



## EUROPEAN DEFENCE AGENCY

### DECISION N° 18/19

of 18 June 2018

#### **adopting EDA's policy on the prevention and management of Conflict of Interests**

#### **THE CHIEF EXECUTIVE,**

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (hereinafter referred to as "the Council Decision"),<sup>1</sup> notably Articles 10 and 11 thereof,

Having regard to Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC (hereinafter referred to as "the Staff Regulations")<sup>2</sup>, and in particular to Articles 11, 12 and 104 thereof,

Having regard to Council Decision (EU) 2016/1352 of 4 August 2016 concerning the rules applicable to national experts seconded to the European Defence Agency, and repealing Decision 2004/677/EC (hereinafter referred to as "the SNE rules")<sup>3</sup> and in particular to Article 8 thereof,

Having regard to Council Decision (EU) 2016/1353 of 4 August 2016 concerning the financial rules of the European Defence Agency and repealing Decision 2007/643/CFSP (hereinafter referred to as 'the Financial Rules'),<sup>4</sup> notably Article 25 and 33 thereof,

Whereas:

- (1) The Agency recognises that a clear and transparent policy on the prevention and management of conflicts of interests is a key element in the governance of every Union institution, body or agency, and crucial for maintaining the trust of stakeholders and citizens in its integrity;
- (2) in order to effectively fulfil its mission as set out under Article 2 of the Council Decision, the Agency needs to have access to the highest level of expertise available in its field of activity - while being made fully aware of all the interests involved and possible risks of conflict of interests or appearance of conflict of interests, in order to act upon these risks;
- (3) there is no comprehensive EU regulatory framework dedicated to conflict of interests and, as a result, the Agency has developed rules and procedures to prevent and manage conflict of interests situations,

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<sup>1</sup> OJ L 266, 13.10.2015, p.55.

<sup>2</sup> OJ L 219, 12.08.2016, p.1.

<sup>3</sup> OJ L 219, 12.08.2016, p.82.

<sup>4</sup> OJ L 219, 12.08.2016, p.98.

following the guidelines provided by the European Court of Auditors and the European Commission to EU Agencies, as well as the recommendations of the Agency Internal Auditor.

- (4) This Decision takes into account the specific nature of EDA as an Agency established under the Treaties, as well as the need to ensure proportionality in light of the limited availability of expertise in the defence sector.

**HAS DECIDED AS FOLLOWS:**

## **TITLE I GENERAL PRINCIPLES**

### **Article 1 Scope**

1. This Decision lays down the policy on the management of potential or actual situations of conflict of interests in the European Defence Agency (hereinafter referred to as "EDA" or "Agency").
2. This Decision is applicable to staff members of the Agency including temporary and contract agents, as well as persons seeking employment with EDA, and to Seconded National Experts ("SNEs"). It also applies to personnel recruited on an interim basis and trainees.
3. The Agency shall ensure that external experts participating in EDA activities, as well as contractors or tenderers are made fully aware of their obligations under this Decision.
4. All instances of exposure to the issue of conflict of interests that may occur at the Agency shall be comprehensively dealt with under the provisions of the present Decision and the relevant documents it refers to.

### **Article 2 Definitions**

For the purposes of this Decision:

- a) "Actual conflict of interests" exists when the private interests and affiliations of the persons falling under the scope of this Decision could negatively impact his/her independence and/or loyalty towards the Agency and/or its interests.
- b) "Assignment", pursuant to Article 2 of Decision No.18/17<sup>5</sup> means the taking-on of a defined, time-limited task.
- c) "Conflict of interests" is a situation in which the private interests and affiliations of the persons falling under the scope of this Decision could actually or potentially be perceived to negatively impact their independence and/or loyalty towards the Agency and/or its interests.
- d) "Declaration of absence of conflict of interests" means the written declaration to be submitted according to the provisions of the present Decision;
- e) "Direct interests" means interests of personal benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing his/her behaviour;

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<sup>5</sup> Decision No.18/17 of 15 May 2018 on outside activities and assignments.

- f) "Indirect interests" means other interests that may have some influence over the individual's behaviour and therefore shall be declared and neutralised;
- g) "Interest" means all interests falling within the fields of competence of the Agency that are subject to declaration in line with Article 5.3 of this Decision;
- h) "Outside activity", pursuant to Article 2 of Decision No. 18/17 means any other activity, paid or unpaid, that is of an occupational character or goes otherwise beyond what can be reasonably considered a leisure activity.
- i) "Potential conflict of interests" exists where a person falling under the scope of this Decision has interests in his/her 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.
- j) "Senior members of temporary staff", means staff members occupying functions corresponding to the type of post in grades AD14 and above.

### **Article 3** **Principles**

#### *Independence*

1. The Agency shall take all appropriate measures to ensure that all persons falling under the scope of this Decision are independent from all external interests and, in all its processes, impartial decisions are taken.
2. The persons falling under the scope of this Decision shall not, in the performance of their duties, deal with any matter, directly or indirectly, in which they have any private interests which would, as such, impair their independence and, in particular, interests as defined in Article 5.2 of this Decision.

#### *Transparency*

3. Declarations of conflict of interests as defined in Article 2 for all persons covered by this Decision, as defined in Article 1, as well as the measures taken in this respect shall be clearly recorded in formal documents to enable the Agency to demonstrate, if necessary, that a specific actual or potential conflict of interests has been appropriately identified and managed.
4. The Agency shall ensure that its administrative processes allow for transparency and the documentation of requested information in line with the applicable EU legal framework, in particular as regards the protection of personal data.

### **Article 4** **Specific nature and mission of the Agency**

1. Considering the specific nature and mission of the Agency, the mere fact that a person falling under the scope of this Decision has a function in an entity which has contractual or any other kind of relationships with the Agency should not *per se* be regarded as a conflict of interests situation that would exclude the person concerned from providing his/her services to EDA.
2. The nature, scope and impact of the link of the person with another entity/other entities should be reviewed on a case-by-case basis before drawing a conclusion in respect to the existence of an actual conflict of interests.

### **Article 5** **Principle of declaration of absence of conflict of interests**

1. In order to prevent and manage situations of potential and actual conflict of interests, EDA requests a declaration of absence of conflict of interests in situations where conflict of interests may arise. In that

respect, it should be noted that having and declaring an interest does not necessarily mean having a conflict of interests.

2. Templates for the declarations referred to under this Decision are provided by the relevant unit in the Corporate Services Directorate ("CSD") and, once signed by the persons falling under the scope of this Decision, is assessed by CSD.
3. Persons falling under the scope of this Decision shall declare any interests, in line with the definitions under Article 2, corresponding to the following categories of interests:
  - a) "Financial interests" meaning direct or indirect interests of a financial nature;
  - b) "Professional interests" meaning all activities performed for or on behalf of a company/organisation operating in a related field, whether or not these activities have been subject to regular or occasional remuneration in cash or in kind;
  - c) "Intellectual Interests" meaning interests of a non-pecuniary or material benefit to the individual, arising from professional activities or affiliation with national or international organisations or bodies with tasks similar to EDA or persons involved in activities similar with those of EDA. Intellectual interests also include participation in public interest groups, professional societies, clubs or organisations, which have an agenda or an interest in the Agency's work, as well as involvement in academic trials or in publicly funded research initiatives.
  - d) Interests deriving from the professional activities, as well as direct and indirect interests of financial nature of his/her close family members.
  - e) Any other interests that they consider pertinent.

#### **Article 6**

##### **Responsibility for the declaration**

All persons falling under the scope of this Decision have a primary responsibility to provide information regarding the existence of any conflict of interests, belonging to the categories defined in Article 5.3 of this Decision, and to update their declarations accordingly, as soon as a conflict of interests arises, without delay.

## **TITLE II**

### **PROCEDURE FOR IDENTIFYING AND HANDLING CONFLICTS OF INTERESTS**

#### **Article 7**

##### **Declarations of absence of conflict of interests in recruitment procedures**

1. In line with Article 11 of the Staff Regulations, the authority authorised to conclude contracts (defined under Article 1.2 of the Staff Regulations and referred to hereinafter as "AACC") shall, before recruiting a staff member, examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interests. To that end, the candidate shall submit a declaration of absence of conflict of interests.
2. In case potential or actual situations of conflict of interests have been declared, the AACC shall take this into account in a duly reasoned opinion, in line with Articles 11 and 12 of the Staff Regulations.

#### **Article 8**

##### **Provisions applicable to staff members, SNEs and other persons providing services at EDA**

1. Each staff member and SNEs shall be subject to and fully comply with the principles of independence, integrity, impartiality, discretion and loyalty, as stipulated in the Staff Regulations and the SNE Rules respectively, as well as in the Code of Good Administrative Behaviour, adopted under Decision No.18/21.<sup>6</sup> The same principles shall apply to personnel recruited on an interim basis and trainees.
2. In cases where a person falling under the scope of the present Decision encounters a matter falling into the categories provided for in Article 5.3 of the present Decision, he/she shall immediately inform the CE/AACC. The latter shall address the matter according, as relevant, to the provisions of Articles 11 and 12 of the Staff Regulations, and Article 8 of the SNE Rules, and shall take this into account in a duly reasoned opinion.

**Article 9**  
**Specific provisions applicable**  
**to senior members of temporary staff**

1. Senior members of staff shall declare any interests belonging to the categories listed in Article 5.3 with respect to all activities in which they are currently involved, as well as all activities in which they have been involved during the five years preceding the submission to EDA of the first declaration of interests. This declaration, shall be updated annually and shall also cover interests, as defined under Article 2(g) of this Decision held by their spouse or partner living in the same household.
2. For transparency purposes, a public declaration of interests shall be made public on the EDA website.

**Article 10**  
**Provisions regarding outside activities**

1. Any member of staff wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside of EDA, shall first obtain the permission of the AACC, pursuant to Article 15 of the Staff Regulation and in line with Decision No.18/17 on outside activities and assignments.
2. Article 1 to Decision No. 18/17 of 15 May 2018 on outside activities and assignments shall apply to SNEs.

**Article 11**  
**Selection panels in recruitment procedures**

1. Members appointed to EDA selection panels shall act in conformity with the principles of independence and impartiality and shall fully comply with Decision No. 17/11 of 2 October 2017 adopting rules on the selection procedure for the recruitment of EDA staff.
2. Each member appointed to a selection panel shall sign a declaration of absence of conflict of interests before the selection panel initiates its activities. They shall inform the AACC of the existence of any links with candidates which might lead to their being suspected of bias, such as the interests falling into the categories of Article 5.3 and shall not issue a personal opinion on the candidate's application file, qualifications, or written or oral tests. The members of a selection panel are bound by the rules on selection procedures which provide for secrecy of the proceedings and shall only provide the relevant assessment in the course of the selection procedure in line with these rules.

**Article 12**  
**Provisions applicable to the members of Opening and Evaluation Committees**  
**in procurement procedures**

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<sup>6</sup> Decision No.18/21 adopting a code of good administrative behaviour for EDA staff in its relations with the public.

1. All members appointed to opening and evaluation Committees in EDA procurement procedures shall sign a declaration of absence of conflict of interests.
2. Appointed members shall fully comply with the relevant EDA Financial Rules and any other internal decisions applicable under EDA's procurement procedures.

### **Article 13**

#### **Specific provisions applicable to tenderers and external contractors**

1. In line with the provisions of the EDA Financial Rules, contracts may not be awarded to candidates or tenderers for whom a conflict of interests has been identified during the procurement procedure. All tenderers and candidates in procurement procedures shall submit a declaration of absence of conflict of interests as part of their application file.
2. EDA shall inform the external contractor that if potential or actual situations of conflict of interests are identified before or during the performance of a contract awarded by EDA as Contracting Authority, the external contractor in question has a duty to notify the Contracting Authority in writing without delay.

### **Article 14**

#### **Specific provisions applicable to experts invited to participate in EDA activities**

1. External experts in areas of activity under the remit of EDA may be invited to participate in CapTech meetings, regular or ad hoc working groups, or other similar groups in order to bring an independent expert view on the issues discussed.
2. The Agency shall inform invited external experts that they have a responsibility to disclose the existence of possible conflicts of interests that may place the impartiality of the Agency at risk. They shall state the type and nature of interests, specifying whether they are general or relate to a project/programme under implementation or under discussion or to other activities of the Agency.
3. The declarations shall be collected by the Chair of the relevant working group or meeting and shall be assessed by CSD for a possible conflict. If a conflict of interests is established and no mitigating measure can be found, the external expert may no longer participate to the working group or meeting.

## **TITLE III**

### **Final provisions**

#### **Article 15**

##### **Raising awareness**

1. All staff members as well as SNEs, personnel recruited on an interim basis and trainees shall be informed of this Decision upon their appointment or commencement of duties within EDA.
2. EDA shall organise training sessions on a regular basis to raise awareness of the present Decision and on the management of conflicts of interests.

#### **Article 16**

##### **Personal data protection**

Declarations of interests shall be processed pursuant to EU legislation on the protection of personal data applicable to the Agency.

**Article 17**  
**Entry into force**

The present Decision shall enter into force on the day of its adoption.

Done at Brussels, on *18<sup>th</sup> June 2018*

A handwritten signature in blue ink, appearing to read 'Jorge Domecq', written in a cursive style.

Jorge Domecq  
Chief Executive