



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

THE GOVERNING BOARD,

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"), and in particular Article 6(3)(k) thereof;

HAVING REGARD to the Report of the European Parliament on the 2009 discharge: performance, financial management and control of EU agencies;²

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 2012;³

HAVING REGARD to the ruling of the Judgment of the General Court of 20th March 2013 in the *Nexans* case⁴;

Whereas:

- (1) Independence, impartiality, objectivity and high standards of professional conduct by all the Joint Undertaking Bodies 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 and Managing Potential Conflicts of Interest on 28th June 2007;
- (3) The Joint Undertaking reassessed its exposure to conflicts of interest taking into account the experience gained since the original 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;
- (4) As a result, it seems appropriate to update the provisions on commitment, independence and confidentiality and to lay down detailed practical arrangements and proportionate measures for avoiding conflicts of interest of the Bodies of the Joint Undertaking;
- (5) "Body(ies)" in this decision refers to the Joint Undertaking's Governing Board, committees established under the Joint Undertaking's Statutes or created by a decision of the Governing Board, *ad hoc* and working groups created by the Governing Board or the committees;

¹ O.J. L 90, 30.03.2007, p. 58.

² 2010/2271(DEC).

³ Special Report 15/2012.

⁴ *Nexans France v Joint Undertaking Fusion for Energy* (Case T-415/10), O.J. C 129, 4.5.2013, p. 16.

- (6) "Participant(s)" in this decision refers to the chairs and members of the Bodies, their alternates and advisors, as well as external experts and consultants and any third parties participating at any title in the Bodies;

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 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.

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

1. 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.
2. 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 and Managing Potential Conflicts of Interest of 28th June 2007. It shall have immediate effect. It shall also apply to the current Participants.

Done at Barcelona, 27th June 2013

For the Governing Board



Stuart Ward
Chair of the Governing Board

For the Secretariat

Raymond Monk
Secretariat of the Governing Board

ANNEX I

DECLARATION OF COMMITMENT

Name: _____

Body:

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: _____

Body: _____

Position:

- 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, in the general interest of the Joint Undertaking.

DONE AT _____ ON _____

SIGNATURE:

ANNEX III

DECLARATION CONCERNING CONFIDENTIALITY

Name: _____

Body: _____

- 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 Body indicated above, even after my duties have ceased. 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:

ANNEX IV

RULES ON THE PREVENTION AND MANAGEMENT OF CONFLICTS OF INTEREST

1. INTRODUCTION

1. Independence, impartiality, objectivity of the Participants are of paramount importance to the Joint Undertaking.
2. 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.
3. In this context, the Joint Undertaking acknowledges that the expertise of the Participants of the Bodies, and the quality of such expertise is inherently based upon prior experience.
4. The need to avoid conflict of interest should thus not prevent Fusion for Energy 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.
5. Hence, the risks of actual or perceived conflicts needs to be identified and managed while ensuring a fair and proportional response to each case.
6. The present Rules have been established on the basis of Article 6(3)(k) of the Statutes annexed to the Council Decision (Euratom) No 198/2007⁵ of 27 March 2007 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*”.
7. The Governing Board mandates the Chairs of the Bodies, with the assistance of the Secretary in charge, to develop a methodology for the assessment of conflicts of interest tailored to the particularities of their respective committee/body and submit them to the Administration and Finance Committee for approval.

2. WHO SHALL DECLARE INTERESTS?

2.1. Candidates

8. Conflicts of interest shall be avoided to the extent possible already at the stage when *ad personam* Participants are selected. To this end, when publishing Calls for Expressions of Interest for participation in the Bodies, 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.

⁵ O.J. L 90, 30.03.2007, p. 58.

2.2. *Participants*

3. Each Participant in the Joint Undertaking Bodies shall be responsible for the declaration of his⁶ 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 train new members during the induction course to ensure Participants' awareness of the policy and its practical application.

3. WHAT TO DECLARE?

3.1. *Types of interest and relevance*

4. 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*

5. Financial interests shall comprise real estate or other (intellectual) property, including ownerships of patents/trademarks, or assets (shares and/or securities held in companies), grants or other funding held over the last five years, with an indication of their number and value, as well as the name of the company/provider of the grant/funding.
6. 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, one of its subsidiaries or a company in the capital of which it has a holding.
7. Financial interests need not be disclosed unless they have a market value of greater than 10,000 Euros. Share portfolios need not be disclosed if the management arrangement is in the form of a blind trust or equivalent where the individual has not control whatsoever over its management.

3.1.2. *Past and Present Professional Interests*

8. Professional interests shall include posts held in foundations or similar bodies, educational institutions, companies or other organisations (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 material benefits , including notably:
- Permanent or temporary employment or work contracted out through consultancy or otherwise;
 - Participation in internal decision-making bodies (e.g. directorships, board membership, executive or non executive directorship, etc.);
 - Grants for travel, study or research, fellowships or sponsorships.

3.1.3. *Intellectual Interests*

9. Intellectual Interests shall include interests of non-pecuniary or material benefit to the individual during the preceding five years, arising from professional activities or affiliation with national or international organisations or bodies, such as the participation

⁶ "His" shall include "his/her" throughout.

of the individual in scientific projects and the (co)authorship of scientific documents or literature. Intellectual interest is often a prerequisite for the scientific excellence and is not necessarily considered an undesirable bias.

4. WHEN DOES A CONFLICT OF INTEREST ARISE?

10. 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.
11. 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.
12. 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.
13. 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*

14. 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)*

15. Candidates responding to Calls for Expressions of Interest for one of the Joint Undertaking's Bodies 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.
16. The signed GDols shall be submitted to the Secretary of the Body concerned.
17. 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)*

18. Ahead of each meeting of their Body, 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 a Body shall make such declarations to the Governing Board Chair, the Governing Board Chair to the Governing Board Vice-Chair.

19. At the beginning of each meeting, the Participants shall fill in the Attendance /Specific Declaration of Interests (SDOI) form (Attachment 2), either confirming that they are not in a conflict of interest or for which items they are or may be in a conflict of interest.

5.1.3. *Spontaneous Declarations*

20. If during a meeting, a Participant becomes aware that he has an interest that may be in conflict with an agenda point, he shall immediately make a Spontaneous Declaration to the Chair who shall notify the Secretariat and take appropriate action.

5.2. *Screening and Assessment of Dols*

21. 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.

22. When a Dol – be it a GDol, SDol or Spontaneous Dol, is received, the respective Chair, with the assistance of the Secretary, shall screen the Dols, ensuring that they are complete and, to their knowledge, accurate.

23. On the basis of the Dols, 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. *Preventive Actions*

24. The respective Chair, with the assistance of the Secretary, shall decide on the actions to be taken as a result of the Dol 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 has any personal interest such as to impair his/her independence or any other conflict of interest.

25. 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:

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

26. 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.

27. 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

28. 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

29. On its website, the Joint Undertaking shall publish the Rules of Procedure of its bodies, including on 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' GDol.
30. 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 DGol public on its website.
31. The conservation period of GDol and SDol 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.
32. The Participants have a right to access to their respective declaration of interests and to correct it at any time.

Attachment 1

GENERAL DECLARATION OF INTERESTS (GDoI)

Name: _____

Body: _____

Position:

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

Information on interests:

1. Any financial interests including real estate 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 foundations or similar bodies, educational institutions, companies or other organisations (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, and publications, with direct or indirect pecuniary or material benefits which are or could be perceived as related to the domain of activity of the Joint Undertaking:
3. Intellectual interests (last five years), 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 are or could be perceived as related to the domain of activity of the Joint Undertaking:
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 and dependent children living in the same household) which might create a conflict of interests in the performance of your duties:
6. Any other interests or facts you consider pertinent:

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

ATTENDANCE LIST / SPECIFIC DECLARATION OF INTEREST (SDOI)

GB/Body: _____

Name of the meeting: _____

Meeting place: _____

Meeting date: _____

Name	Address	Signature	I am/may be in a conflict of interest regarding an item/items on today's agenda (No/Yes, in relation to the following item(s) due to an interest arising from ...)