

Q&A 1 Interim Agencies – Ref. n. HR/11/IA/MC/23

Question 1	Should the offer reflect both hourly and monthly co-efficient?
Answer 1	<p>No, only the monthly coefficients are requested (below 6 months and above 6 months).</p> <p>The invoicing can be per hour or per month, though all invoicing is currently managed with monthly rates. Calculations are detailed in the RFP and are both based on the relevant monthly coefficient.</p>
Question 2	For the financial credit in the background checks, is it obligatory for all candidates?
Answer 2	<p>The financial credit verification listed under section 3. Vetting of Interim Workers (SWIFT), is only applicable to interim workers who will have access to the SWIFT system. It is not applicable to all candidates and it also depends on the specific jurisdiction where the check is to be done.</p>
Question 3	"Vetting of interim workers (SWIFT) : Financial credit verification : what does that mean?"
Answer 3	<p>ESM uses a financial system provided by a company called SWIFT. It is a requirement of SWIFT that any person having access to local ESM's SWIFT infrastructure i.e. SWIFT-related systems and virtualisation platform hosting SWIFT-related virtual machines is vetted. ESM will inform the Interim Agencies when such a check is needed.</p> <p>When performing the background checks, the Interim Agency will need to inform ESM that the checks have been performed and if any irregularities were discovered.</p>
Question 4	Could you please confirm that the salary is paid on a 12 months basis? Is there other advantages such as bonuses for instance?
Answer 4	<p>The Interim Agency will invoice ESM on a monthly basis. A gross <u>monthly</u> salary is established at contract start and the invoicing is detailed in section 7. Pricing model and payment.</p> <p>The only remuneration paid by ESM to the Interim Agency is the agreed monthly gross salary or the hourly rate (derived from the monthly gross salary) and the applicable coefficient.</p> <p>Please see section 4. Additional Information for the benefits. No bonus applies.</p>
Question 5	What is your policy in terms of teleworking?
Answer 5	<p>Place of employment is Luxembourg yet current working arrangements include the possibility to work remotely, normally up to two days a week, from Luxembourg and the border region (or from further away under certain conditions).</p>
Question 6	Is there a restriction on the number of CVs that we could upload per request?
Answer 6	<p>No.</p>
Question 7	"Reporting : You are talking about a dashboard showing both quantitative and qualitative indicators. What kind of data / your expectations on the qualitative part? Do you have an example template to provide us with?"
Answer 7	<p>Any reporting of qualitative and quantitative you have in place already and can provide. Please feel free to submit an example in the proposal.</p>

Question 8	<p>"Pricing model and payment: you gave the example of a contract with a change of the coefficient in the middle of the month since the duration of 6 months of contract has been reached.</p> <p>Is it possible to maintain the initial coefficient until the end of the current month to make it easier for everyone and of course to avoid any risk of error or forgetting.</p>
Answer 8	<p>Please see the revised wording in the RFP, Annex 1 Section 7 and the draft contract.</p> <p>If the interim worker starts at ESM between the 1st and 14th of the month, the coefficient below 6 months will apply for 6 months and until the remainder of the 7th calendar month. The coefficient above 6 months will start on the 1st day of the 8th calendar month.</p> <p>If the interim worker starts at ESM between the 15th and 31st of the month, the coefficient below 6 months will apply until the end of the 6th calendar month. The coefficient above 6 months will start on the 1st day of the 7th calendar month.</p>
Question 9	<p>"Coefficient applicable to contract management services: Should we understand that all contract management will always be in a fixed monthly salary and in consequence a fixed monthly bill? Could you please confirm that illness is included in that case?</p>
Answer 9	<p>Yes, for contract management services the monthly salary is fixed.</p> <p>Interim personnel benefit from social security benefits provided under Luxembourg law and this include the relevant sick leave.</p>
Question 10	<p>Indexation: Sometimes the indexation is applicable retroactively because the text of the law is not adopted in time. It would be fair to apply the retroactivity (according to the law) to our invoices in this case, right?</p>
Answer 10	<p>The invoices should reflect the salaries paid, hence they should indeed reflect the indexation adjusting salaries in a given month.</p>
Question 11	<p>Could you please confirm that reference checks will be only provided if the Interim Agency Services has obtained the agreement of the candidate?</p>
Answer 11	<p>Indeed, reference checks should take place when the candidate provided contact details of the person(s) to contact, ideally previous line managers, not peers.</p>
Question 12	<p>Could you confirm for us that the Interim Agency will not have to check the authenticity of the document named "criminal record" but only if the criminal record is blank?</p>
Answer 12	<p>The Interim Agency will check whether the content of the record is blank.</p>
Question 13	<p>Can you also confirm that the Interim Agency shall not be obliged to keep criminal record according to GDPR as it contains personal data?</p>
Answer 13	<p>The Service Provider, as an independent data controller, should decide if it needs to keep this document for its purposes, it is not EMS's decision.</p>
Question 14	<p>'Vetting for interim workers': Could you please confirm that this will be only possible if the Interim Agency obtains the prior agreement of the interim worker? What are the requested documents? How does it works? Is it related to the Luxembourgish law?</p>

Answer 14	<p>Please see answer 3. The SWIFT related vetting is not done based on consent (the checks are mandatory for accessing the system). The scope of the background checks (only for SWIFT) will include the following elements:</p> <ul style="list-style-type: none"> • Identity verification • Confirmation of full details of qualifications • Confirmation of previous employment history • Details of any past or pending civil or criminal proceedings • Validation of any involvement in external businesses that could result in a conflict of interest • Financial credit verification. <p>Interim agencies will be requested to do the checks listed above and confirm to ESM they have done so and report any issues.</p>
Question 15	<p>In case of mini competition, ESM chooses the coefficient. How do you determine it? Why does the coefficient change? In case of monthly payment, do the public/ bank holidays / sick leave / exceptional leaves are invoiced under the assignment's coefficient? What is included in the hourly coefficient? On which base does ESM apply it?</p>
Answer 15	<p>There are only 3 coefficients:</p> <ul style="list-style-type: none"> • below 6 months (temporary work services), • above 6 months (temporary work services), • contract management services. <p>It is up to candidates to offer these coefficients. You can if you want offer the same coefficient. Please refer to the calculation of each coefficient (hourly or monthly) explained in the tender documents (e.g. section Pricing model and payment of the RfP and contract template document: sections 5.3, 5.4, 5.6).</p> <p>ESM does not choose the coefficient. ESM chooses how to be invoiced, i.e. hourly or monthly but the invoices are always sent monthly. See answer 4.</p>
Question 16	<p>We would like to participate in the tender for Interim agency services. However, our company is not yet officially created. It will be launched for end of February-beginning of March 2024. Is it still possible to apply?</p>
Answer 16	<p>In order to participate, the company needs to exist at the time of the submission deadline. Also all selection and eligibility criteria must be met.</p>
Answer 16	<p>'Art 2 Performance of the contract, obligations of the service provider': Could you please confirm that if the positions involve the wearing of PPE or badge this will be the responsibility of ESM as the user company and this, in accordance with the law?</p> <p>2.4 Could you please confirm that services will only be provided in Luxembourg?</p> <p>2.5 We have the temporary work certification. Is this certification enough?</p>
	<ol style="list-style-type: none"> 1. An interim worker should be obliged by the interim agency to follow the ESM internal policies. 2. In general, the services will be provided in Luxembourg (as per clause 1.5). However, as per clause 1.6. Interim Workers provided to the ESM by the Service Provider, if required by the ESM to travel on duty, will be subject to ESM's duty travel regulations. The ESM will inform the Service Provider before any assignment abroad of the Interim Worker.

	<p>3. The selection criteria include an authorisation to perform interim and contract management services in Luxembourg (e.g. from the Ministère du Travail), certificate of incorporation (e.g. from the Registre du Commerce) and/or (instead of or in addition to the authorisation(s) mentioned above) any other relevant documents required by Luxembourg law. Additional certificates may be required, e.g. to confirm that an interim worker obtained the specific certification as required for their position.</p>
Question 17	<p>‘Art 3 Duration and Termination’: With regard to temporary recruitment services, could you confirm to us that in accordance with the law the contract for the provision of the temporary employee can only be terminated under the legal conditions for termination of his contract (trial period, gross misconduct, force majeure)? Furthermore, can we provide that in the event of termination of the framework contract, the provision contracts will survive until their contractual term?</p>
Answer 17	<p>Article 3 refers to the termination of the framework agreement and states that either Party has a right to terminate this Contract and any Services Contracts on convenience by providing at least one month written notice to the other Party. The parties will decide upon the termination whether the particular Service Contract will be terminated or will continue.</p>
Question 18	<p>‘Article 4 Working Terms and Procedure for awarding services contracts’ Could you please indicate us what are these SLA? Any SLA should be agreed by the Parties for the dedicated agreement or amendment.</p>
Answer 18	<p>SLA is a service level agreement and as stated in section B.3 the parties may enter into such agreement (If during the lifetime of the Contract, the ESM and the Service Provider enter into service level agreements (SLAs)). The scope of an agreement depends on the type of specific service provided.</p>
Question 19	<p>Could you please confirm that in the event social, fiscal, parafiscal taxes increase, in particular following a legal reform, invoicing will be proportionally and will automatically follow such increase? Moreover, in the event of a change of economic circumstances impacting the performance of the interim services, could you confirm that the Temp Agency may increase the applicable remuneration after discussion between the Parties ?</p>
Answer 19	<p>Coefficient are fixed for the duration of the contract, i.e. 4 years. Please see Section D. Indexation that covers the only applicable price revisions. and 5.11 of the ESM contract template.</p>
Question 20	<p>Article 7 ESM Public Holidays: Could you please confirm that in the event social, fiscal, parafiscal taxes increase, in particular following a legal reform, invoicing will be proportionally and will automatically follow such increase ? ESM offers 17 public holidays. If there are less than 17 days there is a financial compensation provided. On which base it is reinvoiced?</p> <p>Moreover, in the event of a change of economic circumstances impacting the performance of the interim services, could you confirm that the Temp Agency may increase the applicable remuneration after discussion between the Parties ?</p> <p>Do permanent worker have the same condition ?</p>

Answer 20	When ESM set less than 17 days of ESM public holidays, the remainder is added to the holiday balance of the interim worker, pro-rata temporis of the contract length performed in the calendar year.
Question 21	Could you please tell us if the overtime is paid at the usual rate (40%) or do you have your own rule?
Answer 21	Indeed, time effectively worked on weekends and on public holidays is compensated on a 1:1 basis (only compensatory time off) and subject to the prior approval of the Head of Human Resources and Organisation of the ESM.
Question 22	<p>Article 12: Confidentiality and personal data protection</p> <p>Could you confirm that each Party shall act as an independent data controller of the personal data of the applicants and/or of its staff that it discloses to the other Party within the framework of their business relationship and for the performance of the services ? In such case, the clause shall be reviewed.</p> <p>12.2 Provided that Service Provider is legally allowed to communicate the request to ESM ?</p> <p>12.3 Can we delete the reference to "final" ?</p> <p>12.9 Can these 24 hours be modified for a longer period for example 5 days ?</p> <p>12.11 Can we modify with 10 years instead of 20 years ?</p>
Answer 22	<ol style="list-style-type: none"> 1. The Service Provider is an independent data controller. Therefore, for avoidance of doubt we can remove points. 12.6-12.9. as these clauses will not apply. 2. In reference to the communication of requests mentioned in point 12.2 please see article 24 of the agreement. 3. Please see response No. 1 above. 4. Please see response No. 1 above. <p>This is the standard clause used by the ESM and the wording will not be modified.</p>
Question 23	<p>Article 13: Intellectual Property Rights</p> <p>Could you please confirm that this will be only limited to direct damages and in accordance with the clause "liability" of this agreement? Can we delete the reference to "hold harmless" ?</p> <p>13.10 Is it possible to reduce this delay of 10 years instead of 20 years ?</p>
Answer 23	<ol style="list-style-type: none"> 1. Please see answer 26. The indemnity and liability provisions should be read separately. 2. This is the standard clause used by the ESM and the wording will not be modified. 5. This is the standard clause used by the ESM and the wording will not be modified.
Question 24	<p>Article 15: Selection and recruitment process of the interim workers</p> <p>Could you please confirm that ESM will always explain to the Interim Agency the permit and qualifications that are required at the time the mission is entrusted and specify if a criminal record check is necessary ?</p> <p>15.2 Could you please confirm that this check does not require check of authentication and collect according to GDPR ?</p> <p>Could you confirm that this check doesn't require a control of authenticity of the document?</p> <p>Regarding reference checks, could you confirm that is only possible with the prior agreement of the interim worker?</p>

Answer 24	<ol style="list-style-type: none"> 1. We will let you know which qualifications workers need for each role indeed. For the criminal record check related to SWIFT, we will let you know as well. 2. The GDPR does not address the issue of authenticity, so the question is not clear to us. 3. Checking references can only be done based on the information provided by the Interim Workers, and this should constitute their consent.
Question 25	<p>Article 18: Vetting of interim workers</p> <p>18.3 Are these elements editable? For 18.3.4 Can we only do criminal checks based on the criminal records?</p> <p>18.3.6 Could you precise if this financial credit verification is mandatory for all mission?</p> <p>18.4 Could you confirm that this the processing of this data will be done pursuant to GDPR ?</p>
Answer 25	Please see answer 2, 3 and 15. We assume that the data processing will not be commissioned as the parties will be the independent data controllers (see answer 23).
Question 26	<p>Article 22: Inspection and audit</p> <p>22.1 Can we modify so that it only concerns "substantial discrepancy" ?</p>
Answer 26	This is the standard clause used by the ESM and the wording will not be modified.
Question 27	<p>Article 26: Survival of obligations</p> <p>Possibility to reduce to 10 years ?</p>
Answer 27	This is the standard clause used by the ESM and the wording will not be modified.
Question 28	<p>Appendix D</p> <p>Is this appendix applicable to Temp Worker or permanent employee?</p>
Answer 28	See answer to question 23. The Service Provider is an independent data controller. Therefore, for avoidance of doubt we can remove points 12.6-12.9. as these clauses will not apply (there will be no commission of the data processing and consequently, the appendices C and D should not apply to the relationship between the ESM and the Service Provider).