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work better for society.

DECISION n° 162

of the Management Board of the European Union Agency for Railways adopting rules for the prevention and management of conflicts of interest in respect of the members of the Management Board of the European Union Agency for Railways

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS,

Having regard to Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways (hereinafter referred to as “the Agency”) and repealing Regulation (EC) No 881/2004 (hereinafter referred to as “Regulation (EU) 2016/796¹”), and in particular Articles 51 § 1 point (s) and 46-53 thereof,

Whereas:

- (1) Ensuring the independence of and establishing high standards of ethics and professional conduct to be demonstrated by all those who are involved in the activities of the Agency, and in particular by the Management Board members, is an absolute prerequisite for establishing and maintaining the trust of stakeholders and citizens in the Agency’s integrity, reputation and efficiency;
- (2) It is acknowledged that the basis for being member in the Board is the appointment in line with Article 47 of Regulation (EU) 2016/796 either as representative of a Member State, representative of the European Commission or representing the railway sector organisations;
- (3) The members of the Management Board are selected by the Member States and the Commission on their merits and knowledge. Therefore, it is reasonably expected that its members would not use their position for personal gain;
- (4) The Board takes into consideration the different nomination procedures and the different roles and responsibilities of the members of the Management Board compared to the other parts of the administrative and managerial structure of the Agency including the Executive Director, and Agency staff as well as to other EU Agencies;
- (5) The fact that the members of the Board represent the Member States or their organisations and that, consequently, their votes and positions in the Board should be in line with instructions received from these Member States or organisations, does not constitute a conflict of interest;

¹. OJ L 138, 26.5.2016, p. 1-43.

- (6) Members of the Management Board should be required to submit a declaration of interests concerning them upon their appointment;
- (7) The responsibility for providing a complete, accurate and timely declaration of any interest which might be considered prejudicial to their impartiality and of keeping such declaration up-to-date lies solely with the Management Board members;
- (8) Having an interest does not necessarily mean having a conflict of interest and declaring such interest does not automatically entail limitation of participation of the declarant in the activities of the Management Board;
- (9) Preventive measures that deal with conflicts of interest situations should be identified and facilitated in order to develop and sustain an open organisational culture where conflicts of interest or measures dealing with conflicts of interest matters can be freely raised and discussed;
- (10) The Board members should be enabled to foresee potential conflicts, where feasible. For example, availability of meeting agendas in advance; record in meeting proceedings any conflicts that arise and the measures taken to resolve them;
- (11) Consistency and openness in resolving or managing conflicts of interest situations should be ensured, for example by providing up-to-date information about the Board's rules and management procedures regarding conflicts 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;
- (12) Where the term "members" or "Board members" is used in the text of the following rules, the relevant provision should be construed as covering both members and alternates of the Management Board and the Executive Board, unless explicitly provided otherwise therein;
- (13) These rules might be subject to a periodic review in the light of the experience gained from their application of these rules;

HAS DECIDED AS FOLLOWS:

Title I – General provisions

Article 1 – Scope

1. The present rules establish the principle of impartiality of the members of Management Board and their alternates. They define the measures to ensure its practical application in order to prevent and mitigate the risk that past, current or future interests might improperly influence the impartiality of the Board members during the performance of their duties.
2. The rules shall be applicable also to the Executive Board members and alternates as they are also members of the Management Board in the performance of their duties in the service of the Board.
3. These rules will not affect voting rights of Member States and the Commission and their representation at the Board meetings.

Article 2 – Definition of the term conflict of interest

1. For the purposes of the present rules, a conflict of interest shall involve a conflict between the public duty and private interests of a public official in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities².
2. The concept of conflicts of interest is intended to cover situations in which the impartiality and objectivity of decisions of the Board taken pursuant to Article 51 of Regulation 2016/796 has been actually compromised by an interest held by, or entrusted to, one or more of its members or might, from the point of view of a reasonable third person having knowledge of the relevant facts and circumstances or in the public perception, appear as compromised by such interest.
3. The concept of conflicts of interest is objective in nature and the intentions of the persons concerned should not be taken into consideration for the purpose of establishing whether a conflict of interest actually exists or not or could potentially arise, in particular when such persons have acted in good faith.
4. Both actual and potential conflicts of interest are of equal relevance and shall be considered in relation to the performance of the duties of the Board members and alternates.
5. The Board members shall undertake to act in the public interest and shall not be guided by personal interest or outside influences. 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 there is a conflict of interest as well as for declaring any possible conflict of interest is placed on the Board member concerned.
6. The fact that the members of the Board represent the Member States or their organisations and that, consequently, their votes and positions in the Board should be in line with instructions received from these Member States or organisations, does not constitute a conflict of interest.

Article 3 – Other Definitions

For the purposes of the present rules:

- i) “Personal interest” shall mean the relation of being objectively concerned in something e.g. by having a right or title thereto, a claim thereupon or a share therein, falling within the fields of competence of the Agency, which creates or has the potential to create a conflict of interest. The personal interests to be declared by the Board members may be of financial or non-financial nature. Such interests may stem from personal or close family relationships as well as professional affiliations of the member concerned;
- ii) “Employment” shall mean any form of regular, occasional or ad-hoc occupation or business, whether part-time or full-time, paid or unpaid, including self-employment, in any organisation or company carrying out any of the activities on which the Agency’s outputs impact directly or indirectly;
- iii) “Legal representation, provision of consultancy or of advice” shall mean any activity in which the person concerned provides advice or services related to the field of activities of the Agency to organisations, companies, associations or other bodies, including services provided on a honorary basis, i.e. for free or without the payment of fees or emoluments, as well as any advice related to products, their development and/or assessment methods thereof;
- iv) “Strategic advisory role” shall mean any activity through which the member concerned participates, with a right to vote or with the power to influence the outcome, in an advisory board or committee with the role of providing advice or of expressing opinions on the strategy, direction and development of the activities of the company concerned, regardless of contractual arrangements or form of remuneration;

². *OECD Guidelines for Managing Conflict of Interest in the Public Service, June 2003, § 10 accessible at: <http://www.oecd.org/governance/ethics/2957360.pdf>.*

- v) “Membership of a Management Board or Advisory Board or equivalent structure” shall mean any participation in the internal decision-making process e.g. in the form of a board membership, directorship, etc. of a public or private entity or in the work of an advisory body, created on a permanent or ad-hoc basis and managed by a body with an interest in the field of activities of the Agency, with a right to have an influence on its output(s), including participation in activities carried out jointly with the Agency;
- vi) “Other membership or affiliation” shall include any membership or affiliation, not falling under the categories above and relevant for the purposes of the present rules, to any body with an interest in the field of the activities of the Agency, including professional organisations;
- vii) “Research funding” shall mean any funding for research or developmental work related to a field of activities of the Agency received from any public or private body by the person concerned in his or her personal capacity or falling under the professional sphere of influence of that person, including grants, rents and reimbursement of expenses, sponsorships and fellowships;
- viii) “Close family members” are considered to be the persons forming a household with the person making the declaration i.e. spouse, partner, dependent children;
- ix) “Gift” shall mean a sum of money or any physical object, or the possibility to participate for free in events which are open to the public or are private in nature, are only accessible in return for payment and represent a certain value such as complementary tickets for sports events, concerts, theatre, conferences, etc. or any other advantage with a pecuniary value such as transport costs. Low value items given for purely information purposes -brochures, booklets, catalogues, etc - are not considered as gifts in this context.

Title II – Management of Conflicts of Interest and Preventive Actions

Article 4 – Principle of declaration of interests

1. In order to allow for the prevention, detection, monitoring and, where possible, mitigation of risks stemming from situations of potential and actual conflicts of interest at the earliest opportunity, the Board members shall be required to submit declarations of interests in written form.
2. The responsibility for submitting complete, honest and accurate declarations and for updating those declarations, should any change to the situation of the declared interests occurs in the future, lies exclusively with the Board members declaring their interests.

Article 5 – Categories of declarable interests

1. The following interests are required to be declared in particular:
 - i. Employment with, legal representation of, provision of consultancy or of advice to or assignment of a strategic advisory role within an undertaking which is active in the railway sector;
 - ii. Membership of a Management Board or Advisory Board or equivalent structure of an undertaking which is active in the railway sector or scientific advisory body and any other membership or affiliation associated with the work of the Agency;
 - iii. Research funding received from an undertaking which is active in the railway sector;
 - iv. Financial investments in an undertaking which is active in the railway sector, including holding of stocks and shares, stock options, equity, bonds, partnership interest in the capital of such undertaking, one of its subsidiaries or a company in the capital of which it has a holding amounting to a value above 10.000 € per company or shares, stocks or comparable entitling to a voting right of 5% or more in such undertaking -notwithstanding their financial value-;
 - v. Intellectual property rights, including patents, trademarks, proprietary know-how and/or copyright relating to the Agency’s activities owned by the Board member or held directly by the Board member;

- vi. Receipt of gifts and/or hospitality offers including food, drink, accommodation and/or entertainment from any source outside the Agency by an undertaking which is active in the railway sector;
2. Any other direct or indirect interest not falling under the categories outlined above which might interfere or could reasonably be perceived as interfering with the impartiality of the Board member concerned.

Article 6 – Public Declaration of Interests (PDol)

1. A declaration of interests shall be submitted by all Board members in the form of a “Public Declaration of Interests” (hereinafter referred to as “PDol”) and shall include in its scope any activities in which they are currently involved or have been involved during a period of five (5) years preceding the submission of the PDol as well as any activities which are presently undertaken by them in their capacity as Board members.
2. The declarations shall be submitted in writing upon appointment in accordance with the form in Annex 1 and shall be renewed when there is a change in the Board members’ situation. A notification recalling such obligation shall be sent to the members annually by the Chairperson.
3. The obligation stipulated in paragraph 1 shall also concern the close family members of the Board members only as regards interests currently held by them which will be declared by the Board members in the same form.
4. Should any change to the information initially provided in the PDol occur due to new circumstances giving rise to additional interests which could not have reasonably been declared at an earlier point in time, the Board members concerned shall promptly notify such interests following the same procedure through the submission of an updated PDol.
5. The PDol shall be published on the Agency’s website.

Title III – Assessment with a view to identifying and handling potential conflicts of interest

Article 7 – Criteria applicable to the assessment of Public Declarations of Interests

When assessing whether the declarations of interests contain an actual or perceived conflict of interest, the Conflicts of Interest Review Panel defined in Article 9 will at least take the following criteria into account:

- i. The compatibility of the specific interests declared by a Board member with the activities performed and the interests represented by the Management Board;
- ii. The importance of the interest declared, the role of the individual holding the interest, specific mitigating measures and controls imposed, the importance and impact on the decision-making and the availability of alternates.

Article 8 – Conflicts of interests related to Board meetings agenda items

1. In order to avoid a specific conflict of interest relating to decisions and/or discussions during Board meetings, members will, prior to the meeting, arrange themselves in a way that such conflict is managed in advance.
2. Board members may withdraw, on their own initiative, from such decisions/discussions or the Appointing Authority(ies) of those members may decide on a different representation during the Board meeting(s) concerned.
3. The Chairperson of the Board shall, in drawing up the draft Board meeting agenda, ensure that the items on the agenda are described in such a detail to allow the identification of any situation that may raise a conflict of interest.

Article 9 - Conflicts of Interest Review Panel

1. A Conflicts of Interest Review Panel (hereinafter referred to as “CoIRP”) is established as an advisory body. It is available to the Board, for advice on matters related to conflicts of interest of Board members, namely for the assessment of the Public Declarations of Interests (PDol).
2. The CoIRP is composed of:
 - a. The Chair of the Board and as alternate, the Deputy Chair of the Board;
 - b. A member (or alternate member) of the Executive Board representing the Member States and as alternate another member (or alternate member) of the Executive Board representing the Member States;
 - c. A European Commission representative in the Management Board and as alternate a Commission official;
 - d. A legal expert from the Agency staff as non-voting secretary and an expert from the Commission as non-voting adviser.
3. One representative of a European regulatory agency dealing with related matters, including conflicts of interest may be invited when a re-examination of an assessment is requested by the concerned member. This representative and his/her alternate are not members of the Review Panel.
4. The CoIRP shall establish its own Rules of Procedure which shall be published.
5. The Rules of Procedure shall include clear, objective criteria for the assessment and possible related decision, methodology for the assessment of the declaration of interests and for the review of the assessment and its related decision when such review is requested by the Board member.
6. The Board members shall be kept informed of their respective PDols assessment performed by the CoIRP.

Article 10 – Request for review of the PDol assessment

1. The Board members or their respective Appointing Authority(ies) may request a review of the assessment performed on the PDols by the CoIRP.
2. Such request shall be sent to the Chairperson of the Board within one month of the receipt of the assessment with a clear and complete justification for the revision.
3. The Chairperson of the Board shall initiate the review of the CoIRP assessment.
4. The CoIRP shall, by involving as necessary, the representative of a European regulatory agency mentioned in Article 9, provide a documented reviewed assessment together with a recommendation to the Chairperson of the Board who shall transmit the result to the concerned Board member as well as the Appointing Authority concerned.
5. The Board member shall be kept informed of the outcome of the request for review.

Title IV – Breach of rules and remedial actions

Article 11 – Remedial actions

1. In case of absence of declaration of interests by a Board member, the Chairperson of the Board shall inform the Appointing Authority of the member concerned and request to remedy the situation without delay.
2. In case the assessment of a declaration of interests indicates an omission of relevant interests resulting in a potential or actual conflict of interest, it may be considered as a breach of the present rules on declaration of interests.
3. The Chairperson of the Board, in consultation with the CoIRP, shall bring the issue to the concerned Appointing Authority and request a decision on the matter.
4. In case of knowledge that a specific conflict of interest relating to decisions / discussions on Board meetings agenda items has not been dealt adequately by the Board member prior to the meeting, it may be considered that there is a breach of the present rules.

5. In such cases, the Chairperson of the Management Board shall refer the matter to the concerned Appointing Authority.
6. In case of knowledge of non-consistent information of the declaration of gifts, or in case of failure to declare them, the Chairperson of the Board, after consultation with the CoIRP, will request a decision on the matter from the concerned Appointing Authority.
7. If the Chairperson of the Board considers the decisions taken by the Appointing Authority not satisfactory, this fact shall be mentioned at the next Board meeting and noted in the minutes.
8. The Board member shall be kept informed in all cases.

Article 12 – Preventive measures

1. The Board members are required to accept responsibility for arranging their private affairs so as to prevent any conflicts of interest related to their duties in the Management Board.
2. In case of suspicion on the possibility of existence of conflicts of interests, Board members have the obligation to undertake all necessary measures with a view to preventing influence from private interests.

Title V – Gifts, hospitality, decorations and honours

Article 13 – Declaration and registration

1. Board members shall not accept any gift with a value of more than 150 € in the course of the performance of their duties in the Management and Executive Board.
2. When, in accordance with diplomatic and courtesy usage, Board members receive gifts of a value higher than the amount mentioned in paragraph 1, such gifts shall be handed over to the Management Board secretariat.
3. In case of doubt as to the exact amount of the value of a gift, the Board Chairperson shall make an estimation of such value. In case there is a disagreement on the estimation of the gift value the Board member concerned may address a request for review of the gift value estimation to the CoIRP.
4. A register of gifts with a value of more than 150 € shall be maintained by the Management Board.
5. Members shall not accept hospitality related to the activities of the Agency unless it is offered in accordance with diplomatic and courtesy usage. Attendance upon invitation to any events where Board members represent the Agency shall not be considered as hospitality.
6. Any gift, decoration, prize or honour awarded to the Board members in the exercise of their duties in the Management Board shall be notified by them in writing to the Chairperson of the Management Board.
7. A prize awarded to the Board members which consists of an amount of money or valuables shall be donated to a charity of their choice.

Title VII – Final provisions

Article 14 – Training and information

1. The Agency may organise introductory training courses on the present rules specifically designed to provide the new Board members with basic knowledge on the issues relating to the management of conflicts of interest. To this end, the Agency may organise information sessions with training on the conflict of interest issues according to the needs and in the most appropriate and cost effective way.
2. Board members who have already undergone the induction sessions referred to in paragraph 1 may be invited to enrol in refresher trainings scheduled at regular intervals. Such trainings may be delivered in the form of a specific e-learning module.

Article 15 – Publication and protection of personal data

1. Without prejudice to the relevant provisions of Regulation (EU) 2016/796, all declarations shall be processed pursuant to the applicable data protection regulations.
2. The purpose of such data processing is to safeguard the independence and impartiality of the Management Board members.
3. The declarations shall be retained for a period of two (2) years starting from the date on which the European Parliament granted a discharge for the budgetary year to which those declarations relate.
4. Data subjects shall enjoy the right to obtain access to their declarations and to ask for an update or rectification thereof at any time under the conditions prescribed the applicable data protection regulations.
5. Data subjects are entitled to have recourse at any time to the Data Protection Officer of the Agency and/or to the European Data Protection Supervisor.

Article 16 – Review

The present rules shall be subject to review by the Management Board where necessary.

Article 17 – Repeal

The ERA Administrative Board Conflicts of Interest policy adopted on 24 March 2015 is hereby repealed. The public declarations of interests received under the conditions of this policy shall remain valid unless the Board members declare a new interest and submit for that purpose an updated declaration form.

Article 19 – Entry into force

The present decision shall enter into force the date following that of its adoption by the Management Board.

Done at Valenciennes, on 29-11-2017
For the Management Board

The Deputy Chairperson
Hinne J.Y. GROOT

Annex : Public Declaration of Interests (PDol) of members of the Management Board of the European Union Agency for Railways

Annex

Public Declaration of Interests (PDol) of members of the Management Board of the European Union Agency for Railways³

Name:

Title/Function:

Company/Organisation:

Management Board Member or Alternate⁴

I, do hereby declare to the best of my information, knowledge and belief that⁵:

- I and my close family members⁶ have no interests to declare in relation to my duties and responsibilities within the Management Board of the Agency;
- I have, but my close family members have no interests to declare in relation to my duties and responsibilities within the Management Board of the Agency;
- I have no interests, but my close family members have interests to declare in relation to my duties and responsibilities within the Management Board of the Agency;
- I and my close family members have interests to declare in relation to my duties and responsibilities within the Management Board of the Agency.

³. Hereinafter referred to as "the Agency".

⁴. Specify if Member or Alternate (strikethrough the irrelevant entry).

⁵. Tick as applicable.

⁶. For this purpose, "close family members" are considered to be the persons forming a household with the person making the declaration (spouse, partner, dependent child). Only current interests held by close family members are of relevance and not past ones.

I have recorded the following interests in the field of the Agency's activities⁷:

Title/Function (you or your close family members)	Period of activity (within the past 5 years)	Company or organisation	Description of the activity (including contracts with the Agency, as well as Products, Projects, and/or Activity references in accordance with the Agency Programming Document)
1. Employment with a company or an organisation			
2. Legal representation of or provision of consultancy or of advice to or assignment of a strategic advisory role within a company or an organisation			
3. Member of a Management Board or equivalent structure of a company or an organisation			
4. Member of an Advisory Board or equivalent structure of a company or an organisation			

⁷. Please kindly note that the table below while covering many of the varied situations that commonly arise in practice, do not purport to provide an exhaustive list of potential interests, nor could they do so, and that all other elements that might jeopardise your independence and impartiality in the performance of your duties in the service of the Management Board should also be indicated under point 8 "Other relevant information" of the table hereunder.

Title/Function (you or your close family members)	Period of activity (within the past 5 years)	Company or organisation	Description of the activity (including contracts with the Agency, as well as Products, Projects, and/or Activity references in accordance with the Agency Programming Document)
5. Other membership or affiliation			
6. Research funding from a company or an organisation, including grants, rents, sponsorships, fellowships, non-monetary support			
7. Financial investments in a company or an organisation, including holding of stocks and/or shares, stock options, equity, bonds, partnership interest in the capital of such undertaking, one of its subsidiaries or a company in the capital of which it has a holding (of a value above 10,000 € per company or shares, stocks or comparable entitling you to a voting right of 5% or more (notwithstanding their financial value)			
8. Other relevant information			

Should there be any change to the information provided above, I shall promptly notify the Management Board secretariat and complete a new Public Declaration of Interests (PDol).

I understand that this Public Declaration of Interests (PDol) is published on the Agency website.

I understand that I am responsible for notifying an updated version of this PDol to the Management Board secretariat as soon as there has been a change in my situation.

The Agency will handle the information provided above in accordance with Regulation (EC) No 45/2001⁸.

Done at _____ on _____

Signature:

⁸. 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 movement of such data, OJ L 8, 12.1.2001, p. 1-22.