Rules on the Prevention and Management of Conflict of Interests concerning eu-LISA staff members

Adopted – 30 January 2018
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1. Background

The prevention and management of (potential) conflict of interest situations is a key element of governance and management of every EU institution, body or agency and crucial for maintaining the trust of stakeholders and citizens in its integrity.

Agencies’ exposure to the issue of conflict of interest varies significantly from one to another. Therefore, the European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (thereafter eu-LISA) has performed an assessment to identify its degree of exposure to conflicts of interest. The assessment results are presented in the Annex 1 enclosed. The result, which is that eu-LISA has an overall medium to high exposure to the risk of conflict of interest, requires mitigating measures in particular in the areas of procurement and recruitment procedures.

A key role in the prevention and management of conflict of interest lies with the declaration of interest, which these rules essentially add to the existing procedures. Also, for a structured and coherent approach, this document aims at consolidating all other declarations related to the matter, which are required in various administrative and operational areas.

2. Legal basis

Article 41(4) of the Financial Regulation of eu-LISA provides that “The Agency shall adopt rules on the prevention and management of conflict of interests.”

To help fulfilling the requirement, the Commission issued the Guidelines on Prevention and Management of Conflict of Interest in EU decentralised Agencies¹, which have been considered for the preparation of these rules.

Legal obligations for staff members bound by the Staff Regulations and the CEOS are foreseen in Title II (Rights and Obligations) of the Staff Regulations and the appropriate implementing rules:

- a staff member shall carry out his/her duties and conduct him/herself solely with the interest of the agency in mind (cf. Art. 11);
- a staff member shall neither seek nor take instructions from any government, authority, organisation or person outside his agency (cf. Art. 11);

• a staff member shall not without the permission of the agency accept any honour, decoration, favour, gift or payment (cf. Art 11);

• a staff member shall inform the agency of any potential conflict of interests due to any personal interest before his/her recruitment or at the end of the unpaid leave period (cf. Art. 11);

• a staff member shall not deal with a matter in which, directly or indirectly, he/she has any personal interest such as to impair his/her independence (cf. Art. 11a);

• a staff member shall refrain from any action or behaviour which might reflect adversely upon his position (cf. Art. 12);

• a staff member shall inform his/her agency if his/her spouse is in gainful employment (cf. Art. 13);

• a staff member shall notify his/her agency if he/she intends to stand for public office (cf. Art. 15);

• a staff member shall refrain from any unauthorised disclosure of information received in the line of duty including after leaving the service (cf. Art. 17 and 19);

• a staff member shall inform his/her agency of his/her intention to engage in an outside activity (cf. Art. 16 and 40).

3. Overall Objective

The overall objective of these rules is to provide improvements for the good governance of eu-LISA’s administrative and financial decisions by an effective prevention and management of potential conflict of interests across eu-LISA. This is crucial for sustaining the trust and the credibility and therefore the legitimacy of eu-LISA by protecting the integrity of its decisions, that they are not compromised by individual, illegitimate interests.

Specific objectives:

✓ To comply with Article 41(4) of eu-LISA’s Financial Regulation;

✓ To reinforce the relevant obligations foreseen in the Staff Regulations and CEOS for the staff members of eu-LISA;


3 Anti-Fraud Strategy of eu-LISA, adopted by the eu-LISA Management Board on November 17, 2015

4 http://www.eulisa.europa.eu/AboutUs/WhoWeAre/Documents

Protection level  PUBLIC
Organisational Values⁵;

- To provide a comprehensive and coherent approach to the currently existing practices related to management of conflict of interest risks at eu-LISA.

4. **Scope**

These rules apply to the entire eu-LISA as an organisation and all of its activities, whether administrative or operational in nature. The scope applies to the staff members of eu-LISA. For the purpose of these rules, by staff member is meant any eu-LISA temporary (TA) or contract staff (CA) bound by the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (CEOS).

The declaration of interest form (DoI) shall include the following information on all interests that are or could be perceived as related to the domain of activity of eu-LISA⁶:

- a. Any direct financial interests of a value above EUR 5 000.00 (five thousands) net/year,
- b. Current activities and past activities,
- c. Spouse’s/partner’s/dependent family members’ current activity and financial interests;
- d. Other relevant interests.

Relevant personal interest may be of 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.

The DoI form provided in Annex 3 enclosed shall be complied with wherever referred to in these rules.

5. **Definition of the Conflict of Interest**

A conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of eu-LISA is or might be perceived as being compromised by a personal interest held or entrusted to a given individual.

Not only actual independence but also perception of independence is important, since it can impact on eu-LISA’s reputation by raising doubts about the conclusions reached. The appearance of conflict of interest can

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⁵ Management and staff are aware of and share appropriate ethical and organisational values and uphold these through their own behaviour and decision-making. The 16 Internal Control Standards’ framework, as adopted by the eu-LISA Management Board with its decision 057-2014 from 15.06.2014

constitute a reputational risk to eu-LISA, even if it turns out to be unsubstantiated.

Therefore, giving due consideration to proportionality, specific backgrounds, all relevant facts and mitigating circumstances, eu-LISA will treat a risk of perceived conflict of interest as if it were an actual conflict.

6. Preventing Conflicts of Interest

6.1 Transparency rules

The most common method of preventing a real, potential or apparent conflict of interest is the ex-ante disclosure of interests. All interests that may interfere or may be seen as interfering with the work of the Agency and its duty to take impartial and objective decisions in the public interest shall be declared. Once an individual's interests are transparent to the other parties involved in the decision-making process, it then becomes possible for those others to balance or judge the statements and decisions made by that individual in the light of their disclosed interests.

Completed DIs shall be made available on paper or electronically in a database for internal consultation by all staff members, who shall treat such information with due confidentiality.

6.1.1 Rules applicable to all staff members of eu-LISA

Any staff member of eu-LISA is obliged to carry out his/her duties independently, objectively, impartially and in keeping with his/her duty of loyalty to the EU.

The staff members of eu-LISA shall declare their interest and ensure that the information provided is up to date throughout the year. To that end, before signing an employment contract with eu-LISA, they shall complete a declaration of interest (DoI) using the form in Annex 3.

Every year by the 31st of January, or whenever their situation changes in respect of interests declared, they shall update their DoI and submit it to their line manager.

For the purpose of these rules, by line manager is meant any head of unit, department, or function (accounting, data protection, internal audit), and the Executive Director of eu-LISA, who appraises performance of at least one staff member. The role of line manager for the Executive Director is ensured by the Chairperson of the Management Board.

If at any time, in the course of his/her duties, a staff member becomes aware that his/her actions may bring his/her own interests into conflict with those of the Agency, he/she shall refrain from such actions refer the matter to his/her line manager. The line manager shall assess whether there is a conflict of interests or not and shall communicate the result in writing to the staff member concerned. If the line manager confirms the existence of a conflict of interest, the line manager shall ensure the staff member ceases activities affected

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7 Page 5, EC Guidelines on the prevention and management of conflict of interest in EU decentralised agencies dated 10/12/2013
until the conflict of interest no longer applies.

6.1.2 Additional rules applicable to certain staff members of eu-LISA. Declaration of absence of conflict of interest

Members of the Recruitment Selection Panels – before receiving access to the candidates’ application, they shall make and sign a specific written declaration of absence of conflict of interest to pursue their work as a member of the selection committee in compliance with the form provided in Annex 5. The eu-LISA Human Resources and Training Unit (HRTU) coordinates this activity and manages potential conflict of interests in line with point 7.2 below.

Members of Procurement Opening Boards and Evaluation Committees – before receiving access to the tender files, they shall make and sign a specific written declaration of absence of conflict of interest to pursue their work as a member of such boards and committees in compliance with the forms provided in Annex 6 and Annex 7. The eu-LISA Finance and Procurement Unit (FPU) coordinates this activity and manages potential conflict of interests in line with point 7.3 below.

Internal auditors of Internal Audit Capability (IAC) – before carrying out an assurance audit, they shall make and sign a specific written declaration of absence of conflict of interest in line with the form provided in Annex 8. They shall communicate the signed declaration to the Executive Director and the auditee(s).

6.2 Awareness-raising

All line managers of eu-LISA shall ensure that each staff member in their remit follows a mandatory training course on how to comply with these rules. HRTU shall organize the training course at least once a year.

HRTU shall include a presentation of these rules in the welcome kit for newcomers and shall make them available on the eu-LISA Intranet and/or learning platform.

7. Managing Conflicts of Interest

The following entities described below are in charge of activities for the management of conflict of interest at eu-LISA:

7.1 Line manager

The line manager\(^8\) undertakes to:

- Ensure that their staff members complete accurately and submit annually by 31\(^{st}\) January their DoI

\(^8\) For the purpose of these rules, by line manager is meant any head of unit, department, or function (accounting, data protection, internal audit), and the Executive Director of eu-LISA, who appraises performance of at least one staff member. The role of line manager for the Executive Director is ensured by the Chairperson of the Management Board.
using the form in Annex 3;

- Assess the compatibility of interests declared against duties of the individuals concerned. The line manager may ask and the staff member concerned shall provide any clarifications deemed necessary to concluding the evaluation. A list of examples of conflict of interest and red flags on potential conflict of interests in procurement is provided in Annex 2, which may be used to facilitate the evaluation;

- Send completed DoIs and assessment conclusions to HRTU every year by the 31st of March;

- Provide requested statistical reports on DoIs in her/his remit to RAD (i.e. number of DoIs submitted, DoI submitted on time, number of DoIs evaluated, number of actions taken, etc).

### 7.2 Human Resource and Training Unit (HRTU)

Under the direct responsibility of the Head of Unit, the HRTU undertakes to:

- Remind the staff members of eu-LISA of their obligations deriving from the current rules;

- Facilitate the assessment of DoIs by line managers;

- Collect, keep, and safeguard all DoIs completed by staff members in line with the form in Annex 3, together with line managers’ assessments as items of the personnel files;

- Assess the declaration of absence of conflict of interest completed in line with the form provided in Annex 4 and 5. In case of declarations by selection committee members (Annex 5), the Head of the Resources and Administration Department (HoRAD) shall assess them if the head of HRTU is a member of the selection committee. The head of HRTU (or the HoRAD if applicable) shall ensure that a selection committee member in potential situation of conflict of interest either abstain from the assessment or he/she is replaced. This measure protects both the eu-LISA’s reputation and the person in a situation of potential conflict of interest. A list of examples of conflict of interest and red flags on potential conflict of interests in procurement is provided in Annex 2, which may be used to facilitate the assessment;

- Collect, keep, and safeguard all declarations completed in line with Annex 4 and 5, together with assessments results as items of the related recruitment files;

- Provide requested statistical reports on the status and changes of declarations under its remit to RAD (i.e., number of DoIs submitted, DoI submitted on time, number of DoIs evaluated, number of actions taken, etc).

### 7.3 Finance and Procurement Unit (FPU)

Under direct responsibility of the Head of Unit, the FPU undertakes to:
• Remind the members of Procurement/Tender opening boards and evaluation committees of eu-LISA of their obligations to declare their interests and update their declarations prior to starting any work of such panels in line with the forms provided in Annex 6 and Annex 7;

• Collect, keep, and safeguard the abovementioned declarations as items of the related procurement file;

• Assess the declaration of absence of conflict of interest completed in line with the forms in Annex 6 and 7. The HoRAD shall assess them if the head of FPU is a member of that Opening Board or Evaluation Committee. The head of FPU (or the HoRAD if applicable) shall ensure that a person being in a potential situation of conflict of interest is replaced in the Opening Board or Evaluation Committee concerned. This measure should protect both, the eu-LISA’s reputation and the person in situation of potential conflict of interest. A list of examples of conflict of interest and red flags on potential conflict of interests in procurement is provided in Annex 2, which may be used to facilitate the evaluation;

• Provide requested statistical reports on the status and changes of these declarations to RAD (i.e., number of Dols submitted, Dols submitted on time, number of Dols evaluated, number of actions taken, etc).

### 7.4 Data Protection Officer (DPO)

As an independent function, the eu-LISA Data Protection Officer (DPO) will assure the compliance of these rules with the data protection legal framework. A balance must be struck between the importance of ethics and independence obligations and the possible intrusion in the right to privacy of the persons concerned, who may not have a direct relationship with eu-LISA.

The DPO will ensure with the different actors that, only personal data when it is justified depending on the responsibility of the persons concerned is processed by the controllers.

The DPO will ensure that the data subject’s rights are being respected.

The DPO will ensure that any personal data breach deriving from this process of managing conflict of interests will follow the proper rules adopted by eu-LISA in particular the Data Breach Policy and Procedure⁹.

Any data subjects that feels his/her fundamentals rights are not being respected can recourse to the eu-LISA’s DPO or to the European Data Protection Supervisor (EDPS).

### 7.5 Breach of trust and remedial actions

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⁹ eu-LISA decision 60/2015 – Policy and Procedure on Personal Data Breach handling
Failure by the Executive Director to fill in the declaration of interest (DoI form in Annex 3) in a complete, correct, and timely manner may be considered as a breach of trust towards the Agency. Because of that failure, the Management Board, acting on a two-thirds majority of all its members with right to vote, may dismiss the Executive Director.

Failure by a staff member to fill in the declaration of interest (DoI form in Annex 3, and if applicable, Annex 4 to 8) in a complete, correct, and timely manner may be considered as a breach of trust towards eu-LISA. Because of that failure, appropriate actions may be taken by a decision of the Executive Director such as:

- opening of an administrative inquiry, which may lead to a disciplinary procedure against the staff member concerned,
- informing the European Anti-fraud Office (OLAF),
- cancelling the contract/act affected by the conflict of interests.

8. Performance indicators (PIs) and regular review

Based on annual reports requested from line managers, Resource and Administration Department (RAD) will monitor and report in a dedicated section of the Agency’s annual activity report the following performance indicators:

- Number and % of DoIs submitted, of which on time. Target is set to 100% respectively >80%;
- number and % of DoIs evaluated. Target is set to >90%;
- number and % of preventive measures or decisions limiting participation taken in compliance with these rules.

RAD also shall ensure the development and proper functioning of all relevant databases according to the best functional requirements of sensitive information and protection of personal data.

The Internal Audit Capability of eu-LISA (IAC) may also assess the effectiveness of these rules in order to provide assurance and recommend adaptations to new risks.

9. Personal Data Protection

eu-LISA processes all declarations of interest (DoI), pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community Institutions and bodies and on the free movement of such data.

The purpose of the processing operations aims at avoiding conflicts of interests to protect the integrity of eu-LISA decisions from illegitimate interests.
The DoI processing is based on Article 5(a) of Regulation (EC) No 45/2001 according to the following legal instruments:

- Article 21 of Regulation (EU) No 1077/2011 and Article 41(4) of the Financial Regulation of eu-LISA;
- As concerns DoI of the Executive Director and of eu-LISA staff, Article 11 and 11(a) of the Staff Regulations.

For publication, only the names of members of the Management Board shall be made available, based on Article 5(b) of Regulation (EC) No 45/2001. In case of the remaining actors, in particular members of the Advisory Groups and staff members, it will follow a necessity test for the publication pursuing Article 5(a) of Regulation (EC) 45/2001, for each category and function, assessing on a case-by-case.

The Human Resources and Training Unit (HRTU) collects, keeps, and safeguards all DoIs completed by staff members in line with the form in Annex 3, together with assessments results as items of the personnel files. Data subjects can exercise their rights of access and rectification of the factual data at any time before the closure of the appraisal process by contacting the unit at EULISA.HR@EULISA.EUROPA.EU.

The categories of data processed are: name, position, previous or current employments, ownership or other investments including shares, membership of a managing body or entity, intellectual property rights, spouse/partner’s /dependent family members current activity, and other relevant interest, which might create a conflict of interests in the performance of duties of the declarant.

DoIs may be completed on paper or electronically. Completed DoIs shall be made available on paper or electronically in a database for internal consultation by all staff members, who shall treat such information with due confidentiality.

The recipients of the DoI are the persons and bodies identified in these rules. DoIs may be transferred to bodies in charge of a monitoring or inspection task in conformity with Union Law, including the European Court of Auditors, the Internal Audit Service, OLAF, the European Ombudsman and the European Data Protection Supervisor.

The conservation period of DoI per category of data subjects is 5 years from the date of submission of the relevant DoI, that can be extended for a specific period as long as duly justified.

Data subjects have a right to access their DoI and to update or correct it at any time. In case eu-LISA has knowledge of information that is not consistent with the declared interest, or in case of failure to submit a DoI, the data subject concerned are contacted with the purpose to update the DoI on the missing information. In case a breach of the rules procedure is opened, the data subject is notified without delay.

Data subjects also are entitled to have recourse at any time to eu-LISA’s DPO (dpo@eulisa.europa.eu) or directly to the European Data Protection Supervisor (edps@edps.europa.eu) http://www.edps.europa.eu.

10. Entry into Force and Publication

These rules enter into force on the date of the Executive Director’s decision adopting them.

Upon entry into force, the rules shall be published on the eu-LISA website.
A review of these rules shall be carried out after two years from the date of entry into force or whenever required by justified business needs.

ANNEXES

1. Assessment of eu-LISA’s exposure to conflict of interest
2. Examples of Conflict of Interest. Example of Red Flags in Procurement
3. Declaration of Interest for staff members (DoI) - template
4. Declaration of Absence of Conflict of Interest for Recruitment procedures / applicants – template
5. Declaration of Confidentiality and Absence of Conflict of Interests for Recruitment procedures / recruitment panels – template
6. Declaration of Absence of Conflict of Interest for Procurement procedures / Opening Board – template
7. Declaration of Absence of Conflict of Interest for Procurement procedures / Evaluation Committee – template
8. Declaration of absence of conflict of interests for IAC auditors
## Annex 1

### Assessment of eu-LISA’s exposure to Conflict of Interests

Between 04/12/2017 and 15/12/2017, the eu-LISA management performed an assessment¹ to identify the degree of exposure of eu-LISA to conflict of interests. The assessment involved five elements and the results are presented in the table below:

<table>
<thead>
<tr>
<th>Exposure element</th>
<th>Exposure is low / medium / high</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The powers entrusted to eu-LISA:</td>
<td></td>
<td>eu-LISA supports Commission and Member States decision-making in the area of freedom, security and justice. Challenges of migration management and the fight against terrorism, organised crime and cyberattacks make the news daily. To help in managing these threats, eu-LISA is requested to deliver more IT solutions rapidly. For that, eu-LISA is entrusted with hundreds of million budget annually (e.g. EUR 156 million for 2017, EUR 201 million for 2018).</td>
</tr>
<tr>
<td>• maintaining large-scale IT systems under its responsibility functioning 24 hours a day, 7 days a week, to allow the continuous and uninterrupted exchange of data between national authorities using them;</td>
<td>high</td>
<td></td>
</tr>
<tr>
<td>• ensuring that it applies the highest levels of data and physical security and data protection for each large-scale IT system;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• participating in preparatory processes to design, develop and implement new IT systems;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• training for national authorities on technical use of IT systems managed by the Agency;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• reporting and providing statistics, and information on the performance of the IT systems as foreseen in the relevant legal bases.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Area of responsibility:</td>
<td></td>
<td>In the form of programming document (i.e. the former annual work program), the Executive Director proposes IT investment options and expenditures and implements them once approved. The Advisory Groups provide the Management Board with expert opinion relating to those proposed options. The Management Board reviews and adopts them. As eu-LISA outsources a large part of its operations on a highly concentrated market, they all are targets for the IT</td>
</tr>
<tr>
<td>eu-LISA is the European Agency responsible for the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC. Operational management shall consist of all the tasks necessary to keep large-scale IT systems functioning in accordance with the specific provisions applicable to each of them, including responsibility for the communication infrastructure used by them. The Agency may also be made responsible for the preparation, development and operational management of large-scale IT systems in the area of freedom, security and justice other than those referred to previously.</td>
<td>high</td>
<td></td>
</tr>
</tbody>
</table>

¹ Recommendation by the Commission in its Guidelines on Prevention and Management of Conflict of Interest in EU decentralised Agencies
<table>
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<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>industry lobbyist activities. Also, procurement procedures are exposed to the risk of conflict of interests.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. Number of person concerned and duration of relationship with eu-LISA:

3.1. Members and alternates of the Management Board
Number: 30 (+30 alternates) and six observers
Duration: four years (renewable once)

3.2 Members of Advisory Groups
Number: 84
Duration: three years (renewable)

3.3 Executive Director:
Duration: five years (one renewal of three years)

3.4 Statutory Staff (TA + CA)
Number: 145
Duration: from five years to indefinite

3.5 Contractors
Number: based on the 2016 CAAR, eu-LISA awarded a total of 320 contracts, of which 57 following direct procurement procedures launched by the Agency. The remaining 263 were awarded as specific contracts/orders in the scope of already established by eu-LISA or interinstitutional framework contracts. Negotiated procedures accounted for the most commonly used procedures in 2016 (53 cases for low value procurement), followed by 3 open procedures. Duration: from one month to 6 years or more (as per the result of procurement procedures).

4. Internal governance / decision-making structure:
- Management Board
- Advisory Groups
- Executive Director
- Management Committee
- Internal audit
- Data Protection
- Accounting

Low
The eu-LISA governance structure is complete and functional.

5. eu-LISA control over selecting and monitoring the person concerned
- It fully controls the recruitment and performance appraisal of its statutory staff;
- It does not control the selection procedure of the Management Board or Advisory Group members nor their appraisal. They are appointed by the Member States and the Commission.
- The Executive Director is appointed by the Management Board from a

Medium
As for the most EU Agencies, the eu-LISA recruitment procedures are inherently exposed to the risk of conflict of interests due to the excellent benefits offered to eu-LISA staff members.
Assessment result:

Two scores of “high”, two scores of “medium” and one “low”.

eu-LISA has an overall medium to high exposure to the risk of conflict of interest in particular in its procurement and recruitment procedures, which requires mitigation.

Mitigating action:

By 31/03/2018, eu-LISA will set up a system of declaration of interests (DoI) and assessments applicable to individuals who can influence eu-LISA decisions. These persons appear to be:

- Members of the Management Board and their alternates,
- Members of the Advisory Groups,
- The Executive Director,
- Staff members hired as temporary or contract agents.

Estimated effort (for DoI system on paper):

- Declarant: Time to complete a DoI form is estimated within the range of 1.5 hours – 4 hours a year (one hour to attend an information session is included).
- Line manager: Time to assess a completed DoI and communicate the result is estimated within the range of 15 min - 30 min. Example: a line manager of 40 staff members would put between 10 hours and 20 hours a year;
- HRTU: Time to manage the DoIs of staff members is estimated within the range of 8 hours – 16 hours a year.
- GCU: Time to manage the DoIs of members of the MB & AGs is estimated within the range of 12 hours – 20 hours a year.
- HRTU: Time to prepare and deliver one information session on the new system of DoI to staff members is estimated within the range of 12 hours – 16 hours.
- RAD: Time to monitor and report on DoI performance is estimated within the range of 4 hours – 8 hours.
Annex 2

Examples of Conflict of Interest and of Red Flags in Procurement

Conflict of Interest

The following activities illustrate types and situations of potential or actual conflicts of interest that should be avoided and disclosed, as applicable, in accordance with these rules. The list is not all inclusive and is intended to provide guidance.

- **Self-benefit**: Using the position or relationship within the Agency to promote the personal interests or those of your family, including using confidential or privileged information gained in the course of employment at eu-LISA for personal benefit or gain or for the personal gain or benefit of family members;

- **Influence peddling**: Soliciting personal benefits or benefits for one’s family members from outside organisations in exchange for using the influence to advance the interests of that organisation within the eu-LISA;

- **Other business relationships and dealings**: Approving grants or contracts with organisations in which a person or the person’s family members have a significant financial or other interest and relationship, particularly if the person is in a position to influence major decisions, is responsible for review, negotiation and approval of the grants or contracts, or otherwise direct the Agency’s corporate dealings with that business or entity;

Red flags in Procurement

A red flag is an indicator of possible fraud or corruption. It is an element or a set of elements that are unusual by nature or vary from the normal activity. It is a signal that something is out of the ordinary and needs to be examined further. A variety of red flags may appear in public procurements. They can show anomalies in bidding documents, e.g. bids from supposedly different bidders that are faxed from the same telephone number; financial records, e.g. invoices paid in amounts that exceed the contract value; the behaviour of project staff, e.g. putting pressure on the evaluation committee to select a given contractor.

The presence of red flags should make staff and managers more vigilant: they should take the necessary action to confirm or deny that there is a risk of conflict of interests. It is extremely important to react to them. It is the responsibility, first, of the contracting authorities, and, secondly, of the managing authorities, to remove any doubts that the red flag has raised. The existence of a red flag does not mean that fraud has occurred or may occur, but that the situation needs to be checked and monitored with due diligence.

This section discusses typical cases of suspected fraud concerning conflicts of interests in different phases of the procurement process.

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1 Excerpt from *Identifying conflicts of interests in public procurement procedures for structural actions – A practical guide for managers – 12 Nov 2013* – a working document drafted by a group of Member States’ experts with support from OLAF. It is intended to facilitate the implementation of operational programmes and to encourage good practice.
procedure with examples of what happens in practice. Some of these red flags may appear commonplace; they can apply to lots of situations, not just conflicts of interests. It is important to keep in mind that the red flags are indicators aiming at carrying out first level checks to waive the doubts or confirm the likelihood of occurrence of a fraud or irregularity. The following red flags should lead to checks dedicated to waive or confirm the possibility of occurrence of a conflict of interests.

A. Preparation and launch of the procedure

The issue of conflicts of interests must be raised right from the preparation stage of the procedure. When the tender documents are being drafted, the contracting authority may need some outside studies or request opinions from outside sources. To some extent, they may base the documents for the tender procedure on reports drafted by outside experts. The contracting authority must also decide on the type of procedure and draft contract notices, contract documents, specifications and a draft contract.

The contracting authority should take the necessary measures to prevent conflicts of interests right from the very first stage of preparation of the documents.

1. Risks linked to a conflict of interests

Someone who takes part in drafting the documents may directly or indirectly try to influence the tender procedure to allow, say, a relative, friend, or commercial or financial partner, to take part.

Red flags

- The person in charge of drafting the tender documents / a senior official insists on hiring an outside firm to help draft the documents although it is not necessary.
- Two or more preparatory studies are requested on the same subject from external firms and someone puts pressure on staff to use one of these studies in drafting the tender documents.
- The person in charge of drafting the documents organises the procedure in such a way that there is no time to revise the documents carefully before the tender procedure is launched.
- Two or more contracts for identical items are issued over a short period of time for no apparent reason, resulting in a less competitive procurement method being used.
- A negotiated procedure is chosen, even though an open procedure is possible.
- There are unjustified selection or award criteria that favour a particular firm or bid.
- The rules on providing goods or services are too strict, allowing only one firm to bid.
- An employee of the contracting authority has relatives who work for a firm which may bid.
- An employee of the contracting authority worked for a firm which may bid, just before joining the contracting authority.

Example: One of the tenderers takes part in the preparation procedure and gains some additional information before the procedure is launched. This denies other bidders a fair chance of winning the tender, and is a conflict of interests.

2. Risks linked to a conflict of interests

Information on the tendering procedure may be leaked.

Red flags

- Unusual behaviour of an employee insisting on getting information on the tendering procedure although he
is not in charge of this procedure.

- An employee of the contracting authority has relatives who work for a firm which may bid.
- An employee of the contracting authority worked for a firm which may bid, just before joining the contracting authority.

**Example:** A member of staff takes part in drafting or correcting the public procurement documents, then resigns and joins a company which submits a bid soon afterwards.

**SUGGESTIONS:**
- Review bidding documents for red flags.
- Ensure that audit rights and contractual remedies are included, as appropriate.

**B. The call procedure, the evaluation of the tenders and the final decision**

After the deadline for the receipt of tenders, the contracting authority checks the tenders submitted for compliance and evaluates them. Where appropriate, the contracting authority asks tenderers to remedy deficiencies or supply specific information or further explanation. The contracting entity decides which final tenders are valid, based on the criteria given in the notice. The evaluation committee makes a written assessment and recommendation. The decision to award the contract is taken by the decision-maker appointed within the contracting authority.

**Risks linked to a conflict of interests**

The bids received may be tampered with to conceal a bidder’s failure to meet the deadline or to provide all the documentation required.

A member of the evaluation committee may try to mislead or put pressure on the other members to influence the final decision, for example by giving a wrong interpretation of the rules.

**Red flags**

- The official documents and/or certificates of receipt of the documents have obviously been changed (e.g. crossing-out).
- The evaluation committee members do not have the necessary technical expertise to evaluate the submitted bids and are dominated by one individual.
- Subjective elements are overrepresented in the criteria system.
- Some obligatory information from the winning bidder is missing.
- Some information provided by the winning bidder relates to contracting authority staff (e.g. an employee’s address)
- The winning bidder’s address is incomplete, e.g. there is only a PO box address, no telephone number, and no street address (might be shell companies).
- The specifications are very similar to the winning bidder’s product or services, especially if the specifications include a set of very specific requirements that very few bidders could meet.
- Few of the companies that bought the bidding documents submit bids, especially if more than half of them drop out.
- Unknown companies with no track record win the contract.

**SUGGESTIONS:**
• Ensure that committee members are selected in accordance with the established project implementation manual.
• Ensure the project procurement officer is available to the evaluation committee to answer any procedural questions.
• Confirm that the evaluation committee has the necessary technical expertise to evaluate the bids.
• Check that committee members sign a declaration stating that they do not have a conflict of interests in performing their duty, such as any current or past affiliation with any of the bidders.

C. Performance, amendment and modification of public contracts

Any contract awarded under a public procurement procedure must be implemented in full accordance with the requirements laid down in the call for tender and the technical specifications and within the time frame set in the call. Parties may be authorised to amend part of the contract slightly, if they are able to prove that the amendment was not originally foreseeable and ensure reasonable sustaining and economic balance.

Risks linked to a conflict of interests

The contract is not drafted according to the rules and/or the technical specifications and tender documents.
The contract is poorly executed.
The contract is poorly monitored.
False certificates are accepted.

Red flags

➢ Standard contract clauses (audit, remedies, damages, etc.) are changed.
➢ The methodology and work plan are not attached to the contract.
➢ The name and legal status of the firm is changed and the desk officer in charge does not question this.
➢ Numerous or questionable change orders for a specific contractor are made, and approved by the same project official.
➢ In international projects, there is a long, unexplained delay between the announcement of the winning bidder and the signing of a contract (this may indicate that the contractor is refusing to pay or is negotiating on a demand for a bribe).
➢ Substantial changes are made to technical specifications or to the Terms of Reference.
➢ The quantity of items to be delivered is reduced, without a commensurate reduction in payment.
➢ Labour hours are increased, with no corresponding increases in the materials used.
➢ The contract is missing or the documentation supporting a purchase is inadequate.
➢ A contracting employee’s behaviour when dealing with the file is unusual: he/she is reluctant to answer management questions about unexplained delays and missing documents.
➢ There are many administrative reviews and cancelled procurement procedures.
➢ There are any changes to the quality, quantity or specification of goods and services in the contract that deviate from the bidding document (terms of reference, technical specifications, etc.)

SUGGESTIONS:

• Evaluate any requests for change order, check their legitimacy and ask for supporting documents, as appropriate, before agreeing to the change order.
• On monitoring missions to high-risk projects, ask clients to inform the bank of any change orders issued to any of the signed contracts, for any amount.
• Use supervision missions by the task team to check that key goods, works, and services outputs actually
exist. Reviews can confirm that the progress of the work is consistent with the completion certificates issued, that supporting documentation is adequate, that officers are correctly certifying that goods and services have been received on time.

- Require independent annual technical, financial, and procurement audits of high-risk projects.
- Include site visits by technical experts in supervision missions.
- Introduce contract management training for project officials.
- As part of a procurement and financial management review, specifically check the supervision of contract management — payment listings by contract or contractor, checks for duplicate payment, and certification of goods and services received.
- Introduce strict complaints-handling procedures and publicise them.
Annex 3

DECLARATION OF INTEREST

First Name: ________________________________________
Surname: ____________________________________________
Profession: __________________________________________
Involvement with eu-LISA __________________________________

hereby declares to have the following interests relating to his or her eu-LISA activities

(Please specify the interest that you or your spouse / partner / dependent family members currently have or have had last year and/or in the past three years.)

| Financial interest
d| Current? | Current? | Period\(^1\) | Organisation\(^2\) |
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1. Please specify the relevant period of time each activity took place in (month/year).
2. Please indicate name, location and nature of the organisation.
3. Please indicate the subject matter of the activity, your precise role.
4. Please indicate any direct financial interests (managerial stakes in companies, including ownerships of patents or any other relevant intellectual property rights), or assets (shares and/or securities held in companies) or grants or other funding of a value above EUR 5000.00 net/year, which might create a conflict of interests in the performance of your duties, with an indication of their number and value, as well as the name of the company/provider of the grant/funding.

<table>
<thead>
<tr>
<th>Current and past activities</th>
<th>Current?</th>
<th>Current?</th>
<th>Period(^1)</th>
<th>Organisation(^2)</th>
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1. Please specify the relevant period of time each activity took place in (month/year).
2. Please indicate name, location and nature of the organisation.
3. Please indicate the subject matter of the activity, your precise role.
4. Please indicate posts held over the last three years in foundations or similar bodies, institutions, companies or other organisations; other membership/affiliation or professional activities held over the last year, including services, liberal professions, consulting activities, and relevant public statements, with an interest falling within eu-LISA’s remit.
1. Please specify when each activity started (month/year).
2. Please indicate name, location and nature of the organisation.
6. Please indicate your Spouse's / partner's / dependent family members’ current activity and financial interests that might entail a risk of conflict of interests (dependent family member means the direct descendants who are under the age of 21 or are dependants and those of the spouse or partner).
7. Please indicate the subject matter of the activity, your spouse's / partner's / dependent family members' precise role.

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<tr>
<th>Spouse's/partner's/dependent family members’ current activity</th>
<th>Period(^1) From/To (Month/year)</th>
<th>Organisation(^2)</th>
<th>Subject matter(^7)</th>
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1. Please specify when each activity started (month/year).
8. Please indicate any other relevant interest.
9. Please describe the interest.

I confirm that (please indicate the relevant point below):

- I believe I have a conflict of interest with respect to the following eu-LISA activity____________________________________________________________or
- I believe I do not have a conflict of interest with respect to my activity at eu-LISA.

I declare that I have read the eu-LISA Rules on the prevention and management of conflict of interests and that the above declaration is truthful and complete.

Date: ______________ Signature: __________________________________________________

If you need more sheets to declare your interests, do not hesitate to use blank ones or to ask for them, but please sign each one of them and attach them to this form.

**Definition of conflict of interests**

A conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of eu-LISA is or might be perceived as being compromised by a personal interest held or entrusted to a given individual.
interests.

The DoI processing is based on Article 5(a) of Regulation (EC) No 45/2001 according to the following legal instruments:

- Article 21 of Regulation (EU) No 1077/2011 and Article 41(4) of the Financial Regulation of eu-LISA;
- As concerns DoI of the Executive Director and of eu-LISA staff, Article 11 and 11(a) of the Staff Regulations;

For publication, only the names of members of the Management Board shall be made available, based on Article 5(b) of Regulation (EC) No 45/2001. In case of the remaining actors, in particular members of the Advisory Groups and staff members, it will follow a necessity test for the publication pursuant Article 5(a) of Regulation (EC) 45/2001, for each category and function, assessing on a case-by-case.

The General Coordination Unit (GCU) collects, keeps, and safeguards all DoIs completed by members of the Management Board, their alternates, members of the Advisory Groups, and the Executive Director in line with the above form, together with assessments results as items of the Management Board and Advisory Groups files. Data subjects can exercise their rights of access and rectification of the factual data at any time before the closure of the appraisal process by contacting the unit at EULISA.GCU@EULISA.EUROPA.EU

The Human Resources and Training Unit (HRTU) collects, keeps, and safeguards all Dols completed by staff members in line with the form in Annex 3, together with assessments results as items of the personnel files. Data subjects can exercise their rights of access and rectification of the factual data at any time before the closure of the appraisal process by contacting the unit at EULISA.HR@EULISA.EUROPA.EU

The categories of data processed are: name, position, previous or current employments, ownership or other investments including shares, membership of a managing body or entity, intellectual property rights, spouse/partner’s/dependent family members current activity, and other relevant interest, which might create a conflict of interests in the performance of duties of the declarant.

DoIs may be completed on paper or electronically. Completed DoIs shall be made available on paper or electronically in a database for internal consultation by all staff members and shall treat such information with due confidentiality.

The recipients of the DoI are the persons and bodies identified in these rules. DoIs may be transferred to bodies in charge of a monitoring or inspection task in conformity with Union Law, including the European Court of Auditors, the Internal Audit Service, OLAF, the European Ombudsman and the European Data Protection Supervisor.

The conservation period of DoI per category of data subjects is 5 years from the data of submission of the relevant DoI, that can be extended for a specific period as long as duly justified.

Data subjects have a right to access their DoI and to update or correct it at any time. In case eu-LISA has knowledge of information that is not consistent with the declared interest, or in case of failure to submit a DoI, the data subject concerned are contacted with the purpose to update the DoI on the missing information. In case a breach of the rules procedure is opened, the data subject is notified without delay.

Data subjects also are entitled to have recourse at any time to eu-LISA’s DPO (dps@eulisa.europa.eu) or directly to the European Data Protection Supervisor (edps@edps.europa.eu) http://www.edps.europa.eu.
Annex 4

DECLARATION OF ABSENCE OF CONFLICT OF INTEREST

Vacancy Notice Reference Number: 
Position: 
This Declaration serves the purpose of allowing the Executive Director to identify potential or actual conflict of interest in relation to the specific position offered and the appropriate measures to be adopted, if any.

Surname/first name: ........................................................................................................................................
Address for correspondence: ............................................................................................................................
Telephone number: ...........................................................................................................................................
E-mail address: ...................................................................................................................................................

In your opinion, do you have any personal interest, in particular a family or financial interest, or do you represent any other interests of third parties which would actually or potentially impair your independence in the course of your duties in the specific position offered at eu-LISA and which could lead to an actual or potential conflict of interest relevant to that position?

YES ☐ NO ☐

If yes, please detail:
........................................................................................................................................................................
........................................................................................................................................................................

Declaration

I hereby certify that the information provided in this form is correct and complete and that my standard application form is duly updated. I will immediately inform the Executive Director of any change in my situation, or of any new relevant information. I may receive which could cause a breach of the Staff Regulations/CEOS. I am aware that any false declaration may result in the cancellation of the recruitment process or, after recruitment, in disciplinary actions.

Signature of the applicant:

Date: .../.../...

Pursuant to Articles 11 and 11a of the Staff Regulations and 11 and 81 of the Conditions of Employment of Other Servants (CEOS)
Annex 5

DECLARATION OF CONFIDENTIALITY AND ABSENCE OF CONFLICT OF INTERESTS

I, the undersigned, …………………………………………………, having been designated as a source person/selection committee member for open competitions or selection procedures organised by the Agency or by EPSO on behalf of an Institution, body, office or Agency, hereby declare that I am aware of Article 6 of Annex III to the Staff Regulations which stated expressly that the proceedings of the selection board are secret. No information on the proceedings shall be communicated outside the Selection Committee. No information on the outcome shall be disclosed publicly before formal closure of the procedure by the Executive Director.

I also declare that I am aware of Article 17 of the Staff Regulations, which states that an official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public, and that an official shall continue to be bound by this obligation after leaving the service.

Having been called to become a source person/selection board member, I am aware of the fact that I am therefore bound by individual obligations and that I must fulfil my mandate with the rigour and respect for the standards of professional ethics required for this function.

I confirm that I will exercise the greatest discretion in every aspect of my work as a source person/selection board member. I declare that I will keep confidential all matters entrusted to me and that I will not reveal any information of any kind to persons who are not entrusted by the AIPN to deal with the competition. I understand that I will also continue to be bound by the obligation of confidentiality after the completion of my tasks as a source person/selection board member, and that any conduct contrary to these specific obligations will constitute a breach likely to result in disciplinary measures. Moreover, I declare that I am familiar with Article 11a of the Staff Regulations. This article requires me to inform the Director of the Agency as soon as possible if, in the performance of my duties as a source person/selection board member, I am called upon to decide upon a matter where a personal interest is at stake, and which could therefore compromise my independence.

I have been informed that this is an individual obligation and one which I must evaluate on a case-by-case basis, in view of the particular circumstances. Case law has defined that this covers every situation which may be seen to affect my independence in my function as a source person/selection board member.
Examples of this could include family connections in the broad sense of the term (with a candidate or with a selection board member), financial connections, disputes or a relationship of subordination with a candidate. In such cases, once I have informed the Director of the Agency, I understand the Director will take the appropriate measures and I will abide by them.

I shall neither seek nor take instructions from any government, authority, organisation or person outside the Agency. I shall carry out the duties objectively, impartially and in keeping with my duty of loyalty to the Agency.

Lastly, I declare that I am familiar with Articles 21-23 of Regulation 45/2001 on the protection of individuals with regard to the processing of personal data, which set out the obligations incumbent on processors relating to the security and confidentiality of data processing. I hereby confirm that, in the performance of my duties as a source person/selection board member, I will comply with these obligations, and that I will only act on instructions from the Agency while processing personal data where my tasks include dealing with such data. I will not disclose any of this information to third parties. I undertake to observe the greatest discretion and will not communicate any information to outside persons in any form whatsoever. I will ensure that the recruitment and personal files or any other documents given under my responsibility cannot be copied, altered, moved or deleted without authorisation.

At .................................. Date: ..................................

(Signature, preceded by the words “Read and approved”)
Annex 6

Declaration
of absence of conflict of interests and of confidentiality

Title of contract:

Reference:

I, the undersigned ................................................................., having been appointed to the opening board for phase 2 of the abovementioned public contract, declare that I am aware of Article 57 of the Financial Regulation, which states that:

“1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union.

Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interests 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 shared interest with a recipient.”

I hereby declare that, to my knowledge, I have no conflict of interests with the operators who have requested to participate in the procurement procedure for this procurement, including persons or members of a group in case of joint tender, or the subcontractors proposed.

I confirm that if I discover during the opening that such a conflict exists, I will declare it immediately as indicated above. If a conflict of interests is found to exist, I shall cease all activities related to the board.

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate outside the board any confidential information that is revealed to me or that I have discovered. I will not make any adverse use of information given to me.

Date:

Signature:
Annex 7

Declaration
of absence of conflict of interests and of confidentiality

Title of contract:

Reference:

I, the undersigned ………………………………………………………………………, having been appointed to the evaluation committee given the responsibility of assessing the exclusion/selection/award criteria for the abovementioned public contract, declare that I am aware of Article 57 of the Financial Regulation, which states that:

“1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union.

Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interests 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 shared interest with a recipient.”

I hereby declare that, to my knowledge, I have no conflict of interests with the operators who have requested to participate in the procurement procedure for this procurement, including persons or members of a group in case of joint tender, or the subcontractors proposed.

I confirm that if I discover during the evaluation that such a conflict exists, I will declare it immediately as indicated above. If a conflict of interests is found to exist, I shall cease all activities related to the committee.

I also confirm that I will keep all matters entrusted to me confidential. I will not communicate outside the committee any confidential information that is revealed to me or that I have discovered or any information relating to the views expressed during the evaluation. I will not make any adverse use of information given to me.

Date:

Signature:

European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice
Internal Audit Capability (IAC)

Declaration of absence of conflict of interest

Audit mission title: Audit of __________

Audited period:

Auditee:

Standard 1120 – Individual Objectivity
Internal auditors must have an impartial, unbiased attitude and avoid any conflict of interest.

Interpretation:
Conflict of interest is a situation in which an internal auditor, who is in a position of trust, has a competing professional or personal interest. Such competing interests can make it difficult to fulfil his or her duties impartially. A conflict of interest exists even if no unethical or improper act results. A conflict of interest can create an appearance of impropriety that can undermine confidence in the internal auditor, the internal audit activity, and the profession. A conflict of interest could impair an individual’s ability to perform his or her duties and responsibilities objectively.

<table>
<thead>
<tr>
<th>Incompatibilities with the auditee</th>
<th>YES</th>
<th>NO</th>
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<tbody>
<tr>
<td>Did/do you have any official, financial or personal relation with someone who could limit your capacity in gathering information, finding out or disclosing irregularities in any way?</td>
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<tr>
<td>Do you have preconceived ideas about persons, groups of persons, organisations or objectives which could influence you in the audit mission?</td>
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<tr>
<td>Did/do you have any positions or were/are you involved in other way in the auditee activity in the last one year?</td>
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<tr>
<td>Have you been involved in elaboration and/or implementation of the auditee's control systems?</td>
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<tr>
<td>Are you the husband/wife or relative of the audited entity’s manager/s?</td>
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<tr>
<td>Do you have any direct/indirect financial interest at the audited entity?</td>
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</table>
If, during the audit mission, it will appear any personal, external or organisational incompatibility which could affect your work and/or your objectivity, will you inform immediately the head of IAC or the Executive Director if the declaration is given by the head of IAC?

Tallinn, dd /mm/ yyyy

Signature,