



FUSION FOR ENERGY

The European Joint Undertaking for ITER and the Development of Fusion Energy

THE GOVERNING BOARD

DECISION OF THE GOVERNING BOARD OF FUSION FOR ENERGY ADOPTING THE RULES ON THE PREVENTION AND MANAGEMENT OF CONFLICT OF INTEREST REGARDING STAFF MEMBERS OF THE JOINT UNDERTAKING

The Governing Board,

Having regard to the Statutes annexed to the Council Decision (Euratom) No. 198/2007¹ of 27th March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it and in particular to Article 6 thereof as well as the Statutes attached to it, in particular its Articles 10 and 6k.

Having regard to the Guidelines for Managing Conflict of Interest in the Public Service, of the OECD, Paris, June 2003.

Having regard to the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralized agencies as well as the Common Approach with Roadmap, 19th June 2012.

Having regard to the Commission Guidelines of 10th December 2013 on "the prevention and management of Conflict of Interest in EU decentralised Agencies" following the Joint Statement.

Having regard to the Special Report of the European Court of Auditors (ECA) on the "Management of Conflict of Interest in selected EU Agencies", N. 15/2012.

Having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants (CEOS) of the European Union laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68, hereinafter the 'Staff Regulations' and in particular to Articles 11, 11a, 12b, 13 and 16 of the Staff Regulations of Officials and Articles 11 and 81 of the CEOS".

Having regard to the Commission Delegated Regulation (EU) N. 1271/2013 of 30th of September 2013 on "the framework financial regulation for the bodies referred to in Article 208 of Regulation" N. 966/2012 of the European Parliament and of the Council (JO L328, 7.12.2013 p.42), in particular Article 41 thereof.

Having regard to the applicable Joint Undertaking's Financial Regulation and its Implementing Rules, in particular its Articles regarding conflict of interest. HAVING REGARD to the Decision of the Governing Board of 22nd October 2007 (F4E(07)-GB-03-09) concerning the "Code of Good Administrative Behaviour of the Joint Undertaking", in particular Article 9 thereof.

Having regard to the Joint Undertaking's "Integrated Management System Standards" of 2nd April 2014, (IMS Standards), F4E_24LQJM, in particular Standard 3 and 7.

Having regard to the Joint Undertaking's Charter of the Authorising Officer by Delegation (F4E_D_23KBS4), in particular point 6 thereof.

Having regard to the Decision of the Governing Board of 27th June 2013 (F4E(13)-GB27-14.2) "on the Secondment of Experts to the European Joint Undertaking for ITER and the development of Fusion Energy", in particular Articles 6 and 7 thereof.

Having regard to the Decision of the Director of the Joint Undertaking of 19th December 2013 (F4E_D_278HXR) "applying the Decision of the European Commission on outside activities and assignments of 16th December 2013 by analogy C(2013) 9037".

Having regard to the applicable Decision of the Director of the Joint Undertaking concerning gifts, favours or payments received from source outside Fusion for Energy.

Having regard to the Joint Undertakings Guidelines on dealing with Potential Personal Conflict of Interest in relation to family interests within the Joint Undertaking of 23rd June 2010.

¹ As amended by Council Decision of 13th December 2013 (2013/791/Euratom).

Whereas:

- (1) Article 6 of Council Decision of 27th March 2007 (2007/198/Euratom) requires that staff of the Joint Undertaking is subject to the rules and regulations applicable to officials and other staff of the European Union.
- (2) The OECD Guidelines² define Actual Conflict of Interest as involving a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their duties and responsibilities. A Potential Conflict of Interest occurs where a public official has private interests which are such that a Conflict of Interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future.
- (3) According to the European Commission³, situations of Conflict of Interest can arise when there is a link between staff members' work and their private interest, or those of their family or partner; or when staff members find themselves in a situation that could reasonably lead to allegations being made of bias or partiality, in the light of their personal interests.
- (4) According to Article 11 of the Staff Regulations⁴ staff shall carry out his⁵ duties and conduct himself solely with the interests of the Union in mind. He shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever.
- (5) As well before recruiting a staff member, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other Conflict of Interest. To that end, the candidate shall inform the appointing authority using a specific form of any actual or potential Conflict of Interest. These obligations shall apply mutatis mutandis to staff members returning from leave on personal grounds.
- (6) According to the provision of Article 11a of the Staff Regulations members of staff of the Joint Undertaking shall not, in the performance of their duties, deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence, and, in particular, family and financial interests.
- (7) Any member of staff to whom it falls, in the performance of his duties, to deal with a matter referred to under (6) shall immediately inform the appointing authority, as the appointing authority, who shall take any appropriate measure, and may in particular relieve the member of staff from responsibility in this matter.
- (8) A member of staff may neither keep nor acquire, directly or indirectly, in undertakings which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties Article 11a of the Staff Regulations.
- (9) According to Article 13 of the Staff Regulations, the staff member shall inform the appointing authority if his spouse is in gainful employment. Should the nature of the employment prove to be incompatible with that of the member of staff and if the member of staff is unable to give an undertaking that it will cease within a specified period, the appointing authority shall decide whether the member of staff shall continue in his post or be transferred to another post.
- (10) According to Article 16 of the Staff Regulations a staff member intending to engage in an occupational activity, within two years of leaving the service shall inform the Joint Undertaking thereof. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict with the legitimate interests of the Joint Undertaking, the appointing authority may take appropriate action.
- (11) The Joint Undertakings Financial Regulation states that financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, shall not take any action which may bring their own interests into conflict with those of the Union body.

² Points 10-12 of the OECD Guidelines, 2003.

³ http://myintracomm.ec.testa.eu/hr_admin/en/ethics/obligations/conflicts_interest/Pages/conflicts_interest.aspx

⁴ In the following, when the Staff Regulations is mentioned, reference is made automatically to the corresponding Articles in the Conditions of Employment of Other Servants of the European Union (CEOS).

⁵ "His" shall include "his/her" throughout these Rules.

A Conflict of Interest exists where the impartial and objective exercise of the functions of a financial actor or other person, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest.

- (12) Article 9 of the Joint Undertaking's "Code of Good Administrative Behaviour" lays down the principles of impartiality and independence and in particular that the official or other servant shall not be guided by any outside influences or by personal interests; it also states that they shall abstain from being involved in the taking of a decision on a matter concerning his or her own interest, or those of his or her family, relatives, friends and acquaintances.
- (13) Standard 3 of the Joint Undertaking's "Integrated Management System Standards" requires that management and staff shall be aware of and share appropriate ethical and organisational values and uphold these through their own behaviour and decision-making; Standard 7 requires effective decision-making by suitable delegations of powers, and that risks associated with sensitive functions are managed through mitigating controls and, ultimately, staff mobility.
- (14) According to point 6.2 of the Joint Undertaking's "Charter of the authorising officer and authorising officers by delegation", any measure of budget implementation which may give rise to a Conflict of Interest between the authorising officer or staff for whom he is responsible, shall be prohibited.
- (15) In order for the Joint Undertaking's mission and legal obligations in the interests of public a risk-based approach should be taken in balancing the assurances that must be given to citizens and stakeholders of an absence of conflicts of interest with the needs of the Joint Undertaking for staff having the appropriate specific competencies and expertise.

Has adopted this decision:

TITLE I

GENERAL PROVISIONS

Article 1

Purpose

1. The purpose of these Rules is to establish the principles governing impartiality and independence of staff members of the Joint Undertaking, and define the measures to ensure their practical application in order to prevent and mitigate the risk that past, current or future personal or national interests, or any outside influences of whatever kind, might improperly influence the impartiality and the independence of the Joint Undertaking staff during the performance of their official duties.
2. These principles and measures cover the management of actual and potential Conflict of Interest situations.

Article 2

Personal Scope of application

These Rules shall apply to all staff members, of the Joint Undertaking covered by the Staff Regulations and the Conditions of Employment of Other Servants of the European Union (CEOS), hereafter referred to as "staff" or "staff member".

Article 3

Material Scope of application

These Rules contain the management of Conflict of Interest regarding the staff members of the Joint Undertaking. They shall not prevail over the relevant provisions of the Staff Regulations and CEOS, F4E Financial Regulation or its implementing, or other specific rules. The "Code of Good Administrative Behaviour of the Joint Undertaking", according to which staff shall be and remain impartial and independent when performing their official duties, also forms part of these rules.

Article 4

Concept of Conflict of Interest and Definitions

1. Situations of Conflict of Interest can arise when:
 - there is a link between staff members' work and their personal interest, in particular family or financial interest;
 - staff members find themselves in a situation that could reasonably lead to allegations being made of bias or partiality, in the light of their personal interests.
2. Definitions :
 - a) Actual Conflict of Interest: involves a conflict between the public duty and personal interests of a staff member, in which the staff member has private-capacity interests which could improperly influence the performance of their duties and responsibilities. Such a Conflict of Interest situation can be current or it may be found to have existed at in the past.

Potential Conflict of Interest: occurs where a staff member has personal interests which are such that a Conflict of Interest would arise if the staff member were to become involved in relevant (i.e conflicting) staff responsibilities in the future.

 When no specific mentioning is made in these Rules, "Conflict of Interest" means *actual* as well as *potential* Conflict of Interest.
 - b) Appointing authority: the competent authority to decide on matters based on the Staff Regulations, according to the applicable delegating Decision of the Director of the Joint Undertaking on the exercise of Powers conferred by the Staff Regulations and the CEOS. It also refers to the Authority empowered to conclude contracts of employment according to the CEOS.
 - c) Line manager: the immediate superior of the staff member concerned.
 - d) Chair person: the chair of a selection committee recruiting staff or the chair of an evaluation committee for procurements or grants, or chair of any ad-hoc committee.

Article 5

General Obligations of Staff Members

1. Staff members shall avoid any Conflict of Interest and thus not deal with any matter in which they have a direct or indirect personal interest that may compromise their independence and, consequently, the interests of the Joint Undertaking.
2. Staff members have the obligation to declare any personal interest such as to impair his independence in performing his tasks.

Article 6

Conflict of Interest Register

A Conflict of Interest Register shall be created maintaining the main situations, including the staff member concerned, the type of Conflict of Interest and details on the situation giving rise to the Conflict of Interest identified within the Joint Undertaking, as well as a waiver, if any according to Article 18. Access to the Register will be restricted to the appointing authority or other person(s) named by him.

TITLE II

MEASURES FOR PREVENTION OF CONFLICT OF INTEREST

Article 7

Types and General Principles of Declarations of Interest

1. In order to prevent, detect, monitor, mitigate and deal with situations of potential and actual Conflict of Interest, the Joint Undertaking requires Declarations of Interest (DoI) to be filled by staff.

The identification and handling of Conflict of Interest shall be based on the evaluation of General Declarations of Interest (GDol) and of Specific Declarations of Interest (SDol) submitted by the concerned staff as well as of Spontaneous Declarations of Interest (Spontaneous Dol).

2. The responsibility for a complete and truthful declaration shall lie exclusively with the staff member completing the declaration. Based on Article 13 of the Staff Regulations, the declared activities shall cover also activities from a spouse or partner of the Joint Undertaking staff.

Having an interest according to Article 8 does not necessarily mean having a Conflict of Interest, if the independence, impartiality and objectivity are not at risk. In particular, high quality of expertise is by nature based on prior experience. Declaring an interest does therefore not automatically disqualify a person or limits his participation in the highly specialised activities of the Joint Undertaking.

3. A list of posts and functions for which the completion of the GDol is required shall be established by the Director.
4. GDols shall be submitted in an electronic form and stored in a dedicated database.

Access to GDols shall be restricted to the appointing authority and on the need-to-know basis to line managers who have access only to their subordinates, i.e. members of their teams or units. Everybody having access to this database shall keep all data and information strictly confidential.

Article 8

Categories of Interest

For the purpose of declaring interests, the following categories of interests are to be considered. They shall be declared if they are or could be perceived as related to the domain or activity of the Joint Undertaking.

1. Past and Present Professional Interests

Professional interests shall include posts still held because of a contractual arrangement or other arrangements entitling the staff member to return to his previous posts or other posts held in organisations, institutions, companies, foundations or similar bodies (the nature of the post and the name of those bodies shall also be indicated); other membership/affiliation or professional activities having been held or being still held, including services, liberal professions, consulting activities, with direct or indirect pecuniary benefits or other benefits, including notably:

- Permanent or temporary employment or work contracted out through consultancy;
- Participation in internal decision-making or advisory bodies (e.g. directorships, board membership, executive or non-executive directorship.).

Those professional interests shall be declared covering the last five years before joining the Joint Undertaking.

2. Financial Interests

Any direct financial interests, including ownerships of patents/trademarks, or assets (shares or securities held in companies) or grants or other funding held over the last five years which might create a Conflict of Interest in the performance of duties, with an indication of their number and value, as well as the name of the company/provider of the grant or funding.

This shall notably include the holding of stocks and shares, equity, bonds, partnership interests in the capital of an organisation related to the activities of the Joint Undertaking, either directly or through one of its subsidiaries or a company in which it has a holding.

Financial interests need not be disclosed unless they have a market value of greater than 20,000 Euros⁶. Share portfolios need not be disclosed if the management arrangement is in the form of an investment fund or equivalent.

3. Intellectual Interests

Intellectual Interests shall include interests of the staff member during the preceding five years, arising from professional activities or affiliation with national or international organisations or bodies (paid or unpaid) which have a direct impact on the staff member's independence and impartiality.

Intellectual interest is often a prerequisite for the scientific excellence and not necessarily considered an undesirable bias.

⁶ The value of the held shares are evaluated using the share value at the last end of year.

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4. **Other relevant interest:** any interest/information not falling under the categories provided above and could be relevant for the purposes of the present Rules.

Article 9

General Declaration of Interest (GDol)

1. Staff members who are requested, in accordance with Article 7 (3) and (4), to submit a General Declaration (GDol) shall complete the appropriate Form together with the Declaration of Confidentiality attached to it, before taking up their function.

The Joint Undertaking shall ensure that staff members already employed by the Joint Undertaking do so within six months after entry into force of these Rules.

2. Staff members shall immediately update and resubmit, pursuant to Article 7 (4), their GDol, following any change in circumstances with an impact on the interests declared (i.e. changes of information provided in the GDol).

A reminder to submit an updated GDol in case of any change of interest is sent to the staff members on a yearly basis.

3. Individuals shall indicate whether interests declared are "current" (when activities are currently on-going); or they refer to a "past period" according to Article 8 (when they are no longer on-going but have been completed during the five years preceding the submission of the GDol or five years before joining the Joint Undertaking).
4. Details on the business or not-for-profit activity, its name of body or organisation of relevance for each declared interest shall be given, meaning the full name, location of the seat (town and country) and nature (private or public).
5. Details on the subject matter of each declared interest shall be given, indicating the domain in which the activity is, or was, carried out and clarifying the interest and role of the concerned body or organisation in the matter and the role of the concerned person.

Article 10

Specific Declaration of Interest (SDol)

1. Staff members are obliged to submit a Specific Declaration (SDol) regarding Conflicts of Interest, when required by the Staff Regulations and the Joint Undertaking's legal framework for performing a "specific task" according to Article 13 (2). The respective Form shall be filled before starting the activity and be submitted according to Article 7 (4).

A Candidate who is to be recruited shall submit the relevant SDol before his recruitment.

Staff members returning from leave on personal grounds shall also submit the relevant SDol before starting the specific position offered.

2. During the performance of a "specific task" the staff members shall update and resubmit, pursuant to Article 7 (4), their SDol immediately, in case of any change in circumstances with an impact on the interests declared.

Specific guidance will be given, in relevant areas necessary to fulfil the Joint Undertaking's obligations.

Article 11

Identification and Reporting of a Conflict of Interest (Spontaneous Declaration of Interest)

1. The staff member concerned, upon identifying an actual Conflict of Interest during performance of or in connection with his work, shall immediately refer the matter in writing, according to Article 11a (2) of the Staff Regulations, to the appointing authority. He shall also inform the line manager and if relevant the respective chair person, in case the chair person is not the line manager.

The line manager, or any other person as defined in specific implementing measures, shall immediately provide the appointing authority with his opinion on the existence of the actual Conflict of Interest and possible mitigation measures.

2. The appointing authority shall decide on the action to take.

TITLE III

ASSESSMENT AND DECISION REGARDING DECLARATIONS OF INTEREST

Article 12

Assessment Principles

Without prejudice to the legal framework applicable to the Joint Undertaking, the assessment of a Declaration of Interest shall be carried out in accordance with the following Articles, as well as taking into account the specific guidance mentioned in Article 10 (3) and based on a general methodology and objective criteria to be developed by the Director, all assessing the degree of the risk and possible mitigating measures.

Article 13

Assessment of General Declarations of Interest (GDols)

1. The GDol of staff members already employed and updated GDols submitted according to Article 9 (1) shall be screened by the responsible line manager.

Only in case of an actual Conflict of Interest, or if the line manager considers it necessary in case of a potential Conflict of Interest, he requests a decision of the appointing authority.

2. The respective line manager, or any other person as defined in specific implementing measures, shall consult the database of GDols as well as the guidance according to Article 10 (3), before assigning to staff members activities or "specific tasks" related in particular to budget implementation and management, including acts preparatory thereto, as well as related to the selection of new staff members.
3. At all stages, the concerned shall be kept informed of the ongoing assessment of his GDol. The line manager may hear the concerned staff in order to facilitate the assessment.
4. The responsible line manager in case the issue is brought to his attention shall make his assessment based on a specific Assessment Form taking into account, if any, the opinion of the previous line manager(s).

Where a potential Conflict of Interest is found to exist, he shall take any appropriate mitigating measure aiming to limit reasonably that the potential Conflict of Interest materialise in the future in particular by removing or suspending the staff member in question from activities in the respective matter. The appointing authority may also grant a waiver as per Article 18.

Article 14

Assessment of Specific Declarations of Interest (SDols)

1. Unless otherwise stipulated in a specific implementing measure, an SDol in the sense of Article 10 shall be screened by the line manager responsible for the activity. The procedure under Article 13 applies by analogy.
2. Before recruitment, the SDol submitted by a candidate according to Article 10 (1), informing of any actual or potential Conflict of Interest, shall be screened and decided upon by the appointing authority in accordance with Article 11 (3) of the Staff Regulations.

Paragraph 2 applies by analogy to staff members returning from leave on personal grounds.

Article 15

Assessment of Declarations of Interest of the Director

The Declarations of Interest of the Director shall be screened and decided upon by the persons who discharge the function of Reporting Officer for the Director, to identify if an interest could present a conflict with regard to the work of the Director.

Article 16

Request for Review of the Decision

The staff member can send a request to the responsible line manager, to the responsible person as defined in specific implementing measures, or the appointing authority for a review of his respective decision.

Article 17

Consequences of the Decision

1. In the time between identification of a Conflict of Interest and the decision of the responsible line manager or the appointing authority, the staff member concerned shall refrain from any actions related to the performed task.
2. After the decision of the responsible manager or the appointing authority, the staff member shall follow the measures prescribed in the decision.

Article 18

Granting of Waiver

1. The Joint Undertaking's staff member shall not be assigned to a project or task where an actual Conflict of Interest exists. To prevent the risk to impair his independence, objectivity and impartiality in the performance of his duties and thus mitigate the Conflict of Interest situation, the line managers shall take any measures considered appropriate including the reallocation of the project or task to another staff member.
2. When no other suitable staff member is available and his competence/expertise is considered essential for the completion of the task, safeguards should be put in place to ensure that impartiality in decision making is guaranteed and that neither the outcome nor the completion of the task is compromised by a Conflict of Interest.

In such cases, when the staff member is considered essential and where no suitable alternate is found, a waiver may be granted by the appointing authority. The responsible line manager, or any other person as defined in specific implementing measures, shall include all relevant information on which the conclusions are based supporting the request to the appointing authority to grant a waiver.

3. Should a waiver be granted, it should be accompanied by concrete mitigating measures in relation to the actions of the concerned staff member such as requiring him to contribute to particular meetings in which his expertise is considered essential without having decision making power or if he retains decision making power then subjecting his decisions to peer review by colleagues or the line manager.
4. This Article applies by analogy to candidates before the recruitment decision of the appointing authority, as well as before the decision on a position offered to staff returning from leave on personal grounds.

TITLE IV

OUTSIDE ACTIVITIES, GIFTS AND POST-EMPLOYMENT

Article 19

Outside Activities and Gifts/Hospitality

In line with the principles of impartiality and independence and in view of preventing any Conflict of Interest, and in accordance with Articles 11 and 12b of the Staff Regulations, the respective procedure and implementing measures apply for outside activities as well as gifts and hospitalities.

Article 20

Post-Employment

After leaving the service, the former staff member, according to Article 16 Staff Regulations, has the duty to behave with integrity and discretion. The respective procedure and implementing measures apply.

TITLE V

FINAL PROVISIONS

Article 21

Enforcement

1. The disciplinary system, i.e. administrative inquiries and disciplinary procedures, applies to any failure by a staff member or former staff member to comply with his obligations under the Staff Regulations, and under the "Code of Conduct of Good Administrative Behaviour of the Joint Undertaking".
2. In cases where a staff member fails to declare an actual Conflict of Interest in his Declaration of Interest, it may be considered as a failure by the staff member to comply with the rules and obligations of the Joint Undertaking's staff members. If and when the breach of rules is confirmed, in accordance with the applicable provisions of the Joint Undertaking, the Director may request that an administrative inquiry be opened which may lead to disciplinary measures as referred to in Article 86 and Annex IX of the Staff Regulations.

The Joint Undertaking may also claim damages pursuant to Article 22 of the Staff Regulations.

Article 22

Protection of Personal Data and Recording

1. General Declarations of Interest (GDols), as well as CVs of senior management will be published on the Joint Undertakings public website.
2. Any personal data shall be processed by the Joint Undertaking pursuant to Regulation (EC) No 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movements of such data. It shall be processed solely for the purposes of these rules by the Joint Undertaking, without prejudice to possible transmission to its internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the European Union.
3. The data subjects shall have the right of access to his personal data and the right to rectify any such data that is inaccurate or incomplete. Should the data subjects have any queries concerning the processing of his personal data, he shall address them to the Personal Data Controller. The data subject shall have right of recourse at any time to the European Data Protection Supervisor.
4. In cases where the Joint Undertaking has knowledge or information that is not consistent with the declared interests, or in cases of failure to submit a Declaration of Interest when requested, the concerned staff member will be contacted in order to update the Declaration related to the missing information. In cases where an internal procedure should be opened as referred to in Article 21, the staff member shall be notified.

Article 23

Amendment and Implementing Measures to these Rules

1. The Governing Board may amend these Rules by decision. Amendments shall enter into force on the next day following such a decision.
2. The Governing Board delegates the power to adopt the necessary implementing measures to the Director of the Joint Undertaking unless the sensitivity of the matter requires it otherwise.

Article 24

Entry into Force

These Rules shall enter into force the first day of the month following its adoption.

Done at Barcelona, 11 June 2014

For the Governing Board



Stuart Ward
Chair of the Governing Board

For the Secretariat

Raymond Monk
Secretary of the Governing Board