

DECISION NO MB/2021/15 OF THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR CYBERSECURITY

ON RULES FOR PREVENTION AND MANAGEMENT OF CONFLICTS OF INTEREST AND REPEALING DECISION NO MB/2013/7

THE MANAGEMENT BOARD OF ENISA,

Having regard to Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act), in particular Article 15.1 (i) and Article 25;

Having regard to the Staff Regulations of Officials ('Staff Regulations') and the Conditions of Employment of Other Servants ('CEOS') of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68;

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012 ('Financial Regulation');

Having regard to Regulation (EU) 2019/715 of the European Parliament and of the Council of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council;

Having regard to the Decision No MB/2021/5 of the Management Board of the European Union Agency for Cybersecurity (ENISA) on Anti-fraud Strategy and its action plan.

Having regard to Decision No MB/2020/15 of the Management Board of the European Union Agency for Cybersecurity (ENISA) on authorizing an occupational activity after leaving service;

Having regard to Decision No MB/2020/9 of the Management Board of the European Union Agency for Cybersecurity (ENISA) on the establishment of ENISA's internal structures;

Having regard to Decision No MB/2020/5 of the Management Board of the European Union Agency for Cybersecurity (ENISA) on principles for ENISA's Organisation;

Having regard to Decision No MB/2019/8 of the Management Board of ENISA the European Union Agency for Cybersecurity on the Financial Rules applicable to ENISA in conformity with the Commission Delegated Regulation (EU) No 2019/715 of 18 December 2018;

Having regard to the Decision No MB/2019/13 of the Management Board of the European Union Agency for Cybersecurity (ENISA) delegating the relevant appointing authority powers to the Executive Director;

Whereas

1. The prevention and management of *sensu lato* 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.
2. Effective management of conflicts of interests and the insurance of legality and regularity of its processes is thus a crucial requirement to the pivotal role of ENISA 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, independency and high professional standards.

3. 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 and independency, the establishment of clear boundaries for (un)acceptable interests and the appropriate management of conflict of interest situations, including clear underlying 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, registering them and handling them appropriately.
4. Given the new permanent mandate granted to ENISA by the Cybersecurity Act, the prevention and detection of cases of conflict of interest becomes a mandatory obligation of the Agency.
5. The notion of conflict of interest should be understood in its wider sense including indicatively also the case of professional conflicting interest as referred to in recital 104 of the Financial Regulation.
6. Any actual or potential conflict of interests should be promptly identified, handled, removed or mitigated without delay.
7. A conflict of interest situation is not in itself a breach of ethics rules. It may only become so if not handled appropriately.
8. General provisions on conflict of interest applicable to ENISA staff are laid down in the Staff Regulation and the Conditions of Employment of other Staff. The Financial Regulation defines what a conflict of interest of a financial nature is. Article 42 of the Decision No MB/2019/8 of the Management Board of ENISA the European Union Agency for Cybersecurity on the Financial Rules applicable to ENISA in conformity with the Commission Delegated Regulation (EU) No 2019/715 of 18 December 2018 of the European Parliament and of the Council provides for the notion of conflict of interest and outlines the procedure to be followed.
9. As a rule, any person having financial or advisory function with ENISA and 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 impartiality, objectivity and independence of deliberations and the validity of the decisions taken by ENISA.
10. A guidance on how these rules should be interpreted shall include all statutory bodies of the Agency as provided in the Cybersecurity Act as well as other groups established and managed by the Agency.
11. Internal rules of procedure for the National Liaison officers' network and for the Advisory Group provide that annual declarations shall be submitted by members of these bodies without specifying a template for such declaration.
12. The Executive Director is responsible for the day to day administration of ENISA.
13. The Executive Board scrutinised this decision at its meeting held on 21-22 October 2021.

HAS DECIDED TO ADOPT THE FOLLOWING DECISION:

Article 1

Scope

1. This Decision aims to contribute to the efficient management of (potential) conflict of interest, in order to maintain the trust of stakeholders and citizens in ENISA's integrity, impartiality and high professional standards and ensure legality and regularity of its processes.
2. The provisions on conflict of interest applicable to staff are covered by the provisions of the Staff Regulations and the Conditions of Employment of other servants.

Article 2

Definitions

1. A '**Conflict of Interests**' ('**Col**') is a conflict between the public duty of ENISA and the private interests of an individual, which could improperly influence or impair the performance of his/her official duties and responsibilities or could compromise or reasonably be perceived to compromise his/her impartiality, objectivity or independence. A Col can thus be current or it may be found to have existed in the past.
2. '**Personal Interest**' means the relation of being objectively concerned in something, falling within the fields of competence of the Agency that creates or having the potential to create a Col.
3. "**Direct interest**": Interest of personal benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing his behaviour.
4. "**Indirect interest**": Other interest that may have some influence over the individual's behaviour and therefore have to be neutralised.
5. "**Household**" means persons living together permanently or temporarily without regard to whether they are related to each other by marriage or blood and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household. Within the framework of this decision members of the household include spouse, partner and dependent children; also, non-marital partnerships shall be treated as marriage.

Article 3

General principles

1. **Independence** from all external interests. Detailed guarantees and checks need to be implemented in all processes within the Agency. All potential conflicting interests shall be declared.
2. **Transparency** as stipulated in Article 26 of the Cybersecurity Act. The declarations of interests of the members of the Management Board, of their alternates are published on the ENISA website.

Article 4

Persons and actors concerned

1. This Decision is applicable to members of the Management Board, their alternates, the Executive Director, the members of the Advisory Group, the members of the National Liaison Officers Network, the seconded national experts and the members of the ad hoc Working Groups.
2. This Decision is also applicable to any person participating in ENISA's activities, in accordance with the Cybersecurity Act.

Article 5

Obligation to declare conflict of interests

1. Each individual to whom this Decision applies is responsible for the declaration of actual or potential conflict of interests, and whenever becoming aware of any potential conflict of interest.
2. Each individual to whom this Decision applies, must submit a declaration of interests.
3. Each individual to whom this Decision applies is responsible for the declaration of his/her interests and, to the best of his/her knowledge, and to those of his/her household members.
4. A declared "interest" is not automatically considered as a conflict of interest situation.
5. If at any point in time changes occur to the situation of a person concerned under Article 4 of the present Decision, or his/her independence to work on a very specific case is at risk, the person involved must update his/her declaration without delay.

Article 6

Annual Declarations by members of ENISA Management Board, of National Liaison officers Network, of Advisory Group, of Ad Hoc Working Groups

1. The members of the Management Board and their alternates, members of the National Liaison officers network, members of the Advisory group, members of the Ad hoc Working Groups shall submit annual declarations of

commitment in accordance with template in Annex 1 of this decision.

2. The members of the Management Board and their alternates, members of the National Liaison officers network, members of the Advisory group, members of the Ad hoc Working Groups shall submit annual declarations of interest in accordance with template in Annex 2 of this decision.
3. Additionally, at the start of each meeting the members, observers and any experts participating in the meeting of an Ad Hoc Working Group should declare any interests which could be considered to be prejudicial to their independence with respect to any of the points on the agenda.

Article 7

Technical implementation and establishment of the Ethical Committee

1. The secretariat of the statutory bodies listed in Article 6 of this Decision shall keep a register of the declarations of interests submitted by members of those bodies.
2. The Head of each organisational unit of ENISA shall keep a register of submitted declarations of conflict of Interest by individuals in his/her framework of activity. These declarations should be kept in one common central database to be created by the organisational unit of ENISA responsible for human resources.
3. The templates annexed to this decision may be reviewed and amended.
4. 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 and to the Head of Units for consultation on matters related to potential conflict of interests of the individuals in relation to the Agency and its bodies. The Ethical Committee is composed of the Head of the Executive Director's Office Unit (EDO), acting as the Chair of the Committee, of the Head of Corporate Support Services Unit (CSS) and of the Agency's Legal Adviser. Alternate members can be appointed via a specific Executive Director Decision. The secretariat of this Committee is organised by its Chair. At the request of the Executive Director or the Chair of the Management Board, or a Head of Unit, the Ethical Committee issues a reasoned advice, without prejudice to the decision-making powers of the Agency's body requesting it.
5. **Preventing conflicts of interest:**
 - (1) **General obligations:** All individuals to whom this Decision applies 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) **Obligation of abstention:** All individuals to whom this Decision applies shall abstain from participating in a meeting and/or the discussion of and voting on items of the agenda, for which they have accurately and completely declared, at the latest at the start of each meeting, any interest which could be considered to be prejudicial to their independence in relation to such items.
 - (3) **Financial interests** in any commercial entity are to be declared as regards holding of shares, stocks or voting rights, equity, bonds, partnership interests.
 - (4) **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.
6. **Identifying and Handling of potential conflict of interests**
 - (1) **Management Board/Advisory Group/National Liaison officers network.**
 - (a) It shall be the task of the respective Secretariats to regularly monitor the initial and annual declarations made by the members of the Management Board and their alternates, along with the declarations made by the members of the Bodies mentioned in Article 13 (d) and (e) of the Cybersecurity Act.
 - (b) Especially in relation to the members of the Management Board and their alternates, the respective Secretariat should 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.
 - (c) 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 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.
 - (d) Based on the information provided by the members of the Management Board, their alternates and 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.

(2) Experts of the Ad hoc Working Groups.

As stipulated in Article 25 (2) of the Cybersecurity Act, external experts participating in ad hoc working groups, established by virtue of Article 20 (4) of the Cybersecurity Act, shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered to be prejudicial to their independence in relation to the items on the agenda, and shall abstain from participating in the discussion of and voting on such items.

**Article 9
Personal data protection**

Any processing of personal data relating to the Declaration of Interests in the context of this Decision shall be performed in accordance with the Regulation (EU) 2018/1725¹, as well as any relevant guidelines published by the European Data Protection Supervisor² in the field.

**Article 10
Entry into force**

1. The decision enters into force on the day of its adoption.
2. This decision repeals the Decision No MB/2013/7 of the Management Board of the European Union Agency for Network and Information Security on rules for preventing and management of conflict of interest.
3. The templates annexed of this decision shall apply as of calendar year of 2022.

Done at Athens on 17 November 2021.

On behalf of the Management Board

[signed]

Chairperson

Jean Baptiste Demaison

¹ 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.

² <https://edps.europa.eu/node/3446>

Annex 1

ANNUAL DECLARATION OF COMMITMENT

I, hereby declare that I shall make all reasonable efforts to fulfil my duties as a (*please select as appropriate*) member/alternate of the Management Board/National Liaison Officers Network/Advisory Group/ Ad hoc Working Group.

I understand that this Declaration will be entered in a register held by the ENISA 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.

Done at _____ on ____ / ____ 201__

Signature: _____



Annex 2

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/member of the National Liaison officer/ member of the Advisory Group/member of the Ad hoc Working Group 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:

2. From the moment of taking the post of the member on relevant statutory body of ENISA, 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 interests³ 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 When declaring financial interests e.g. stocks and shares, only the kind, number and company name need be stated.

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:

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 MB Decision 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 Cybersecurity (ENISA) will ensure on its part that your personal data hereby submitted is processed as required by *Regulation (EU) 2018/1725 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. 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. To this end, your Declaration of Interest will be publicly accessible upon request and will also be made available at ENISA's website for reasons of transparency. ENISA will make any possible effort to remove any potential sensitive data from the public version of your Declaration of Interest, unless this is not possible in the context of the pursued purpose. ENISA will not keep any Declaration of Interests for a period longer than 5 years after the end of your mandate.*

You have the right of access to your personal data and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. You have the right to object to our processing of your personal data, on grounds relating to your particular situation, at any time. We will consider your request, take a decision and communicate it to you.

In case in the Declaration of Interest you include information about other data subjects (i.e. your family), you are requested to inform them about this fact and provide them with access to the relevant information.

If you have any queries concerning the processing of your personal data, you may address them to the Secretariat of the respective statutory body. You may also contact at any time the ENISA DPO at dataprotection@enisa.europa.eu.

You have the right of recourse at any time to the European Data Protection Supervisor at <https://edps.europa.eu>.

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.)