



European Maritime Safety Agency

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Lisbon,

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**Subject: Follow up on your visit on 22 November 2011 to the European Maritime Safety Agency - [European Ombudsman report OI/13/2011) (JSA)JF]
Guidelines in Conflict of Interest**

Dear Mr Diamandouros,

Following your above mentioned visit to the European Maritime Safety Agency (EMSA) you suggested some improvements as to the formalisation of the EMSA policy on conflict of interest. As agreed earlier, the Agency has prepared a consolidated set of guidelines on conflict of interest that has been made available to all EMSA staff.

As requested in your visit report, please find enclosed a copy of this consolidated set of guidelines. EMSA is well aware of the importance of good and up-to-date policies and procedures dealing with conflict of interest and will therefore make sure all documents will be kept up-to-date.

I would like to thank you again for the findings and suggestions made in your report which will be taken into consideration during the on-going improvement of our contacts with the public.

Yours sincerely,


Markku Mylly
Executive Director

Enclosure: 1



European Maritime Safety Agency

GUIDELINES ON CONFLICT OF INTEREST

December 2012

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1. INTRODUCTION

EMSA staff during and after their career may find themselves in a situation or circumstances that could be perceived as a conflict of interest.

The overriding idea behind avoiding any appearance of conflict of interest is to avoid possible accusations of bias and partiality in any decision-making process, so as to maintain the staff member's and EMSA's independence and credibility.

2. OBJECTIVES

The following guidelines are to assist staff in avoiding situations/circumstances where conflict of interest may arise and to inform them of the measures that should be taken if they find themselves in such a situation.

3. WHAT IS A CONFLICT OF INTEREST?

Staff members are prohibited, during the performance of their duties, from dealing with any matter in which they have a direct or indirect personal interest that has the potential to compromise their independence and, by extension, EMSA's interests (Article 11a of the Staff Regulations).

Such situations can arise when:

- there is some link between staff members' work and their private interests, or those of their family or partner;
- staff members find themselves in a situation that could reasonably lead to allegations being made of bias or partiality, in light of their personal interests.

4. WHAT ARE THE RULES?

If staff members are in such a situation or are in any doubt as to whether the circumstances could give rise to concerns over a conflict of interests, they should consult the Staff Ethics and Conduct page of the HR Intranet or contact Human Resources immediately who will inform them of whether the situation/circumstances could be considered as a possible conflict of interest.

If the situation is deemed as a potential conflict of interest, staff must notify the Appointing Authority (AIPN) immediately by filling in the appropriate form with regard to the situation, available on the Staff Ethics and Conduct page of the HR Intranet, and giving it to Human Resources so it can be processed and approved/not approved by the AIPN.

They should also inform their immediate hierarchy.

Conflicts of interest that may arise within the framework of a budgetary action are addressed by the Financial Regulation (Article 35). In accordance with this Article, the competent authority that must be informed of any potential conflict of interest is the immediate superior of the staff member concerned. If the member of staff is the Executive Director, the competent authority shall be the Administrative Board.

5. SITUATIONS/CIRCUMSTANCES WHERE A CONFLICT OF INTEREST COULD ARISE

There are several situations where a conflict of interest could arise:

5.1. OUTSIDE ACTIVITIES FOR STAFF IN ACTIVE EMPLOYMENT

The Staff Regulations (Article 12b) and the General Implementing Provisions on outside activities and assignments state that every official or agent must first obtain permission from the Appointing Authority before:

- undertaking any type of work outside the institution, whether paid or unpaid, or
- holding any office outside of the European institutions.

At a practical level, such an external activity should not:

- be so time consuming as to impact negatively on their work at EMSA, or constitute a job in itself;
- give rise to any possible appearance of a conflict of interest or be in some other way discreditable, so as to risk bringing EMSA into disrepute.

Furthermore, the amount of remuneration should be modest. The question as to whether the external activity could be of use for EMSA may be taken into account.

No outside work may be performed either on the premises of EMSA or during normal working hours. In assessing such requests, account is taken by the Appointing Authority of the aspects mentioned above.

5.1.1. Voluntary or charitable work

In practice, while respecting these conditions, staff members are for example likely to be authorised to carry out voluntary work, charity work, or limited teaching activities and the like, providing:

- such work does not prevent them from meeting their obligations in terms of working hours (Article 55 of the Staff Regulations); and
- they do not constitute a job in themselves.

5.1.2. Unauthorised activities

Certain activities are incompatible with the status of staff members at EMSA:

- outside work, whether paid or unpaid, in a "profession" (such as architect, lawyer, economist, accountant, IT professional, engineer, interpreter, doctor, translator, etc.);
- work in private companies, even if it is unpaid and the role is merely nominal (such as non-executive director, unpaid adviser, etc.);
- teaching or other pedagogical work, whether paid or not, for more than 100 hours per academic year, unless the Appointing Authority, after consulting the Head of Department A, deems such work to be beneficial to EMSA.

Requests must be submitted two months before starting the work in question, using the following form.

Before making its decision, EMSA reserves the right to assess each case on its merits with regard to the type of work proposed. Permission may be refused to staff members if the work they will perform or the assignment they will be holding are liable to compromise their independence or prejudice the work of the EU.

Staff members do not have the necessary authorisation to perform any work other than that for which they were recruited by the EU. If EMSA grants permission to undertake external activities, staff need to keep in mind that they will be subject to the relevant national income tax rules and social legislation.

In addition, the maximum net annual remuneration they may receive for any authorised external activities undertaken outside EMSA is € 4500 (after taxes). Anything over this amount must be turned over to EMSA.

Permission granted under Article 12b is valid for a maximum of one year from the date of the decision, or a lesser period, which will be stated in the decision. If they wish to extend or renew their permission, staff members must submit a fresh application.

5.2. PROFESSIONAL ACTIVITY DURING LEAVE ON PERSONAL GROUNDS

In exceptional circumstances and upon request, a staff member can be placed on leave without pay for personal reasons.

However, if the staff member plans on carrying out a professional activity during this exceptional leave (CCP), prior authorisation must be attained to avoid any potential conflicts of interest. The following form must be completed and put into circulation at least two month before beginning the activity.

CCP for public appointments: in the particular case of elected office or public appointments, CCP may cease to be a right and become a requirement.

Therefore, if an official or agent is a candidate or elected and appointed to public office, they must notify the Appointing Authority by completing this form. The Appointing Authority will then decide whether in the interests of the service, the person concerned must apply for leave on personal grounds.

5.3. ACTIVITIES OF STAFF HAVING LEFT EMSA (END OF CONTRACT, RETIREMENT)

After leaving service, former staff members are still subject to specific obligations.

Former staff members must "behave with integrity and discretion", as stipulated in the Staff Regulations (Article 16). They must sign a declaration provided by the Appointing Authority stating that they are aware of their continuing obligations to EMSA, in particular under Articles 16, 17(2) and 19 of the Staff Regulations.

As stipulated in Article 16 of the Staff Regulations, EMSA is entitled to impose restrictions on staff and their new employment when they leave EMSA. In order to comply with this article, and in order to evaluate the risk of a conflict with the legitimate interests of EMSA, staff members must inform EMSA's Appointing Authority of all of the elements related to the activity they intend to engage in after leaving EMSA by completing a form.

Former staff members must refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

For two years after leaving the service, a former staff member wishing to perform outside activities or assignments must inform the Appointing Authority. This also applies to contract staff who have had access to sensitive information (Article 21 of the Decision on outside activities and assignments).

The forms referred to in this section are sent personally to the staff member on leaving service.

5.4. PERMISSION TO RECEIVE A DECORATION

As stipulated in the Staff Regulations (Article 11) "An official shall not without the permission of the Appointing Authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration [...] of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service."

It might otherwise reasonably be considered that such an honour has been granted for services rendered to a national government while currently working for EMSA.

Article 11 of the Staff Regulations applies to:

- national honours and decorations awarded by a sovereign State;
- official medals awarded by a sovereign State or an official organ of that State (ministry, regional or municipal authorities, etc.) or recognised by an official authority (Prix Charlemagne, Carnegie Hero Fund, etc.);
- private titles and medals (from foundations, institutes, universities, fraternal societies, etc.), awarded as a mark of recognition or token of esteem, but which are not in any way official.

Only the type of honours, decorations and medals described above are subject to the restrictions outlined in Article 11 of the Staff Regulations.

Invented honours and medals (often named so as to resemble decorations awarded by governments), which are sometimes created for profit, are not subject to these restrictions.

These provisions apply, *mutatis mutandis*, to former staff members, if the decoration is related to their activity while working at EMSA.

In deciding, the Appointing Authority will take into consideration the following factors:

- the reason for the granting of the honour or decoration;
- the possible consequences for the Institution's interests.

Please complete this form if you would like to apply for permission to receive a decoration.

5.5. ADMINISTRATIVE PROVISION RELATED TO GIFTS AND HOSPITALITY

Staff members should not accept any direct or indirect gifts or hospitality offered by third parties without obtaining prior permission from the Appointing Authority.

These rules also apply to **former staff** (officials or agents) if the gift/favour/donation has any link with their work at EMSA (Article 11 of the Staff Regulations).

EMSA has adopted specific Guidelines on gifts and hospitality in order to help staff members to follow their legal obligations – please consult these for more information.

If you would like to ask for permission to accept a gift or favour, please complete this form.

5.6. EMPLOYMENT OF SPOUSE

If a staff member's spouse or partner is "in gainful employment" (i.e. is doing paid work), the Appointing Authority must be informed (Article 13 of the Staff Regulations).

In this respect, unmarried, legally recognised partners are regarded in the same way as spouses (for details, see Article 1(2) (c) of Annex VII of the Staff Regulations).

5.6.1. Incompatibilities

The nature of the employment can be considered incompatible with the staff member's statutory functions. If it is impossible to give an undertaking that this activity will cease within a specified period, the Appointing Authority can decide to transfer the staff member to another post (Article 13 of the Staff Regulations). If there is any change in the spouse's situation, the staff member is obliged to declare this (Article 13 of the Staff Regulations).

Human Resources will rule on the case as appropriate, possibly after consulting the Head of Department and/or the Head of Unit of the staff member.

Certain information must be provided to the Appointing Authority:

- a precise description of the staff member's duties and interests at stake;
- a detailed description of the spouse's or partner's work and information on his/her employer;
- the staff member's opinion on the situation;
- any other information that could help the Appointing Authority assess the situation.

In taking its decision the Appointing Authority will consider the following factors:

- the consequences of the situation for EMSA's interests;
- the relationship between the staff member's professional duties and private interests or those of his family or husband/wife/partner;
- the possibility that they may be open to accusations of bias or liable to have their independence compromised.

On the basis of these considerations, the Appointing Authority will decide whether the staff member should stay in their current post or be transferred to another.

5.7. PUBLISHING ARTICLES AND SPEECHES ---

5.7.1. Publications, speeches and compensation for them: on professional or EU matters

Article 17a(1) of the Staff Regulations grants the right to freedom of expression to staff members "with due respect to the principles of loyalty and impartiality".

If staff members want to publish or to have published, either on their own or with other parties, a document, such as an article or a book, on anything dealing with their work or EU matters generally, they must inform their Appointing Authority in advance, as stipulated in the Staff Regulations (Article 17a(2)).

Before publishing a text (or speech), staff members must first inform their Appointing Authority by using the standard form.

They must provide the Appointing Authority with any information, in particular a copy, of the document they intend to publish. This must be accompanied by a summary, in English.

Where the Appointing Authority can demonstrate that the matter is liable to prejudice seriously the legitimate interests of the European Union, it has to inform the staff member of its decision within 30 working days of receipt of the information. If it does not reply within this time limit, it is considered to have had no objections.

However, it should be noted that the lack of a reaction does not prejudice the possible application of such a provision as Article 12 of the Staff Regulations, if the publication turns out to contain material which is, for example, defamatory or insulting, nor the possible application of Article 24 of the Staff Regulations, if other staff members request assistance against what they may see as defamatory statements in the work. The author remains personally responsible for the published material.

These rules and procedures also apply to speeches and any form of public or private communication outside the scope of their duties, where they relate to EU matters and are or may be published. Blogs are subject to the same rules as publications.

While the Staff Regulations (Article 17a (1)) grant staff members the right to freedom of expression, when it comes to the professional activity of staff members this is subject to the following conditions being met:

- they must show restraint and caution in expressing differing opinions, in particular when the latter are closely linked to the subject and nature of their duties in the two preceding years;
- such opinions or any others regarding Community policies must be expressed with moderation and under their sole responsibility (i.e. with a disclaimer). In this respect, the duty of loyalty requires that the staff member clearly indicates in the article, which he is writing under his/her own name, - and under the freedom of expression as recognized by the Staff Regulations - and engaging himself and not the responsibility of his institution.

They are also subject to the rules concerning non-disclosure of information and the confidentiality requirement.

The duty of confidentiality is governed by Article 17 of the Staff Regulations, which provides that staff members must refrain from any unauthorised disclosure or use of information received in the course of or in connection with their duties, unless that information has already been made public or is accessible to the public.

Where staff members request to make use of any such information, the Appointing Authority must take account of the following in particular:

- the implications, if any, as far as the interests of the institutions are concerned;
- the implications, if any, as far as the interests of the Member States are concerned;
- the need to respect the privacy of third parties.

5.7.2. Remuneration

If the publication (including its writing/preparation) or speech would entitle staff members to any financial payment, they must ask their Appointing Authority for prior authorisation to accept it by completing this [form](#).

Royalties received for publications, to which the Appointing Authority had raised no objections, are not subject to the net annual ceiling of € 4500 that applies to work they are authorised to undertake outside EMSA.

Where remuneration is involved, the procedure is different depending on the circumstances applicable to their publication or speech:

- if the publication or speech is not part of their work for EMSA, staff members must send a [form](#) to the Appointing Authority;
- if the publication or speech forms part of their work during a mission for EMSA (e.g. it may happen that they are offered a fee for a speech they make while on outside assignment, which would count as part of their normal work), they must specify the exact amount in their travel request (mission request) or at least in their subsequent expenses claim (reimbursement of mission expenses). If they receive the payment after their expenses for the assignment are reimbursed, they must inform the service responsible for dealing with reimbursement of mission expenses. If they make a speech in the same location as their place of work, they must declare any amounts received to the Human Resources Unit. These are then deducted either from the balance of their expenses claim or from their next salary payment.

5.7.3. Publications and speeches and compensation for them: on other (non-professional or non-EU) matters

For publications or speeches which are not related to the professional activity or on non-European matters, freedom of expression applies and staff members do not require any authorisation to publish. However, if the publication or speech (including its writing/preparation) could be considered an external activity, notably, if under contract, and/or would entitle them to any financial payment, they must ask their Appointing Authority for prior authorisation to accept it by completing this [form](#). Please note that in this case too, blogs are submitted to the same rules.

5.8. PARTICIPATING IN ELECTORAL CAMPAIGNS ---

5.8.1.1. Standing as a candidate

If staff members wish to stand for public office, such as standing as a candidate (in municipal, regional, national or European elections), they must notify the Appointing Authority (Article 15 of the Staff Regulations).

The Appointing Authority must be notified in advance using this declaration form.

After the Head of Unit and Head of Department of the staff member have given their opinion, the Appointing Authority will decide whether, in the period up to the date of the election or appointment, the staff member:

- must make a request for leave on personal grounds (CCP);
- must take annual leave;
- can be authorised to work part-time; or
- can continue to work with no change to their working hours.

The Appointing Authority will inform them of its decision regarding their administrative status before the date of the election or appointment.

5.9. EXERCISING AN ELECTIVE PUBLIC OFFICE ---

5.9.1.1. Being elected to office

If elected or appointed to a position, staff members must notify the Appointing Authority without delay. They must fill out a specific form and send it to their Appointing Authority.

Then, on the basis of the staff member's Head of Unit and Head of Department's opinion and taking into consideration the interests of EMSA, the importance of the public office in question, the duties it would involve and the remuneration and expenses to which they would be entitled, the Appointing Authority will decide whether the staff member:

- must make a request for leave on personal grounds (CCP);
- must take annual leave;
- can be authorised to work part-time;
- can continue to work with no change to their working hours.

Current administrative practice is for the Appointing Authority to require staff elected to national parliaments (either upper or lower house) or the European Parliament to take special leave (CCP) for the whole term of office.

If the Appointing Authority decides to allow them to continue working as normal at EMSA, special leave of no more than 12 days a year may be granted on the basis of a duly substantiated formal request.

5.10. PERSONAL INTEREST WHICH COULD IMPAIR YOUR IMPARTIALITY ---

5.10.1. In recruitment procedures

When taking part in a selection procedure, as a member of the Selection Board, staff must sign a declaration of confidentiality and absence of conflict of interest. There is a conflict of interest in situations in which the Selection Board member may have a personal interest (direct or indirect) such as to impair his/her independence. The impartial and objective exercise of the functions of member of a Selection Board can be compromised for reasons involving family, emotional life, political or national affinity, economic interest, etc.

If a staff member discovers during the selection process that they are in a situation of conflict of interest, they must declare it immediately and resign from the Selection Board.

This declaration will be given personally to the members of the Selection Board as soon as the call for applications is published.

5.10.2. Other circumstances

In the event that you are called upon to decide, or deal with, in the performance of your duties at EMSA and in the outcome or handling of which you may have a personal interest such as to impair your independence you should declare this to the Appointing Authority, using this [form](#).

5.11. GIVING EVIDENCE AND IMMUNITY IN LEGAL PROCEEDINGS

5.11.1. Giving evidence in legal proceedings

If staff members are called on to give evidence in legal proceedings to do with their work, they must request prior authorisation from the Appointing Authority, in line with the Staff Regulations (Article 19). Staff members continue to be bound by this obligation after leaving the service. Even if the interests of the EU would require authorisation to be refused, it would nevertheless be granted if refusal could result in prosecution of the official concerned.

These provisions do not, however, apply to a member of staff or former member of staff called on to give evidence before the Court of Justice of the European Union (including the Court of First Instance or the Civil Service Tribunal) or before a Disciplinary Board of one of the European institutions for a case related to a staff member or former staff member of the European Union.

However, such requests may also be made by a national judicial or police authority without the staff member being informed. In such circumstances, if EMSA is asked to maintain the secrecy of the procedure, the staff member is informed of the lifting of his/her confidentiality requirement only when he/she is summoned to a hearing by the national authorities.

Requests for authorisation and their supporting documents (in particular the judicial body's request) should be sent to the Human Resources Unit by the staff member.

The Appointing Authority takes a decision after checking the applicable rules and the decision is sent to the staff member who requested authorisation.

5.11.2. Immunity from legal proceedings

Article 11(a) of the Protocol on the Privileges and Immunities (PPI) of the European Union stipulates that staff members shall "be immune from legal proceedings in respect of acts

performed by them in their official capacity, including their words spoken or written. They shall continue to enjoy this immunity after they have ceased to hold office."

In addition, Article 6(2)i of the Protocol between the Government of the Portuguese Republic and the European Maritime Safety Agency states that officials and other Agents of the Agency shall "enjoy immunity from jurisdiction as regards acts carried out by them in their official capacity, including their spoken and written statements. This immunity shall continue after cessation of their functions."

Immunity from legal proceedings is to be accorded solely in the interests of the European Union (Article 18 of the PPI). The protection granted against proceedings before national courts (civil or criminal) covers only acts relating to professional life.

For matters relating to private life, the staff member is subject to national civil and criminal law – as has been confirmed by the rulings of the European Court of Justice. Article 23 of the Staff Regulations stipulates that staff members "shall not be exempt from fulfilling their private obligations or from complying with the laws and police regulations in force."

If a national judicial authority wishes a staff member's immunity from legal proceedings to be lifted, it must submit a request to EMSA. EMSA is required to lift immunity in all cases where it considers that doing so is not contrary to the European Union's interests. Requests for immunity from legal proceedings to be lifted are often combined with a request to lift the confidentiality requirement (see above section on "Giving evidence in legal proceedings").

In addition, Article 23(2) of the Staff Regulations requires staff members to inform the Appointing Authority immediately if immunity is in dispute.

Requests made to EMSA by national judicial authorities are dealt with by EMSA's Human Resources Unit. A decision to lift immunity is adopted by the Appointing Authority.