

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

Provisional rules governing conflict of interests in the Management Board and Scientific Committee of the European Union Agency for Fundamental Rights*

Having regard to the Council Regulation (EC) No 168/2007 of 15 February 2007 (hereinafter referred to as “the Founding Regulation”), establishing the European Union Agency for Fundamental Rights (hereinafter referred to as “the Agency”), and in particular Article 12, 14 and 16 thereof;

Having regard to the Decision of the Management Board of the Agency of 20 May 2011 adopting the Rules of Procedure of the Agency in particular Article 13, 14, 26 and 27 thereof;

Whereas:

- (1) Given the particular functions of the Agency, the Founding Regulation requires that the composition of the Management Board should ensure the Agency’s independence from both European Union institutions and Member State governments and assemble the broadest possible expertise in the field of fundamental rights.
- (2) The Founding Regulation establishing the Agency in the Article 12.1 (a) defines that the Management Board shall be composed *inter alia* of one independent person appointed by each Member State, having high level responsibilities in an independent national human rights institution or other public or private sector organisation.
- (3) The members and alternate members of the Management Board, and the members of the Scientific Committee, shall undertake to act in the public interests. For this purpose, they shall make a statement of financial, or any other, interests of relevance to the mission of the Agency which might be considered prejudicial to their independence.

* Pending adoption of the European Commission’s Guidelines for a coherent policy on the prevention and management of conflicts of interest as provided in the *Roadmap on the follow-up to the Common Approach on EU decentralised agencies*.

- (4) The management of conflict of interest is not regulated at the EU level. Therefore, it is important to develop relevant rules and procedures at the Agency's level. In accordance with Article 12.6 (l) of the Founding Regulation, the Management Board, as the Agency's planning and monitoring body, shall ensure that the Agency performs the tasks entrusted to it. In particular, it shall establish that a member or an alternate member of the Management Board no longer meets the criteria of independence, in accordance with Article 12.4 of the Founding Regulation.
- (5) It is important to identify situations proper to the mandate of the Agency, where a reasonable balance should be established to ensure coherence with the general principles of European Union Law in particular with the principle of proportionality^{*}. The mere fact that a member of the Management Board has a function in an entity which has contractual relationships with the Agency might not per se be regarded as a conflict of interest situation that would exclude the member concerned from serving on the Management Board or the Scientific Committee.

HAS ADOPTED THE FOLLOWING DECISION:

TITLE I COMMON PROVISIONS

SECTION I GENERAL PRINCIPLES

ARTICLE 1 SCOPE

- 1.1 The present decision lays down rules governing conflict of interests in the Management Board and Scientific Committee of the European Union Agency for Fundamental Rights.
- 1.2 The present decision is applicable to the members of its Management Board and the members of the Scientific Committee pursuant to Articles 12 and 14 of the Founding Regulation.

ARTICLE 2 DEFINITIONS

2.1. For the purposes of this decision:

- (a) "Interest" meaning all interests falling within fields of the competence of the Agency and subject to declaration;

^{*} As derived from the jurisprudence of the Court (Case T-21/01 *Zavvos v Commission* and Case T-100/04, *Giannini*).

3.1.2 The members of the Management Board and the members of the Scientific Committee shall not, in the performance of their duties, deal with a matter, directly or indirectly, that she/he has any private interests in such as to impair her/ his independence and, in particular, interests as defined in Article 2.2 of this decision.

3.2 TRANSPARENCY

Registrations and declarations of interests of the members of the Management Board and the members of the Scientific Committee, as well as the measures taken for resolving potential conflicts, shall be clearly recorded in formal documents, to enable the Agency to demonstrate, if necessary, that a specific conflict has been appropriately identified and managed.

3.3 CONFIDENTIALITY

The members of the Management Board and the members of the Scientific Committee shall not disclose information crucial for the mandate of the Agency, covered by the duty of professional secrecy, even after their duties have ceased, without prejudice to Articles 13 and 26 of the Rules of Procedure of the Agency.

ARTICLE 4 SPECIFICITY OF THE AGENCY

The Management Board shall be composed *inter alia* of persons with appropriate experience in the management of public or private sector organisations, and having high level of responsibilities in an independent national human rights institution or other public or private sector organisation.

The Scientific Committee shall be composed of independent persons, highly qualified in the field of fundamental rights.

Considering the specificity of the Agency, the mere fact that a member of the Management Board has a function in an entity which has contractual relationships with the Agency might not per se be regarded as a conflict of interest situation that would exclude the member concerned from serving on the Management Board or the Scientific Committee.

- (b) “Conflict of interests” is a situation in which the private interests of the member of the Management Board or the member of the Scientific Committee could actually or potentially, or be perceived to impact negatively on his/her independence and loyalty towards the Agency and on the interests of the Agency;
- (c) “Annual Declaration of Interests” meaning the written declaration to be submitted annually pursuant to Article 5 of this decision;
- (d) “Oral Declaration of Interests” meaning the verbal declaration to be made at the beginning of each meeting pursuant to Article 6 of this decision;
- (e) “Direct Interests” meaning interests of private benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing his/her behaviour;
- (f) “Indirect Interests” meaning other interests that may have some influence over the individual’s behaviour and therefore shall be neutralised;
- (g) “Member of the Management Board” should be understood as referring also to “the alternate member of the Management Board” pursuant to Article 14 of the Founding Regulation.

2.2 For the purposes of this decision, the members of the Management Board and the members of the Scientific Committee shall declare all private interests corresponding to the following categories:

- (a) Direct interest (financial benefits arising from, for example, employment, contracted work, investments, fees, etc.);
- (b) Indirect financial interests e.g. grants, sponsorships, or other kind of benefits;
- (c) Interests deriving from the professional activities of the member or his/her close family members;
- (d) Interests governing the selection of contractor especially in calls for the choice of the National Focal Points (FRANET) and interests in intervening in the performance of the contract and in the operation of the business relationship between the Agency and its National Focal Points;
- (e) Other interests or facts that the member of MB or SC considers pertinent;

ARTICLE 3 PRINCIPLES

3.1 INDEPENDENCE

3.1.1 The Agency shall ensure that the members of the Management Board and the members of the Scientific Committee are independent from all external interests.

SECTION II INTERESTS TO BE DECLARED

ARTICLE 5 RESPONSIBILITY FOR THE DECLARATION

In accordance with the Article 16.2 of the Founding Regulation, the responsibility for disclosure of interests in declaration rests with the individual member of the Management Board and the member of the Scientific Committee.

ARTICLE 6 INTERESTS TO BE DECLARED IN THE ANNUAL DECLARATION OF INTERESTS

6.1 The members of the Management Board and the members of the Scientific Committee shall declare in the written Annual Declaration of Interests (Annex I) any interest belonging to the categories defined in Article 2.2 of this decision with respect to all activities in which they are involved or have been involved during two years preceding the submission of the Annual Declaration.

6.2 The members of the Management Board and the members of the Scientific Committee shall submit to the Agency's services the written Annual Declaration of Interest within the first month following their appointment.

6.3 The members of the Management Board and the members of the Scientific Committee shall update their Annual Declaration of Interests as soon as their interest changes, without undue delay.

6.4 Details on the name of body or organisation of relevance for each declared interest shall be given. This is to be interpreted as meaning the full name, location of the seat (town and country) and nature (private or public).

6.5 Details on the subject matter of each declared interest shall be given, indicating the domain in which the activity is, or was, carried out and clarifying the interest and role of the concerned body or organisation in the matter and the role of the concerned person.

ARTICLE 7 INTERESTS TO BE DECLARED IN THE ORAL DECLARATION OF INTERESTS

At the beginning of each meeting, and considering the final agenda of the meeting, the members of the Management Board and the members of the Scientific Committee shall declare orally any interest not already declared through the Annual Declaration that might be considered prejudicial to their independence in relation to the items of that meeting.

TITLE II- PROCEDURE FOR IDENTIFYING AND HANDLING CONFLICTS OF INTERESTS

SECTION 1 MEMBERS OF MANAGEMENT BOARD

ARTICLE 8 DECLARATIONS OF INTERESTS OF MEMBERS OF MANAGEMENT BOARD

8.1 The members of the Management Board have a primary obligation to disclose at any time the existence of possible conflict of interests that may place the impartiality of the Agency at risk. Without prejudice to Article 16 of the Founding Regulation, they shall state, in particular, the type and nature of interests, specifying whether they are general or relate to a project/programme under implementation or under discussion for adoption by the Management Board or other activities of the Agency under the monitoring of the Management Board in accordance with the Founding Regulation. When declaring interests, members shall also declare current direct interest of spouse and partner living with them in the same household.

8.2 The Management Board will be informed on the declared interests of the members of the Management Board recorded in the conflict of interests 'register, in order to identify if there are any interests that could present a conflict with regard to the work of the Board.

8.3 If the member of the Management Board intends to be engaged in occupational activities with entities having contractual relationship with the Agency during, or up to one year after the term of the mandate of the Board, then the member shall inform the Director of the Agency accordingly.

ARTICLE 9 SCREENING OF DECLARATIONS OF INTEREST OF MEMBERS OF MANAGEMENT BOARD

The Agency's services shall screen and analyse declared information within the Curriculum Vitae and the Annual Declaration of Interest, and provide a written report to the Management Board.

ARTICLE 10 ASSESSMENT OF DECLARATIONS OF INTEREST OF MEMBERS OF MANAGEMENT BOARD

10.1 The Management Board shall be informed about the outcome of the screening of the Annual Declaration of Interests of its Members.

10.2 If potential situation of conflict of interest are identified, the Management Board, on the basis of the screening conducted by the Agency's services, shall determine whether disclosures of interests contain sufficient detail on the conflicting interest to enable an adequately-informed decision to be made about the appropriate resolution that the member of the Management Board no longer meets the criteria of independence in accordance with Article 12.4 of the Founding Regulation.

10.3 In accordance with Article 12.4 of the Founding Regulation, the member of the Management Board shall inform the Commission and the Director of the Agency where he/she no longer meets the criteria of independence and the party concerned shall appoint a new member for the remaining term of office. Further, if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence, the party concerned shall also appoint a new member or a new alternate member for the remaining term of office.

ARTICLE 11 CHECKS DURING THE MEETINGS OF THE MANAGEMENT BOARD

With due regard to Article 6 of this decision, on the basis of the type and nature of interests noted in the oral declaration, the Management Board, by simple majority, could consider various options such as incompatibility with the performance of certain functions or tasks, temporary exclusion from the meeting, abstention from the debate and/or the vote.

SECTION 2 MEMBERS OF SCIENTIFIC COMMITTEE

ARTICLE 12 PRE-SCREENING OF DECLARATIONS OF INTERESTS OF MEMBERS OF SCIENTIFIC COMMITTEE

The Agency shall identify potential conflict of interests of the members concerned through a compulsory screening of their declarations conducted by the Agency's services, especially by screening the contractual relations between the Agency and the institutions where the members of the Scientific Committee had\have interest. The Agency will provide feedback to the Management Board on the outcome of the pre-screening for subsequent consideration by the Board.

ARTICLE 13 SCREENING PROCESSES OF DECLARATIONS OF INTERESTS OF MEMBERS OF SCIENTIFIC COMMITTEE

The Agency's services shall ensure, in close cooperation with the nominated member of the Scientific Committee that all relevant material necessary for the Agency's review, such as the public declaration of interests, confidentiality form and the curriculum vitae, have been made available.

ARTICLE 14 CHECKS DURING THE MEETING OF MEMBERS OF SCIENTIFIC COMMITTEE

On the basis of the type and nature of interests noted, the Chair of the Scientific Committee could consider various options such as, incompatibility with the performance of certain functions or tasks, temporary exclusion from the meeting, abstention from the debate and/or the vote, and formulate



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accordingly an opinion addressed to the Management Board in accordance with the Article 21 of Rules of Procedure.

ARTICLE 15 ENTRY INTO FORCE

The present decision shall enter into force upon its adoption by the Management Board of the European Union Agency for Fundamental Rights.

For the Management Board:

The Chairperson

Done at Vienna,


24 May 2013