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Rules on the Prevention and Management of Conflict of Interests Concerning eu-LISA Staff Members

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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 Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (hereafter **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);

¹ Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, http://europa.eu/european-union/sites/europaeu/files/docs/body/2013-12-10_guidelines_on_conflict_of_interests_en.pdf

- 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 4o) during engagement or during an unpaid leave;
- a staff member leaving or having left the agency, the staff member receiving an invalidity allowance shall inform his/her agency of his/her intention to engage in an occupational activity, whether gainful or not for 2 years after leaving the service (cf. Art. 16 and 17). A special form declaring his/her awareness of obligations under Article 16 has to be signed.

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 legitimacy² 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;

² Managing Conflict of Interest in the Public Sector. A Toolkit, ISBN 92-64-01822-0, OECD, 2005, p 33, <http://www.oecd.org/governance/ethics/49107986.pdf>

- ✓ To support the implementation of Anti-Fraud Strategy³ and the Code of Conduct⁴ of eu-LISA, thus fulfilling the requirements of the Internal Control Standard No. 2 on Ethical and 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 actual or estimated direct financial interests of a value above EUR 5 000.00 (five thousands) net/year, deriving from:
 - i. any form of compensation or remuneration;
 - ii. managerial stakes in companies, including ownerships of patents or any other relevant intellectual property rights;
 - iii. equity interests, assets (shares and/or securities held in companies);
 - iv. grants;
 - v. sponsored travel, benefits (e.g. professional certifications) or other funding.

Investment into collective investment funds or schemes (e.g. SICAVs), personal insurance policies, investment portfolios where full discretion is given to the investment manager or deposits contracted as a regular customer are excluded from the definition of financial interest⁷.
- 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

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>

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

⁶ Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, para 4, https://europa.eu/european-union/sites/europaefiles/docs/body/2013-12-10_guidelines_on_conflict_of_interests_en.pdf

⁷ The reason for exclusion of abovementioned schemes is that persons investing through such schemes have no influence over the investment strategy or choice of investment.

relationship or professional affiliations (including additional employment or "outside" appointments or former employments or appointments) and other relevant outside activities.

The Dol 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 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 conflict⁸.

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 Dols shall be made available on paper or electronically for internal consultation upon request sent to the HRU by any staff member, 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.

Every second year within one month from the date of launching the exercise by HRU, or whenever their

⁸ Page 5, EC Guidelines on the prevention and management of conflict of interest in EU decentralised agencies dated 10/12/2013

situation changes in respect of interests declared, staff members shall update their DoI using the form in **Annex 3** and submit it to their line manager.

The staff members who have been appointed as an agent or verifier in the operational and financial circuits of eu-LISA or received an authorising officer delegation shall declare their interest **on an annual basis** and ensure that the information provided is up to date throughout the year. Every year they shall complete a declaration of interest (DoI) using the form in **Annex 3** within one month from the date of launching the exercise by HRU.

For the purpose of these rules, by line manager is meant any head of unit, department, or function (accounting, data protection, internal audit), Deputy Executive Director 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 and the assessment shall be completed with the use of a respective template.

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 until the conflict of interest no longer applies and the case shall be reported to the Executive Director. In that case the Executive Director as the competent authority⁹ shall ensure that the person concerned ceases all activities in the matter. The Executive Director shall take any further appropriate action.

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 Unit (HRU) 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**. 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**

⁹ Pursuant to Article 42 of the Commission Delegated Regulation (EU) .../... of 18.12.2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council, C(2018) 8599 final.

2. 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. HRU shall organise the training course at least once a year.

HRU 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 undertakes to:

- Ensure that their staff members complete accurately and submit annually or every second year¹⁰ within one month from the date of launching the exercise by HRU their DoI 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.
- Send completed Dols and assessment conclusions to HRU in compliance with the deadline set by the HRU when launching the exercise;
- Provide requested statistical reports on Dols in her/his remit to CSD (i.e. number of Dols submitted, Dols submitted on time, number of Dols evaluated, number of actions taken, etc).

7.2 Executive Director (ED)

The Executive Director undertakes to:

- Ensure that, in case of a staff member declaring an interest that has been evaluated by his/her line manager as constituting a risk of a conflict of interest, the person concerned ceases all activities in the matter;
- Take any further appropriate action in case of identified risk.

7.3 Human Resources Unit (HRU)

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

- Remind the staff members of eu-LISA of their obligations deriving from the current rules.
- Facilitate the assessment of Dols by line managers and, where necessary, by the Executive Director.
- Collect, keep, and safeguard all Dols completed by staff members in line with the form in **Annex 3**,

¹⁰ Depending on the group, to which a staff member belongs (please see a chapter 6.1.1 - Rules applicable to all staff members of eu-LISA).

together with line managers' assessments in a dedicated folder.

- 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 Corporate Services Department (HoCSD) shall assess them if the Head of HRU is a member of the selection committee. The Head of HRU (or the HoCSD 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.
- Collect, keep, and safeguard all declarations completed in line with **Annex 4 and 5**, together with assessments results as specified in recruitment procedure documents.
- Provide requested statistical reports on the status and changes of declarations under its remit to CSD (i.e., number of Dols submitted, Dol submitted on time, number of Dols evaluated, number of actions taken, etc).

7.4 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**;
- 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**. The HoCSD shall assess them if the head of FPU is a member of that Opening Board or Evaluation Committee. The head of FPU (or the HoCSD 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.
- Provide requested statistical reports on the status and changes of these declarations to CSD (i.e., number of Dols submitted, Dols submitted on time, number of Dols evaluated, number of actions taken, etc).

7.5 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 Procedure¹¹.

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).

7.6 Breach of trust and remedial actions

Failure by the Executive Director to fill in the declaration of interest (**Dol 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 (**Dol form in Annex 3, and if applicable, Annex 4 to 6**) 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

The Human Resources Unit shall monitor and report submission of annual Dol-s (Annex 3) in a dedicated section of the Agency's annual activity report the following performance indicators:

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

CSD also shall ensure the development and proper functioning of all relevant databases according to the best

¹¹ eu-LISA decision 60/2015 – Policy and Procedure on Personal Data Breach handling

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 (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.

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 (EU) 2018/1725 according to the following legal instruments:

- Article 48 of Regulation (EU) 2018/1726 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.

The Human Resources Unit (HRU) collects, keeps, and safeguards all DoIs completed by staff members in line with the form in Annex 3, together with assessments results as items in a specified folder. Data subjects can exercise their rights of access and rectification of the factual data at any time before the closure of the (DoI) 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 for internal consultation upon request sent to the HRU by any staff member, 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 unless specified otherwise in the rules governing the respective process¹², 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.

ANNEXES

1. Assessment of eu-LISA's exposure to conflict of interest
2. Declaration of absence of conflict of interests for IAC auditors
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 / Evaluation Committee – template

¹² For example, rules on recruitment, on procurement etc.