



**EUAA/MB/2022/292**

**Management Board Decision No 122  
of 11 January 2023**

**on the rules governing the prevention and management of conflicts of interest of the members of the Management Board, conflicts of interest connected to membership of organisations and competent bodies of the Consultative Forum, and on the ethical guidance applicable to the Management Board**

**THE MANAGEMENT BOARD,**

HAVING REGARD to Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum<sup>1</sup> (hereinafter ‘the EUAA Regulation’), and in particular Articles 41(1) and 50(3) thereof,

WHEREAS:

- 1) The (previous) EASO policy on the prevention and management of conflicts of interest which, *inter alia*, included provisions applicable to members of the Management Board was adopted by the Executive Director following its endorsement by the Management Board on 29 November 2013.
- 2) Since the adoption of the (previous) EASO policy on the prevention and management of conflicts of interest, the Agency’s Financial Regulation<sup>2</sup> has been updated with additional provisions that address the prevention and management of conflicts of interest. Moreover, the Regulation on the financial rules applicable to the general budget of the Union<sup>3</sup> (hereinafter ‘the Union’s financial rules’) and the Agency’s Internal Control Framework<sup>4</sup> were also updated in this sense in the meantime.
- 3) The EUAA Regulation has introduced changes to the mandate and responsibilities of the Agency, including, *inter alia*, a requirement for the Management Board to adopt rules on the prevention and management of conflicts of interest in respect of its members under Article 41(1), point (f).

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<sup>1</sup> Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010, (OJ L 468, 30.12.2021, p. 1).

<sup>2</sup> Management Board Decision No 54 of 14 August 2019 on the EASO Financial Regulation, as amended by Management Board Decision No 74 of 28 July 2021.

<sup>3</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, (OJ L 193, 30.07.2018, p.1).

<sup>4</sup> Management Board Decision No 42 of 21 December 2018 on the Internal Control Framework of EASO.





- 4) Article 12 of the Annex to Management Board Decision No 95 of 19 January 2022 on the Rules of Procedure of the Management Board (hereinafter Management Board Decision No 95) sets out a number of general provisions on conflicts of interest which are applicable to members of the Management Board. As such, this Decision should include more detailed provisions on conflicts of interest which are applicable to members of the Management Board (also including their alternates) – in a complementary manner to the general provisions contained in the above-mentioned Article 12.
- 5) Furthermore, Article 42 of the Agency’s Financial Regulation in particular makes provisions for the prevention of conflicts of interest and associated risk mitigation in relation to the Management Board, the Executive Director and financial actors. The aforementioned Article also includes a requirement for the Agency to adopt rules on the prevention and management of conflicts of interest and publish annually on its website the declaration of interests of the Management Board members. Additional applicable provisions relating to conflicts of interest are detailed in Articles 143, 155, 205 and 209 of the Union’s financial rules.
- 6) Principle 1 of the Internal Control Framework requires the Agency to demonstrate a commitment to integrity and ethical values by setting the tone at the top, establishing and communicating standards of conduct, and putting in place processes for assessing alignment with the standards and addressing deviations in a timely manner. This should be done by analogy to the standards adopted by the Commission.
- 7) The European Parliament in its follow-up questionnaire to the Agency in the context of the discharge procedure for the final accounts 2020 enquired on the Agency’s plans to develop a code of conduct and good governance as an overarching framework for activities of the Management Board<sup>5</sup>. For this reason, this Decision should reflect the evolving expectations and ensure it addresses adequately and effectively potential or actual risks that could arise from conflicts of interest, and provides guidance on ethical behaviour in an all-encompassing manner.
- 8) The first sentence of the second subparagraph of Article 50(3) of the EUAA Regulation provides that “[o]n a proposal of the Executive Director, the Management Board shall decide on the composition of the Consultative Forum [...]”. As such, this Decision should include more detailed provisions on conflicts of interest connected to membership of the Consultative Forum – in a complementary manner to the general provisions set out in Article 7 of Management Board Decision No 111 of 23 June 2022 on the establishment and composition of the Consultative Forum and on the conditions for transmitting information thereto (hereinafter Management Board Decision No 111).
- 9) The second sentence of the second subparagraph of Article 50(3) of the EUAA Regulation provides that “[t]he Consultative Forum shall, after consulting the Management Board and the Executive Director, establish its working methods [...]”. As such, this Decision should not

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<sup>5</sup> Pursuant to a study requested by the European Parliament’s BUDG Committee on ‘The Management Boards of the Decentralised Agencies’ (Policy Department for Budgetary Affairs; author: Centre for Strategy & Evaluation Services (CSES); Directorate-General for Internal Policies, PE 699.400 – October 2021).



include provisions on the management of conflicts of interest connected to the work practices of the Consultative Forum, after the latter is established. Any such provisions should rather be decided at the level of the Consultative Forum itself and laid down in its working methods. In accordance with Article 50(3) second paragraph, the Consultative Forum shall consult the Management Board and the Executive Director, in the establishment of its working methods, including thematic or geographically focused working groups as deemed necessary and useful.

- 10) The adoption of any written rules on the prevention and management of conflicts of interest which may apply to persons other than members of the Management Board or of the Consultative Forum such as, *inter alia*, statutory staff, seconded national experts ('SNEs') and contractor personnel remains the competence of the Executive Director in accordance with the EUAA Regulation,

**HAS DECIDED AS FOLLOWS:**

**Article 1**

**Rules on the prevention and management of conflicts of interest**

1. The Rules on the prevention and management of conflicts of interest (hereinafter 'the Rules') as set out in Annex 1 to this Decision, are hereby adopted.
2. The Rules shall apply to members of the Management Board, including alternates, as well as relevant organisations and bodies<sup>6</sup> that are members of the Consultative Forum and their representatives.
3. The Rules shall complement the provisions set out in Article 12 of the Annex to Management Board Decision No 95 and Article 7 of Management Board Decision No 111.

**Article 2**

**Guidance on ethical behaviour**

The Guidance on ethical behaviour set out in Annex 2 to this Decision is hereby adopted and shall apply to members of the Management Board, including alternates.

**Article 3**

**Further implementation of this Decision**

1. Further documentation supporting the implementation of the Rules referred to in Article 1 of this Decision, including, *inter alia*, complementary guidance for the use of the electronic system referred to in paragraph 2 below and forms to be completed, may be adopted by means of one

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<sup>6</sup> Pursuant to Article 50(1) of the EUAA Regulation, these include relevant civil society organisations and relevant competent bodies operating in the field of asylum policy at local, regional, national, Union or international level.



or more Decisions of the Executive Director and/or other internal acts<sup>7</sup>. The Chairperson and Deputy Chairperson of the Management Board shall be consulted before the adoption of the aforementioned documentation, which shall subsequently be forwarded to the Management Board for information.

2. The Agency may implement an electronic system to manage submission and/or assessment of declarations of interest and related forms and maintain a register of interests.
3. When processing any personal data in the context of implementing this Decision, the Agency shall comply with the respective provisions of Regulation (EU) 2018/1725<sup>8</sup>.

#### **Article 4 Transparency**

This Decision shall be made public on the EUAA's website.

#### **Article 5 Entry into force**

This Decision enters into force on the date of its adoption and repeals and replaces any provisions applicable to members of the Management Board, including alternate members, observers and national experts contained within the EASO policy on prevention and management of conflicts of interest adopted by the Executive Director following its endorsement by the Management Board on 29 November 2013.

Done by written procedure

For the Management Board

*Signature on file*

Mikael Ribbenvik  
Chairperson of the Management Board

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<sup>7</sup> In accordance with Article 3 of the Decision of the Executive Director No 20 of 19 January 2022 implementing Management Board Decision No 97 of 19 January 2022 establishing the Agency's internal structure, and laying down the internal rules of procedure (ISROP).

<sup>8</sup> Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, (OJ L 295, 21.11.2018, p. 39).



**Annexes:**      Annex 1: Rules on the prevention and management of conflicts of interest.  
                     Annex 2: Guidance on ethical behaviour.



## Annex 1

### Rules on the prevention and management of conflicts of interest

#### 1. Purpose and scope

The Common Approach on EU Decentralised Agencies endorsed in July 2012 by the European Parliament, the Council of the EU and the European Commission and the roadmap thereof adopted in December 2012 mention the need to address the issue on prevention and management of conflicts of interest in order to enhance the EU agencies' accountability, transparency, and good management.

Situations involving conflicts of interest can happen at any time. It is of paramount importance to either prevent them or manage them appropriately when they occur. That requirement is crucial for upholding the transparency, reputation and impartiality of the public sector and the credibility of the rule of law principles as a fundamental value of the EU. This is essential for maintaining public confidence in the integrity and impartiality of public bodies and officials as well as in the decision-making processes that serve the general interests. Conversely, if conflicts of interest are not prevented or properly managed when they arise, they can negatively affect the decision-making process in public bodies, give rise to unsound use of public money and cause reputational damage. They can also lead to a loss of faith in the public sector's ability to operate impartially and in the general interests of society.

These Rules, which are based on the guidelines drafted by the European Commission and experience gained by other agencies, set out a number of principles and procedures aimed at preventing, identifying, and managing situations of conflict of interest. They should be read and interpreted in conjunction with the European Commission's Guidance on the avoidance and management of conflicts of interest under the Financial Regulation<sup>9</sup>.

For the purpose of these Rules, members of the Management Board and their alternates, as well as relevant organisations and bodies that are members of the Consultative Forum, are hereinafter jointly and collectively referred to as "individuals".

#### 2. Conflicts of interest

According to the European Commission's 'Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies':

*Relevant personal interest may be of a financial or non-financial nature, and it may concern a personal or family relationship or professional affiliations (including additional employment or 'outside' appointments or former employments or appointments) and other relevant outside activities.*

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<sup>9</sup> OJ C 121, 9.4.2021, p.1.



*Not only actual independence but also perception of independence is important, since it can impact on the Agency's reputation by raising doubts about the conclusions reached. The appearance of conflict of interest can constitute a reputational risk to the Agency, even if it turns out to be unsubstantiated.*

*Therefore, giving due consideration to proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest should be treated as if it were an actual conflict.*

Moreover, pursuant to Article 42(2) of the Agency's Financial Regulation, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other individual, including the members of the Management Board, involved in budget implementation and management, including acts preparatory thereto, audit and control, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

A conflict of interest can arise even if the individual does not actually benefit from the situation, as it is sufficient that circumstances compromise the exercise of their functions in an objective and impartial manner. However, such circumstances must have a certain identifiable and individual link with (or impact on) concrete aspects of the conduct, behaviour, or relationships of the individual.

A perceived conflict of interest may notably occur when an individual, regardless of their intentions, may reasonably see themselves or be seen as having competing personal and public interests, as these risk undermining the individual's ability to fulfil their tasks and responsibilities in an impartial and objective manner (e.g., a risk or possibility of favouritism or hostility for reasons of family interest and national or political affinity may objectively be perceived as a conflict of interest). A perceived conflict of interest covers objective circumstances affecting trust and confidence in an individual's or entity's independence and impartiality, even if the conflict of interest does not materialise or even if the individual does not actually benefit from the situation. In this context, it is of utmost importance to safeguard both the effective observance of the rules on avoidance of conflicts of interest and avoid any doubts that a reasonable, informed, objective and good-faith person may have about the conformity of the behaviour of an involved individual.

### **3. Principles**

#### ***Transparency and responsibility***

Individuals shall assume individual responsibility by declaring their interests in good faith. Existence of conflicts of interest or potential conflicts of interest shall be disclosed by the individual. The individual should state, in particular, the type and nature of the interests, specifying whether they are general or relate to a specific topic (under discussion or being decided on), product, report, tender, recruitment etc. The Agency undertakes to review the declarations of interests. Moreover, the Agency will include in its single programming documents an indication of measures to prevent recurrence of cases of conflict of interest in line with Article 32(1), point (h), of the Agency's Financial Regulation.



### ***Proportionality***

When taking decisions related to the management of these Rules, the Agency shall ensure that the measures taken are suitable, necessary, and reasonable to the legitimate aim pursued.

### ***Awareness***

The Agency shall make all individuals aware of these Rules and shall provide clear guidance in case of queries in relation to the subject in question.

## **4. Requirements**

### **4.1 Members of the Management Board and their alternates**

In accordance with Article 12 of Management Board Decision No 95 of 12 January 2022 on the Rules of Procedure of the Management Board, the members Management Board and their alternates must declare their interests and duly fill in a declaration of interests. The declaration of interests has to be completed on their nomination to the Management Board and every year thereafter in line with Article 42(4) of the Agency's Financial Regulation. Completed declarations of interests shall be kept by the Management Board Secretariat (e.g., in an online system) and be published annually on the Agency's website.

The members of the Management Board and their alternates are obliged to ensure that they have no conflicts of interest in relation to any of the topics to be discussed at that meeting. The Management Board Secretariat shall remind them of this obligation in the meeting invitation and invite them to inform the Chairperson or the Deputy Chairperson of the Management Board of any identified potential or actual conflicts of interest prior to the start of the meeting.

During meetings, if a potential or actual conflict of interest becomes apparent to a participant, then it must be communicated immediately to the Chairperson or the Deputy Chairperson of the Management Board. The nature and details of the conflicting interest need not be openly disclosed to the other participants in the meeting.

In either of the preceding situations, should any member of the Management Board and their alternate declare such conflicts of interest, the Chairperson or the Deputy Chairperson of the Management Board shall take the necessary measures to ensure that there is no undue influence on the outcome of discussions and/or decisions made at the meeting, including where necessary excluding the individual in question from participating in discussions and/or voting on the concerned topic. The Management Board Secretariat shall record the communicated conflicts of interest and any measures taken by the Chairperson or the Deputy Chairperson of the Management Board in the meeting minutes.

Candidatures for positions on the Management Board, the Executive Board (if constituted) or any group established by the Management Board shall not be considered as a conflict of interest and





shall not preclude the members presenting themselves as candidates from casting their own votes in the respective election procedures.

These Rules shall complement the provisions in Article 12 of the Annex to Management Board Decision No 95.

The Chairperson of the Management Board shall every year remind members of the Management Board and their alternates of their obligations concerning these Rules, including the obligation to review and/or update their declaration of interests.

The Management Board Secretariat will assess and make preliminary appraisals of compatibility of interests declared with general or specific discussions and/or votes to be taken. These appraisals shall be brought to the attention of the Chairperson or Deputy Chairperson of the Management Board who, if deemed necessary, shall take action in line with section 6.1 of these Rules.

Although observers, advisers and experts taking part in a meeting of the Management Board do not have any decision-making powers as such, they may indirectly still have an influence thereon. As such, although not strictly falling under the scope of these Rules, the afore-mentioned persons are also obliged to ensure that they have no conflicts of interest in relation to any of the topics to be discussed at that meeting. As such, they too are required to declare their interests to the Management Board Secretariat by duly filling in a written declaration of interests (though these will not be published on the Agency's website). In case a (potential) conflict of interest is identified by the Agency, the Chairperson or the Deputy Chairperson of the Management Board shall request:

- i) the respective observer, or
- ii) the member of the Management Board to direct their adviser(s) or expert(s) concerned to either give up their conflicting (personal) interest (if possible, e.g., at the stage of approval of the individual) or refrain from participating and/or providing advice in relevant discussions for which such a conflict may arise.

#### **4.2 Relevant organisations and bodies that are members of the Consultative Forum**

Pursuant to the first sentence of the second subparagraph of Article 50(3) of the EUAA Regulation, on a proposal of the Executive Director, the Management Board shall decide on, *inter alia*, the composition of the Consultative Forum.

As such, when expressing their interest to become members of the Consultative Forum, each candidate organisation (as a legal person) is required to declare any interests by signing and submitting a declaration of interests, made available by the Agency. The Agency also expects that the person(s) who are intended to represent that organisation in the Consultative Forum also declare any interests, in their personal capacity (i.e., as a natural person) by also signing and submitting a dedicated declaration. The information provided in these declarations shall allow the Agency to carry out an informed (pre-) assessment on whether there are any (potential) conflicts of interest which may warrant the organisation unsuitable to become a member of the Consultative Forum (whereby the interests of potential representatives shall become an integral part of such assessment).



In a continuous effort to safeguard the membership of organisations and bodies free of undisclosed conflicts of interest, in accordance with Article 7(3) of Management Board Decision No 111, all members of the Consultative Forum shall complete a declaration of interests not only when their membership is to be approved by the Agency but also every two years thereafter. All submitted declarations of interests shall be kept by the Agency (i.e., thereby also including the declarations of interests submitted by the representatives in their personal capacity). Moreover, all members of the Consultative Forum are further obliged to notify the Agency without delay in case of any change affecting their declarations of interest (i.e., thereby also including the declarations of interests submitted by the representatives in their personal capacity).

In accordance with the first sentence of Article 7(5) of Management Board Decision No 111, the Agency shall take the required preventive action appropriate to the level of risk of exposure to the conflicting interests, and if needed, take appropriate action in case of breach of trust. Moreover, pursuant to the second sentence of Article 7(5) of Management Board Decision No 111, the Agency may also, in any event, require the organisation as described in the second paragraph above to undertake additional safeguards to mitigate the risk that the conflict of interest materialises.

It should be noted that any of the afore-mentioned preventive actions and/or additional safeguards may solely concern the membership of the Consultative Forum as such (i.e., approval or revocation thereof by the Agency).

These Rules shall complement the provisions of Management Board Decision No 111, as referenced in Article 7(3) thereof.

In accordance with the second sentence of the second subparagraph of Article 50(3) of the EUAA Regulation, any provisions on the management of conflicts of interest concerning the Consultative Forum in general may rather be laid down in the Consultative Forum's working methods.

The Chairperson of the Consultative Forum is requested to remind all members of the Consultative Forum and individuals representing them of their respective obligations to declare any conflicts of interests under these Rules in a timely manner, including the obligation to review their declaration of interests every two years.

The Agency will assess and make preliminary appraisals of compatibility of interests declared with membership of the Consultative Forum. These appraisals shall be brought to the attention of the Executive Director who, if deemed necessary, shall take action in line with section 6.2 of these Rules.

## **5. Declaration of Interests**

### **5.1 What to declare?**

An individual may have private financial interests, personal relationships or affiliations that could compromise official decisions in which they are involved. Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time. Personal relationships or affiliations could compromise official decisions in which an individual is



involved. Where a competing interest arises due to direct or indirect interests the individual's involvement will have to be negated or restricted so that the competing interest is mitigated.

For the purposes of this sub-section of these Rules, the following definitions shall apply:

- **'Activity'** shall include:
  - **Employment:** any form or regular occupation or business, part-time or full-time, paid or unpaid, including self-employment, in any organisation active in relation to the Agency's remit;
  - **Consultancy, legal representation or advisory role:** any activity in which the concerned individual provides advice or services in a particular field that falls within the EUAA's remit regardless of the contractual arrangements or any form of remuneration;
  - **Membership of a management board/advisory board or equivalent structure:** any participation in the internal decision-making (with the right to vote/influence the outputs) of any organisation operating in a domain falling within the EUAA's remit in which the individual is expressing opinions on the (future) strategy, direction, and development activities either in terms of general strategy or activity-related strategy, regardless of contractual arrangements or any form of remuneration;
  - **Other memberships or affiliations:** any membership or affiliation not falling under the above categories and relevant for the purposes of these Rules, to any entity with an interest in the field of the activities of the EUAA, including professional organisations;
  - **Public statement or position:** any expert opinion or testimony in the field of activities of the EUAA for a commercial entity or other organisation as part of a regulatory or judicial process. Any office or other position (paid or unpaid), where the concerned individual represented interests or defended opinions in the field of activities of the EUAA.
  
- **'Financial interests'** shall include:
  - **Financial investments:** any economic stake or share in company, which is active in the field of activities of the EUAA, including holding of stocks and shares, stock options, equities, bonds, partnership interests and or securities held in the capital of a company, its subsidiaries or in a company in which it has a holding. Independently managed investment funds and/or pension schemes are not in scope and need not be declared;
  - **Research funding:** any funding for research or developmental work financed by public or private body (e.g., grants, rents and reimbursement of expenses, sponsorships, and fellowships) and received in a personal capacity or by an institute to which they are associated and fall within the EUAA's remit;
  - **Intellectual property rights:** rights in the field of activities of the EUAA granted to creators and (co-)owners of works that are the result of human intellectual creativity (e.g., patents, trademarks, etc.) and may lead to a financial gain.

Each individual is responsible for declaring their interests. The individual must declare all interests that could be prejudicial to their independence, whether of direct or indirect nature. These include:

- **Direct interests:** interests of personal benefit to the individual at any point in time, likely to influence or give the appearance of influencing their behaviour, including:



- **Past activities:** activities engaged in over the last two years in foundations or similar bodies, academic institutions, companies or other public and/or private organisations (the nature of the post/role and the name of those bodies should also be indicated); other membership/affiliation held or professional activities carried out over the last two years, including services, liberal professions, consulting activities, and relevant public statements;
- **Current activities:** activities engaged in foundations or similar bodies, academic institutions, companies or other public and/or private organisations (the nature of the post/role and the name of those bodies should also be indicated); other membership/affiliations held, or professional activities carried out, including services, liberal profession, consulting activities, and relevant public statements. stocks and shares, in the capital of such a company;
- **Financial interests** which might create a conflict of interest in the performance of duties, with an indication of their number and value, as well as the name of the company/provider of the declared interest, asset, grant or funding.
- **Indirect interests:** other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.
- **Interests of close family members:** spouse's, partner's and/or dependent family members' current activities and financial interests in a domain falling within the EUAA's remit that might give rise to or create a perception of a conflict of interest.
- **Any other relevant interests:** any interests not falling under the categories provided above and relevant for the purposes of these Rules.

In accordance with the above, Article 12(2) of the Annex to Management Board Decision No 95 further provides the following definition of a conflict of interest:

*'There is a conflict of interest where the impartial and objective exercise of the duties of a member of the Management Board or his/her alternate, in particular those related to the decision-making process of the Management Board, including acts preparatory thereto, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient of such decision-making.'*

## 6. Management of the Rules

### 6.1 Remedial actions at the level of the Management Board

The applicable legal framework further establishes certain (other) measures to be taken in dealing with conflicts of interest at the level of the Management Board<sup>10</sup>.

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<sup>10</sup> For instance, the Agency's Financial Regulation states:

Article 30 – Internal control of budget implementation

[...] 3. Effective internal control shall be based on best international practices and on the Internal Control Framework laid down by the Commission for its own departments and shall include, in particular, the following elements:

[...] (c) avoidance of conflicts of interest; [...]

Article 42 – Conflicts of interest



In accordance with Article 12(4) of the Annex to Management Board Decision No 95, any member of the Management Board or their alternate, who are in a situation where the performance of their duties is incompatible with any other interest or where a conflict of interest is likely to arise shall immediately inform the Chairperson or the Deputy Chairperson and/or shall abstain from taking part in that decision-making.

Furthermore, in case a (potential) conflict of interest on the part of a member of the Management Board or their alternate is identified by the Agency, the following measures shall be taken.

As a starting point, the Chairperson or Deputy Chairperson of the Management Board shall aim to ensure that the member of the Management Board or their alternate concerned either gives up the conflicting (personal) interest (if possible, e.g., at the stage of their nomination/approval), or refrains from participating in relevant discussions or decision-making for which such a conflict may arise.

Moreover, depending on the determination of the level of residual exposure to an actual or risk of conflict of interest of each individual concerned, the Chairperson or Deputy Chairperson of the Management Board may, after consulting the Executive Director and engaging<sup>11</sup> with the member of the Management Board concerned or their alternate, further propose to adopt a written decision of the Management Board determining that the member of the Management Board concerned or their alternate, *inter alia*:

- is not to be appointed to the relevant role - e.g., as chairperson - or requested to (be) withdraw(n) from the relevant role<sup>12</sup>;
- is not to work on or be involved in the concerned topic;
- is not to be involved in the concerned activities;
- is not to participate in decision-making or a vote on the concerned topic;

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1. Financial actors within the meaning of Chapter 3 of this Title and other persons, including the members of the Management Board, involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action that may bring their own interests into conflict with those of the Union body. They shall also take appropriate measures to prevent a conflict of interest from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interest.

Where there is a risk of a conflict of interest, the person in question shall refer the matter to the competent authority. The competent authority shall confirm in writing, whether a conflict of interest is found to exist. In that case, the competent authority shall ensure that the person concerned ceases all activities in the matter. The competent authority shall take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interest exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

3. The competent authority referred to in paragraph 1 shall be the Executive Director. If the member of staff concerned is the Executive Director, the competent authority shall be the management board or, where the constituent act allows it, the executive board. In case of a conflict of interest involving a member of the management board, the competent authority shall be the management board, exclusive of the member concerned.

<sup>11</sup> Thereby allowing the person concerned ample opportunity to express his or her views prior to any decision-making by the Management Board, either orally and/or in writing.

<sup>12</sup> With particular reference as well to Article 2 of Management Board Decision No 95.



- if appropriate, is not to participate in deliberations leading to certain decisions; in the latter case, the Agency will need to decide whether to benefit from the individual's advice via other means (e.g., expert hearing, invitation on *ad hoc* basis etc.);
- is reprimanded.

The written decision of the Management Board referred to in the preceding paragraph may, in exceptional circumstances, also include a request to the nominating Member State or body to remedy the issue, which may include *inter alia* the revocation of the nomination of the concerned member or their alternate or the duty to resign.

Any such written decisions by the Management Board referred to directly above are notwithstanding the relevant provisions mentioned in the Annex to Management Board Decision No 95, thereby entailing a 'lex specialis' to the Rules of Procedure of the Management Board.

Moreover, the Management Board has identified circumstances constituting non-compliances with these Rules, which may be motivated by a (risk of) conflict of interest. Such non-compliances, which may potentially warrant any of the actions referred to above in this Section 6.1, include, *inter alia*:

- failure to complete a declaration of interests when required to do so under these Rules following two successive reminders to do so;
- failure to declare or communicate an actual or potential conflict of interest in a declaration of interests or prior to/during a meeting intentionally or through gross negligence;
- submission of an incorrect or incomplete declaration of interests, and failure to rectify following two successive reminders;
- failure to comply with the requirements of these Rules intentionally or through gross negligence.

The appropriate actions shall be based on the principle of proportionality and shall take into account the reasons for the non-compliance, as well as previous proven non-compliances.

Any of the actions taken shall be duly recorded.

## 6.2 Remedial actions at the level of the Consultative Forum

In case a conflict of interest or potential conflict of interest on the part of a member of the Consultative Forum is identified by the Agency, the following measures shall be taken.

As a starting point, the Executive Director shall request the Chairperson of the Consultative Forum to ensure that the organisation concerned and/or person representing that organisation either gives up the conflicting (personal) interest (if possible, e.g., at the stage of nomination/approval of the individual) or refrains from participating in relevant discussions or decision-making for which such a conflict may arise, unless there are other available means which may be undertaken.

Without prejudice to the foregoing conciliatory approach, depending on the determination of the level of residual exposure to an actual or risk of conflict of interest of the organisation concerned and/or person representing that organisation, the Agency always retains its right to revoke the



membership of a relevant organisation or body from the Consultative Forum in accordance with Article 4(2) of Management Board Decision No 111.

Moreover, the Agency has identified circumstances constituting non-compliances with these Rules, which may be motivated by a (risk of) conflict of interest. Such non-compliances, which may potentially warrant any of the actions referred to above in this Section 6.2, include, *inter alia*:

- failure to complete a declaration of interests when required to do so under these Rules following two successive reminders to do so;
- failure to declare or communicate an actual or potential conflict of interest in a declaration of interests or prior to/during a meeting intentionally or through gross negligence;
- submission of an incorrect or incomplete declaration of interests, and failure to rectify following two successive reminders;
- failure to otherwise comply with the requirements of these Rules intentionally or through gross negligence.



## Annex 2 Guidance on ethical behaviour

### 1. Purpose and scope

This Annex provides guidance on a number of ethical principles that apply in the performance of the Agency's activities and the tasks it delivers as a public body of the European Union.

Similar ethical principles guide statutory staff so it is appropriate that they should be applied by analogy to the Management Board members and their alternates (hereinafter 'individuals').

The guidance provided in this Annex does not preclude individuals from complying with or abiding by rules and other requirements laid down by their national governments, institutions, bodies, or employers in the exercise of their official roles at national or international level.

### 2. Confidentiality and discretion

All individuals must treat information on the Agency's work with the utmost discretion and confidentiality<sup>13</sup>. The Agency faces potentially conflicting obligations, requiring it to weigh the duty to deliver on its tasks, transparency and granting public access to documents, with the need to respect confidentiality of information that the Agency holds, where appropriate as legally required.

All individuals are subject to a general duty of confidentiality under the Lisbon Treaty. The protection of personal data and respect of confidential information is an essential part of the relationship between the Agency, European institutions, Member States, third countries and other third parties. The Agency recognises that some individuals may have access to confidential information as well.

Individuals have to treat information on the Agency's activities with the utmost discretion and confidentiality. This is of particular importance in view of the potential implications and legal consequences of a disclosure of sensitive information to the public. Individuals have to exercise the greatest discretion both during their term of office and afterwards. Individuals have a life-long duty of confidentiality even after they have ceased their relationship with the Agency. This covers all information of the kind covered by the obligation of professional secrecy. The duty of confidentiality applies under all circumstances, whether at the Agency, in their own workplace or at home. Individuals have to avoid discussing sensitive information outside the Agency or their workplace. Utmost discretion should be exercised when discussing Agency work-related subjects with third parties including family and friends and with colleagues or third parties in a public place.

Individuals are advised to exercise care when answering questions so as not to supply any information where this is not public. The provenance of the party posing a question should always be ascertained and questions should be put in writing where possible. Common sense must be applied regarding indirect questions seeking to obtain information. Where it is not possible to consult

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<sup>13</sup> With particular reference as well to Article 11 of Management Board Decision No 95.





the Agency in advance on an envisaged presentation or statement, e.g., answers to questions in a panel discussion or in other similar situations, it is advisable to give a disclaimer, e.g., that the views presented are those of the individual and may not be understood or quoted as being made on behalf of the Agency or reflecting the position of the Agency.

In case of any doubt about the correct handling of information individuals should seek guidance from the Management Board Secretariat.

As a general policy, on matters related to the Agency, individuals should exercise caution and restraint in their envisaged contacts with journalists and the wider media, and inform the Agency's Spokesperson or Press Officer in advance.

Individuals should also exercise caution and restraint in the use of social media, particularly when acting in a private capacity (e.g., as a blogger). They should refrain from voicing opinions on sensitive topics in the areas of the Agency's mandate and tasks.

Individuals are required to cooperate fully with the European Anti-Fraud Office (OLAF). The release of information in response to a request from or in the course of an investigation by OLAF shall not constitute a breach of confidentiality. Information provided to the European Court of Auditors (ECA) or the European Commission's Internal Audit Service (IAS) in the course of its duties, national or European Courts shall not constitute a breach of confidentiality.

### **3. Gifts and hospitality**

#### **3.1. Definitions**

A 'gift' is understood to mean:

- a sum of money or any physical object, or
- the possibility to participate for free in events which are open to the public or are private in nature, are only accessible in return for payment and represent a certain value (such as complimentary tickets for sports events, concerts, theatre, conferences, etc.), or
- any other advantage with a pecuniary value such as transport costs.

Low value items given for purely information purposes (brochures, booklets, catalogues, etc.) are not considered as gifts in this context. Indirect gifts are those which are not offered directly to an individual, but to a third party that is close to the individual.

'Hospitality' is defined as an offer of food, drink, accommodation and/or entertainment from any source outside the Agency.

#### **3.2. Principles**

As a general rule, individuals should not accept any direct or indirect gifts or hospitality offered by third parties in the context of their role on the Management Board.



This is most evident where gifts are offered by persons, authorities or organisations which are involved in or are seeking official action by the Agency especially in a sensitive area in which the individual is, has been or will likely be active in the foreseeable future. All such gifts should be in principle refused. In addition, the rules apply to "indirect" gifts or hospitality offered to a third party that is close to the individual. In any event, any situation where the acceptance of a gift or hospitality may lead to real, potential, or perceived conflict of interest should be absolutely avoided. Any gifts entailing a sum of money, regardless of the amount, must always be refused.

Acceptance of gifts or hospitality may exceptionally be deemed acceptable (if worth up to €150) when it is clear that this will not compromise or reasonably be perceived to compromise the individual's objectivity and independence and will not damage the Agency's public image. This evaluation can only be based in the first place on sound judgement from the individual in the given circumstances. In the relevant cases, the individual should consult the Management Board Secretariat in advance.

Criteria to be considered in this context are, in particular, if the acceptance of the gift or hospitality is counter to the interest of the Agency or presents a real or perceived conflict of interest for the individual concerned, or if such acceptance would be in accordance with diplomatic and courtesy usage.

In this respect, certain factors may point towards the likelihood that gifts and hospitality are deemed acceptable, for instance when the offer of a gift or hospitality has a low value or is addressed to a large number of persons. On the other hand, there are factors which may point towards the likelihood that gifts and hospitality would not be deemed acceptable, for instance when the offer of a gift or hospitality has a high value or is addressed to a single individual.

In general terms, for the purposes of assessing whether gifts or hospitality are deemed acceptable, the following factors could be relevant: it being understood that the factors mentioned are not exhaustive, and that they will be neither individually nor collectively decisive but should form part of a case-by case analysis:

- depending on the context, the nature of the source offering the gift or hospitality (private/public);
- the apparent motive behind the offer of the gift or hospitality;
- the link between the entity offering the gift or hospitality and the Agency (e.g., cases under investigation, financial interests, etc.);
- the nature and estimated value of the gift or hospitality, including whether there have been one or several offers from the same source;
- the individual or collective destination of the offer;
- the role of the individual on the Management Board.

Gifts and hospitality motivated solely by a family relationship or personal friendship, or in a context not related in any way to the individual's duties or role do not, in principle, fall under these provisions. However, even here situations may arise when acceptance can be perceived as compromising the individual's independence.



### 3.3. Specific provisions relating to gifts

As a general rule, gifts should not be accepted and one should make use of sound judgement in order to assess, in the given circumstances, if acceptance could be envisaged.

Subject to the general principles set out in sub-sections 3.1 and 3.2, gifts should therefore only be accepted if in line with or if required by social, courtesy, or diplomatic usage. Offers of any sum of money should always be refused by the individual.

### 3.4. Specific provisions relating to hospitality

As a general rule, hospitality should not be accepted and one should make use of sound judgement in order to assess, in the given circumstances, if acceptance could be envisaged.

Subject to the general principles set out in sub-sections 3.1 and 3.2 above, hospitality should therefore only be accepted if in line with or if required by social, courtesy, or diplomatic usage. In that case, the following arrangements apply:

- a) Prior consultation of the Management Board Secretariat and in the interest of expedient administrative practice:
  - of hospitality in the form of lunches or dinners strictly linked to the role of the individual, and as such not prejudicial to the interests and public image of the Agency, and in which the individual participates in agreement with the Agency and in the interest of the service;
  - of occasional offers of simple meals, refreshments, snacks, etc.

As in the case of gifts, the presumption of hospitality being deemed acceptable does not mean that individuals should consider themselves at liberty to accumulate a number of offers of hospitality, bearing in mind that an accumulation may be seen to compromise their objectivity and independence, or may damage the Agency's public image.

- b) Prior consultation of the Management Board Secretariat should be carried out:

In cases not covered by the previous heading, or if the individual judges that there is a doubt as to the appropriateness of accepting or refusing a hospitality offer. If a prior consultation is not feasible, the Management Board Secretariat should be consulted as soon as possible subsequent to the event.

This does not mean that individuals should consider themselves at liberty to accumulate a number of offers of hospitality, which will also be an element that will be taken into consideration by the Management Board Secretariat.

## 4. Invitations to publish or to give speeches or lectures

Invitations to publish or to give speeches or lectures can be seen as a gift or an indirect benefit. One must distinguish between publications, speeches, or lectures in an official capacity on behalf of the



Agency or when using one's position on the Management Board to support one's participation or publication, and private publications, speeches, or lectures.

Individuals acting in their official Agency capacity, should consult the Chairperson of the Management Board in advance via the Management Board Secretariat.

Where it is not possible to consult the Chairperson in advance on an envisaged presentation or statement in advance, e.g., answers to questions in a panel discussion or during an interview, a disclaimer must be stated, i.e., that the views presented are those of the individual and may not be understood or quoted as being made on behalf of the EUAA or reflecting the position of the EUAA.

## **5. Fees and honoraria**

For invitations to speak which are deemed acceptable as such, it is further acceptable that the participation fee is waived and/or travel expenses are paid for by the inviting organisation.

However, no honorarium should normally be accepted for publications, speeches, or lectures in the course of duty. Exceptionally, a payment may be accepted to defray reasonable attendance and accommodation costs.

## **6. Honours or decorations**

If individuals are offered an honour or decoration in relation to their role on the Management Board from any government or other source, they should consult the Chairperson of the Management Board in terms of whether it is deemed acceptable.

There is an exception for services rendered before the start one's term of office on the Management Board or during special leave for military or other national service and in respect of such services.

These provisions apply only to national honours and decorations awarded by a sovereign state or official medals awarded by a sovereign state or an official organ of that state (ministry, regional or local authorities, universities, etc.), or recognised by an official authority outside the Agency (Prix Charlemagne, Carnegie Hero Fund, etc.).

In the context of the afore mentioned consultations, the Chairperson of the Management Board will take into consideration the following factors:

- the reason for the honour or decoration;
- the possible consequences for the Agency's interests.

These provisions also apply to former individuals if the decoration or honour has any link with their work at the Agency.