



**DECISION NO MB/2013/7  
OF THE MANAGEMENT BOARD OF THE  
EUROPEAN AGENCY FOR NETWORK AND INFORMATION SECURITY  
ON RULES FOR PREVENTION AND MANAGEMENT OF CONFLICTS OF INTEREST**

THE MANAGEMENT BOARD OF ENISA,

Having regard to the Regulation (EU) No 523/2013 of the European Parliament and of the Council of 21 May 2013 concerning the European Union Agency for Network and Information Security (ENISA) and repealing Regulation (EC) No 460/2004 and, in particular Article 5(6) thereof,

Having regard to the European Court of Auditors Special Report No 15/2012 On Management of Conflict of Interest in Selected EU Agencies.

HAS ADOPTED THIS DECISION:

**Article 1  
Objective**

1. The 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. Effective management of conflicts of interests and assuring legality and regularity of its processes is thus a crucial requirement if ENISA wants to play a pivotal role in ensuring that its opinions and recommendations have credibility with all stakeholders and the public. For this reason it is vital to ensure ENISA's reputation for integrity, impartiality and high professional standards<sup>1</sup>.
2. In order to achieve this ENISA has to strike a delicate balance between getting the right expertise to guarantee high quality decision making and at the same time strictly avoiding conflicting interests influencing or seen as influencing the decision-making process. Important tools to achieve this balance are awareness raising, methods for detecting risks to the Agency's integrity, the establishment of clear boundaries for (un)acceptable interests and the appropriate management of conflict of interest situations, including underlying clear procedures. In this, it is not so much a matter of eliminating any possibility of conflict of interest, but of detecting them at an early stage, recording them and handling them appropriately.

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<sup>1</sup> See in particular recital 41 of the ENISA Founding Regulation (EU) 526/2013

## **Article 2 Scope**

This Decision applies to the entire ENISA as an organisation and all of its activities, whether administrative or operational in nature. The scope thus includes all members of the Management Board, their alternates, experts of the ad hoc Working Groups, the Executive Director, officials seconded by the Member States and the staff of the Agency.

## **Article 3 Legal basis**

1. General provisions on conflict of interest are laid down in the Staff Regulation and the Conditions of Employment of other Staff<sup>2</sup>. The Financial Regulation defines what a conflict of interest of a financial nature is<sup>3</sup>.
2. Article 15 of Regulation (EU) No 526/2013 concerning the European Union Agency for Network and Information Security (ENISA) provides for the obligation for the Members of the Management Board, the Executive Director and officials seconded by Member States on a temporary basis to make a declaration of commitments and a declaration indicating the absence of any direct or indirect interest, which might be considered prejudicial to their independence. Such declarations shall be made in writing.
3. Therefore, as a rule, any person facing a conflict of interest situation is under a duty of informing and, as appropriate, discussing the best way of avoiding that the situation has an impact on the validity of the decisions.
4. The Management Board have therefore decided to give guidance on how these rules should be interpreted as far as members of the Management Board and their alternates, the Executive Director and officials seconded by Member States on a temporary basis are concerned.

## **Article 4 Definition**

1. There is a conflict of interests where the impartiality and objectivity of a decision, opinion or recommendation of the Agency, including its bodies, is or might in the public perception be compromised by an interest held by, or entrusted to, an individual working for the Agency.
2. A conflict of interest exists when a person appointed to a function has a personal or vested interest in the outcome of decisions resulting from that function. Consequently, a person must not be involved in any decision during the course of his/her duties with the knowledge that there is an opportunity to further his/her personal interests.
3. It must be highlighted that an "interest" declared is not automatically considered a conflict of interest. Therefore, the immediate aim of a conflict-of-interest policy is to protect the integrity of official policy and administrative decisions and of public management generally.

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<sup>2</sup> See in particular Article 11 of the Staff Regulations.

<sup>3</sup> See Article 34 of Commission Regulation (EC/Euratom) N°2342/2002 laying down the implementing rules. OJ L357/1, 31/12/2002.

4. Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time:
- Direct interests: Interests of personal benefit to the individual at the time of declaration, likely to influence or given the appearance of influencing his behaviour.
  - Indirect interests: Other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.

Some examples of cases that could lead to a conflict of interests are:

- a) any matter being considered by, or arising at a meeting of the Management Board in which a member, his/her alternate or the Executive Director or any household member<sup>4</sup> have a direct or an indirect pecuniary interest;
- b) a situation where a member of the Management Board, his/her alternate or the Executive Director are in a position to make or make a decision, or are in a position to act, motivated by other or additional considerations than the best interests of ENISA;
- d) a situation where a member of the Management Board, his/her alternate, the Executive Director or any household members learn of an opportunity for profit which might be valuable either personally or to any person in which they have a direct or indirect pecuniary interest.

These cases are not intended to be exhaustive.

5. It is recognised that it is often difficult to objectively assess whether a Conflict of Interest situation exists. If a Member of the Management Board, the Executive Director or official seconded by Member States on a temporary basis feels that a potential Conflict of Interest position may exist he/she is bound to declare it immediately. Each individual is responsible for the declaration of his/her interests and, to the best of his/her knowledge, those of his household members. In order to maintain privacy, the names of the household members do not need to be declared.

## **Article 5 General principles**

- 1. Independence.** Independence from all external interests is one of the core values of the Agency. In all of its processes ENISA shall ensure that it is independent from all external interests and that impartial decisions are taken. To achieve this, detailed guarantees and checks need to be implemented in all processes within the Agency. As a first step all potential conflicting of interests shall be declared. Each process owner<sup>5</sup> shall then be responsible for putting in place the necessary checks in the daily working practices, including regular checks for potential conflicting interests.
- 2. Transparency.** Transparency is strongly embedded in the Agency's founding Regulation<sup>6</sup>. Decisions and opinions are formed as openly as possible. For this reason, declarations of interests of the members of the Management Board, their alternates, the Executive Director as well as officials seconded by the Member States are made available to the general public and published on ENISA website.
- 3. Confidentiality.** Article 17 of the ENISA Founding Regulation (EU) 526/2013 imposes on the members of the Management Board, the Executive Director, the members of

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<sup>4</sup> For this purpose "household member" is considered to be persons forming a household with the person making this declaration (spouse, partner and/or dependent children)

<sup>5</sup> A process owner is a person designated by the Executive Director, responsible for the efficient and effective functioning of the process and has the necessary authority to take action or make decisions with an impact on the process performance. In general, the process owner ensures that proper action is taken with respect to the implementation, maintenance, control and improvement of the process.

<sup>6</sup> See art.16 of the ENISA Founding Regulation (EU) 526/2013

the Permanent Stakeholders Group, experts participating in ad hoc Working Groups as well as on all staff members of the Agency the duty not to disclose information of the kind covered by the duty of professional secrecy, and this even after their duties have ceased. This confidentiality duty is also included in the respective Internal Rules of Operation of the ENISA Management Board.

For the ENISA staff also Articles 17 and 19 of the Staff Regulations impose a duty of strict confidentiality. The confidentiality duty shall furthermore also imply that the individuals working for the Agency shall not seek to gain any improper advantages from the information to which they have access and that is covered by the duty of professional secrecy. The management of the conflicts of interest is an element for preventing information leaks.

4. **Awareness.** As the Agency role is to promote the public interest in an independent and transparent manner with respect for confidentiality rules, it is crucial that the individuals working with the Agency understand that the exercise of public authority comes with certain duties. The Agency shall support these individuals in fulfilling their duties, raise awareness and set up further implementing procedures for identifying and handling conflict of interest situations.

## **Article 6 Responsibilities**

1. **Individuals working for the Agency.** The first responsibility in avoiding and declaring any potential conflicting interests and in respecting confidentiality rules shall lie with the public officials and other individuals working for the Agency. To this effect, they must submit declarations of interests compliant with the template in Annex.
2. **Secretariat of the ENISA Management Board.** The respective Secretariat of the Management Board shall keep a register of the declarations of interests submitted.
3. **ENISA Staff.** For the staff of the Agency, the Executive Director is responsible making sure that rules are in place to prevent and address (potential) conflicts of interest and raise any issues to the Management Board for consideration where appropriate.
4. **Ethical Committee.** An Ethical Committee with a consultative function is established within the Agency. It is available to the Management Board as well as to the Executive Director for consultation on matters related to potential conflict of interests of the individuals staffing the Agency and its bodies.

The Ethical Committee is composed of the Head of the Administration of the Agency, acting as the Chair of the Committee, of a person designated by the Management Board, of the Agency's Legal officer and of the Agency's Procurement Officer. The secretariat of this Committee is organised by its Chair.

On request of the Executive Director or the Management Board, the Ethical Committee issues a reasoned advice, without prejudice to the decision-making powers of the Agency body requesting it.

## **Article 7 Implementation**

1. **Preventing conflicts of interest: general obligations.** All individuals working for the Agency have to comply with the legal obligations bestowed upon them, as well as

with the respective rules of procedure of the ENISA Management Board. As one of the main obligations they shall declare any interests which could be considered to be prejudicial to their independence.

**2. Preventing conflicts of interest: declaration 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.

The **timeframe** for declaring interests includes all current interests and those that existed during the last 3 years preceding the declaration.

With regard to **family ties**, all relevant interests held by any members of household (spouse, partner and dependent children) need to be declared.

**Financial interests** in any commercial entity are to be declared as regards holding of shares, stocks or comparable amounting to a voting right of 5% or more. Interests below this threshold are declared on a voluntary basis.

**Other potential interests** include among others professional relationships such as employment, and consultancy, membership of a managing body or advisory body, other memberships or affiliations, EU grants.

## **2.1 Management Board**

### *2.1.1 Initial and annual declarations*

According to Article 15(1) of the ENISA Founding Regulation, all members of the Management Board make a written declaration of interest which could be considered to be prejudicial to their independence. Practical arrangements for these declarations are laid down in the Agency's internal rules of operation.

### *2.1.2 Specific declarations*

Additionally, at each meeting the Management Board members, observers and any experts participating in the meeting are explicitly asked by the Chair to declare any interests which could be considered to be prejudicial to their independence with respect to any of the points on the agenda.

## **2.2. ENISA staff**

The ENISA's staff includes all temporary agents, contract agents and seconded staff that are employed by or work for the Agency. The Staff Regulations (Articles 11 to 16), the Rules on the secondment of national experts to ENISA impose a number of obligations on all staff that guarantee their independence.

If at any point in time changes occur to the situation of the staff member's interests, or his/her independence to work on a very specific dossier is at risk, the person involved must update his/her declaration without delay or declare the specific interest in the dossier at hand to his/her line manager.

When a staff member leaves service at ENISA, he/she shall be reminded of his duties under the Staff Regulations and shall duly sign a document regarding integrity, discretion and confidentiality.

After leaving the Agency service, former ENISA staff has to notify the Agency for a period of two years of any employment that could constitute a conflict of interest with the previous ENISA post. The Agency can, if needed, either forbid the former staff member from undertaking it or give its approval subject to any conditions it thinks fit (Article 16 Staff Regulations).

**2.3. Expert groups, ad hoc Working Groups and Permanent Stakeholder Group.** Informal Expert groups, ad hoc Working Groups, if established, and Permanent Stakeholder Group support the Agency in its work. As these groups have a balanced composition, and as they are only advisory bodies, the risk of conflicting interests affecting the formal work of ENISA is minimal. However, it shall be a standard practice that the person chairing these meetings requests when relevant that any conflicting interests are declared at the start of each meeting.

**2.4 Working with third parties.** Whenever the Agency is contracting external service providers to support it in its tasks, it shall ensure that these contractors are bound by confidentiality duties and that potential conflicts of interests are avoided. Both a confidentiality clause and a conflict of interests' clause are included in all such contracts that ENISA concludes. Based on those contractual provisions, the Agency may require external consultants (regardless of him/her working intramuros or not) to make a specific declaration of interests with regard to the work performed for ENISA, in case they would be involved in the preparation of decision-making at the Agency.

### **3. Identifying and Handling of potential Conflicts of Interests.**

**3.1 Management Board.** It shall be the task of the respective Secretariat to regularly monitor the initial and annual declarations made by the members of the Management Board and their alternates and to bring any potential conflict of interests to the attention of the Chairperson of the Management Board. The Executive Director shall also be informed of any such cases. On the basis of the type and nature of the conflict identified, the Chairperson shall decide on the appropriate level of participation in the work of the Management Board.

In case of a problem which hampers the functioning of the Management Board, the Chairperson in consultation with the Executive Director shall send a formal notification to the appointing authority<sup>7</sup> stating the nature of the problem. The same procedure will apply for any false declaration, wilful omission or refusal to declare interests, which will be considered as a breach of trust towards the Agency.

Based on the information provided by the members of the Management Board, their alternates, the Executive Director, the Management Board will jointly evaluate whether a declared interest constitutes a conflict. As a result of such assessment, the matter will be brought to the attention at the next ordinary meeting of the Management Board.

**3.2. ENISA staff.** Declarations of interests of the Executive Director are reviewed by the Chairperson of the Management Board. When he/she detects a potential conflict of interests, he brings the matter to the attention of the Management Board that shall then decide on the action to take.

For all other Agency staff potential issues shall be assessed by the respective line managers and escalated towards the appointing authority for decision if necessary. The appointing authority shall have the possibility to consult the Ethical Committee before deciding on the action to take. Any false declaration or wilful omission of potential conflicts of interests, as well as the refusal to declare interests may result in disciplinary action under the Staff Regulations.

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<sup>7</sup> For the Management Board the appointing authority is the respective Member State (Article 6 (1) ENISA Founding Regulation (EU) 526/2013)

**Article 8**  
**Further technical implementation**

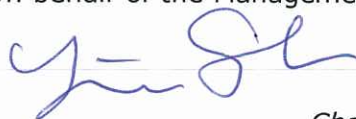
1. The template for Declarations of Interests annexed to these rules may be amended by the Management Board on the basis of a proposal by the Executive Director.
2. The Executive Director shall adopt implementing rules related to Article 16 of the Staff Regulation concerning post-employment.

**Article 9**  
**Entry into force**

This Decision shall enter into force on the date of its signature.

Done at Vilnius, on 17 October 2013.

On behalf of the Management Board



*Chairperson*

**Annex**

**ANNUAL DECLARATION OF INTEREST**

Title (Ms., Mr., Dr., Prof.).....

First Name: .....

Surname: .....

ENISA Position: .....

*NB! Please specify your position as the member of the Management Board or alternate for the particular Declaration.*

hereby declares to have the following direct or indirect interest of relevance to ENISA:

1. Work and activities in organisations relevant to the operating area of ENISA.

During the past 3 years, all activities performed for or on behalf of an organization operating in a related field, whether related to the substance of ENISA mandate or to its operational support, and whether or not these activities have been subject to regular or occasional remuneration in cash or kind, either by the declaring member or to the best of his/her knowledge the members of his/her household, including i) participation in the internal decision-making of a company (e.g. Board membership, executive or non executive directorship), ii) permanent or temporary member of the personnel of a company/institute (Other activities performed within a company (e.g. traineeship) are also subject to declaration.), iii) work contracted out by companies/institute, through consultancy or otherwise. Indicate names of organisation/Position/Period:

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2. From the moment of taking the post of the member of the Management Board, any financial interests in a company relevant to the operating area of ENISA and/or voting rights in a company, including holding of stocks and shares, equity, bonds, partnership



interests<sup>8</sup> in the capital of a company, one of its subsidiaries or a company in the capital of which it has a holding (names of the companies):

3. Other links with the field of activity of ENISA during the preceding 3 years, including the participation in relevant activities supported by EU grants or contracts. All assistance and support received from stakeholders of ENISA, whether associated with direct or indirect pecuniary or material benefits, including: i) grants for study or research, ii) fellowships or sponsorships endowed by a company operating in the related business and iii) any other relevant activity related to EU grants and contracts. If such assistance or support is still subject to compensation in any form then declaration of any activity independently of granting period:

4. Any membership role or affiliation, or any other links with the organisations relevant to ENISA.

During the preceding 3 years, interests of non-pecuniary or material benefit to the declaring member, arising from professional activities or affiliation with national or international organisations or bodies with tasks similar to ENISA. It also includes the participation in public interest groups, professional societies, clubs or organisations which have an agenda or an interest or involvement in ENISA's work:

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<sup>8</sup> When declaring financial interests e.g. stocks and shares, only the kind, number and company name need be stated.

5. Other interests or facts whether or not related to such organisations which you consider should be made known to ENISA, including matters relating to the members of your household:

I hereby declare that I have read the Rules for prevention and management of conflicts of interest and that the above Declaration of Interest is at my knowledge complete.

I further declare that should any changes occur and should it appear that I have or acquire additional interests that should be made known to ENISA I shall forthwith declare them and complete a new declaration of interests detailing the changes.

I understand that this Declaration will be entered in a register held by the Agency, and will be accessible to the public, on request, at the headquarters of the Agency and will be made public on the Agency's website.

Please note that the European Union Agency for Network and Information Security (ENISA) will ensure on its part that your personal data hereby submitted is processed as required by *Regulation (EC) No 45/2001 on protection of individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data*. To exercise these rights, please contact the relevant Secretariat. *ENISA will not keep any Declaration of Interests for a period longer than 7 years. You have the right to access your Declaration of Interest and to update or correct it. In case in the Declaration of Interest you include information about other data subjects (i.e. your family), you are yourself responsible to inform them about their rights according to the said Regulation. The purpose of processing this data is to safeguard the independence of ENISA's advice, clarify its credibility as a body of expertise, and to protect the brand value of ENISA and its constituent bodies.*

Signature:.....

Date:.....

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