

**2018-183**

# Rules for the prevention and management of conflict of interest concerning the members of the Management Board and members of the Advisory Groups

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# 1. Overview

Article 29<sup>1</sup> of Regulation (EU) 1726/2018 on the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011<sup>2</sup> provides for the obligation of the members<sup>3</sup> of the Management Board (MB), the Executive Director (ED), the Deputy Executive Director and the members of the Advisory Groups (AG) to undertake to act in the public interest. Article 19.1 (i) adds the requirement for the Management Board (MB) to adopt rules for the prevention and management of conflict of interest in respect of its members and publish them on the Agency's website. Also, article 48 requires the Agency to adopt internal rules on conflict of interest for the members of its Management Board (MB) and its Advisory Groups (AG) and its staff members.

The European Parliament, the Council of the EU and the European Commission adopted, with a Joint Statement dated 19/07/2012, the Common Approach on decentralised agencies<sup>4</sup> and called *inter alia* for coherent rules on preventing and managing conflicts of interest concerning members of the Management Board, whether or not they sit in personal capacity (point 11), and concerning the Director (point 18) to be developed and applied in all agencies. To help fulfilling the requirement, the Commission issued the Guidelines on Prevention and Management of Conflict of Interest in EU decentralised Agencies<sup>5</sup>, which have been extensively considered for the preparation of this document.

Since agencies' exposure to the issue of conflict of interest varies significantly from one to another, eu-LISA has performed an assessment to identify its degree of exposure to conflicts of interest. The result indicates that eu-LISA has an overall *medium to high* exposure to the risk of conflict of interest, which requires mitigating measures such as declaration of interest, its assessment, and appropriate monitoring and communication.

Since January 2018, the Agency has been implementing similar rules for its staff<sup>6</sup>.

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<sup>1</sup> Article 29 reads: 'Public interest: The members of the Management Board, the Executive Director, the Deputy Executive Director and the members of the Advisory Groups shall undertake to act in the public interest. For that purpose, they shall issue an annual, written, public statement of commitment, which shall be published on the Agency's website.  
The list of members of the Management Board and of members of the Advisory Groups shall be published on the Agency's website.'

<sup>2</sup> Official Journal of the European Union L 295/122 of 21.11.2018.

<sup>3</sup> The reference to members also applies to alternates.

<sup>4</sup> [https://europa.eu/european-union/sites/europaefiles/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](https://europa.eu/european-union/sites/europaefiles/docs/body/joint_statement_and_common_approach_2012_en.pdf)

<sup>5</sup> EC Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, [http://europa.eu/european-union/sites/europaefiles/docs/body/2013-12-10\\_guidelines\\_on\\_conflict\\_of\\_interests\\_en.pdf](http://europa.eu/european-union/sites/europaefiles/docs/body/2013-12-10_guidelines_on_conflict_of_interests_en.pdf)

<sup>6</sup> eu-LISA rules n° (2018) 548719 of 30 January 2018 on the prevention and management of Conflict of interests concerning staff members

## 2. Purpose

The purpose of the 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 interest. This is crucial for sustaining the trust and the credibility and therefore the legitimacy<sup>7</sup> of eu-LISA by protecting the integrity of its decisions, that they are not compromised by individual, illegitimate interests.

## 3. Goals

The goals of the rules are:

- ✓ To comply with the requirements set forth in Regulation No. 1726/2018 on the eu-LISA<sup>8</sup> and in the Common Approach on decentralised agencies;
- ✓ To support the implementation of the Anti-Fraud Strategy<sup>9</sup> of eu-LISA.

## 4. Scope

### What is a 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 affect eu-LISA's reputation by raising doubts about the conclusions reached. The appearance of conflict of interest can constitute a reputational risk to the Agency, even if it turns out to be unsubstantiated.

However, it should also be recognised that the MB members represent Member State interests.

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.

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<sup>7</sup> Managing Conflict of Interest in the Public Sector. A Toolkit, OECD, 2005, p 33, <http://www.oecd.org/governance/ethics/49107986.pdf>

<sup>8</sup> Regulation (EU) 1726/2018, Article 19 'Functions of the Management Board, 1. The Management Board shall: ... (i) adopt rules for the prevention and management of conflicts of interest in respect of its members and publish them on the Agency's website; ...'

<sup>9</sup> Anti-Fraud Strategy of eu-LISA, adopted by the eu-LISA Management Board on 17 November 2015

These rules apply to:

- The MB members and their alternates,
- The AG members.

They shall declare all interests that are or could be perceived as related to the domain of activity of eu-LISA. MB and AG members should declare the interests in entities providing services to the Agency (i.e. in the areas of IT, consultancy, infrastructure, catering, event organisation, security, business continuity<sup>10</sup>). They shall also declare positions (either a managerial role or other influential roles) in a governing body (irrespective if such position is paid or not) of a professional organisation with an interest in the field of IT or related to the domain of activity of eu-LISA. The DoI form shall be complied with wherever referred to in these rules and shall provide for the declaration of:

- a. Any direct financial interests of a value above EUR 5 000.00 (five thousands) net/year, which might create a conflict of interest,
- b. Current activities and activities in the past two years of the concerned person,
- c. Spouse's/partner's/dependent family members' current activity and financial interests that might entail a risk of conflict of interest;
- d. Other relevant interests.

It is the responsibility of the MB members and AG members to adhere to these rules.

## 5. Preventing Conflicts of Interest - 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.

Since the members of the Management Board might be involved in recruitment procedures, it is important that due account is taken of the recent case law on this subject<sup>11</sup> in order to prevent situation which may be detrimental to the reputation and the functioning of the Agency.

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<sup>10</sup> The list is not exhaustive

<sup>11</sup> Judgment - 28/09/2017 - Hristov v Commission and EMA

These rules provides for the MB members and AG members that:

- Upon his/her official nomination or appointment, he/she shall declare his/her interests by using the declaration of interest form (thereinafter Dol) and instructions provided in Annex 1 enclosed and submit it to the MB Secretariat.
- He/she shall update his/her Dol every year by the 31<sup>st</sup> of March or whenever his/her situation changes in respect of interests declared;
- By the same date, he/she shall also make an annual public statement of commitment to act in the public interest using the form in Annex 2;
- At the beginning of each MB meeting, the members attending the meeting shall inform the MB Chairperson of any conflict of interest with regard to a particular item on the agenda. In the event of such a conflict of interest, the person concerned shall, at the request of the MB Chairperson, withdraw from the meeting whilst the relevant items of the agenda are being dealt with;
- If at any time, in the course of duties, he/she 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, immediately update his/her Dol and refer it to the MB Chairperson via the MB Secretariat;
- Their Dols shall be published on the Agency's website, whilst ensuring that personal data legislation is adhered to.

## 6. Rules on Managing Conflicts of Interest

The MB Chairperson shall ensure that the rules are observed by all persons concerned. He/she shall be supported in this task by the AG Chairpersons and by the MB Secretariat<sup>12</sup>. The MB Chairperson undertakes to:

- Remind the MB members of their obligation to declare and update their interests annually by 31<sup>st</sup> of March, in line with the Dol form in Annex 1. Also, remind them to complete a public statement of commitment annually by 31<sup>st</sup> of March, in line with the form in Annex 2;

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<sup>12</sup> The support by the MB Secretariat shall consist of:

- facilitating the assessment of Dols by the chairperson and vice-chairperson,
- collecting, keeping, and safeguarding the completed Dols and public statements of commitment together with assessments results,
- ensuring publication on the Agency's website of the completed Dols and public statements of commitment,
- providing requested statistical reports on the status and changes of declarations (i.e. number of Dols submitted, Dol submitted on time, number of Dols evaluated, number of actions taken, etc).

- Each year by 31<sup>st</sup> of May, assess the declarations of interest of the MB members completed in line with the DoI form in Annex 1, and confirm in writing whether a conflict of interest exists or not by filling out the assessment form in **Annex 3** enclosed. The MB vice-chairperson (or a designated MB member in the absence of a vice-chairperson) shall assess the DoI submitted by the MB Chairperson using the assessment form in **Annex 3**.
- If the existence of a conflict of interest is confirmed, at the request of the MB Chairperson (or MB vice-chairperson if the person concerned is the MB chairperson), the person concerned shall stop attending MB meetings and stop receiving information until the conflict of interest is resolved or no longer exists;
- If a confirmed conflict of interest of a MB member is not resolved, the MB acting on a two-thirds majority of all its members with the right to vote, may ask the competent Member State (or the Commission if the member concerned represents it), to replace the member concerned.

The AG Chairpersons, with the support of the MB Secretariat, undertake to:

- Remind the AG members of their obligation to declare and update their interests annually by 31<sup>st</sup> of March, in line with the form in **Annex 1**. Also, remind them to complete a public statement of commitment annually by 31<sup>st</sup> of March, in line with the form in **Annex 2**;
- Each year by 31<sup>st</sup> of May, assess the declarations of interests completed in line with the form in **Annex 1** and confirm in writing whether a conflict of interest exists or not by filling out the assessment form in **Annex 3** enclosed. The AG vice-chairpersons (or a designated AG member in the absence of vice-chairperson) shall assess the DoI submitted by their chairpersons using the assessment form in **Annex 3**.
- If the existence of a conflict of interest is confirmed, at the request of the respective AG Chairperson, the person concerned shall stop attending AG meetings and receiving related information until the conflict of interest is resolved or no longer applies;
- If an identified conflict of interest of a AG member is not resolved, the respective AG, acting on a two-thirds majority of all its members with right to vote, may ask the competent Member State (or the Commission if the member concerned represents it) to replace the member concerned;
- At the beginning of each AG meeting, the members attending the meeting shall inform the AG Chairperson of any conflict of interest with regard to a particular item on the agenda. In the event of such a conflict of interest, the person concerned shall, at the request of the AG Chairperson, withdraw from the meeting whilst the relevant items of the agenda are being dealt with.

## 7. Breach of trust and remedial actions

Failure by a MB or AG member to declare an actual or potential conflict of interest, or to fill in the declaration of interest (Dol form in Annex 1) in a complete, correct, and timely manner may be considered as a breach of trust towards the Agency. Because of that failure, and taking into account the reasons for the failure to declare (negligence, justified lack of knowledge<sup>13</sup>), the MB or the concerned AG acting on a two-thirds majority may:

- send a letter of reprimand to the concerned person or
- ask the competent Member State (or the Commission if the member concerned represents it) to proceed with the replacement of the concerned person.

If the concerned person was involved in a decision-making or opinion issuing procedure of the Agency without having declared an interest, the Agency, based on an ex post review of the person's activities and contributions, may review or cancel that decision or opinion if seriously affected by the conflict of interest.

## 8. Performance indicators (PIs) and regular review

Based on annual reports requested from the MB Secretariat, the Corporate Services Department of eu-LISA (CSD) will monitor and report in a dedicated section of the Agency's annual activity report the following performance indicators:

- Number and % of declarations of interest (Dols) submitted, of which on time. Target set to 100% respectively >80%,
- number and % of Dols evaluated. Target set to 100%,
- number and % of preventive measures / decisions limiting participation / taken in compliance with these rules.

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

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<sup>13</sup> For example due to confidentiality connected to the profession of the household member



## 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) 45/2001 according to:

- Article 19(1) (i) of Regulation (EU) 1726/2018 on eu-LISA and Article 41(4) of the Financial Regulation of eu-LISA;

For publication, only the names of members of the Management Board shall be made available, based on Article 5(b) of Regulation (EC) 45/2001.

The MB Secretariat of eu-LISA collects, keeps, and safeguards all DoIs completed by the MB and AG members, in line with the form in Annex 1, together with assessments results as items of the MB and AG 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

[management-board@eulisa.europa.eu](mailto:management-board@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 interest in the performance of duties of the declarant.

DoIs may be completed on paper or electronically.

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 of the EC, the Internal Audit Capability of eu-LISA, OLAF, the European Ombudsman and the European Data Protection Supervisor.

The conservation period of DoI per category of data subjects is five years from the date of submission of the relevant DoI, which 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 is 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.

The Data Protection Officer of eu-LISA (DPO) will ensure the compliance of these rules with the data protection legal framework. 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

The MB of eu-LISA adopted these rules on 21 November 2018<sup>14</sup>, which shall enter into force on the same date (i.e. 11 December 2018) of entry into force of Regulation (EU) 1726/2018 the European Union Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), and amending Regulation (EC) 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) 1077/2011, and shall be published on eu-LISA's website.

A review of these rules shall be carried out after one year from the date of entry into force and every two years after.

## ANNEXES

1. Declaration of Interest (Dol) - template
2. Annual Statement of Commitment – template
3. Assessment of Dol - template

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<sup>14</sup> Decisions of the 19<sup>th</sup> meeting of the MB of the eu-LISA ref. 2018-168/21.11.2018, point B.17.