
Decision n°: 2014/14

SUBJECT : Rules governing conflict of interest in the Management Board and Scientific Committee of the FRA

HAVING REGARD to the Council Regulation (EC) No 168/2007 of 15 February 2007 (hereinafter referred to as "the Founding Regulation"), establishing the European Union Agency for Fundamental Rights (hereinafter referred to as "the Agency"), and in particular Article 12, 14 and 16 thereof;

HAVING REGARD to Regulation (EC) No 45/2001 on the protection of personal data by European institutions and bodies;

HAVING REGARD to the Decision of the Management Board of the Agency of 20 May 2011 adopting the Rules of Procedure of the Agency in particular Article 13, 14, 26 and 27 thereof;

HAVING REGARD to the Decision establishing the Provisional Rules on conflicts of interest in the Management Board and the Scientific Committee and adopted on 24 May 2013 by the Management Board of the FRA;

HAVING REGARD to the Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies adopted by the European Commission on 10 December 2013.

WHEREAS:

- (1) Given the particular functions of the Agency, the Founding Regulation requires that the composition of the Management Board should ensure the Agency's independence, and by extension this of its members.
- (2) The Founding Regulation establishing the Agency in the Article 12.1 (a) defines that the Management Board shall be composed *inter alia* of one independent person appointed by each Member State, having high level responsibilities in an independent national human rights institution or other public or private sector organisation.
- (3) The members and alternate members of the Management Board, and the members of the Scientific Committee, shall undertake to act in the public interests. For this purpose, they shall make a statement of financial, or any other, interests of relevance to the mission of the Agency which might be considered prejudicial to their independence.
- (4) The management of conflict of interest is not regulated at the EU level. Therefore, it is important to develop relevant rules and procedures at the Agency's level. In accordance with Article 12.6 (l) of the Founding Regulation, the Management Board, as the Agency's planning and monitoring body, shall ensure that the Agency performs the tasks entrusted to it. In particular, it shall establish that a member or an alternate member of the Management Board no longer meets the criteria of independence, in accordance with Article 12.4 of the Founding Regulation.
- (5) It is important to identify situations proper to the mandate of the Agency, where a reasonable balance should be established to ensure coherence with the general principles of European Union law. The mere fact that a member of the Management Board has a function in an entity which has contractual relationships with the Agency might not per se be regarded as a conflict of interest situation that would exclude the member concerned from serving on the Management Board or the



Scientific Committee. It may, however, be regarded as an appearance of the conflict of interest, which should be addressed by adequate mitigating actions.

- (6) The European Commission's Guidelines aim at supporting agencies, by providing a set of principles and tools that they should consider in order to develop their own conflict-of-interest policy, with due consideration to the specific context in which each one of them operates, as well as their degree of exposure to the risk of conflict of interest.
- (7) The Management Board has adopted *Provisional Rules on conflicts of interest in the Management Board and the Scientific Committee of the European Union Agency for Fundamental Rights* conveying core values such as integrity and impartiality.
- (8) Nonetheless with a view to developing a comprehensive conflict-of-interest policy it is necessary to adopt the definitive provisions on conflicts of interest in the Management Board and the Scientific Committee of the European Union Agency for Fundamental Rights in line with the core principles and tools proposed in the Commission Guidelines.


HAS DECIDED AS FOLLOWS

Article 1

To adopt the Agency's Rules governing conflict of interest in the Management Board and Scientific Committee.

Vienna, 12.12.2014

For the European Union Agency for Fundamental Rights


Maija Sakslin
Chairperson of the Management Board



Rules governing conflict of interests in the Management Board and Scientific Committee of the European Union Agency for Fundamental Rights

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TITLE I GENERAL PRINCIPLES

ARTICLE 1 SCOPE

1.1 The present provisions are applicable to the following persons:

- a) members of Management Board of the Agency. This body is responsible for the supervision of the Agency's activities and makes strategic decisions. It is, therefore, important that its members act in the full interest of the specific mission entrusted to the Agency;
- b) members of the Scientific Committee of the Agency. By providing scientific and technical advice they play a crucial role, especially when their opinions form the basis of subsequent Management Board's decisions.

ARTICLE 2 DEFINITIONS

2.1. For the purposes of this decision:

- (a) A conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of the Agency is or might be perceived as being compromised by a personal interest held or entrusted to a given individual.
- (b) Relevant personal interest may be of financial or non-financial nature and it may concern a personal or family relationship or professional affiliations (including additional employment or "outside" appointments or former employments or appointments) and other relevant outside activities.
- (c) Not only actual independence but also perception of independence is important, since it can impact on Agency'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. Therefore, giving due consideration to proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest should be treated as if it were an actual conflict.
- (d) "Member of the Management Board" should be understood as referring also to "the alternate member of the Management Board" pursuant to Article 14 of the Founding Regulation.

2.2 For the purposes of this decision, an interest should be understood as:

- (a) Financial interests - any financial interests in a company/institution operating in a related field, including holding of stocks and shares, equity, bonds, partnership interest in the capital of a company, one of its subsidiaries or a company in the capital of which it has a holding.
- (b) Work carried out for a company/ institution operating in the field of activity of the Agency during the preceding five years, all activities performed for or on behalf of a company/ institution operating in a related field, whether or not these activities have been subject to regular or occasional remuneration in cash or kind, including:

- Participation in the internal decision-making of a company/ institution (e.g. Board membership, executive or non-executive directorship),
 - Permanent or temporary member of the personnel of a company/ institution. Other activities performed within a company (e.g. traineeship) are also subject to declaration,
 - Work contracted out by companies/ institutions, through consultancy or otherwise.
- (c) Other links with the field of activity of the Agency - during the preceding five years, all assistance and support received from stakeholders of the Agency, whether associated with direct or indirect pecuniary or material benefits, including:
- Grants for study or research,
 - Fellowships or sponsorships endowed by a company operating in the related business.
- (d) “Intellectual” interests - during the preceding five years, interests of non-pecuniary or material benefit to the individual, arising from professional activities or affiliation with national or international organisations or bodies with tasks similar to the Agency. Intellectual interests also include participation in public interest groups, professional societies, clubs or organisations which have an agenda or an interest or involvement in the Agency work.
- (e) Any other relevant interests. Spouse's/partner's/dependent family members' current activity and financial interests that might entail a risk of conflict of interest

2.3 For the purposes of this decision, a direct and indirect interests should be understood as:

- a) Direct interests: Interests of personal benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing her/his behaviour.
- b) Indirect interests: Other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.

2.4 The definitions referred to in Article 2 do not address all possible scenarios. The Agency shall evaluate on a case-by-case basis any other scenarios not covered by these definitions.

ARTICLE 3 PRINCIPLES

3.1 INDEPENDENCE

3.1.1 The Agency shall ensure that the members of the Management Board and the members of the Scientific Committee are independent. Their conduct and decision-making should be determined by the need to serve the common good and the public interest, and never by any other interests whether personal or otherwise or as a result, for example, of political pressure.

3.1.2 The members of the Management Board and the members of the Scientific Committee shall not, in the performance of their duties, deal with a matter, directly or indirectly, that she/he has any personal interests in such as to impair her/ his independence or perceived independence and, in particular, interests as defined in Article 2 of this decision.

3.1.3 In accordance with Article 12.4 and 14.3 of the Founding Regulation, the member of the Management Board and Scientific Committee shall inform the Commission and the Director of the Agency where he/she no longer meets the criteria of independence and the party concerned shall appoint a new member for the remaining term of office.

3.2. IMPARTIALITY

In any decisions the members of the Management Board and the Scientific Committee are called upon to make, their approach should be unbiased.

3.3 OBJECTIVITY

When drawing conclusions, these should be balanced and based on a thorough analysis of the facts and the legal background.

3.4. LOYALTY

Loyalty towards the Agency is essential for maintaining its independence and achieving its mission.

3.5 TRANSPARENCY

3.5.1 The best way to foster integrity and accountability is to ensure transparency in all instances, within the limits of the respect of personal dignity, in compliance with the data protection legislation, in particular Regulation (EC) No 45/2001 and the consultation of the European Data Protection Supervisor as appropriate) whilst avoiding a disproportionate administrative burden.

3.5.2 The individuals concerned should assume individual responsibility by declaring their interests or absence of interest in good faith.

3.5.3 Transparency should be complemented by a culture of declaring interests and possibly abstaining from the respective decision making process in cases where a conflict of interest exists or could be perceived. Withdrawal should not automatically imply full resignation. In certain situations of conflicts of interest, declaring the interest while abstaining from contributing, giving advice or participating in the decision-making, could be considered proportionate.

3.6 SPECIFICITY OF THE AGENCY

3.6.1 The Agency was created in order to respond to very specific needs identified by the EU in the areas of fundamental rights. To meet the objectives entrusted to the Agency, the Agency needs the highest level of expertise available in the respective fields. Such expertise is built over time, through contact and collaboration with the relevant stakeholders in a specific sector.

3.6.2 The need to avoid conflicts of interest should not prevent the Agency from collaborating with and seeking input from high level experts. As the persons concerned are generally experienced and may have interests arising out of their professional background and capacity, appearance of conflict of interest, cannot always be entirely avoided. The risks of actual or perceived conflicts should be identified, evaluated and managed. This is particularly relevant in areas where available expertise is limited. A fair, proportionate and timely handling of each case should therefore be ensured.

3.7 CONFIDENTIALITY

The members of the Management Board and the members of the Scientific Committee shall not disclose information crucial for the mandate of the Agency, covered by the duty of professional secrecy, even after their duties have ceased, without prejudice to Articles 13 and 26 of the Rules of Procedure of the Agency.

3.8 FREEDOM TO CHOOSE AN OCCUPATION AND RIGHT TO ENGAGE IN WORK

In accordance with Article 15 paragraph 1 of the Charter everyone has the right to *“engage in work and to pursue a freely chosen or accepted occupation”*. Any restriction on this right must therefore be duly motivated, necessary and proportionate to the risks under consideration, see Article 52, paragraph 1, of the Charter. Any such provision has to be interpreted restrictively.

TITLE II PROCEDURE FOR IDENTIFYING AND HANDLING CONFLICTS OF INTERESTS

ARTICLE 4 RESPONSIBILITY FOR THE DECLARATION FOR CURRENT MEMBERS

In accordance with the Article 16.2 of the Founding Regulation, the responsibility for disclosure of interests in declaration rests with the individual member of the Management Board and the member of the Scientific Committee. The persons concerned should be directly responsible for updating the declarations of interest whenever their situation changes in respect of the interests declared.

ARTICLE 5 DECLARATIONS OF INTEREST

5.1 Declarations of interest are submitted at least annually in writing and updated. In addition, an oral declaration of interest should be made with regard to the agenda of each meeting, if deemed necessary. Finally, in some circumstances written declarations may be requested in addition ahead of a meeting in relation to the specific agenda items. These additional declarations may be required in order to avoid any biased deliberation or decision or appearance of conflict of interests. If interests are declared ahead of or during a meeting, the identified situation should be stated in that meeting's minutes and the appropriate follow-up identified in the minutes.

5.2 Written declarations of interest should be available for public scrutiny including on the Agency website, with due respect to EU rules on protection of personal data. Where deemed relevant, the concerned person's curriculum vitae (or a summary of his/her professional experience) could also be made available.

5.3 The members of the Management Board and the members of the Scientific Committee shall submit to the Agency's services the written Annual Declaration of Interest within the first month following their appointment.

ARTICLE 6 INTERESTS TO BE DECLARED

6.1 The members of the Management Board and the members of the Scientific Committee shall declare, in the declarations of interests, any interest belonging to the categories defined in Article 2 of this decision with respect to all activities in which they are involved or have been involved during five years preceding the submission of the respective declaration.

ARTICLE 7 SCREENING AND ASSESSMENT OF DECLARATIONS OF INTERESTS OF MEMBERS OF THE MANAGEMENT BOARD AND THE SCIENTIFIC COMMITTEE

7.1 The Agency's services shall ensure, in close cooperation with the members of the Management Board and the Scientific Committee that all relevant material necessary for the Agency's review, such as the declaration of interests, confidentiality form and the curriculum vitae, have been made available.

7.2 The Agency's services shall screen and analyse declared information within the curriculum vitae and the declarations of interest, and provide a written report to the Management Board. The screening should in particular analyse the contractual relations between the Agency and the institutions where the persons concerned had\have interest.

ARTICLE 8 ACTIONS AND SANCTIONS

8.1 Where interests that might lead to potential conflicts of interests are properly and transparently declared, the Agency service responsible for screening the declarations is requested to suggest to the Management Board mitigating actions that should prevent a conflict of interest situation. Usually, this means that the declarer should not be involved in discussions or decisions where his/her opinion could be considered to be biased in the light of the potential conflict of interest.

8.2 If potential situation of conflict of interest are identified, the Management Board, on the basis of the screening conducted by the Agency's services, shall determine whether disclosures of interests contain sufficient detail on the conflicting interest to enable an adequately informed decision.

8.3 If the conflict of interest has already allegedly materialised a breach of trust procedure should be initiated in accordance with Article 9 of this decision. In this case, the Chair of the Management Board should be informed.

8.4 If the concerned person was involved in a decision-making procedure without having declared an interest, the Agency may undertake remedial actions, in particular to review or cancel that decision if seriously affected by the conflict of interest. This implies carrying out an ex-post review of the person's activities and contributions to the Agency's output.

8.5 In the case of contractors possible sanctions include the termination of parts of or the entire contract.

ARTICLE 9 BREACH OF TRUST PROCEDURE

9.1 Should the Agency become aware of discrepancies between any declarations of interest and the real situation of interest of a declarer involving or leading to a potential conflict of interest, this should be considered a breach of trust. A procedure is detailed in Annex 1 regarding the steps to be taken in such situations.

9.2 The appropriate remedial action should take into account the reasons for the failure to declare (negligence, justified lack of knowledge (for example due to confidentiality connected to the profession of the household member)). A review procedure is foreseen to allow for the protection of the rights of the individual concerned (see Annex 1).

9.3 Further to Article 3.1.3, if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member no longer meets the criteria of independence, the party concerned shall also appoint a new member for the remaining term of office in accordance with the Founding Regulations and its implementing decisions.

9.4 With due regard to Article 6 of this decision, on the basis of the type and nature of interests noted in the declarations, the Management Board / Scientific Committee, by simple majority, could consider various options such as incompatibility with the performance of certain functions or tasks, temporary exclusion from the meeting, abstention from the debate and/or the vote. The Scientific Committee should also formulate accordingly an opinion addressed to the Management Board in accordance with the Article 21 of Rules of Procedure.

ARTICLE 10 OBLIGATIONS AFTER LEAVING THE MANAGEMENT BOARD OR SCIENTIFIC COMMITTEE

If the member of the Management Board or Scientific Committee intends to be engaged in occupational activities with entities having contractual relationship with the Agency during, or up to one year after the term of the mandate of the Board/Committee, then the member shall inform the Director of the Agency accordingly, who should formulate an opinion to the Management Board and if necessary propose mitigating actions in line with the principles laid down in this decision.

ARTICLE 11 REVIEW OF THIS DECISION

This decision and its elements will be regularly reviewed by the Management Board upon assessment conducted by the Agency services at least annually. It shall be amended as appropriate in the light of past experiences and new recommendations from inside or outside the Agency.

ARTICLE 12 ENTRY INTO FORCE

The present decision revokes the decision of 24 May 2013 and shall enter into force upon its adoption by the Management Board of the European Union Agency for Fundamental Rights.

Annex I Breach of trust procedure

A breach of trust is defined as a failure to declare an actual or potential conflict of interest or failure to comply with the Agency's conflict-of-interest policy.

The following procedural steps apply for cases of breach of trust:

1. In case Agency has knowledge of information that is not consistent with the information included in the declaration of interests, and such information should have been declared, the Agency's services will inform the person in writing, asking him/her to clarify the situation, in particular by providing the rationale for the absence of the information to be declared, and to complete the declaration of interests with the missing information. The Chair of the Management Board (Chair) will also be informed.
2. While awaiting the person's reply, his/her involvement in Agency activities may be suspended until the aforementioned information has been received and assessed by the Agency. The person as well as the Chair will be notified of this suspension.
3. Once the information requested has been received, the Agency's services shall assess this information in order to establish whether the omission of the person needs to be considered as a breach of trust vis-à-vis the Agency, if it is found that:
 - the information missing from the declaration of interests is a declarable interest according to Agency's Rules,
 - the person did not declare the missing information intentionally or through gross negligence or he/she failed otherwise to meet his/her obligations under Agency's Rules on the management of conflict of interest.
4. The person shall be notified of the assessment and the possible consequences of this procedure.
5. The person shall be invited to reply to the assessment in order to gather his/her views on the facts in question. This shall be organised before any decision is taken. The Agency shall take account of any comments or documents received before or as part of the reply.
6. The Agency's services shall draw up a decision proposal for the Management Board.
7. The Management Board shall take a decision having due regard to all information provided by the Agency's services. The decision shall be taken in the plenary meeting by a simple majority of the votes cast in accordance with Article 12 (8) of the Founding Regulation. The member concerned has the opportunity to present his or her views to the Board.
8. The member is given the possibility to appeal the decision. Following the receipt of the reasoned decision the member can appeal within fourteen calendar days as of the day of notification of the decision, providing all the supporting documents and information. A permanent appeal group should be set up by the Management Board for the duration of two years. The group should consist of three members: one member of the Board, one representative of the Commission and one representative of the Agency's services. The group shall be delegated to subsequently assess all submitted documents and information within two calendar weeks. The group may seek outside views before reaching its opinion. Unless the group recommends the Board to alter its earlier decision, the decision reached in the plenary meeting will remain in force.

9. In case of a breach of trust the Agency reserves the right to make this information public.

Whenever a breach of trust reveals a case of suspected fraud, the Agency will inform the European Antifraud Office (OLAF) without delay, in light of the provisions laid down in the Decision of the Management Board of 2008.

Annex II Guidance on gifts, favours (hospitality offers) and payments

The member of the Management Board and Scientific Committee should not accept gifts, favours or payments from governments or any other source outside the institution without prior authorisation by the Chair of the Management Board. As a general rule, he/she should decline offers that have more than merely symbolic value (such as diaries, calendars, small desk items, an invitation for coffee etc.). In some exceptional circumstances (for instance if required by social, courtesy or diplomatic usage) and if there is clearly no risk for the interests and public image of the Agency, the member may accept some gifts or hospitality.

Hospitality offers are considered to be a kind of favour. The acceptance of hospitality will depend on the same factors as those outlined above for gifts. However it may be difficult to assess the value of hospitality offers and this is why the nature of the offer should first be considered. For instance offers of working lunches or dinners in which the member participates in the exercise of his/her duties, and where there is no risk of conflict of interest, can be accepted without prior authorisation. The same applies for the offers of simple meals, refreshments and snacks.

If he/she is offered a gift with an estimated value of more than €50, he/she must apply for permission to accept it. In any event, permission will not be granted if the value exceeds €150. Accumulating gifts should be avoided (even below €50 and independently of the source) as this can give rise to a negative image.

For all other offers and in case of doubt, the member should request a prior authorisation by the Chair.

When deciding on a request to accept a gift, the Chair takes into consideration the following factors.

- the nature of the source offering the gift;
- the apparent motive behind offering the gift;
- the link between the entity offering the gift and the Agency;
- the possible consequences for the Institution's interests;
- the individual or collective destination of the offer;
- the nature and estimated value of the gift;
- the Management Board/ Scientific Committee member's work.

Any sum of money must always be refused, except payments for work actually done and declared in the declaration of interest.