable laws and the private law contracts.

Article 4 – Lawfulness

The ESMA staff member shall act according to law and apply the rules and procedures laid down in Union legislation. The ESMA staff member shall in particular take care to ensure 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 ESMA staff member 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 ESMA staff member shall ensure that it is justified by the objective relevant features of the particular case.

The ESMA staff member shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, racial, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

Article 6 – Proportionality

When taking decisions, the ESMA staff member shall ensure that the measures taken are proportional to the aim pursued. The ESMA staff member 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 ESMA staff member 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 ESMA staff member 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 ESMA staff member shall be impartial and independent. The ESMA staff member shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

The ESMA staff member shall not be guided by any outside influences of whatever kind, including political influences, or by personal or national interests.



The ESMA staff member shall abstain from being involved in the taking of a decision on a matter concerning his or her own personal or financial interests, or those of his or her family, relatives, friends and acquaintances.

Article 9 – Objectivity

When taking decisions, the ESMA staff member 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, consistency and advice

The ESMA staff member shall be consistent in his own administrative behaviour as well as with the administrative action of ESMA. The ESMA staff member shall follow ESMA's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case. Where such grounds exist, they shall be recorded in writing.

The ESMA staff member shall respect the legitimate and reasonable expectations that members of the public have in the light of how ESMA has acted in the past.

The ESMA staff member shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

Article 11 – Fairness

The ESMA staff member shall act fairly, impartially and reasonably.

Article 12 – Courtesy

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

If the ESMA staff member is not responsible for the matter concerned, he or she shall direct the citizen to the appropriate ESMA staff member.

If an error occurs which negatively affects the rights or interests of a member of the public, the ESMA staff member shall apologise for it and endeavour to correct the negative effects resulting from his or her error in the most expedient way and inform the member of the public of any rights of appeal in accordance with Article 19 of the Code.

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

The ESMA staff member 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.

The same should apply as far as possible to legal persons such as associations (NGOs) and companies.

Article 14 – Acknowledgement of receipt and indication of the competent staff member

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 ESMA



staff member 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 ESMA staff member to whom the file has been passed.

The ESMA staff member shall alert the member of the public or organisation to any errors or omissions in documents and provide an opportunity to rectify them.

Article 16 – Right to be heard and to make statements

In cases where the rights or interests of individuals are involved, the ESMA staff member 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 ESMA staff member 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 ESMA staff member 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 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 ESMA staff member 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 ESMA staff member shall guarantee that he or she subsequently provides the citizen who expressly requests it with an individual reasoning.

Article 19 – Indication of the possibilities of appeal

A decision 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. 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

The ESMA staff member shall ensure that decisions 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 ESMA staff member shall wherever possible abstain from communicating the decision to other sources until the person or persons concerned have been informed.

Article 21 – Data protection

The ESMA staff member who deals with personal data concerning a citizen shall respect the principles laid down in Regulation (EU) No 2018/1725 on the protection of natural persons with regard to the processing of personal data by the EU institutions, bodies, offices and agencies and on the free movement of such data.

The ESMA staff member 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 ESMA staff member shall, when he or she has responsibility for the matter concerned, provide members of the public with the information that they request. When appropriate, the ESMA staff member shall give advice on how to initiate an administrative procedure within his or her field of competence. The ESMA staff member 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 ESMA staff member shall advise the person concerned to formulate his or her demand in writing.

If, because of its confidentiality, the ESMA staff member may not disclose the information requested, he or she shall, in accordance with Article 17 of this Code, indicate to the person concerned the reasons why he or she cannot communicate the information.

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

Where appropriate, the ESMA staff member 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 ESMA staff member shall give access to these documents in accordance with the decision on access to ESMA documents.

If the ESMA staff member 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 departments 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 ESMA or the ESMA staff member 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 – Review

This Code will be reviewed every five years after taking effect, as necessary.

Article 28 – Entry into force and repeal

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

This decision repeals the previous version of the Code of good administrative behaviour (ESMA/2011/MB/6).

Done at Paris on 22 March 2021

[signed]

The Chair

Steven Maijoor
For the Management Board