

EMSA Administrative Board Conflict of Interest Policy

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1. Introduction

The Commission, the Member States, representatives of EFTA countries (Norway and Iceland) and the industry are represented within the Administrative Board in order to control effectively the functions of the Agency, entrusted with the necessary powers, as stipulated in Article 10 of Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, as amended (hereinafter referred to as 'Founding Regulation') to *inter alia* adopt the work programme of the Agency for the coming year, adopt the final budget of the Agency before the beginning of the financial year, adopt the annual report on the Agency's activities and appoint the Executive Director.

The Administrative Board recognises that the members of the Administrative Board are carefully selected by Member States and Commission, relying upon the trust in their integrity, judgment, and courage therefore the Administrative Board reasonably expects that no member would ever use his or her position for personal gain.

However, the Administrative Board recognises the sensitivity of the tasks to be performed and the need to define a concept of conflict of interest as well as the need to lay down practical arrangements and proportionate measures for avoiding or managing apparent, potential and real conflicts of interest (hereinafter referred to as 'conflict of interest').

The Administrative Board recognises the different nomination procedures and the different roles and responsibilities of the members of the Administrative Board of the European Maritime Safety Agency (hereinafter referred to as 'EMSA') compared to other EU agencies as well as of the Executive Director and other members of EMSA staff.

Therefore the 'EMSA Administrative Board Conflict of Interest Policy' is adopted specifically for the EMSA Administrative Board, recognising its role and responsibilities (hereinafter referred to as 'Policy').

2. Purpose

The purpose of this Policy is to establish the principles governing impartiality and independence of the members of EMSA's Administrative Board and their alternates and define the measures to ensure their practical application in order to prevent and mitigate the risk that past, current or future interests might improperly influence the impartiality and the independence of the Board members during the performance of their duties.

Furthermore, it defines types of conflict of interest and procedure for identifying and handling it.

It should be noted that this Policy is based on the principle that interests declared in a transparent way are not per se considered to represent conflicts of interest. So this Policy is not to ban or sanction the holding of interests by members of the Administrative Board but to facilitate in a transparent and consistent manner the handling of situations where conflicts of interest may arise.

It must be stressed that this document describes the main principles which apply and is not intended to be exhaustive but rather to provide examples of relevant interests and potential conflict of interest situations.

This Policy may need to be updated in the light of the experience gained by the Administrative Board.

3. Scope

This Policy shall apply to all members and alternate members of the Administrative Board (hereinafter referred to as the 'Board member(s)'), in the performance of their functions.

4. Conflict of interest

A conflict of interest is an apparent, potential or real conflict between the public duty and personal or vested interests of a Board member, in which the Board member has direct or indirect interests which could improperly influence the performance of their official duties and responsibilities.

Personal and vested interests may be of financial or non-financial nature and may concern a personal or family relationship or professional affiliations (including additional employment, "outside" appointments or former employments or appointments).

Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time. Direct interests are interests of personal benefit to the individual at the time of declaration, likely to influence or give the appearance of influencing his behaviour. Indirect interests should be considered as other interests that may have some influence over the individual's behaviour and therefore have to be neutralised.

In this context, the conflict of interest can also be actual or apparent, which can be said to exist where the impartiality and objectivity of a decision of the Administrative Board is or might in the public perception be compromised by an interest held by, or entrusted to, a Board member.

A conflict of interest can create an appearance of impropriety that can undermine confidence in the person, profession, or the organisation.

A conflict of interest may exist even if no unethical or improper act results from it. On the other hand, the holding of interests does not automatically give rise to a conflict of interest, if the independence and objectivity of decisions are not at risk.

It is recognized that it is often difficult to objectively assess whether a conflict of interest situation exists.

5. Policy statement

The Board members shall undertake to act independently in the public interest. The Board members shall not be guided by personal interest or any outside influences of whatever kind. The Board members shall make their best efforts to refrain from involving themselves in any activity that would result in a conflict of interest and abstain from handling matters which involve his or her own interest, or those of his or her family and relatives.

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

5.1. Declaration of commitment and confidentiality

Taking into account the sensitivity of the tasks to be performed by the Administrative Board of EMSA and the need to ensure that the principles of impartiality, fairness and transparency are properly applied, in the exercise of their functions, declarations of commitment and confidentiality are requested from each Board member. For the same purpose CVs of the Board members are also requested.

The Board members shall be subject to the requirements of confidentiality even after their duties have ceased.

For this purpose, the Board members shall complete and submit upon their appointment or for the current members as of 14 November 2013, a declaration of commitment and confidentiality, in accordance with Annex 1 of the Rules of Procedure. In addition, the Board members shall submit upon their appointment or for the current members as of the 2nd June 2015, a CV and whenever necessary an updated version thereof.

5.2. Preventive measures

Preventive measures that deal with emergent conflict of interest situations should be identified and facilitated. It is considered to be important to develop and sustain an open organisational culture where conflict of interests or measures dealing with conflict of interest matters can be freely raised and discussed. The Board members should also accept responsibility for arranging their private affairs so as to prevent conflicts of interest. In case of suspicion of the possibility of existence of conflict of interests, Board members are obligated to undertake all necessary measures with a view to preventing private interest influence.

The Board members should be enabled to foresee potential conflicts, where feasible: for example by providing significant meeting agendas in advance; record in meeting proceedings any conflicts that arise and the measures taken to resolve them. Consistency and openness in resolving or managing conflict of interest situations should be ensured, for example by providing up-to-date information about the Administrative Board's policy, rules and administrative procedures regarding conflict of interest, or by encouraging discussion on how specific situations have been handled in the past and are expected to be handled in the future.

5.3. Declaration of interest (meeting)

At the beginning of each meeting of the Administrative Board the Chairperson should assess if anyone of the participants has any direct or indirect interests in the outcome of the deliberations in relation to any matter on the agenda of the meeting. Members of the Administrative Board are required to submit an oral declaration of interests. Thereby the Board members shall declare all direct or indirect interests in the outcome of the deliberations in relation to any matter on the agenda of the meeting that could be prejudicial to their independence. When declaring interests members should also declare current direct interest of (a) household member(s) (i.e. spouse, partner and children living at the same address as the individual).

Interests need to be declared up to 5 years after which the interest ceases to exist. However, individuals can declare any interests beyond the 5 years timeframe.

The responsibility for a complete and truthful declaration shall lie exclusively with the Board member declaring his or her interest and those held by members of his or her household. In order to maintain privacy, the names of household members do not need to be declared.

Interests declared during meetings should be fully disclosed and published in the minutes. Alternatively it should be noted that simultaneously with the adoption of the agenda of the Board meeting it has been stated that there were no conflicts of interest in relation to any matter on the agenda of the meeting.

5.4. Assessment and evaluation of declared interests

If a Board member declares any direct or indirect interests in the outcome of the deliberations in relation to any matter on the agenda of the meeting that could be prejudicial to their independence, based on the information provided by the Board member, the Administrative Board will jointly evaluate

whether a declared interest constitutes a conflict. The final decision remains with the Chairperson of the Administrative Board.

5.5. Interests and conflict of interest of the Administrative Board

5.5.1. Interest

Interests to be declared are any activities or interests in relation to any matter on the agenda of the meeting that could be perceived as an interest in an activity falling within EMSA's remit and/or which could be perceived as compromising the ability of the individual Board member to act in an independent manner in the public interest.

Direct or indirect interests include among others financial, business or professional interests of the Board members as well as personal or family relationships.

5.5.2. Conflict of interest

In general terms, situations and relationships should be considered to be conflicts of interest if the declared interest is likely to improperly influence the performance of the Board members official duties and responsibilities as a member of EMSA's Administrative Board or if the impartiality and objectivity of a decision of the Board member is or might in the public perception be compromised by the interest held by, or entrusted to, the Board member.

For example, a conflict of interest of a financial nature may exist when individuals have a financial stake because of a secondary employment, investment in a company/institute operating in a related field or intellectual property rights whose value may be influenced in either a negative or positive sense by a decision of the Administrative Board, e.g. with regard to a planned administrative arrangement.

A conflict of interest may also arise where, during the preceding five years, assistance and support from stakeholders of the Agency were received, whether associated with direct or indirect pecuniary or material benefits. Conflict of interest can also exist in cases of 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 with tasks similar to EMSA. This also includes participation in public interest groups, professional societies, clubs or organisations which have an agenda or an interest or involvement in the Agency's work.

Situations of conflicts of interest may occur in the context of all different kinds of decisions of the Administrative Board, for example those regarding the annual work programme of the Agency or requests for assistance to the Commission, as referred to in Article 2(2)(d), or requests for technical assistance, as referred to in Article 2(3), 2(5) or Article 2a of the Founding Regulation.

5.6. Procedure

In order to evaluate whether a declared interest constitutes a conflict the Chairperson of the Administrative Board may seek additional background information with regard to the information that was declared.

The Board member concerned shall classify his or her declaration of interest according to the following indicative levels of conflict of interest:

- A conflict of interest is "non-existent" if the declared interest cannot be expected to cause any conflict of interest.
- A conflict of interest is "possible" if the declared interest poses a potential conflict of interest by default, for example because there might be a potential benefit to the individual arising from the respective decision of the Administrative Board. Whether a potential conflict of interest will result in a factual or perceived conflict of interest depends hereby on the nature of that particular potential

conflict, the subject at issue, the behaviour of others, etc. A conflict of interest is also “possible” if a conflict of interest cannot be excluded.

- A conflict of interest is “existent” if the declared interest obviously implies a factual or perceived conflict.

Based on the information provided by the Board member concerned and taking into account the general context in which that specific activity or interest is developed, and all particularities of the specific activity or interest at issue, the indicative level of a conflict of interest in question can be either adjusted or confirmed by the Chairperson of the Administrative Board after consultation with all Board members not concerned.

If the Chairperson of the Administrative Board declares any direct or indirect interests in the outcome of the deliberations in relation to any matter on the agenda of the meeting that could be prejudicial to his or her independence, he or she shall be replaced by the Deputy Chairperson.

5.7. Resolution measures

The decision on the nature of participation of a member of the Administrative Board in a specific meeting shall be taken by the Chairperson of the Administrative Board in consultation with all Board members not concerned on the basis of the level of conflict of interest. The consultation shall take place without the presence of the Board member concerned.

If a declared interest might pose a factual or perceived conflict of interest for the Board member concerned, it is in the interest of EMSA, the Administrative Board as well as of the individual with that interest that there is no involvement in that particular decision. This non-involvement should be made explicit and noticeable from minutes, reports and opinions.

In order to resolve or manage the conflict positively the following resolution measures should be taken:

- Conflict of interest is “non-existent”

Involvement in all activities is permitted.

- Conflict of interest is “possible”

The Board member concerned can be present to answer questions addressed specifically to him or her but he or she cannot actively participate in the final discussion and has no right to vote.

- Conflict of interest is “existent”

The Administrative Board examines specific items of its agenda concerned by the conflict in question without the presence of the Board member concerned.

5.8. Gifts, hospitality, decorations and honours

The Board members shall not accept any gift with a value of more than EUR 150 related to their performance and duties as a member of the Administrative Board of EMSA.

When in accordance with diplomatic and courtesy usage, they receive gifts worth more than this amount, they shall hand them over the Secretariat of the Administrative Board. In case of doubt as to the value of a gift, an evaluation shall be undertaken under the authority of the Chairperson of the Administrative Board, whose decision on the matter shall be final.

The Administrative Board secretariat shall keep a register of gifts with value more than EUR 150.

6. Breach of this Policy

In case of an omission of relevant interests resulting in a conflict of interest, the Administrative Board shall jointly evaluate whether it may be considered as a breach of this policy. The final decision remains with the Chairperson of the Administrative Board.

The Chairperson of the Administrative Board may seek additional background information with regard to the information that was not declared. The following discussion shall take place without the presence of the member concerned.

When a breach is confirmed, and the concerned person was involved in a decision without having declared an interest, the Board should undertake remedial actions, in particular to review or cancel that decision if seriously affected by the conflict of interest. This implies carrying out an ex post review of the person's activities and contributions to the agency's output.

In addition, the Chairperson of the Administrative Board should inform the concerned Appointing Authority.

In case of knowledge of non-consistent information of the declaration of gifts, hospitality, invitations, honours, or in case of failure to declare, in line with the rules defined in 5.8 the Chairperson of the Administrative Board, in consultation with all Administrative Board members not concerned, will inform the concerned Appointing Authority.

The respective Appointing Authority is responsible for adopting any formal decision as a consequence of a conflict of interests or breach of trust, when being informed of a situation described above.

The participant shall be kept informed.

7. Transparency

The Policy and the model declaration of commitment and confidentiality and CVs shall be published on the EMSA website as well as the list of the Board members which have signed a corresponding declaration. The declarations will be entered in a register held by the Agency, which is accessible to the public.

Oral declarations of interest resulting in a conflict of interest are recorded in the minutes of the relevant meeting as well as the measures taken to resolve them. At least it should be noted that all Board members confirmed that there were no conflicts of interest in relation to any matter on the agenda of the meeting.

Upon request, minority opinions should be included in the minutes and made public, thereby ensuring transparency on divergent views.

8. Review

This Policy should be regularly assessed with regard to its effectiveness, in order to adapt it to possible new risks.