



FUSION FOR ENERGY

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

THE GOVERNING BOARD

DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ON CONFIDENTIALITY, INDEPENDENCE, PREVENTING AND MANAGING CONFLICTS OF INTEREST

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007¹ of 27/03/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it (hereinafter "the Statutes"), as last amended on 10/02/2015², and in particular Article 5, 6(3)(k) as well as Articles 8a(4), 8b(3), 9(3) and 9a(4) thereof;

HAVING REGARD to the amended Rules of Procedure of the Governing Board³, in particular Rules 1(4) and 19, as well as of the Bureau⁴, in particular Rules 1(3) and 10;

HAVING REGARD to the Rules of Procedure of the Administration and Management Committee, in particular Rules 1(5) and 11; of the Procurement and Contracts Committees, in particular Rules 1(4) and 12, as well as the amended Rules of Procedure of the Technical Advisory Panel, in particular Rules 1(3) and 12⁵; HAVING REGARD to the Report of the European Parliament on the 2009 discharge: performance, financial management and control of EU agencies⁶;

HAVING REGARD to the Special Report of the European Court of Auditors (ECA) on the "Management of conflict of interest in selected EU Agencies" of 11th October 2012⁷;

HAVING REGARD to the ruling of the Judgment of the General Court of 20th March 2013 in the *Nexans* case⁸;

Whereas:

- (1) Independence, impartiality, objectivity and high standards of professional conduct by all the Joint Undertaking Bodies and Committees involved in the tasks and activities of the Joint Undertaking are the cornerstones of the Joint Undertaking;
- (2) The Governing Board adopted a Decision on Confidentiality, Independence, Preventing and Managing Potential Conflicts of Interest on 27th June 2013⁹;
- (3) The Joint Undertaking reassessed its exposure to conflicts of interest taking into account the experience gained since the last Governing Board Decision was adopted and in light of Report of the European Parliament on the 2009 discharge: performance, financial management and control of EU agencies as well as the Special Report of the European Court of Auditors (ECA) on the "Management of conflict of interest in selected EU Agencies" of 11th October 2012;

¹ O.J. L 90, 30.03.2007, p. 58.

² O.J. L 37, 13.02.2015, p. 8.

³ F4E(15)-GB31-09.3.

⁴ F4E(15)-GB31-09.4

⁵ Rules of Procedure: AMC (F4E(15)-GB31-09.5), PCC (F4E(15)-GB31-09.6), TAP(F4E(15)-GB31-09.7).

⁶ 2010/2271(DEC).

⁷ Special Report 15/2012.

⁸ *Nexans France v Joint Undertaking Fusion for Energy* (Case T-415/10), O.J. C 129, 4.5.2013, p. 16.

⁹ (F4E(13)-GB27-16.1).

- (4) Changes were necessary to reflect the amendments to the Joint Undertaking's Statutes, ensure coherence with its Rules on the prevention and management of conflict of interest regarding the Joint Undertaking's staff members, adopted on 11th June 2014¹⁰ and to add the methodology for assessing conflicts of interest following the Governing Board's earlier Decision on the subject;
- (5) As a consequence the provisions on commitment, independence and confidentiality have been updated to lay down detailed practical arrangements and proportionate measures for avoiding conflicts of interest of the Bodies and Committees of the Joint Undertaking;
- (6) The present Decision covers the "Governing Board and Committees", thus including the Joint Undertaking's Governing Board itself, the Committees as well as any subsidiary bodies established under the Statutes or by a decision of the Governing Board, as well as to *ad hoc, experts* and working groups established by the Governing Board or one of the Committees;
- (7) "Participant(s)" in this Decision refers to the Chairs, Vice-Chairs and members of the Governing Board and Committees, their alternates , as well as external experts and observers and any third parties participating at any title in the Governing Board and Committees;

THE GOVERNING BOARD OF THE JOINT UNDERTAKING HAS ADOPTED THIS DECISION:

Article 1

Commitment and Independence

1. The Participants shall act in the general interest of the Joint Undertaking. They shall make a Declaration of Commitment (Annex I) to that effect before taking up their duties.
2. The Participants not representing Euratom or the Joint Undertaking Member States who are appointed *ad personam* shall not be bound by any instructions and shall be completely independent in the performance of their duties. They shall make a Declaration of Independence (Annex II) to that effect before taking up their duties.

Article 2

Confidentiality

1. Participants, even after their duties have ceased, shall be subject to the requirements of confidentiality pursuant to Article 194 of the Treaty establishing the European Atomic Energy Community and Article 339 of the Treaty on the Functioning of the European Union. They shall make a Declaration concerning Confidentiality (Annex III) to that effect before taking up their duties.
2. The Joint Undertaking shall not divulge to third parties confidential information that it receives for which confidential treatment has been requested and justified.

¹⁰ F4E(14)-29.12.1

Article 3

Conflicts of Interest

The Participants shall be bound by the Rules on Preventing and Managing Conflicts of Interest annexed to this Decision (Annex IV).

Article 4

Breach of Trust and Remedial Action

In case a Participant fails to comply with the present Decision, such a Participant may be requested to resign or his nomination may be revoked.

If a Participant was involved in a decision without having declared a conflicting interest, the Joint Undertaking may undertake remedial actions.

Article 5

Data Protection

1. Any personal data provided as a result of obligations arising from this Decision shall be processed by Fusion for Energy 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 this Decision by Fusion for Energy, without prejudice to possible transmission to its internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF) for the purposes of safeguarding the financial interests of the European Union.
2. The data subjects shall have the right of access to their 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 their personal data, they shall address them to the Personal Data Controller. The data subjects shall have right of recourse at any time to the European Data Protection Supervisor.
3. Fusion for Energy shall inform the data subjects of the name of the Personal Data Controller upon request.

Article 6

Periodic review

The Joint Undertaking should regularly assess the effectiveness of the existing conflicts of interest policy, in order to adapt it to possible new risks.

Article 7

Final Provisions

This Decision shall replace the Decision of the Governing Board on Confidentiality, Independence, Preventing and Managing Potential Conflicts of Interest of 27th June 2013. It shall have immediate effect.

Done at Barcelona, 9 June 2015

For the Governing Board

A handwritten signature in black ink, appearing to read 'Stuart Ward', with a horizontal line underneath the name.

Stuart Ward
Chair of the Governing Board

For the Secretariat

Raymond Monk
Secretary of the Governing Board

ANNEX I

DECLARATION OF COMMITMENT

Name: _____

Governing Board / Committee:

Position:

- Chair
- Representative / Member
- Expert
- Other (please specify)

I hereby undertake to act in the performance of my duties in the general interest of the Joint Undertaking.

DONE AT _____ ON _____

SIGNATURE:

ANNEX II

DECLARATION OF INDEPENDENCE

Name: _____

Governing Board¹¹ / Committee¹²: _____

Position:

- Chair / Vice Chair
- Representative / Member
- Expert
- Other (please specify)

I hereby undertake not to be bound by any instructions and shall be completely independent in the performance of my duties.

DONE AT _____ ON _____

SIGNATURE:

¹¹ Members of the **GB** who are representing a JU Member State or Euratom, do not sign this Declaration, as they are not appointed ad personam, see Art. 1 (2) of the current Decision. However the Chair shall sign the Declaration of Independence.

¹² Regarding **Bureau** and **AMC** : Chair / Vice Chair shall sign the Declaration of Independence. Members as well, unless they do represent Euratom or a JU Member State (e.g. Host Member State).
PCC/TAP/Audit Committee: All members, Chairs and Vice Chairs sign the Declaration of Independence.

ANNEX III

DECLARATION CONCERNING CONFIDENTIALITY

Name: _____

Governing Board / Committee: _____

- Chair
- Representative / Member
- Expert
- Other (please specify)

I hereby declare that I am aware of my obligation to respect confidentiality. I know that I am obliged not to disclose information acquired as a result of my participation in the Governing Board / Committee indicated above, even after my duties have ceased. However, as an F4E Member's representative in the Governing Board / Bureau / Administrative and Management Committee, I am allowed to disclose, if necessary and on a need to know basis all or part of the information in the exercise of my professional duties.¹³

I shall also respect the confidential nature of the opinions expressed by other Participants during discussions in meetings or provided in written form.

DONE AT _____ ON _____

SIGNATURE:

¹³ Only applicable accordingly for GB, Bureau and AMC.

ANNEX IV

RULES ON THE PREVENTION AND MANAGEMENT OF CONFLICTS OF INTEREST

1. INTRODUCTION

Independence, impartiality, objectivity of the Participants are of paramount importance to the Joint Undertaking.

At the same time, the Joint Undertaking recognises that it is crucial for the fulfilment of the very specific obligations it has been entrusted with to have recourse to the highest level of expertise, built over time, in contact and collaboration with the relevant stakeholders in the fusion sector.

In this context, the Joint Undertaking acknowledges that the expertise of the Participants of the Governing Board and Committees, as well as the quality of such expertise is inherently based upon prior experience.

The need to manage conflicts of interest should thus not prevent the Joint Undertaking from attracting high level experts. As the Participants are experienced and may have legitimate interests arising out of their professional background and capacity, conflicts of interest or appearance of conflict of interest cannot always be entirely avoided.

Hence, the risks of actual or perceived conflicts need to be identified and managed while ensuring a fair and proportional response to each case.

The present Rules have been established on the basis of Article 6(3)(k) of the Statutes annexed to the Council Decision (Euratom) No 198/2007 of 27 March 2007¹⁴ establishing the European Joint Undertaking for ITER and the Development of Fusion Energy which provides that the Governing Board shall adopt and apply measures and guidelines to “*manage potential conflicts of interest*”.

2. WHO SHALL DECLARE INTERESTS?

2.1. *Candidates*

Conflicts of interest shall be avoided to the extent possible at the stage when *ad personam* Participants are selected. To this end, when publishing Calls for Expressions of Interest for participation in the Governing Board and Committees, the Joint Undertaking shall require candidates to submit General Declarations of Interest as part of the application and provide a link to the present Rules.

2.2. *Participants*

Each Participant in the Joint Undertaking Governing Board and Committees shall be responsible for the declaration of his interests. The Joint Undertaking shall provide all Participants with a copy of the present Governing Board Decision and Rules after their appointment before taking up their duties and ensure Participants' awareness of the policy and its practical application.

¹⁴ As amended, see above, Fn 1 and 2.

3. WHAT TO DECLARE?

3.1. *Types of interest and relevance*

For the purposes of the present Rules, notably the following three categories of interests are considered: (a) financial interests, (b) professional interests and (c) intellectual interests. Such interests are to be declared if they are or could be perceived as related to the domain of activity of the Joint Undertaking.

3.1.1. *Financial Interests*

Financial interests shall comprise any direct financial interest or other (intellectual) property, including ownerships of patents/trademarks, or assets (shares and/or securities held in companies), grants or other funding, which might create a conflict of interest in the performance of their mandate, with an indication of their number and value, as well as the name of the company/provider of the grant/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 the capital of which it has a holding.

Financial interests need not be disclosed unless they have a market value of greater than 20,000 Euros¹⁵. Share portfolios need not be disclosed if the management arrangement is in the form of an investment fund or equivalent.

3.1.2. *Past and Present Professional Interests*

Professional interests shall include 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 - held over the last five years - including services, liberal professions, consulting activities, with direct or indirect pecuniary or other benefits, including notably:

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

3.1.3. *Intellectual Interests*

Intellectual Interests shall include interests of non-pecuniary or material benefit to the individual, which might create a conflict of interest in the performance of their mandate, arising from professional activities or affiliation with national or international organisations or bodies. Intellectual interest is often a prerequisite for scientific excellence and should not necessarily be considered an undesirable bias.

“Intellectual Interests” include rights granted to creators and owners of work that are the result of human intellectual creativity, e.g. publications or in the industrial or scientific domain. They can be in the form of an invention, a manuscript, a suite of software, or a business name (copyrights etc.); unless already covered by “Financial Interests”.

¹⁵ The value of the held shares is evaluated using the share value at the last end of year.

Other relevant interest; any interest/fact not falling under the categories provided above and could be pertinent in relation to the present Rules.

4. WHEN DOES A CONFLICT OF INTEREST ARISE?

The holding of interests as defined above shall not automatically give rise to a conflict of interest, if the independence, impartiality and objectivity of deliberations and decisions are not at risk.

For the purposes of the present rules, a conflict of interest is deemed to arise where the impartiality and objectivity of a decision, opinion or recommendation of a Participant is or might be perceived as being compromised by a personal interest held or entrusted to that Participant, notably when:

- there is some link between a Participant's work and his personal interest, or those of their family or partner;
- a Participant finds himself in a situation that could reasonably lead to allegations being made of bias or partiality, in the light of his personal interests.

Taking due consideration to proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest shall be treated as if it were an actual conflict.

A conflict of interest may exist even if no unethical or improper act results from it. A conflict of interest can create an appearance of impropriety that can undermine confidence in the person, profession, or the organisation.

5. PREVENTING AND MANAGING CONFLICTS OF INTEREST

5.1. Identification of Conflicts of Interest

Conflicts of interest are to be identified on the basis of General, Specific and Spontaneous Declarations of Interest. The declaration of an interest does not *per se* imply the existence of any conflict of interest.

5.1.1. General Declarations of Interest (GDol)

Candidates responding to Calls for Expressions of Interest for one of the Joint Undertaking's Governing Board or Committees whose participants are appointed *ad personam* shall submit a General Declaration of Interests ("GDol", Attachment 1) as part of their application. Participants representing Euratom or the Member States shall submit a GDol following their appointment but before taking up duties.

The signed GDols shall be submitted to the Secretary of the Governing Board or Committee concerned.

To ensure information is accurate, complete and up to date, the Participants are directly responsible to submit an updated GDol whenever there has been a change in circumstances with an impact on their interests. The updated GDol shall be submitted as soon as possible after the Participant concerned learned of the relevant change, not later, however, than within one month from that date. The Secretary shall remind the Participants annually of this obligation.

5.1.2. Specific Declarations of Interest (SDol)

Ahead of each meeting, in order to prevent conflicts of interest and avoid any biased deliberation, decision or appearance thereof, the Participants shall declare any conflict

of interest in relation to the specific agenda items to the respective Chair and Secretary via email no later than 24 hours following the circulation of the agenda. If the need arises, the Chair of the Governing Board or Committee shall make such declarations to the Governing Board Chair, the Governing Board Chair to the Governing Board Vice-Chair.

At the beginning of each meeting, the Participants shall declare to the Chair and Secretary, by filling in the Specific Declaration of Interest (SDoI) form (Attachment 2), whether they have or may have a conflict of interest for any items on the agenda.

5.1.3. *Spontaneous Declarations*

If during a meeting, a Participant becomes aware that he¹⁶ has an interest that is or may be in conflict with an agenda point, he shall immediately inform the Chair by filling in the Specific Declaration of Interest form (Attachment 2). The Chair shall notify the Secretariat and take appropriate action.

5.2. *Screening and Assessment of Declarations of Interest (DoI)*

The primary responsibility for assessing whether an interest might impede independence or influence judgement and for declaring any possible conflict of interest is placed on the individual concerned.

When a DoI – be it a GDoI, SDoI or Spontaneous DoI - is received, the respective Chair, with the assistance of the Secretary, shall screen the DoIs, ensuring that they are complete and, to their knowledge, accurate.

On the basis of the DoIs, the Chair, with the assistance of the Secretary, shall assess level of exposure to a risk of conflict of interest taking into account the Participant's specific activity. For the Chairs the responsibility lies with the Governing Board Chair, for the Chair of the Governing Board with the Vice-Chair of the Governing Board.

5.3. *Methodology for Assessment*

In any particular case, the nature of the Governing Board/Committee and its type of activity needs to be considered. Generally the requirements for Participants could be considered less strict for activities concerning the general planning of the Joint Undertaking, than for activities which relate ultimately to a contract award.

5.3.1. *Risk Level*

The risk level depends on the specific mandate given to the respective Body/Committee and the particular agenda point in question.

Thus, e.g. even in its recommendatory (not decision-making) function, the Procurement and Contracts Committee (PCC) through its Participants, has an important impact on e.g. an individual procurement strategy an award decision, ultimately followed by the Director.

Participants dealing with matters with no impact on the market, e.g. the Governing Board in relation to the F4E budget, would be exposed to a lower level of risk. Thus, although membership in the Governing Board implies a role in decision making power such as strategic decisions, supervising the Joint Undertaking, the Participants' level of risk may well be low. The more general the agenda point, the lower the risk (e.g. normally the case with overall procurement strategies, Procurement Arrangements compared to an assessment just prior to the award).

¹⁶ "He" shall include "he/she" throughout the Decision.

5.3.2. *Nature of Interest*

Another relevant criterion for the assessment is, whether a direct or an indirect interest is at issue. Generally a direct interest implies a higher risk than an indirect interest.

Direct Interests are e.g.: any employment (according to point 3.1.2) during the last year with a company or institution being considered in a tender procedure for which award is recommended; current financial interests (according to pint 3.1.1); ownership of a patent.

Indirect interests e.g.: past employment, longer than one year ago, where the risk involved would normally be lower.

5.3.3. *Likelihood and Seriousness*

The likelihood of undue influence depends on the value of the interest, the scope, depth and duration of the relationship between the Participant and the interest (in the sense of point 3), and on the role of the Governing Board/Committee in which the Participant is taking part.

The extent to which economic and legal interest are affected, as well as the integrity and public perception of the Joint Undertaking, are factors which should be considered in assessing the potential seriousness of the damage which could be done to the Joint Undertaking.

5.4. *Preventive Actions*

The respective Chair, with the assistance of the Secretary, shall decide on the actions to be taken as a result of the DoI screening, depending on the assessment of the degree of exposure to conflicts of interest and ensuring that situations implying a risk of conflict of interest are managed adequately. For the Chairs the responsibility lies with the Governing Board Chair, for the Governing Board Chair with the Bureau. In this context, it shall be examined whether the selected candidate or member has any personal interest such as to impair his independence or any other conflict of interest.

Based on the screening of any of the three types of Dols, the respective Chair, Chair of the Governing Board or Vice Chair of the Governing Board as the case may be, shall determine the level of exposure to a risk of conflict of interest and, if necessary, decide on preventive action, such as (in order of restrictiveness in the Joint Undertakings activities):

- A candidate is not selected for a the Joint Undertaking Governing Board or Committee due to a fundamental incompatibility with membership of that Governing Board or Committee if this possibility has been clearly stated in the Call for Expressions of Interest;
- A Participant is not appointed as Chair or Vice-Chair;
- A Participant cannot participate in the decision/vote/recommendation on a particular agenda item;
- A Participant cannot participate in the deliberations leading to that decision or recommendation.

The timeframe of a restriction is decided according to the particular case, considering notably the likelihood of undue influence and seriousness of the harm. The restrictions can also be applied on the own initiative of the Participant, following his DoI.

When a Participant has declared a conflicting interest in a SDol before a meeting, the Secretary shall not release documents relating to the relevant agenda item to the

Participant, unless instructed otherwise by the Chair following the determination of the level of exposure to a risk.

At the beginning of each meeting, the Chair shall report whether, based on the DoI provided by the Participants, interests with specific items on the agenda exist and which mitigation measures have been decided. If relevant interests are declared ahead of or during a meeting, the identified situation and the appropriate follow-up shall be duly recorded in that meeting's minutes.

6. POST-MANDATE OBLIGATIONS

When a Participant's mandate expires he shall:

- observe integrity, discretion and confidentiality;
- destroy any documents in electronic or paper format related to his mandate within 20 days;
- avoid any activity that could lead to a conflict with legitimate interests of the institution.

7. TRANSPARENCY AND DATA PROTECTION

The Joint Undertaking shall publish on its website the Rules of Procedure of its Bodies and Committees, including their decision-making procedures, the Governing Board Decision on *Confidentiality, Independence, Preventing and Managing Conflicts of Interest*, including the present Rules, as well as the Participants' GDols and CV's.

The Joint Undertaking shall process all declarations of interests in accordance with Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of the personal data by the Community institutions and bodies on the free movement of such data (Data Protection Regulation). The Joint Undertaking shall make a Special Privacy Notice available to the Participants and family/household members together with the relevant forms, notably to inform them about the possibility of making their personal data contained in the GDol public on its website.

The conservation period of GDol, SDol and CVs shall be 5 years after the expiry of a Participant's mandate to ensure information is available should the independence and impartiality of the Participant be called into question at a later stage.

The Participants have a right to access to their respective declaration of interests / CV and to correct it at any time.

Attachment 1

GENERAL DECLARATION OF INTERESTS (GDoI)

Name: _____

Governing Board / Committee: _____

Position:

- Chair
- Representative / Member
- Expert
- Other (please specify)

Information on interests, according to point 3 of these Rules¹⁷ (Annex IV):

1. Financial interests, including any direct financial interest or other property/patents, or assets (shares and/or securities held in companies), grants or other funding which are or could be perceived as related to the domain of activity of the Joint Undertaking, with an indication of their number and value, as well as the name of the company/provider of the grant/funding:
2. Professional interests (last five years), including 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 held over the last five years, including services, liberal professions, consulting activities, with direct or indirect pecuniary or other benefits which are or could be perceived as related to the domain of activity of the Joint Undertaking:
3. Intellectual interests, including interests of non-pecuniary or material benefit to the individual, arising from professional activities or affiliation with national or international organisations or bodies which might create a conflict of interest in the performance of the mandate:
4. Interests arising from any membership role or affiliation that you have in organisations/bodies/club which might create a conflict of interests in the performance of your duties:
5. Interests (as defined above) of members of your family/household (e.g. spouse or partner) which might create a conflict of interests in the performance of your duties:
6. Any other interests or facts you consider pertinent:

¹⁷ “Rules on the prevention and management of Conflict of Interest”

Declaration:

I declare on my word of honour that the information provided above is true and complete. Aware that the persons covered by the above GDoI have a right to object to disclosure on compelling legitimate grounds pursuant to Article 18 of the Data Protection Regulation, I agree that this GDoI is made publicly available on the Joint Undertaking's website. I understand that I shall submit an updated GDoI whenever there has been a change in circumstances with an impact on my interests.

Done at _____ on _____

Signature: _____

Attachment 2

SPECIFIC DECLARATION OF INTEREST (SDOI)

Governing Board / Committee: _____

Name of the meeting: _____

Meeting place: _____ Meeting date: _____

Name	Address	I am / may be in a conflict of interest regarding the following item(s) on the agenda - please state the reason(s) -

Signature: