

Annex 3

Procedure for the management of the breach of trust by Governing Board and Advisory Groups members (full/alternate/observers)

Owner	Backup owner	Procedure reference	Date adopted
Network Manager	N/A	N/A	25 November 2014

Approval steps	Responsible	Date
Draft	Quality Team	11 November
Review	Director	11 November
Final adoption	Governing Board	25 November 2014

Revision date (1)	Detail of revision made (1)	Reason for revision (1)
23 September 2015	To be able to exercise his/her rights, the GB/AG member concerned should receive a copy of the conclusions of the conflict of interest committee on a potential breach of trust attributed to him/her and, on request, of all documents directly linked to the allegations made, subject to the restrictions of Article 20 of the Regulation.	Recommendations included in the EDPS' prior check report
Revision date (2)	Detail of revision made (2)	Reason for revision (2)

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Part 1: Description and aims of procedure

1.1 Overview and purpose

This procedure has a remedial nature. It aims to follow-up on four scenarios related to a member (full/alternate/observers) of the Governing Board or the Advisory Groups who – by virtue of his/her relation with the Agency – is subject to the provisions of the Agency's policy on management of conflict of interest:

- Lack of cooperation in the implementation of the mitigating/remedial actions taken by the member concerned further to being found in a conflict of interest situation by the Conflict of interest committee;
- Fraudulent omission in the declaration of interests and summary of CV;
- Submission of false declaration of interests or summary of CV;
- Failure to submit a declaration of interests or summary of CV.

This procedure is in line with the roles and responsibilities in line with the Agency's policy on management of conflict of interest and in compliance with Regulation (EC) No 45/2001 on protection of personal data.

1.2 Concept and key terms

By “**breach of trust**”, it is meant any false declaration, wilful omission or refusal to declare interests or any other failure to comply with the Agency's policy on management of conflict of interest.

1.3 Persons involved

The addressees of this procedure are:

- Governing Board members (full/alternate/observers);
- Advisory Group members (full/alternate/observers).

The following actors have a role in the implementation of the procedure:

- Conflict of interest committee (composed by the Heads of Unit or a member of the Network Secretariat and the Internal Control Coordinator);
- Board hearing committee (composed by 2 members per interest group and 1 member of the Commission);
- Board appeal committee
- Appointing authorities (Council of the EU, Governing Board and others);
- Governing Board Chair/Advisory Groups Chairs;
- Anti-fraud office of the European Commission (also referred as “OLAF”).

Their responsibilities are described in the table below

Responsible		Description of responsibilities
Governing Board	Advisory Groups (not GB members)	
Conflict of interest committee		<ul style="list-style-type: none"> Assess possible breach of trust situations. Defers the case to the Board hearing group whenever relevant and inform OLAF where appropriate.
Governing Board Chair	Advisory Groups Chairs (Heads of Unit)	<ul style="list-style-type: none"> Get informed; Implement preventive/remedial actions foreseen by the Conflict of interest committee's recommendation.
Board hearing committee		<ul style="list-style-type: none"> Appointed by the Governing Board, it reflects its composition (2 members per each interest group and 1 for the Commission). Examine the case deferred by the Conflict of interest committee.
Board appeal committee		<ul style="list-style-type: none"> Appointed by the Governing Board, it reflects its composition (2 members per each interest group and 1 for the Commission). Members of the appeal group are different from those of the hearing group. Re-examine the case upon appeal lodged by the member concerned.
Council of EU (full/alternate) Governing Board Chair/Vice-Chairs (observers) DG Employment (Commission)	Governing Board	<ul style="list-style-type: none"> Get notified by the Conflict of interest committee and adopt a formal decision.
Anti-fraud office of the Commission (OLAF)		Whenever the procedure of breach of trust reveals potential suspicion of fraud, informed by the Agency.

1.4 When to apply the procedure

This procedure shall apply in the situation when there are grounded reasons that a member (full/alternate/observer) of the Governing Board might have failed to declare his/her interest deliberately or because of gross negligence or failed to comply with his/her obligations under the Agency's policy on the management of conflict of interests.

Part 2: Procedure

Step	Responsible		Description
	Governing Board	Advisory Groups (not GB members)	
1	Conflict of interest committee		<p>Initiate the “breach of trust” procedure.</p> <p>Notify the member concerned and include conclusions from the Conflict of interest committee.</p> <p>Whenever the procedure of breach of trust reveals potential suspicion of fraud, inform the Anti-Fraud Office of the Commission (OLAF).</p> <p>Keep the Chair of the Governing Board informed throughout the process.</p>
2	Board members (full/alternate/observers)	Advisory Groups members (full/alternate/observers)	<p>Receive the notification from the Agency and react within 10 working days.</p> <p>Can request supporting documentation linked to the allegations made (subject to the restriction of Article 20 of Regulation (EC) N.45/2001). If so, the 10 working days period is put on hold until the documentation is sent.</p>
3	Conflict of interest committee		<p>On request from the Board/Advisory Groups member, provide the supporting documentation.</p> <p>Assess the information received (if any) in the light of whether:</p> <ul style="list-style-type: none"> • The information missing from the declaration of interest is a declarable interest according to the Agency’s policy on management of conflict of interest • The person concerned omitted / falsified the information deliberately or because of gross negligence; • The person concerned failed to meet his/her obligations under the Agency’s policy on management of conflict of interest. <p>If the assessment is positive, settle the case and notify the member concerned.</p> <p>If the assessment is not positive, defer to the Governing Board for the defence phase and inform the member concerned. Can recommend temporary remedial actions to be implemented by the Governing Board Chair and Advisory Groups Chair.</p> <p>In either case, the member is provided with the conclusions from the Conflict of interest committee.</p>
4	Board hearing committee		<p>Re-examine the case and set a hearing session for the member concerned.</p>

			<p>If the assessment is positive, settle the case and notify the member concerned.</p> <p>If it is not positive, defer to the Governing Board Chair to notify the appointing authority and inform the member concerned. Can recommend temporary remedial actions to be implemented by the Governing Board Chair and Advisory Groups Chair.</p> <p>In either case, the member is provided with the conclusions from the Board hearing committee.</p>
5	Board members (full/alternate/observers)	Advisory Groups members (full/alternate/observers)	Can lodge an appeal addressed to the Governing Board Chair within 10 working days.
6	Board appeal committee		<p>Re-examine the case and review any new element if provided.</p> <p>If the assessment is positive, settle the case, notify the member concerned.</p> <p>If it is not positive, defer to the Governing Board Chair to notify the appointing authority and inform the member concerned.</p> <p>In either case, the member is provided with the conclusions from the Board appeal committee.</p>
7	<p>Council of the EU (full/alternate)</p> <p>Governing Board Chair/Vice-Chairs (observers)</p> <p>DG Employment (Commission)</p>	Governing Board	Upon notification by the Governing Board Chair, adopt a formal decision and notify the member.

Part 3: Context

3.1. Regulatory Framework

- EU-OSHA Internal Control Standard n.2 “Ethical and Organizational Values”;
- The Commission Guidelines on the prevention and management of conflict of interest in EU decentralised Agencies;
- Decision No ADM/99/2 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity liable to give rise to administrative or criminal proceedings and subsequent amendments.

3.2. Links to relevant procedures and policies

- EU-OSHA policy on management of conflict of interest;

- Procedure related to the submission, screening and assessment of declarations of interests and summaries of CVs and validation for Governing Board and Advisory Groups members (full/alternate/observers).

Part 4: Monitoring and compliance

This procedure shall be monitored in conjunction with the implementation of the Agency's policy on management of conflict of interest. An annual account of its implementation shall be included in the Annual Activity Report.

Annex E: Flowchart



