

RULES FOR THE PREVENTION AND MANAGEMENT OF CONFLICT OF INTEREST

CONCERNING THE REPRESENTATIVES OF
THE MANAGEMENT BOARD, OF THE
PROGRAMME MANAGEMENT BOARDS AND
OF THE ADVISORY GROUPS

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1. Overview

Under Article 29 of Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 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 [hereinafter “Regulation (EU) 2018/1726”]¹ the members of the Management Board (MB), the Executive Director (ED), the Deputy Executive Director (DED) and the members of the Advisory Groups (AG) of the Agency shall undertake to act in the public interest.

Consequently, Article 19(1)(i) of the Regulation (EU) 2018/1726 requires the MB to adopt rules for the prevention and management of conflict of interest in respect of its members. Furthermore, Article 48 of the Regulation (EU) 2018/1726 requires the Agency to adopt internal rules on conflict of interest for the members of its MB, its AGs and its staff members. These rules shall be published on the Agency’s website.

The above rules are in line with the European Parliament, the Council of the European Union and the European Commission’s Joint Statement dated 19 July 2012, adopting the Common Approach on decentralised agencies [hereinafter “Common Approach on decentralised agencies”]² in which the institutions 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 guidance on the avoidance and management of conflicts of interest under the Financial Regulation³, 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, appropriate monitoring and communication.

The Rules also support the implementation of the eu-LISA Anti-Fraud Strategy⁴.

Since December 2020, the Agency has been implementing similar rules for its staff⁵.

In line with Article 13 of the Regulation 2022/850 of the European Parliament and of the Council of 30 May 2022 on a computerised system for the cross-border electronic exchange of data in the area of judicial cooperation in civil and criminal matters (e-CODEX system), and amending Regulation (EU) 2018/1726⁶, by 1 January 2023, eu-LISA’s Management Board shall establish a permanent e-CODEX Programme Management Board (PMB). The aim of the Programme Management Board is to advise eu-LISA’s

¹ OJ L 295, 21.11.2018, p. 99.

² https://europa.eu/european-union/sites/europa.eu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf

³ Guidance on the avoidance and management of conflicts of interest under the Financial Regulation. [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XC0409(01)&from=EN)

⁴ Anti-Fraud Strategy 2019-2021, adopted by the Management Board of eu_LISA on 20 March 2019 and Anti-Fraud Strategy 2022-2024, adopted by the Management Board of eu_LISA on 17 August 2022

⁵ Decision No 2020-405 of 23.12.2020 of the Management Board of eu-LISA on implementing rules on the prevention and management of Conflict of interests of the staff members.

https://www.eulisa.europa.eu/AboutUs/Documents/MB%20Decissions/2020%e2%80%93405_IR%200n%20Col%20for%20staff.pdf

⁶ OJ L 150, 1.6.2022, p. 1–19

Management Board on the prioritisation of activities, including on developing digital procedural standards, new features and new software versions. The Programme Management Board being a new body in the governance structure of eu-LISA, the above-mentioned rules on conflict of interest shall be applicable to its members.

In line with Article 11 (1) of Regulation (EU) 2023/969 of the European Parliament and of the Council of 10 May 2023 establishing a collaboration platform to support the functioning of joint investigation teams and amending Regulation (EU) 2018/1726⁷, prior to the design and development phase of the JIITs collaboration platform, the Management Board of eu-LISA shall establish a Programme Management Board for the duration of the design and development phase.

2. Objectives

The purpose of the rules is to assure an effective prevention and handling of potential conflict of interest. The rules are crucial for sustaining the trust, the credibility and the legitimacy⁸ of eu-LISA by protecting the integrity of its decisions which must not be compromised by individual, illegitimate interests.

The goal of the rules is to comply with the requirements set forth in Regulation (EU) 2018/1726 and in the Common Approach on decentralised agencies.

3. 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/PMB/AG 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 was an actual conflict.

These rules apply to:

- The MB members, their alternates and observers;
- The PMB members and their alternates;

⁷ OJ L 132, 17.5.2023, p. 1–20

⁸ Managing Conflict of Interest in the Public Sector. A Toolkit, OECD, 2005, p 33, <http://www.oecd.org/governance/ethics/49107986.pdf>

- The AG members and observers.

They shall declare all interests that are or could be perceived as related to the domain of activity of eu-LISA. MB, PMB and AG representatives 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 continuity⁹). 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 Declaration of Interest (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 thousand) net/year, which might create a conflict of interest;
- b. Current activities and activities in the past two years of the concerned person;
- c. Household 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, PMB and AG representatives to adhere to these rules.

4. 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 publically 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 MB members might be involved in the recruitment procedures, it is important that due account is taken of the recent case law on this subject¹⁰ to prevent situations which may be detrimental to the reputation and the functioning of the Agency.

These rules provide for the MB/PMB/AG members, alternates and observers that:

- Upon his/her official nomination or appointment, he/she shall declare his/her interests by using the declaration of interest form (hereinafter DoI) and instructions provided in Annex 1 enclosed and submit it to the MB Secretariat;
- He/she shall update his/her DoI every year by 31 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

⁹ This list is not exhaustive.

¹⁰ Judgment of 28/09/2017, *Hristov v Commission and EMA*, T-495/16 RENV I, EU:T:2017:676.

interest using the form in Annex 2;

- At the beginning of each 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 DoI and refer it to the MB Chairperson via the MB Secretariat;
- Their DoIs shall be published on the Agency's website, whilst ensuring that personal data legislation is adhered to.

5. 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 PMB Chairpersons, AG Chairpersons and by the MB Secretariat¹¹. The MB Chairperson undertakes to:

- Remind the MB members of their obligation to declare and update their interests annually by 31st of March, in line with the DoI form in Annex 1. Also, remind them to complete a public statement of commitment annually by 31st of March, in line with the form in Annex 2;
- Each year by 31st 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 Deputy Chairperson (or a designated MB member in the absence of a Deputy 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 Deputy 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 PMB Chairpersons, with the support of the MB Secretariat, undertake to:

- Remind the PMB members of their obligation to declare and update their interests annually by 31 March, in line with the form in **Annex 1**. Also, remind them to complete a public statement of commitment annually by 31 March, in line with the form in **Annex 2**;
- Each year by 31 May, assess the declarations of interests completed in line with the form in **Annex 1** and

¹¹ The support by the MB Secretariat shall consist of:

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

confirm in writing whether a conflict of interest exists or not by filling out the assessment form in **Annex 3** enclosed. The PMB Deputy Chairpersons (or a designated PMB member in the absence of Deputy Chairpersons) 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 PMB Chairperson, the person concerned shall stop attending PMB meetings and receiving related information until the conflict of interest is resolved or no longer applies;
- If an identified conflict of interest of a PMB member is not resolved, the respective PMB, 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 PMB meeting, the members attending the meeting shall inform the PMB 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 PMB Chairperson, withdraw from the meeting whilst the relevant items of the agenda are being dealt with.

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 March, in line with the form in **Annex 1**. Also, remind them to complete a public statement of commitment annually by 31 March, in line with the form in **Annex 2**;
- Each year by 31 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 Deputy Chairpersons (or a designated AG member in the absence of Deputy Chairpersons) 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.

6. Breach of trust and remedial actions

Failure by a MB, PMB or AG member, alternate and observerto declare an actual or potential conflict of interest, or to fill in the declaration of interest (DoI 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 knowledge¹²), the MB, the PMB or 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/EU Agency if the member concerned represents them) to replace 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 it is seriously affected by the conflict of interest.

7. 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 percentage of declarations of interest (Dols) submitted, of which on time. Target set to 100% respectively >80%;
- Number and percentage of Dols evaluated. Target set to 100%;
- Number and percentage 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.

8. 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 [hereinafter "Regulation (EU) 2018/1725"]¹³.

The purpose is to avoid conflicts of interests and safeguard eu-LISA's independence by ensuring impartiality of the persons concerned.

In terms of processing operations, two different activities can be distinguished:

- the collection and assessment of personal data in the declarations within eu-LISA, and

¹² For example, due to confidentiality connected to the profession of the household member.

¹³ OJ L 295, 21.11.2018, p. 39.

- the publication of declarations on eu-LISA website.

The Dol processing operations are based on Article 5 (a) and (b) of Regulation (EU) 2018/1725:

- Processing is necessary for the performance of tasks carried out in the public interest or in the exercise of official authority vested in eu-LISA:
 - Regulation (EU) 2018/1726, in particular, Article 29 (“public interest”) and Article 48 (“Prevention of conflict of interest”).
- Processing is necessary for compliance with a legal obligation to which eu-LISA is subject:
 - Regulation (EU) 2018/1726, in particular, Article 29 (“public interest”): eu-LISA’s legal obligation directed to issuing annual, written, public statement of commitment that shall be published on the Agency’s website alongside with the list of members of the Management Board and of members of the Advisory Groups. In addition, in line with the applicable rules (MB document 2023-363), an annual public declaration of interest (DOI) will be published on eu-LISA’s website;
 - Article 19(1) (i) of Regulation (EU) 2018/1726;
 - Article 42 of the Financial Rules of eu-LISA.
- Processing is necessary for the management and functioning of the Agency:
 - Regulation (EU) 2018/1726, in particular, Article 36(1) (b) (“Purposes of processing personal data”).

Dols may be completed on paper or electronically.

When data on household members of Management Board, Programme Management Board and Advisory Groups are also collected and published, these persons should receive the information listed in Article 16 of Regulation (EU) 2018/1725, at the latest when the data are first disclosed, so that they can exercise, if need be, their right to object to the processing. The Management Board, Programme Management Board and Advisory Groups representatives must inform their family members about the collection and further publication of their personal data in due time, so that they have the opportunity to exercise their right to object under Article 23 of the Regulation (EU) 2018/1725.

Data subjects can exercise their rights of access and rectification of the factual data at any time before the closure of the assessment by contacting the controller - Executive Support and Stakeholder Relations Unit (ESU) – at management-board@eulisa.europa.eu.

The recipients of the Dol are designated eu-LISA staff members, staff working in the Management Board Secretariat, Executive Director of eu-LISA, the general public. Dols 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 European Commission, the Internal Audit Capability of eu-LISA, OLAF, the European Ombudsman and the European Data Protection Supervisor.

The conservation period of Dol per category of data subjects is five (5) years from the date of submission of the relevant Dol, extended with one (1) year if duly justified.

Data subjects have the right to access their Dol 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 Dol, the data subject concerned is contacted to update the Dol. In case a breach of the rules

procedure is opened, the data subject is notified without delay.

The Data Controller - Stakeholders Management and Support Sector, will ensure the compliance of these rules with the data protection legal framework. Data subjects can exercise their rights under Regulation (EU) 2018/1725, by email at management-board@eulisa.europa.eu.

With regard to issues related to the processing of their personal data under Regulation (EU) 2018/1725, data subjects are also entitled to have recourse at any time to eu-LISA's DPO (dpo@eulisa.europa.eu) or can lodge a complaint directly to the European Data Protection Supervisor (edps@edps.europa.eu) <http://www.edps.europa.eu>, if they consider that their rights under Regulation (EU) 2018/1725 have been infringed as a result of the processing of their personal data by the Data Controller.

For more information, please consult:

- The record of processing activity no. 38 - 0001/2016, available on eu-LISA website: https://www.eulisa.europa.eu/AboutUs/DP/Documents/web_DPO_Register.pdf#zoom=300.
- The privacy statement available on eu-LISA website:
- <https://eulisa.europa.eu/Activities/Data-Protection/privacy-notice>

9. Entry into Force and Publication

The MB of eu-LISA adopted the first Rules on for the prevention and management of conflict of interest concerning the representatives of the Management Board and of the Advisory Groups on 21 November 2018¹⁴, entered into force on 11 December 2018, and were published on eu-LISA's website.

The MB of eu-LISA adopted the updated version of the Rules on for the prevention and management of conflict of interest concerning the members of the Management Board and members of the Advisory Groups on 20.01.2022¹⁵, and were published on eu-LISA's website.

The MB of eu-LISA adopts the present Rules on for the prevention and management of conflict of interest concerning the representatives of the Management Board, of the Programme Management Board and of the Advisory Groups which enter into force on xx.xx.2023¹⁶, and will be published on eu-LISA's website.

The review of these rules is set to be carried out after every three (3) years after from the date of entry into force, unless an amendment is needed.

ANNEXES

Annex 1: Declaration of Interest (DoI) - template

Annex 2: Annual Statement of Commitment – template

Annex 3: Assessment of DoI - template

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

¹⁵ Decisions of the 33rd meeting of the MB of the eu-LISA ref. 2022-006/20.01.2022, WP 3.

¹⁶ The current Rules on for the prevention and management of conflict of interest concerning the representatives of the Management Board, of the Programme Management Board and of the Advisory Groups are a revision of the initial rules adopted on xx.xx.2023.