

EU-OSHA POLICY

ON PREVENTION AND MANAGEMENT OF CONFLICT OF INTERESTS WITH RESPECT TO MANAGEMENT BOARD MEMBERS/ALTERNATE MEMBERS AND OBSERVERS AND EXTERNAL EXPERTS

Approval steps	Responsible	Date
Draft	Management Board Secretariat	30 April 2019
Review	Executive Director	9 May 2019
Final adoption	Management Board	7 June 2019

Contents

1	Purpose and overview.....	3
2	Scope of application.....	3
3	Concepts, criteria and principles.....	3
3.1	Concepts.....	3
3.2	Criteria and principles.....	4
4	Roles & Responsibilities.....	4
5	Preventive actions.....	5
5.1	Declarations of absence of conflict of interest.....	5
5.2	Declarations at meetings.....	5
5.3	Declarations for decisions to be taken by written procedure.....	6
5.4	Mitigating measures.....	6
6	Remedial actions and breach of trust.....	7
7	Provisions applicable to experts.....	7
8	Monitoring and reporting.....	7
9	Personal data protection.....	8
10	Regulatory framework.....	8
11	Entry into force.....	8

1 Purpose and overview

The management of (potential) conflict of interests situations is a key element of good governance and management of EU institutions and bodies and it is crucial for maintaining the trust of stakeholders and citizens in their work. For this reason, it is extremely important to preserve the integrity of the decisions, opinions and recommendations issued by EU-OSHA by ensuring its independence and transparency.

The present policy builds on a reflection based on the lessons learnt from the implementation of the 2014 EU-OSHA's policy on management of conflict of interests as well as the outcome of a risk assessment to identify its exposure to the risk of conflict of interests as a result of the entry into force of a new founding regulation¹ in 2019. The reflection confirmed that the risk exposure to conflict of interests situations remains low. The mandate and role of EU-OSHA do not include regulation or inspection tasks. There is no direct financial impact from the Agency's work on its stakeholders. As several interests are represented in the governance structure of the Agency, the actual governance structure of the Agency is a preventive element. Among all the declarations of interests submitted and processed in the last five years, there has been no case that needed to be referred beyond the basic assessment level.

The residual risk related to conflict of interests is a low level of awareness, in particular among Management Board members, on the topic. As a result, the main objective for EU-OSHA is to ensure sustained awareness within the target group while establishing effective and agile mechanisms to detect potential situations at an early stage, recording them and handling them appropriately.

This policy aims at establishing a comprehensive framework for the management of situations of conflict of interests that may arise among Management Board members and external experts in relation to EU-OSHA's work.

To this purpose, the policy includes:

- A definition for the different types of interests, conflict of interests and implications as well as criteria and principles against which potential conflict of interests situations shall be assessed.
- A description of the main actions to prevent or to put remedy to potential conflict of interest situations.
- An overview of the roles and responsibilities in relation to conflict of interests management at EU-OSHA.

2 Scope of application

The provisions included in this policy shall apply to **full and alternate members and observers to EU-OSHA's Management Board** (hereinafter, **Management Board members**), who, by virtue of their role, set the strategic directions for the Agency and hold the Executive Director accountable.

Due to the influence that **external experts** can exert over strategic decisions by providing scientific advice on specific activities, this policy includes some specific provisions under item 7.

3 Concepts, criteria and principles

3.1 Concepts

An **interest** may be of financial or non-financial nature and it may concern a personal or a family relationship (to be understood as close family circle: parents, stable partner, children) or a professional affiliation.

Legitimate interests are interests of a particular individual in their capacity as representative of an organisation or an interest group within the governance structure of EU-OSHA and its Management Board. Legitimate interests are, indeed, legitimate and are embedded in the performance of the

¹ Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94 (referred to as "EU-OSHA founding regulation")

concerned individual's role as Management Board member at EU-OSHA and there is no expectation that these should lead to a conflict of interests.

A **conflict of interests** refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation is or might be perceived as being compromised by a personal interest held or entrusted to an individual. Not only actual impartiality and objectivity is important, but also perception of impartiality and objectivity. Appearance of conflict of interest can constitute a reputational risk for the Agency.

A **potential conflict of interests** exists when a person falling under the scope of these rules has interests in their private capacity which could cause a conflict of interests to arise if that person was to become involved in relevant (i.e. conflicting) official responsibilities in the future.

3.2 Criteria and principles

The significance of potential conflict of interests' situations shall be determined on the basis of the nature of the presumed interest (direct, indirect etc.) and assessed according to pre-defined criteria and principles.

Criteria

- (1) **Likelihood of undue influence:** the likelihood that decisions, opinions and recommendations made would be unduly influenced by a personal interest that goes beyond the legitimate interest of the individual.
 - What is the value of the personal/undue interest?
 - What is the scope of the relationship under scrutiny?
 - What is the extent of discretion in the decision-making process?
- (2) **Seriousness of the potential harm or wrong** that could result from such influence.
 - What is the value of the decision/opinion/recommendation?
 - What is the scope of the consequences?
 - What is the impact on accountability?
- (3) **Availability of mitigating measures** that could reduce the likelihood or limit the harm.

Principles

- (1) **Proportionality and efficiency:** the balance of expected benefits and risks should be taken into account
- (2) **Fairness:** similar treatment should be applied to individuals that are in the same situation
- (3) **Transparency:** the assessment shall be carried out according to the pre-defined criteria, documented and communicated to the concerned individuals and stakeholders.

4 Roles & Responsibilities

All **Management Board members** have the duty to declare whether they are in a situation of conflict of interests or not.

The **Management Board** has the duty to deal with any case referred by an individual Management Board member – which may include following up to requests for information or clarification by a Management Board member or assessing specific situations or competing interests declared in any form. The assessment shall be performed in line with the criteria and principles referred to under item 3.2 of this policy. Furthermore, it has the duty to put in place effective controls by implementing either mitigating measures or remedial actions where such interests carry a risk of turning into potential conflicts of interest, cf. items 5 and 6 of this policy.

The **interest groups coordinators and one member of the Commission** (other than the one designated as Deputy Chairperson) are designated to perform the assessment (hereinafter **competent**

body). Decisions on possible preventive and remedial actions are taken by the Chairperson of the Management Board on behalf of the Management Board upon a proposal from the competent body. Requests to review the mitigating or remedial actions decided upon by the competent body shall be processed by the Chairperson of the Management Board, assisted by the three Deputy Chairpersons.

Should any of the above-mentioned members find themselves in a situation of potential conflict of interests, the Management Board shall designate another member from the same interest group or among the Commission representatives to perform the tasks required for the implementation of the policy.

The **Management Board secretariat at EU-OSHA** shall provide support to the Management Board in the performance of this task.

As legal representative of EU-OSHA and responsible for the daily management of the Agency, the **Executive Director** shall ensure a proper implementation of this policy. This entails ensuring that appropriate communication and training actions are delivered to Management Board members and others covered by its provisions and that the required reporting obligations are met.

5 Preventive actions

5.1 Declarations of absence of conflict of interests

According to article 4.4 of EU-OSHA Founding Regulation, at the time of taking office, Management Board members have the duty to declare that they are not in a situation of conflict of interests. To this purpose, they shall be required to undersign a declaration of absence of conflict of interests based on a template provided by EU-OSHA's Management Board secretariat. The declaration shall be made available in electronic form and Management Board member shall provide their acceptance in the same way following instructions from EU-OSHA².

Management Board members shall assume individual and full responsibility in declaring their absence of conflict of interests in good faith. The declarations shall be renewed every four years, upon renewal of their mandate (if applicable).

If at any point in time any changes occur to the situation of any member's interest, they shall update their declarations without any delay by notifying their intention to do so to the Management Board secretariat. Similarly, any request for clarification in respect to individual situations shall be addressed to the Management Board secretariat, which, in turn, shall notify the competent body within the Management Board.

5.2 Declarations at meetings³

In the invitation to meetings where members of the Management Board are invited to participate, they shall be explicitly requested to declare whether they are/could be in a potential situation of conflict of interests with respect of any agenda item. Any such case should be referred via the Management Board secretariat, to the competent body within the Management Board for assessment,

In addition, at the beginning of each meeting, participants shall be reminded by the chair of the meeting (Chairperson of the Management Board or other) to declare any interest which could be considered as prejudicial to their independence with respect to any of the items of the agenda. Provided that the case shall be referred to the competent body within the Management Board for a full-fledged assessment at a convenient time, the chair of the meeting (Chairperson of the Management Board or other) shall take the following as default precautionary measure: the member concerned shall not participate in the discussions and in the final deliberation of the relevant agenda item.

² EU-OSHA shall provide specific instructions for Management Board members and expert groups member and provide technical assistance if needed.

³ Meetings include all Management Board and Executive Board meetings as well as Advisory Groups meetings (Tools and Awareness Raising Advisory Group and Prevention and Research Advisory Group).

Any conflicting interest shall be recorded in the minutes together with the specific mitigating measures adopted.

5.3 Declarations for decisions to be taken by written procedure

At the time a written procedure is launched with Management Board members, the Management Board secretariat shall, on behalf of the Management Board, remind members about the issue and request them to declare any interest, which could be considered as prejudicial to their independence with respect to the item proposed for decision. The Management Board secretariat shall refer any such case to the competent body within the Management Board for assessment. The Chairperson of the Management Board shall take a decision based on the proposal from the competent body. Any conflicting interest shall be recorded in the decision together with the specific mitigating measures adopted.

5.4 Mitigating measures

The Chairperson of the Management Board shall, upon a proposal by the competent body within the Management Board and after having informed the Executive Director, implement measures aiming at mitigating or eliminating potential conflict of interests situations. These measures shall be adopted in a situation in which interests are properly and transparently declared and the conflict of interests has not yet materialised.

In the first instance, if a potential conflict of interests is identified during the assessment – either via the declarations submitted by Management Board members or via any other means – the Chairperson shall arrange for the member concerned to either give up the conflicting personal interest or pull out/ recuse himself/herself from relevant decisions and, if necessary, discussions for which such a conflict may arise.

Other actions may include restriction in the level of the participation in Management Board's discussions, deliberations and voting (if applicable) where their opinion or vote may be perceived as biased in the light of the potential conflict of interests. Restrictions may vary depending on the materiality of the conflict of interests as assessed by the competent body within the Management Board.

Examples include:

- The member concerned can participate in the discussions but not in the final deliberation of the relevant agenda item;
- The member concerned shall not participate in the discussions and in the final deliberation of the relevant agenda item;
- The member concerned is requested to leave the room for the duration of the discussions and deliberation of the relevant agenda item;
- The member concerned shall participate only as an expert in order to give specialist advice on a specific issue by providing information and replying to questions;
- The member concerned may not be considered suitable to hold a function within the Management Board such as Chairperson or Deputy Chairperson; interest group coordinator; reporting officer for the Executive Director etc.;
- In case an alternate can be appointed, the member concerned may be replaced for the relevant agenda item.

Should the situation of the member concerned be deemed to be particularly detrimental to EU-OSHA, the Chairperson of the Management Board shall refer the case to the appointing authority⁴ stating the nature of the problem.

It remains within the responsibility of the competent appointing authority to adopt any formal decision with regard to the member concerned, which, where necessary, may lead to the revocation of their nomination as Management Board members.

⁴ The appointing authority is the Council of the European Union for Management Board members from the three interest groups (Governments, Employers and Workers); the European Commission for the Commission representative; the European Parliament for the Parliament representative; for any other observer members, it is the authority responsible for their appointment.

The member concerned shall be informed prior to any step being taken and may provide further details/explanation related to the case. They may also request a review of any of the mitigating actions decided upon by submitting a request, via the Management Board secretariat, to the Chairperson of the Management Board.

6 Remedial actions and breach of trust

In case the potential conflict of interests has already materialised, the Chairpersons of the Management Board shall, upon a proposal by the competent body within the Management Board and after having informed the Executive Director, implement, in addition to any mitigating measure considered useful (cf. item 5.4 of this policy), specific remedial actions.

Such actions may include, further to an ex-post review of the concerned member's activities and contributions to the Agency's outputs:

- Review by the Management Board of the decisions taken with the contribution of the member concerned adopted without the required mitigating measures;
- Cancellation of such decisions in case the member concerned has played a significant role in their adoption, for instance, by virtue of their role within the Management Board.

Any false declaration, wilful omission or refusal to declare interest or any other failure to comply with this policy may be seen as a breach of trust towards EU-OSHA. In these cases, in addition to the above-mentioned remedial actions, the Chairperson of the Management Board shall refer the case immediately to the competent appointing authority stating the nature of the problem. It remains within the responsibility of the competent appointing authority to adopt any formal decision with regard to the member concerned, which, where necessary, may lead the revocation of their nomination as Management Board members.

Cases of presumption of fraud shall be referred immediately to the European Anti-Fraud Office (OLAF).

The member concerned shall be informed prior to any step being taken and may provide further details/explanation related to the case. They may request a review of any of the remedial actions decided upon by submitting a request, via the Management Board secretariat, to the Chairperson of the Management Board.

7 Provisions applicable to experts

In the planning, design and implementation of its activities, EU-OSHA may resort to expert advice. In order to give a full and transparent account of EU-OSHA internal decision-making process, preserve the scientific reliability of the advice sought and ensure integrity of the Agency's outputs, external experts shall be required to undersign a declaration of absence of conflict of interests with respect to the area of EU-OSHA work for which their expert advice is requested.

At EU-OSHA, the responsibility of ensuring the implementation of the policy lies with the Heads of Unit under whose remit the activities are planned, designed and implemented – who act on behalf of the Executive Director. *Mutatis mutandis*, the criteria and principles for assessment (item 3.2) and mitigating (item 5) and remedial actions (item 6) referred to in this policy shall apply. The competent authority to decide on such measures is the Executive Director upon a proposal from the relevant Head of Unit, Internal working instructions shall be drafted for the purpose.

8 Monitoring and reporting

The Executive Director shall ensure the utmost transparency in relation to the implementation of the policy. To this end, they shall ensure that all Management Board members' declarations of absence of conflict of interests and any related updates thereto are published on the Agency's website. In addition, an annual account of the implementation of the policy shall be included in the Consolidated Annual Activity Report (article 48 of EU-OSHA Financial Regulation).

As an additional transparency measure, the Executive Director shall ensure that the following information is made publicly available and accessible on the Agency's corporate website:

- EU-OSHA policy on management of conflict of interests with respect to the Management Board;
- Rules of procedure of the EU-OSHA Management Board;
- Names of the members (full/alternate/observers) of the Management Board including the names of the organisations they represent/belong to;
- Agendas and minutes of Management Board and Executive Board meetings including list of attendees;
- Any restrictions of any kind with regard to Management Board and Executive Board deliberations and written procedures;
- Names of independent experts, organisations they belong to and declaration of absence of conflict of interest and related updates thereto.

9 Personal data protection⁵

Declarations shall be processed 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.

The Executive Director is the data controller for handling the declaration of absence of conflict of interests of data subjects identified in this policy.

Data subjects are also entitled to have recourse at any time to the European data Protection Supervisor.

10 Regulatory framework

Regulation (EU) 2019/126 of the European Parliament and of the Council of 16 January 2019 establishing the European Agency for Safety and Health at Work (EU-OSHA), and repealing Council Regulation (EC) No 2062/94 (referred to as "EU-OSHA founding regulation")

11 Entry into force

The policy repeals "EU-OSHA policy on management of conflict of interest", adopted by the Governing Board on 25 November 2014 and enters into force on the day after its adoption.

Annexes:

Annex I – Declaration of absence of conflict of interests (template)

Annex II – Privacy statement

⁵ For further details, cf. the specific privacy statement annexed to this policy.

Annex 1

Declaration of absence of conflict of interests of the members/alternate members/observers to the Management Board of EU-OSHA

I, _____, in my capacity as appointed member/alternate member/observer to the Management Board of EU-OSHA, having knowledge of the “Policy on prevention and management of conflict of interest at EU-OSHA”, hereby declare that I have no actual or potential conflict of interests that may affect negatively the performance of the duties that I have committed to duly and appropriately discharge as a member of the Management Board of EU-OSHA.

It is hereby referred to as “conflict of interests” a situation in which my private interests and affiliations could actually or potentially be perceived to impact negatively my independence and/or loyalty towards EU-OSHA and/or its interests.

I hereby further undertake to inform the Chairperson of the Management Board in writing as soon as any situation of conflict of interests arises during the performance of my duties, by submitting, without undue delay, a written declaration describing the particular situation of the actual potential conflict of interests.

On such occasions, I understand that the Management Board shall assess my perceived situation of conflict of interests and shall take any appropriate measure in order to ensure its independence and the impartiality of its deliberations and decisions. The Management Board shall thus reach a duly reasoned decision with respect to my perceived situation of conflict of interests and the performance of my duties respectively. I acknowledge that I have the right to ask for a review of the assessment of my situation and I ultimately undertake to abide by the Management Board’s decision in this respect.

In accepting this declaration, I also agree that my declaration will be posted on the EU-OSHA website with date and time of my acceptance.

Annex 2

Privacy Statement on the protection of personal data in relation to the EU-OSHA policy on management of conflict of interest with respect to Management Board members and external experts

Organizational part of the Agency entrusted with the processing of personal data

Christa Sedlatschek, Executive Director, informationatosha.europa.eu

Purpose of processing

The processing of personal data is to maintain the integrity of the decisions, opinions and recommendations issued by EU-OSHA and foster accountability in relation to the Agency's work and activities.

Type of data processed

- Name and surname, employer and role played by Management Board members, alternates and observers within the Management Board of EU-OSHA or name and surname, employer and role played in one of EU-OSHA's expert groups.
- Statement related to the absence of conflict of interest vis-à-vis EU-OSHA's work and mandate (incl. acceptance and data of acceptance by the data subjects).
- Direct or indirect interests declared by the data subjects during meetings, written procedures or any other form.

Legal basis

The processing and publishing of personal data is carried out on the basis of Regulation (EC) No. 2019/126 of 16/01/2019 establishing the European Agency for Safety and Health at Work repealing Council Regulation (EC) No 2062/94 and subsequent amendments.

Lawfulness of processing

The lawfulness of the processing is based on Article 5(a) and (d) of [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 (hereinafter the Regulation).

Data recipient

- The declarations of absence of conflict of interest and any restriction in the level of involvement in the Agency's activities as a result of the assessment of potential conflict of interests situations shall be published on the website and therefore are accessible by the general public.
- The Management Board plays a key role in the implementation of the policy. A small competent body established within the Board deals with any situation involving a potential conflict of interests and any other issue related to the interpretation and implementation of the policy and prepares decisions in this respect for the Chairperson of the Management Board. This work is supported by EU-OSHA's Management Board secretariat. Data processed are disclosed on the basis of the "need-to-know" principle.

The data subject's rights

- Data subjects have the right to request from the controller access to and rectification or erasure of personal data or restriction of processing concerning the data subject or, where applicable, the right to object to processing or the right to withdraw consent at any time without affecting the lawfulness of processing based on consent before its withdrawal (Articles 17, 18, 19, 20, 22, 23 and 24 of the Regulation).
- Data subjects' rights can be restricted only in the cases foreseen in Art 25 of the Regulation.
- Data subjects have the right to rectify any information included in the declaration by sending a new declaration to managementboardatosha.europa.eu and requesting its replacement. In

addition, data subject have the right to lodge an appeal against the assessment of their declaration or on the preventive and remedial measures decided upon under the terms and conditions established under the policy.

Information on the conservation period of data

The acceptance of the statement of absence of conflict of interest together with the date of acceptance shall be made available on the EU-OSHA's website throughout the duration of the mandate of the corresponding Management Board member/alternate/observer and expert group member and will be stored until 3 years after the end of the mandate (once the discharge for the relevant year has finalised).

Request for information

For any further information regarding the handling of their personal data, data subjects can address their request to EU-OSHA Data Protection Officer at: dpoatosha.europa.eu.

Recourse

Data subjects are entitled to have recourse to the European Data Protection Supervisor: <http://www.edps.europa.eu>, should they consider that the processing operations regarding their personal data do not comply with the Regulation.

Date when processing starts

Date of entry into force of the policy.