

DECISION OF THE MANAGEMENT BOARD

On the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union, governing the conditions of employment of contract staff employed under the terms of Article 3a thereof

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 ('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 Article 110(2) of the Staff Regulations and Title IV 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(2019)3016 of 2 May 2019,

After consulting the ESMA 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) On 20 October 2017, the Commission informed ESMA that it adopted Decision C(2017)6760 of 16 October 2017 on the general provisions for implementing Article 79(2) of the CEOS, governing the conditions of employment of contract staff employed by the Commission under the terms of Articles 3a and 3b thereof.
- (2) Pursuant to Article 110(2) of the Staff Regulations, implementing rules such as those referred to in Recital 1 shall apply by analogy to ESMA. By way of derogation, an agency may request the Commission's agreement to the non-application of certain implementing rules. The Commission may, instead of accepting or rejecting the request, require the agency to submit, for its agreement, implementing rules which are different from those adopted by the Commission.
- (3) Commission Decision C(2017)6760 is suitable to apply to ESMA if it is adapted to the peculiarities of ESMA. Those peculiarities concern in particular selection procedures, policy on duration of contracts, mobility and non-application of the provisions related to contract staff covered by Article 3b of the CEOS.
- (4) On 30 April 2020, contract staff accounted for 26% of ESMA's staff and they fulfil an essential role in many of ESMA's activities and processes.
- (5) Contract staff should be appropriately integrated within ESMA by providing them with prospects for development. This has implications for the whole process of managing this category of staff: from their selection to their appraisal, but also for their career, advancement and reclassification. These developments include the possibility of changing their grade and function group, while making mobility easier between agencies.
- (6) The objective of this Decision is, in particular, to optimise the recruitment process through, for example, permanent calls for expression of interest and the internal publication of vacant posts for contract staff. It also aims to make it possible for the most deserving members of the contract staff to benefit from mobility and provide them with additional career opportunities, for example by organising an exercise enabling contract staff to move into the next function group.
- (7) In order to make mobility easier, it is important to make the link between contract staff employed by ESMA and those employed by other agencies by using common/similar guidelines for the selection and management of contract staff.
- (8) More generally, the rules and provisions applicable to contract staff should provide flexibility in the employment conditions of this staff category, be it in the selection procedure, classification in the function group and grade or the duration and renewal of contracts.

Has adopted these general implementing provisions:

TITLE I: General provisions

Article 1 – Scope and terminology

1. This Decision shall apply to the conditions of employment of contract staff covered by Article 3a of the CEOS ('CA 3a') engaged by ESMA, ('contract staff').
2. The terms 'CA 3a' and staff covered by Article 3b of the CEOS ('CA 3b') are used to refer exclusively to these types of staff.

TITLE II: Conditions of engagement

Article 2 – Selection

1. Engagement as contract staff shall be conditional upon passing the selection procedure set out in Annex I.
2. By way of derogation from paragraph 1, in exceptional cases, where justified in the interests of the service, the authority authorised to conclude contracts of employment ('AACC') may recruit as contract staff a candidate who has passed a recruitment competition for officials, or who is a successful candidate in a selection of temporary staff under Article 2(f) of the CEOS, if such competition, or selection is considered to be appropriate to the duties to be performed.
3. By way of derogation from paragraph 1, the AACC may engage as a contract staff an official or a temporary staff under Article 2(f) of the CEOS who has been granted leave on personal grounds or unpaid leave respectively.

Article 3 — Function groups

1. The AACC shall determine the function group in which the member of the contract staff is engaged on the basis of Article 80(2) of the CEOS.
2. The Agency entity in charge of human resources shall draw up a job description to this end.

Article 4 — Minimum conditions and qualifications for engagement

1. Engagement as a member of the contract staff shall be conditional upon fulfilling the minimum conditions and qualifications set out in Article 82(2) and (3) of the CEOS.

2. Under Article 82(2) of the CEOS, 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.

Article 5 — Classification in the function group

1. In accordance with Article 86(1) of the CEOS, the AACC shall classify contract staff in their function group taking into consideration their qualifications and professional experience at the time of entry into service.

For the purposes of this classification, the qualifications and professional experience taken into account shall be those acquired between the date on which contract staff met the minimum requirements for recruitment, as set out in Article 82(2) of the CEOS, and their entry into service. In the case of qualifications equivalent to those giving access to the function group, the AACC shall establish a reference date from which experience shall be taken into account.

2. Without prejudice to Articles 8 and 9, contract staff engaged in Function Group I shall be classified in grade 1.
3. Without prejudice to Articles 8 and 9, contract staff engaged in Function Groups II, III and IV shall be graded within their function group according to the following rules:

a) in function group II:

Qualifications and professional experience	Grade
less than 5 years	4
5 years or more	5

b) in function group III:

Qualifications and professional experience	Grade
less than 5 years	8
between 5 years and 15 years	9
15 years or more	10

c) in function group IV:

Qualifications and professional experience	Grade
less than 5 years	13
between 5 years and 17 years	14
17 years or more	16

4. By way of derogation from paragraph 3, the AACC may, at the request of the Agency entity in charge of human resources, classify a member of the contract staff recruited in function groups II, III or IV in a grade within the function group that is higher than those in the tables in paragraph 3(a), (b) and (c). The grading shall be carried out within the range set out in Article 86 of the CEOS. The Agency entity in charge of human resources shall justify its request to the AACC on the basis, in particular, of the professional experience and qualifications required, the tasks and level of responsibility involved or labour market conditions for the profile in question.
5. Without prejudice to Articles 8 and 9, for the implementation of paragraph 3, the qualifications and professional experience to be taken into account for the purposes of grading contract staff in their function groups are set out in Annex II.
6. Grading shall be determined on the date of entry into service.

Without prejudice to Article 87(3) of the CEOS, the grading shall not be revised in the course of the contract, including any renewals thereof.

Article 6 — Classification in the grade

1. In accordance with Article 86(1), second subparagraph, of the CEOS, and without prejudice to Article 8, contract staff shall be classified in the first step of their grade.
2. However, in accordance with Article 86(1), second subparagraph, of the CEOS, the AACC shall grant 24 months' additional seniority in the step to a contract staff recruited at grade 1 in function group I to take account of professional experience of three years or more.

Professional experience shall be taken into account in line with the rules in Article 5(1) and (5).

Article 7 — Duration of contracts

1. In application of Article 85 of the CEOS, the head of the Agency as referred to in the act(s) establishing the Agency ('Executive Director') 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 a central record by the AACC.

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 specific areas (and accordingly, to renew staff) or for replacement of absences. 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 7(2).

In both cases of such contracts, the AACC shall clearly inform the candidate, in the offer letter, in the contract, or in any renewal of contract and, where relevant, in the selection notice, that the contractual relationship is linked to duties of limited duration in time that may lead to the termination of the contract or its non-renewal.

Where a successful candidate to contracts referred to in this paragraph is a contract staff under indefinite duration, he or she shall be engaged for an indefinite period in accordance with Annex III. The same applies where, in accordance with Article 85 of the CEOS and Annex III, the new contract of a contract staff would result in indefinite duration contract.

In such cases, the AACC shall clearly inform the candidate in the selection notice, in the offer letter, in the contract or in any renewal of contract, that the contractual relationship is linked to duties of limited duration in time that may lead to a reduction in the activities of the Agency or a reorganisation of the services, that could constitute a valid ground for termination of the contract.

4. In the event of interruption, the contract may not be renewed.

Article 8 — Successive contracts

1. The engagement by the Agency of a contract staff immediately after a CA 3a or CA 3b contract with another Agency or institution within the meaning of Article 1a of the Staff Regulations shall require a new contract.
2. The rules applicable to the different situations referred to in paragraph 1 are set out in Annex III.

Article 9 — Probationary period

1. Without prejudice to Article 8, contract staff shall serve a probationary period in accordance with Article 84 of the CEOS.

Where an initial contract is shorter than the probationary period and the contract is renewed, the period worked during the initial contract shall be included in the total probationary period.

2. If the outcome of the probationary period in a new function group immediately following a previous contract in a lower function group is unsatisfactory, the AACC shall endeavour to identify vacant posts within the Agency corresponding to the previous function group and to the contract staff member's profile. If such vacant posts are identified, the AACC may re-employ the staff member in his or her previous function group. The new contract shall be concluded in the grade, step and seniority that the staff member previously had in that function group.

TITLE III — Conditions of employment and career development

Article 10 — Changing function group

1. In application of Article 87(4) of the CEOS, a CA 3a shall advance to a higher function group by taking part in a general selection procedure.
2. The AACC may also, by way of exception, organise an exercise enabling the contract staff to advance to the next function group by taking part in a general selection procedure organised by the AACC in accordance with the procedure that it shall set out in advance, within the framework set by this Article.
3. When deciding whether to organise such an exercise and determining the function groups covered by the exercise, the AACC shall take into account in particular the existing staff at ESMA for each of the function groups, the commitment forecasts and the available funds.
4. When it decides to organise such an exercise, the AACC shall set the specific eligibility criteria for the exercise by means of an administrative notice. When setting the criteria, the AACC shall exclude from participation in the exercise contract staff who:
 - have served as contract staff at ESMA without interruption between the contracts for less than three years;
 - have not been reclassified in the next grade in the same function group, in accordance with Article 87(3) of the CEOS.

Furthermore, contract staff should have the qualifications required for advancing to the function group for which they are applying as part of the exercise.

5. Where a contract staff is engaged in the next function group at the close of the exercise provided for in this Article, the AACC shall conclude a new contract and shall apply the provisions of Article 3(2), (3) and (4)(a) of Annex III.

Article 11 — Mobility within ESMA and between ESMA and other Union agencies and institutions

1. Mobility of contract staff within ESMA may imply publication of the vacancy.

The AACC may issue an internal notice describing the process applicable to internal selection procedures.

Following internal mobility, the contract staff concerned is assigned to new tasks without impact on the current contract of employment with ESMA.

2. In order to facilitate the mobility of contract staff between ESMA and the Union agencies and institutions and make the best possible use of the skills available, ESMA may organise a selection procedure similar to the general selection procedure provided for in Article 3 of Annex I reserved for contract staff already employed by ESMA and the Union agencies and institutions.

To this end, vacant contract staff posts may be published at ESMA, if not already internally published, and be accessible to other Union agencies and institutions. Where they have the qualifications, skills and experience required to perform the tasks set out in the vacancy notice, CA 3a in ESMA and Union agencies and institutions who belong to the same function group as the one published in the vacancy notice and who have served for at least three years as contract staff within ESMA or a Union agency or institution may apply directly to ESMA. The post shall also be open to CA 3a who belong to the function group below the one published in the vacancy notice who have passed at ESMA a general selection procedure under the exercise referred to in Article 10.

3. If ESMA deems it advisable, the published post referred to in paragraph 2 may be opened to CA 3b from the Union institutions. In order to be able to apply, CA 3b staff must belong to the same function group as the one published in the vacancy notice, have served as CA 3b staff for at least three years within the institution and have the qualifications, skills and experience required to carry out the tasks set out in the vacancy notice. If the selection procedure for CA 3a staff as referred to in paragraph 2 is unsuccessful, applications from CA 3b staff may be examined by ESMA before resorting to the selection procedure referred to in Article 2(2) or Article 3 of Annex I.

4. For the engagement of CA 3a selected in accordance with the procedure in paragraph 2, except the mobility within the same Agency in the same function group, the AACC shall conclude a new contract and apply the following provisions:
 - i. in Article 1 of Annex III, in the case of a change of agency, or institution; or
 - ii. in Article 10(5), in the case of engagement in the next function group under the exercise referred to in Article 10.
5. For the engagement of CA 3b from a Union institution, selected in accordance with the procedure in paragraph 3, the AACC shall conclude a CA 3a contract and apply Article 2 of Annex III.

TITLE IV — End of contract

Article 12 — Notice of end of contract

1. The period of notice shall be set in accordance with Article 47 of the CEOS.

Fixed-term contracts that are not renewed shall end on their termination date without notice being served.
2. Contract staff wishing to resign must formalise their request by writing to the AACC at the latest on the day before the first day of the notice period, clearly stating that they wish to leave the service. Contract staff shall inform their line manager and their Agency entity in charge of human resources beforehand.
3. If the member of the contract staff, the department to which he or she is assigned and the AACC are in agreement, the period of notice may be shorter than that provided for in paragraph 1.
4. Paragraphs 1 to 3 shall apply by analogy to the probationary period provided for in Article 84 of the CEOS.

TITLE V — Transitional and final provisions

Article 13 — Guidance

The Agency entity in charge of human resources may draw up a Guide for the Agency's entities indicating procedures and good practices to achieve the objectives of this Decision.

Article 14 — Final provisions and entry into force

1. The Commission's Decision C(2017)6760 of 16 October 2017 on the general provisions for implementing Article 79(2) of the Conditions of Employment of Other Servants of the European Union, governing the conditions of employment of contract staff employed by the Agency under the terms of Articles 3a and 3b thereof does not apply by analogy at ESMA.
2. This Decision shall take effect on the day following its adoption.
3. These general implementing provisions shall also apply to contract staff selected and still on an open reserve list who receive an offer of employment on or after the day after the entry into force of this Decision.

Contract staff shall not have to retake the selection tests referred to in Article 2(2)(c) or 3(6) of Annex I if they have passed equivalent selection tests.

Done at Paris, on 27 May 2020

[Signed]

Steven Maijoor
Chair
For ESMA

ANNEX I

Contract staff selection procedure

Article 1 – General principles

1. In accordance with Article 82(5) of the CEOS, ESMA may ask EPSO to organise a selection procedure for contract staff.
2. The selection procedure shall be organised by one of the following entities:
 - a) EPSO via interinstitutional call
A public call for expressions of interest is published, stating the profiles sought, the function groups corresponding to the various profiles, the selection method and the eligibility criteria ('interinstitutional call'); or
 - b) Group of agencies; or
 - c) One agency.
3. In accordance with Article 82(3)(a) of the CEOS, the call for expressions of interest referred to in paragraph 2 may be opened to nationals of EU candidate countries, and, where justified by the needs of the service, to nationals of non-member countries.

I – Interinstitutional call (EPSO)

Article 2 – Selection procedure referred to in Article 1(2)(a)

1. The selection procedure is organised on the basis of the call for expressions of interest referred to in Article 1(2)(a).
2. The selection procedure includes the following stages:
 - a) Candidates register in an interinstitutional electronic database accessible to the Agency entity in charge of human resources. To this end, they fill in an electronic application form.

The application form contains, in particular, information making it possible to assess the qualifications, professional experience, skills and motivation of the candidate.

Candidates may express interest for several profiles and function groups.

Candidates must regularly update their electronic application form.

- b) On the basis of the electronic application form referred to in (a), the Agency entity in charge of human resources and/or the hiring department staff carries out a preselection of the candidates registered in the database who best fit the requirements for the duties to be performed.

The Agency entity in charge of human resources invites a person appointed by the Staff Committee to attend the preselection of candidates.

- c) If they have not yet successfully passed selection tests as part of another preselection organised on the basis of this Annex for the same profile and for an equivalent or higher function group, the candidates preselected by the Agency entity in charge of human resources and/or the hiring department referred to in (b) are required to take selection tests.
- d) The Agency entity in charge of human resources referred to in (b) invites the candidates who have successfully passed the selection tests referred to in (c) to an interview before a selection board.

The selection board is made up of at least three members consisting of a chairperson, at least one member from the administration of the Agency and one member appointed by the Staff Committee.

The interview before the selection board will make it possible to assess the suitability of the candidates chosen by the Agency entity in charge of human resources and/or the hiring department for the duties to be performed within the Agency, as well as their language skills.

The selection board draws up the list of successful candidates and sets out its conclusions in a record of the interview.

- e) The department concerned chooses the person whom it wishes to engage from the list of successful candidates drawn up by the selection board and asks the AACC to make an offer of employment to the candidate.
- 3. The preselected candidates who passed the selection tests referred to in paragraph 2(c) but who have not been engaged following the interview referred to in paragraph 2(d) will have their results recorded in the database referred to in paragraph 2(a).

Their results in the selection tests will remain valid for the profile and function group concerned, as well as for the lower function groups in the same profile, for the duration and under the terms set out in the call for expressions of interest.
 - 4. Preselected candidates who did not pass the selection tests referred to in paragraph 2(c) may retake the tests for function groups of an equivalent or higher level in that profile only after a minimum period of time set out in the call for expressions of interest.

5. The data in the electronic application form referred to in paragraph 2(a) of a member of the contract staff under contract with an institution within the meaning of Article 1a of the Staff Regulations will remain accessible in the database also referred to in paragraph 2(a) subject to the regular updating of the electronic application form referred to in paragraph 2(a).

II – Agency's or inter-agencies' call

Article 3 – Selection procedure referred to in Article 1(2)(b) and (c)

1. An external selection procedure may be organised either to fill one or more similar positions 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 position(s)/to constitute a reserve list), including the profile and the number of persons to be selected;
 - b) the function group, profile;
 - c) the type of tests;
 - d) the type of duties to be performed;
 - e) the general and specific conditions and qualifications required for the position;
 - 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 on the website of the agency or agencies concerned, and 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.
4. The selection procedure shall be conducted to the same standards of EPSO's selections organised for contract staff with equivalent profiles and number of applicants.
5. When an agency or group of agencies is not in a position to meet the standards referred to in paragraph 4, the agency or group of agencies shall seek EPSO's endorsement of the selection procedure before launching it. EPSO shall respond within the deadline agreed with the agency or agencies concerned.
6. In both cases, the selection procedure shall rely, in addition to examination of the applications, on one or more written³ test(s) as well as on an interview before a selection board referred to in paragraph 7 of this Article. 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 contract staff 3(a).The elements in points (a) to (c) may be grouped in one or more parts.
7. The selection procedure shall be conducted by a selection board appointed by the AACC⁴ 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.

³ 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 7(2) of the Decision.

⁴ In the case of a selection procedure organised by a group of agencies, a selection board shall be designated by agreement between the authorities authorised to conclude contracts of employment of the agencies concerned.

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 agencies and institutions.

8. Candidates who, for the same profile and an equivalent or higher function group, successfully passed written test(s) as part of another selection organised on the basis of Article 3(6) by the same agency, or group of agencies, including the agency organising a new selection procedure, or on the basis of Article 2(2)(c), are not required to take tests referred to in Article 3(6).

ANNEX II

Taking account of qualifications and professional experience for purposes of grading contract staff in their function group

Article 1 – General principles

1. The same period may be counted only once.
2. The supporting documents submitted by the candidate may be subjected to a detailed examination by the Agency entity in charge of human resources.

Article 2 — Qualifications

1. 'Qualifications' means any completed studies or professional training attested by a diploma issued by a Member State under the conditions set out in Article 4(2) of this Decision.
2. Qualifications will be taken into account:
 - provided that the study or training is at least equivalent to the level of the qualification required for access to the function group and that it lasted for at least one full-time academic year;
 - in respect of a period which may not exceed the statutory duration of the studies. In the case of a doctorate, the actual duration of the studies will thus be taken into account, subject to a maximum of three years;
 - provided that the study or training was undertaken following the award of the diploma giving access to the function group. Studies undertaken and qualifications obtained prior to the diploma giving access to the function group will not be taken into account.

Article 3 — Professional experience

1. For the purposes of this Decision, 'professional experience' means any paid activity carried out by the member of the contract staff in accordance with Article 5(1) of this Decision.
2. The actual duration of compulsory military service or equivalent civilian service will be taken into account even if this period of service took place before the conditions giving access to the function group were met.

3. For freelance interpreters, the length of the professional experience will be calculated by counting the number of days worked as an interpreter; 100 days of actual interpretation work will be considered to be equivalent to one year's professional experience.
4. For freelance translators, the length of professional experience will be calculated, within the limits of the period spent on such activities, on the basis of the number of pages translated converted into days worked; five pages translated will be considered to be equivalent to one day's work.
5. Periods of paid in-service training, or in-service training for which an indemnity is paid, will be regarded as professional experience.
6. Non-salaried professional activities (e.g. self-employed, liberal professions) will be considered on a case-by-case basis, taking into account their nature and duration. Such consideration will be based on formal data such as tax returns, statements of fees from national bodies, or any other supporting document of an official nature.
7. Professional activities carried out on a part-time basis will be calculated pro rata according to the hours worked.

ANNEX III

Rules applicable to changes in engagement following a contract with ESMA or with another Union agency or institution

I — Successive contracts within the same function group

Article 1 — Successive CA 3a contracts within the same function group

A CA 3a who concludes a CA 3a contract with ESMA in the same function group immediately after a CA 3a contract with another Union agency or institution, will be subject to the following rules:

1. He or she will not be subject to the selection tests referred to in Article 2(2)(c), or Article 3(6) of Annex I if he or she successfully passed equivalent selection tests before being engaged by the other Union agency or institution. The AACC decides whether the selection tests passed in another Union agency or institution are deemed to be equivalent to selection tests referred to in Annex I.
2. He or she will be invited by the Agency entity in charge of human resources wishing to engage him or her to an interview before a selection board in accordance with Article 2(2)(d), or Article 3(6) of Annex I.
3. If the CA 3a was confirmed in his or her duties by the other Union agency or institution at the end of the probationary period provided for in Article 84 of the CEOS, he or she will be exempt from the requirement to serve another probationary period.

If the CA 3a did not serve the probationary period provided for in Article 84 of the CEOS in the other Union agency or institution, did not complete it or was not confirmed in his or her duties at the end of the probationary period, he or she will have to serve the whole of the probationary period at ESMA under the conditions set out in Article 9 of the Decision.

4. For the purposes of Article 7 of the Decision and, when applicable, taking into account specific provisions of Article 7(3) thereof, the number of contracts concluded previously with the other Union agency or institution will be taken into account by ESMA when the new contract is being concluded, except in the case provided for in paragraph (3).

This means that a CA 3a who had an indefinite contract with the other Union agency or institution will also be engaged for an indefinite period by ESMA.

5. Pursuant to Article 86(2), third subparagraph, of the CEOS, the CA 3a will be classified in the most favourable grade resulting from:

- the maintenance of his or her grade, step and seniority within the grade and step during his or her previous contract; or
- the grading in accordance with Article 5 of the Decision.

Article 2 — CA 3a contract succeeding a CA 3b contract within the same function group

A CA 3b who concludes a CA 3a contract with ESMA in the same function group immediately after a CA 3b contract with a Union institution, will be subject to the following rules:

1. He or she will not be subject to the selection tests referred to in Article 2(2)(c) or Article 3(6) of Annex I if he or she successfully passed equivalent selection tests before being engaged by the previous Union institution. The AACC decides whether the selection tests passed in the previous Union institution are deemed to be equivalent to selection tests referred to in Annex I of this Decision.
2. He or she will be invited by the Agency entity in charge of human resources wishing to engage him or her to an interview before a selection board in accordance with Article 2(2)(d) or Article 3(6) of Annex I.
3. He or she will be required to serve the probationary period provided for in Article 84 of the CEOS at ESMA under the conditions in Article 9 of the Decision.
4. For the purposes of Article 7 of the Decision, the AACC will conclude a new CA 3a contract.
5. He or she will be classified in the function group in accordance with Article 5 of the Decision.

II — Successive contracts in a different function group

Article 3 — Successive CA 3a contracts in different function groups

A CA 3a who concludes a CA 3a contract with ESMA in a different function group immediately after a CA 3a contract with ESMA or another Union agency or institution, will be subject to the following rules:

1. He or she must pass the selection procedure set out in Article 2 or 3 of Annex I.
2. He or she will be required to serve the probationary period provided for in Article 84 of the CEOS at ESMA under the conditions in Article 9 of the Decision.

3. For the purposes of Article 7 of the Decision, the number of contracts previously concluded with the other Union agency or institution will not be taken into account by ESMA when concluding the new contract, except where the CA 3a had an indefinite contract with the other Union agency or institution, in which case he or she will also be engaged by ESMA for an indefinite period in the new function group.
4. As regards classification in the function group:
 - a) If the engagement is in a higher function group than the one to which he or she belonged in the other Union agency or institution, the CA 3a will be classified in his or her function group at the most favourable grade resulting from:
 - the application of Article 86(2), second subparagraph, of the CEOS, using the lowest grade taking into account the steps; or
 - the grading in accordance with Article 5 of the Decision.
 - b) If the engagement is in a lower function group than the one to which he or she belonged in the other Union agency or institution, the CA 3a will be classified in accordance with Article 5 of the Decision.

Article 4 — CA 3a contract succeeding a CA 3b contract in a different function group

A CA 3b who concludes a CA 3a contract with ESMA in a different function group immediately after a CA 3b contract with a Union institution will be subject to the following rules:

1. He or she must pass the selection procedure set out in Article 2 or 3 of Annex I to the Decision.
2. He or she will be required to serve the probationary period provided for in Article 84 of the CEOS at ESMA under the conditions in Article 9 of the Decision.
3. For the purposes of Article 7 of the Decision, the AACCC will conclude a new CA 3a contract.
4. He or she will be classified in the function group in accordance with Article 5 of the Decision.

III — Horizontal provision

Article 5 — Horizontal provision

For the application of the provisions of Article 1(5), Article 2(5), Article 3(4), Article 4(4), the AACC may take into account the classification of the contract staff when deciding whether to engage him or her.