



## 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 CONCERNING A CODE OF GOOD ADMINISTRATIVE BEHAVIOUR OF THE JOINT UNDERTAKING**

Having regard to the Statutes annexed to the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it<sup>1</sup>;

Having regard to Regulation (Euratom) No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community<sup>2</sup>;

Having regard to Article 41 of the Charter of Fundamental Rights of the EU and to the provisions of openness in the Amsterdam Treaty, and in particular Articles 1 and 6 of the Treaty on European Union, and Articles 21 and 308 of the EC treaty;

Having regard to the European Parliament resolution on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour<sup>3</sup>;

Having regard to the Decision of the Governing Board of the European Joint Undertaking for ITER and the Development of Fusion Energy concerning transparency and public access to the documents of the Joint Undertaking<sup>4</sup>,

Whereas:

- (1) Since the entry into force of the Treaty of Maastricht every national of a Member State is also a citizen of the European Union;
- (2) Article 41 of the Charter of Fundamental Rights of the European Union recognises that citizenship includes the right to good administration;
- (3) In order to guarantee a better quality of administration, a Code should be adopted which contains the basic principles of good administrative behaviour for the staff of the Joint Undertaking when dealing with the public;

---

<sup>1</sup> O.J. L 90 , 30.03.2007, p. 58.

<sup>2</sup> O.J. L 17/58, 6.10.1958, p. 406/58

<sup>3</sup> O.J. C 72 E, 21.03.2002, p. 331

<sup>4</sup> F4E(07)-GB02-04.5 adopted 17/07/2007

- (4) Such a Code should be made as widely accessible as possible to citizens and easily available, including through the Internet.

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

*Article 1*

**Applicability**

The principles laid down in Resolution C5-0438/2000 – 2000/2212 (COS) of the European Parliament shall apply to the Joint Undertaking in accordance with the implementing arrangements provided for in this Decision.

*Article 2*

**General provision**

In their relations with the public, officials and other servants of the Joint Undertaking shall respect the principles which are laid down in this Decision and which constitute the Code of good administrative behaviour, hereafter referred to as "the Code".

*Article 3*

**Personal scope of application**

The Code shall apply to all officials and other servants to whom the Staff Regulations and the Conditions of employment of other servants apply in their relations with the public.

The Joint Undertaking will take the necessary measures to ensure that the provision set out in this Code also apply to other persons working for it, such as persons employed under private law contracts, experts on secondment, trainees or other relevant persons.

The public refers to natural and legal persons, whether they reside or have their registered office in the territory of a Member of the Joint Undertaking or not.

*Article 4*

**Material scope of application**

This Code contains the general principles of good administrative behaviour, which apply to all relations of the Joint Undertaking's officials and other servants with the public, unless they are governed by specific provisions.

The principles set out in this Code do not apply to the relations between the Joint Undertaking and its officials and other servants. Those relations are governed by the Staff Regulations.

*Article 5*

**Lawfulness**

Officials or other servants of the Joint Undertaking shall act according to law and apply the rules and procedures laid down in Community legislation. The official or other servant of the Joint Undertaking shall in particular take care that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

*Article 6*

**Absence of discrimination**

In dealing with requests from the public and in taking decisions, the official or other servant of the Joint Undertaking shall ensure that the principle of equality of treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.

If any difference in treatment is made, the official or other servant of the Joint Undertaking shall ensure that it is justified by the objective relevant features of the particular case.

The official or other servant of the Joint Undertaking shall in particular avoid any unjustified discrimination between members of the public based on nationality, sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, or sexual orientation.

*Article 7*

**Proportionality**

When taking decisions, the official or other servant of the Joint Undertaking shall ensure that the measures taken are proportional to the aim pursued. The official or other servant shall in particular avoid restricting the rights of the citizens or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.

When taking decisions, the official or other servant of the Joint Undertaking shall strike a fair balance between the interests of private persons and the general public interest.

*Article 8*

**Absence of abuse of power**

Powers shall be exercised solely for the purposes for which they have been conferred by the relevant provisions. The official or other servant of the Joint Undertaking shall in particular avoid using those powers for purposes which have no basis in the law or which are not motivated by any public interest.

*Article 9*

**Impartiality and independence**

The official or other servant of the Joint Undertaking shall be impartial and independent. The official or other servant shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

The official or other servant of the Joint Undertaking shall not be guided by any outside influences of whatever kind, including political influences, or by personal interests.

The official or other servant shall abstain from being involved in the taking of a decision on a matter concerning his or her own interests, or those of his or her family, relatives, friends and acquaintances.

*Article 10*

**Objectivity**

When taking decisions, the official or other servant shall take into consideration the relevant factors and give each of them its proper weight in the decision, whilst excluding any irrelevant element from consideration.

*Article 11*

**Legitimate expectations and consistency**

The official or other servant of the Joint Undertaking shall be consistent in his own administrative behaviour as well as with the administrative action of the Joint Undertaking. The official or other servant shall follow the Joint Undertaking's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case.

The official or other servant shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Joint Undertaking has acted in the past.

*Article 12*

**Fairness**

The official or other servant of the Joint Undertaking shall act fairly and reasonably.

*Article 13*

**Courtesy**

The official or other servant of the Joint Undertaking shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails, the official or other servant shall try as much as possible to be helpful and to reply to the questions which are asked.

If the official or other servant is not responsible for the matter concerned, he shall direct the citizen to the appropriate official or other servant.

If an error occurs which negatively affects the rights or interests of a member of the public, the official or other servant shall apologise for it.

*Article 14*

**Reply to letters in the language of the citizen**

The official or other servant shall endeavour to ensure that any member of the public who writes to the Joint Undertaking in one of the Treaty languages receives an answer in the same language.

*Article 15*

**Acknowledgement of receipt and indication of the competent official or other servant**

Every letter or complaint to the Joint Undertaking shall receive an acknowledgement of receipt within a period of 14 calendar days, except if a substantive reply can be sent within that period.

The reply or acknowledgement of receipt shall indicate the name and the telephone number of the official or other servant who is dealing with the matter.

No acknowledgement of receipt and no reply need be sent in cases where letters or complaints are abusive because of their excessive number or because of their repetitive or pointless character.

*Article 16***Obligation to transfer to the competent service of the Joint Undertaking**

If a letter or a complaint to the Joint Undertaking is addressed or transmitted to an official or other servant who has no competence to deal with it, the file shall be transferred without delay to the competent official or other servant of the Joint Undertaking.

The official or other servant which originally received the letter or complaint shall notify the author of this transfer and shall indicate the name and the telephone number of the official or other servant to whom the file has been passed.

*Article 17***Right to be heard and to make statements**

In cases where the rights or interests of individuals are involved, the official or other servant shall ensure that, at every stage in the decision-making procedure, the rights of defence are respected.

Every member of the public shall have the right, in cases where a decision affecting his rights or interests has to be taken, to submit written comments and, when needed, to present oral observations before the decision is taken.

*Article 18***Reasonable time-limit for taking decisions**

The official or other servant shall ensure that a decision on every request or complaint to the Joint Undertaking is taken within a reasonable time limit, without delay, and in any case no later than two months from the date of receipt. The same rule shall apply to answering letters from members of the public.

If a request or a complaint to the Joint Undertaking cannot, because of the complexity of the matters which it raises, be decided upon within the above-mentioned time-limit, the official or other servant shall inform the author thereof as soon as possible. In that case, a definitive decision should be notified to the author in the shortest time.

*Article 19***Duty to state the grounds of decisions**

Every decision of the Joint Undertaking which may adversely affect the rights or interests of a private person shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.

The official or other servant shall avoid making decisions which are based on brief or vague grounds or which do not contain individual reasoning.

If it is not possible, because of the large number of persons concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the official or other servant shall guarantee that he subsequently provides the citizen who expressly requests it with an individual reasoning.

#### *Article 20*

##### **Indication of the possibilities of appeal**

A decision of the Joint Undertaking which may adversely affect the rights or interests of a private person shall contain an indication of the appeal possibilities available for challenging the decision or recommendation. It shall in particular indicate the nature of the remedies, the bodies before which they can be exercised, as well as the time limits for exercising them.

#### *Article 21*

##### **Notification of the decision or recommendation**

The official or other servant shall ensure that decisions which affect the rights or interests of individual persons are notified in writing, as soon as the decision has been taken, to the person or persons concerned.

The official or other servant shall abstain from communicating the decision to other sources until the persons or persons concerned have been informed.

#### *Article 22*

##### **Data protection**

The official or other servant who deals with personal data concerning a citizen shall respect the principles laid down in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data.

The official or other servant shall in particular avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorized persons.

*Article 23*

**Requests for information**

The official or other servant shall, when he has responsibility for the matter concerned, provide members of the public with the information that they request. The official or other servant shall take care that the information communicated is clear and understandable.

If an oral request for information is too complicated or too comprehensive to be dealt with, the official or other servant shall advise the person concerned to formulate his demand in writing.

If, because of its confidentiality, an official or other servant may not disclose the information requested, he or she shall, in accordance with Article 19 of this Code, indicate to the person concerned the reasons why he cannot communicate the information.

Further to requests for information on matters for which he has no responsibility, the official or other servant shall direct the requester to the competent person and indicate his name and telephone number. Further to requests for information concerning another Community institution or body, the official or other servant shall direct the requester to that institution or body.

Where appropriate, the official or other servant shall, depending on the subject of the request, direct the person seeking information to the department or sector responsible for providing information to the public.

*Article 24*

**Requests for public access to documents**

Further to requests for access to documents of the Joint Undertaking, the official or other servant shall give access to these documents in accordance with the Decision of the Governing Board of the Joint Undertaking concerning transparency and public access to the documents of the Joint Undertaking<sup>5</sup>.

If the official or other servant cannot comply with an oral request for access to documents, the citizen shall be advised to formulate it in writing.

---

<sup>5</sup> F4E(07)-GB02-04.5 Adopted 17/07/2007



*Article 25*

**Keeping of adequate records**

The Joint Undertaking's departments and sectors shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take.

*Article 26*

**Public access to the Code**

The Joint Undertaking will take the necessary measures in order to ensure that this Code enjoys the widest possible publicity amongst the citizens. It will in particular make it available on its official internet website and will provide a copy of this Code to any citizen who requests it.

*Article 27*

**Right to complain to the European Ombudsman**

Any failure of an official or other servant to comply with the principles set out in this Code may be the subject of a complaint to the European Ombudsman in accordance with Article 107d of the Euratom Treaty.

*Article 28*

**Entry into force**

This Decision shall have immediate effect.

Done at Barcelona, 22 October 2007

For the Governing Board

*Carlos Varandas*

**Carlos Varandas**  
Chair of the Governing Board