

Making the railway system  
work better for society.

## DECISION n°199

### *of the Management Board of the European Union Agency for Railways adopting the revised Framework of Good Administrative Behaviour*

#### **THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS,**

Having regard to:

- › the Regulation (EU) 2016/796 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Railways<sup>1</sup> (hereinafter referred to as “the Agency”) and repealing Regulation (EC) No. 881/2004 (hereinafter called “the Regulation”), and in particular Article 51 § 1 points (h) and (s), Article 67(3) and Article 69 thereof.
- › the Staff Regulations of Officials (‘Staff Regulations’) and the Conditions of Employment of Other Servants of the European Union (‘CEOS’), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 , and in particular Title II of the Staff Regulations and Articles 11 and 81 of the CEOS.
- › the Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies dated 10 December 2013.
- › the Special Report of the European Court of Auditors (ECA) on the ‘Management of conflict of interest in selected EU agencies’ no 15/2012 and in particular recommendation 1, 2, 4, 5, 7, 8 and 11.

Whereas,

- › EU citizens have a fundamental right to good administration under the Charter of Fundamental Rights of the European Union (EU). As a body of the EU, the Agency must provide such good administration, centered on the principles of impartiality and fairness.
- › In order to discharge of its obligations, the Agency should put in place a general framework of conduct for its staff, within the limits set out by the Staff Regulations of Officials of the European

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<sup>1</sup>. OJ L 138 26.5.2016, p. 1-43.

Union and the Conditions of Employment of Other Servants of the European Union, laid down by Council Regulation (EEC, Euratom, ECSC) No. 259/682<sup>2</sup>.

- › The Management Board recognises the sensitivity of the tasks to be performed by the Agency especially under the new tasks defined in the Regulation (EU) 2016/796. With regard to the prevention and management of conflicts of interest, it is essential that the Agency acts impartially, demonstrates integrity and establishes high professional standards. There should never be any legitimate reason to suspect that decisions might be influenced by interests conflicting with the role of the Agency as a body serving the Union as a whole or by private interests or affiliations of any member of the Agency staff, any seconded national expert or external expert which would create, or have the potential to create, a conflict with the proper performance of the official duties of the person concerned.
- › In order for the Agency to maintain these values it is essential that all staff members as well as external experts declare any interest that they, or their close family members, may have that could give the appearance of a conflict, even where no actual or potential conflict exists. A declaration of interest enables a more informant assessment and it is more transparent compared to a declaration of absence of conflict of interests. Furthermore, the agency has been entrusted with regulatory powers and thus the degree of exposure to conflict of interest of staff members and external experts working on our behalf is significant. In this sense, the Agency is following the European Commission guidelines on the prevention and management of conflict of interest in EU decentralised Agency and the recommendations issued by ECA in its special report.
- › The Agency should therefore put in place comprehensive rules on conflicts of interests that cover the entire Agency and lay down arrangements and proportionate measures for avoiding or managing apparent, potential and real conflict of interest.

## HAS DECIDED AS FOLLOWS:

### *Article 1*

The revised framework for Good Administrative Behaviour of the European Union Agency for Railways is adopted as set out in Annex to this decision.

### *Article 2*

The Executive Director shall take all the necessary measures for the practical implementation of the Framework for Good Administrative Behaviour, including by adopting the necessary internal procedures and guidelines and providing the necessary training.

***Article 3 – Final provision***

Decision n°169 of the Management Board adopting the Framework for Good Administrative Behaviour of the European Union Agency for Railways is repealed.

***Article 4 – Date of application***

This decision shall take effect on the day following that of its adoption. It shall be published on the Agency's website.

Done at Valenciennes, on 06-06-2019  
For the Management Board

The Chairwoman  
Clio LIÉGEOIS

# Framework for Good Administrative Behaviour of the European Union Agency for Railways

## Introduction

EU citizens have a fundamental right to good administration under the Charter of Fundamental Rights of the European Union (EU). Every person has the right to have his or her own affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the EU.

One of ERA's major assets is our reputation for professionalism. It is of the utmost importance for all ERA staff to meet the highest ethical standards in the performance of duties in order to safeguard our reputation and credibility vis-à-vis EU institutions, national administrations, the business communities, other stakeholders and the general public.

The goal of the present Framework for Good Administrative Behaviour of the European Union Agency for Railways ('the Framework' / 'FGAB'), which constitutes ERA's ethical guide, is to set out and clarify the rules concerning ethics and integrity that derive from the Staff Regulations, the Conditions of Employment of Other Servants of the European Communities and the case-law of the Court of Justice of the European Union and thus meet the expectations of the EU citizens.

The Framework also contains specific instructions concerning the execution of the day to day duties for ERA staff, which are meant to help staff respect their already existing obligations. It touches upon issues that may arise for all staff, including how to handle potential conflicts of interest, rules governing participation in and remuneration from external activities, and contacts with third parties. The issues covered by this document touch on aspects of professional conduct which, if improperly dealt with, could seriously affect both the Agency's reputation and/or cause harm to third parties. Moreover, improper handling of these questions could also affect a staff member's individual reputation and career.

This Framework applies to all ERA staff in a broad sense (temporary agents, contract agents). The Agency will take the necessary measures to ensure that its provisions also apply to other persons working for the Agency, such as experts on secondment from national authorities, trainees and, where relevant, persons employed under private law contracts.

There are frequent references in the text to the concept of "Authority Authorised to Conclude Contracts" (AACC). The Management Board of the Agency has delegated its authority in personnel matters to the Executive Director. It should be underlined that the Staff Regulations and other relevant texts relating to staff's conduct often leave the AACC a margin of discretion as regards their application and implementation.

The disciplinary system (administrative inquiries and disciplinary procedures) applies to any failure by a member or former member of staff to comply with their obligations under the Staff Regulations, whether intentionally or through negligence. This can include conduct in private life. In this context, it is important to draw attention to the fact that ERA staff can be held responsible in case of breach of the Staff Regulations and/or other relevant provisions, even if s/he has not benefited from this failure or the failure did not cause damage to the Agency<sup>2</sup>.

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<sup>2</sup> See *Joined Cases T-24/98 and T-241/99 E v Commission* [2001] ECR II-681, paragraph 76

Insofar as this Framework explains the detailed application of the Staff Regulations it does not directly apply to persons working for ERA who are not staff members, such as persons who work as independent contractors on particular projects, consultants, persons commissioned to carry out studies, etc. These persons are, however, subject to the provisions on ethics and integrity as set out in the contracts between the Agency and such persons. These provisions are to a certain extent similar to the ethical obligations imposed on Agency staff and the guidance given in this Framework is therefore to a certain extent also of relevance for external staff working for ERA (e.g. Annex 1).

This Framework is fully in line with the provisions of the Staff Regulations, the relevant Commission and Agency Decisions and the case-law and will be regularly updated. ERA staff cannot invoke these framework as an excuse for not having complied with the Staff Regulations.

It is of paramount importance for all ERA staff to comply with the rules on ethics. Implementing these rules is part of the staff's responsibilities in discharging of their duties. In most cases, dealing correctly with ethics is above all a question of common sense and open communication. A conflict of interest - for example a staff member being assigned to a case involving a firm in which s/he has some personal interest - is not in itself an infringement. It only becomes one if not handled appropriately.

The present Framework for Good Administrative Behaviour of the European Union Agency for Railways includes a Code of Conduct (structured on the backbone of the Code of Good Administrative Behaviour developed by the European Ombudsman<sup>3</sup>) and three annexes:

- › **Annex 1** (Framework on Impartiality and Independence) establishes the principles governing impartiality and independence within the Agency and defines the measures to ensure their practical application in order to prevent and mitigate the risk that past, current or future personal interests, or any outside influences of whatever kind, might improperly influence the impartiality and the independence of the Agency staff members during the performance of their official duties;
- › **Annex 2** (Framework on gifts and hospitality);
- › **Annex 3** (Framework for staff on the use of Social Media).

The present document is intended as a reference tool for all staff. Should any questions/comments arise please do not hesitate to contact the Ethics Officer ([ethics@era.europa.eu](mailto:ethics@era.europa.eu)) to signal any gaps or corrections which might be needed.

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<sup>3</sup> <https://www.ombudsman.europa.eu/en/resources/code.faces#/page/1>

# ERA Code of Conduct

## ***Article 1 – General provision***

In their relations with the public, Staff Members of the Agency shall respect the principles which are laid down in this Code of Conduct for the staff of European Union Agency for Railways, hereafter referred to as “the ERA Code of Conduct”.

## ***Article 2 – Personal scope of application***

1. This Code shall apply to all Staff Members of the Agency covered by the Staff Regulations and the Conditions of employment of other servants, in their relations with the public.
2. The Agency shall take the necessary measures to ensure that the provisions set out in this Code also apply to other persons working for the Agency, such as experts on secondment from national authorities, trainees and, where relevant, persons employed under private law contracts and external experts.
3. The term “public” refers to natural and legal persons, whether they reside or have their registered office in a Member State, or not.
4. Hereafter the term “Staff” or “Staff Member” refers to all those falling within the scope of this Code.

## ***Article 3 – Material scope of application***

1. This Code contains the general principles of good administrative behaviour which apply to all relations of the Agency with the public, unless they are governed by specific provisions.
2. This Code is without prejudice to the obligations of Staff Members, as defined by the Staff Regulations (SR), the Conditions of Employment of Other Servants of the European Union (CEOS), the decisions adopted according to the provisions of Article 110 of the Staff Regulations and the ERA Financial Regulation.
3. References to documents in this Code shall include any document whatever its medium, either written on paper or stored in electronic form or as a sound, visual or audio-visual recording.

## ***Article 4 – Lawfulness***

The Staff Member shall act according to the law and apply the rules laid down in applicable law and Agency Integrated Management Systems documents. The Staff Member shall in particular ensure that decisions which affect the rights or interests of individuals have a basis in law and that their content complies with the law.

## ***Article 5 – Absence of abuse of power***

The Staff Member shall exercise his or her powers solely for the purposes for which they have been conferred by the relevant provisions. The Staff Member shall in particular avoid using those powers for purposes which have no basis in law or which are not motivated by any public interest.

### ***Article 6 – Absence of discrimination***

1. In dealing with requests from the public and in taking decisions, the Staff Member shall ensure that the principle of equal treatment is respected. Members of the public who are in the same situation shall be treated in a similar manner.
2. If any difference in treatment is made, the Staff Member shall ensure that it is justified by the objective relevant features of the particular case.
3. The Staff Member 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***

1. When taking decisions, the Staff Member shall ensure that the measures taken are proportional to the aim pursued. The Staff Member shall in particular avoid restricting the rights of individuals or imposing charges on them, when those restrictions or charges are not in a reasonable relation with the purpose of the action pursued.
2. When taking decisions, the Staff Member shall respect the fair balance between the interests of individuals and the general public interest.

### ***Article 8 – Impartiality and independence***

1. The Staff Member shall be impartial and independent. The Staff Member shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.
2. The conduct of the Staff Member shall never be guided by personal, family, or national interest or by political pressure.
4. The Staff Member shall abstain from handling matters in which he or she has a financial interest.
5. The principles governing impartiality and independence within the Agency and the measures to ensure their practical application are set out in Annex 1.
6. The Agency Framework on Gifts and Hospitality is set out in Annex 2.

### ***Article 9 – Objectivity***

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

### ***Article 10 – Legitimate expectations, consistency and advice***

1. The Staff Member shall respect the legitimate and reasonable expectations that members of the public have in the light of how the Agency has acted in the past.
2. The Staff Member shall be consistent in his or her own administrative practice as well as with the administrative action of the Agency. The Staff Member shall follow the Agency's normal administrative practices, unless there are legitimate grounds for departing from those practices in an individual case. Where such grounds exist, they shall be recorded in writing.

3. The Staff Member shall, where necessary, advise the public on how a matter which comes within his or her remit is to be pursued and how to proceed in dealing with the matter.

#### ***Article 11 – Fairness***

The Staff Member shall act impartially, fairly and reasonably.

#### ***Article 12 – Courtesy***

1. The Staff Member shall be service-minded, correct, courteous and accessible in relations with the public. When answering correspondence, telephone calls and e-mails the Staff Member shall try to be as helpful as possible and shall reply as completely and accurately as possible to questions which are asked.

2. If the Staff Member is not responsible for the matter concerned, he or she shall direct the concerned individual to the appropriate Staff Member or service. Further to requests for information concerning another European Union institution or body, the Staff Member shall direct the requester to that institution or body.

3. If an error occurs which negatively affects the rights or interests of an individual, the Staff Member shall apologize for it and shall endeavour to correct the error as well as the negative effects resulting from it, to the extent that the circumstances and legal framework permit. When doing so, the Staff Member shall also inform the individual of any rights to complain according to Article 27 of this Code.

#### ***Article 13 – Telephone communication***

When answering the telephone, Staff Members shall identify themselves. Telephone calls shall be returned as promptly as possible.

#### ***Article 14 – Obligatory measures when absent from office***

When a Staff Member is absent from office, he or she shall take appropriate measures to ensure that all incoming communications are properly monitored and that the continuity of operations is ensured.

#### ***Article 15 – Reply to the letters in the language of the citizen***

The Agency shall ensure that every citizen of the Union who writes to the Agency in one of the Treaty languages receives an answer in the same language, unless a different arrangement has been agreed with the citizen concerned. The same shall apply to legal persons.

#### ***Article 16 – Acknowledgment of receipt and indication of the responsible staff member***

1. Every letter or complaint to the Agency shall receive an acknowledgement of receipt within a period of two weeks, except if a substantive reply can be sent within that period. This also applies to e-mail, where the e-mail is, by its nature, the equivalent of a letter.

2. The reply or acknowledgement of receipt shall indicate the name, telephone number and e-mail address of the Staff Member who is dealing with the matter, as well as the Unit to which he or she belongs.

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

### ***Article 17 – Obligation to transfer files to the competent Unit of the Agency***

1. If a letter or a complaint according to Article 27 is addressed or transmitted to a Unit which has no competence to deal with it, its services shall ensure that the file is transferred without delay to the competent Unit of the Agency.
2. The Unit which originally received the letter or complaint shall inform the author of this transfer in the acknowledgement of receipt and shall indicate the contacts of the Unit to whom the file has been passed.
3. The Staff Member shall alert the individual about any errors or omissions in documents provided by the individual to the Agency and offer an opportunity to rectify them.

### ***Article 18 – Right to be heard and to make statements***

1. In cases where the rights or interests of individuals are involved, the Staff Member shall ensure that, at every stage in the decision making procedure, the concerned individual is heard.
2. Every individual shall have the right, in cases where a decision affecting his or her rights or interests has to be taken, to submit comments and, when needed, to present oral observations before the decision is taken, unless the legal framework provides for a different procedure.
3. When urgent safety concerns mandate immediate action the right to be heard shall be guaranteed in a way that does not impede the safety objective.

### ***Article 19 – Reasonable time-limit for taking decisions***

1. The Staff Member shall ensure that a decision on every request or complaint to the Agency is taken within a reasonable time-limit, without delay, and in the normal case no later than two months from the date of receipt. The same rule shall apply for answering letters from members of the public.
2. If a request or a complaint to the Agency cannot be decided upon within the above mentioned time limit, because of the complexity of the matters which it raises or because established and published procedures clearly specify a longer lead-time, the Staff Member shall ensure that the author is duly informed as soon as possible. In that case, a definitive decision should be notified to the author in the shortest possible time.

### ***Article 20 – Duty to state the grounds of decisions***

1. Every decision of the Agency which may adversely affect the rights or interests of individuals shall state the grounds on which it is based by indicating clearly the relevant facts and the legal basis of the decision.
2. The Staff Member shall avoid making decisions which are based on brief or vague grounds, or which do not contain an individual reasoning.
3. If it is not possible, because of the large number of individuals concerned by similar decisions, to communicate in detail the grounds of the decision and where standard replies are therefore made, the Staff Member shall guarantee that he or she subsequently provides the individual who expressly requests it with an individual reasoning.

### ***Article 21 – Indication of the possibility of appeal***

Any decision which may adversely affect the rights or interests of an individual shall contain an indication of the possibilities available for challenging the decision. 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 22 – Notification of decisions***

1. The Staff Member shall ensure that decisions which affect the rights or interests of individuals are notified in writing, as soon as the decision has been taken, to the individuals concerned.
2. When urgent safety concerns mandate immediate action by the Agency, any other immediate and effective means of notification may be used in combination with notification in writing.
3. The Staff Member shall abstain from communicating the decision in any way to other sources until the individual or individuals concerned have been informed.

### ***Article 23 – Data protection***

1. The Staff Member who deals with personal data concerning an individual shall respect the privacy and the integrity of the individual in accordance with the provisions of Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data.
2. The Staff Member shall in particular avoid processing personal data for non-legitimate purposes or the transmission of such data to non-authorized persons.

### ***Article 24 – Requests for information***

1. The Staff Member shall, when he or she has responsibility for the matter concerned, provide individuals with the information that they request in accordance with Agency procedures. When appropriate, the Staff Member shall give advice on how to initiate an administrative procedure within his or her field of competence. The Staff Member shall ensure that the information communicated is clear and understandable.
2. If an oral request for information is too complicated or too comprehensive to be dealt with, the Staff Member shall advise the individual concerned to formulate the demand in writing.
3. If the Staff Member may not disclose the information requested because of its confidential nature he or she shall, in accordance with Article 20 of this Code, indicate to the individual concerned the reasons why the information cannot be communicated.
4. Where appropriate, the Staff Member shall, depending on the subject of the request, direct the person seeking information to the Unit of the Agency or another Institution responsible for providing information to the public.

### ***Article 25 – Requests for public access to documents***

1. The Staff Member shall handle all external requests for public access to documents in accordance with the Arrangements to be applied by the Agency for public access to documents<sup>4</sup>. All incoming applications for access to documents should be forwarded to the Document Access Coordinator<sup>5</sup> who will review and process the request, including related forms, and respond to the applicant in accordance with the general principles and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the

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<sup>4</sup> *In their consolidated version, as adopted by Decision 145 of the ERA Management Board of 29 November 2016 amending the 'Arrangements to be applied by the Agency for Public Access to Documents'*

<sup>5</sup> *Idem.*

Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents<sup>6</sup>.

2. If a Staff Member receives an oral request for access to a document which is not already publicly available (e.g. on the ERA website) he should encourage the applicant to formulate the request in writing and consult the Document Access Coordinator.

#### ***Article 26 – Keeping of adequate records***

The Staff Member shall ensure that his or her incoming and outgoing mail, documents received, and measures taken, are properly recorded in accordance with the applicable IMS Documents.

#### ***Article 27 – Complaints***

1. Any alleged breach of the rules and principles set out in this Code may be subject of a complaint by members of the public to the Agency.
2. Such complaints shall be managed according to the internal procedures of the Agency.
3. Members of the public are also entitled to lodge those complaints with the European Ombudsman in accordance with article 228 of the TFEU<sup>7</sup> and the Statute of the European Ombudsman<sup>8</sup>.

#### ***Article 28 – Publicity for the Code***

The Agency undertakes to make the content of its Code known to its Staff and to the Public.

#### ***Article 29 – Revision***

The practical application and effectiveness of this Code of Conduct and its Annexes will be evaluated at the end of a period of three years following its adoption. In light of the results of this evaluation, this Code of Conduct and its Annexes may be revised as appropriate.

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<sup>6</sup> OJ L 145, 31.05.2001, p. 43

<sup>7</sup> OJ C 202, 7.6.2016, p. 1

<sup>8</sup> OJ L 113, 04.05.1994, p. 15; OJ L 92, 09.04.2002, p. 13; OJ L 189, 17.07.2008, p. 25

# Annex 1 - Framework on Impartiality and independence

## 1. Purpose and scope

First and foremost, the work of ERA staff shall be guided by the general obligations of loyalty, independence and impartiality, as laid down in Article 11 (1) of the Staff Regulations. According to that provision, members of the staff are required to act solely with the interests of the Union in mind, to carry out their duties objectively, impartially and in keeping with the duty of loyalty. They shall not seek or take instructions from outside the institution.

These duties largely coincide. They mean that staff members must act in an independent and objective manner at all times. Conclusions or decisions should be balanced and based on a thorough analysis of the relevant rules and underlying facts.

The management of impartiality and independence of staff (in addition to objectivity) is a key element of governance of the EU institutions and agencies and is crucial to ensure their integrity when performing their official functions.

The purpose of this Framework is to (1) establish the principles governing impartiality and independence within the Agency and (2) define the measures to ensure their practical application in order to prevent and mitigate the risk that past, current or future personal interests, or any outside influences of whatever kind, might improperly influence the impartiality and the independence of the Agency staff members during the performance of their section official duties.

These principles and measures cover the management of situations of potential conflict of interest (declaration, monitoring and training/information) and situations of actual conflict of interest.

This Framework completes, refers to and/or follows:

- › the relevant articles of the Staff Regulations and related EU Commission guidelines and rules;
- › the relevant articles of the ERA Financial Regulation;
- › the relevant provisions of the ERA Code of Conduct;
- › PRO\_RIM\_001 including rules on Sensitive functions;
- › the Decision n° 173 of the Management Board of the European Union Agency for Railways laying down rules on the secondment to the Agency of seconded national experts and national experts in professional training;
- › the ED Decision 1691/2019 adopting the new rules on traineeship at ERA;
- › the OECD guidelines<sup>9</sup>.

## 2. Concept of Conflict of Interest

A conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of the Agency is or might be perceived as being compromised by a personal interest held or entrusted to a given individual.

Relevant personal interest may be of financial or non-financial nature and it may concern a personal or family relationship or professional affiliations (including additional employment or "outside" appointments or former employments or appointments) and other relevant outside activities.

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<sup>9</sup>. *Managing Conflict of Interest in the Public Service: OECD Guidelines and Country Experiences* (OECD, Paris, 2003)

Not only *actual independence* but also *perception of independence* is important, since it can impact on ERA's reputation by raising doubts about the conclusions reached. The appearance of conflict of interest can constitute a reputational risk to the Agency, even if it turns out to be unsubstantiated.

Therefore, giving due consideration to proportionality, specific backgrounds, all relevant facts and mitigating circumstances, a risk of perceived conflict of interest should be treated as if it were an actual conflict.

The OECD guidelines furthermore distinguish between potential and actual conflict of interest:

*“An Actual Conflict of Interest* involves a conflict between the public duty and private interests of a public official, which could improperly influence the performance of their duties and responsibilities.

*A Potential Conflict of Interest* is a situation where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in the relevant (i.e. conflicting) official responsibilities in the future”.

### 3. Principles and tools

According to Article 11 of the Staff Regulations and Article 8 “Impartiality and Independence” of the ERA Code of Conduct, the Agency staff shall be and remain impartial and independent when performing their official duties. According to Article 11a of the Staff Regulations, 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, the interests of the institution or body to which they belong.

In order to ensure compliance with the aforementioned requirements, the Agency defined a series of principles and tools for the prevention and management of conflict of interest:

- › Principle of declaration of interests (see Section 6 of this annex);
- › Principle of collegiality and transparency in decision-making (see Section 5 of this annex);
- › Conflict of interest situations register (see Section 4 of this annex);
- › Sensitive functions (see PRO\_RIM\_001);
- › Gifts and hospitality (see Annex 2: Framework on gifts and hospitality);
- › Outside activities and post-employment (see MB Decision 182<sup>10</sup>);
- › Internal rules on whistleblowing (see MB Decision 183<sup>11</sup>);
- › Enforcement (see Section 8 of this annex);
- › Training and information (see Section 9 of this annex).

Regarding the external experts, *Section 10 – Measures for external experts* provides for specific measures adapted to their particular situation.

### 4. Conflict of interest situation register

A dedicated Register shall be created to define and maintain the list of all declarations of interests (Dols) defined in accordance with section 6 of this Framework and submitted by staff members and external experts<sup>12</sup>. The register shall also include the main situations of conflict of interests. All Dols submitted in accordance with this Framework may be disclosed in the context of a request of access to documents

<sup>10</sup> Decision n° 182 of the Management Board of the European Union Agency for Railways on the adoption by analogy of Commission Decision (C2018-4048) of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service.

<sup>11</sup> Decision n° 183 of the Management Board of the European Union Agency for Railways on the Guidelines for Whistleblowing.

<sup>12</sup> Hard copies of the Dols submitted by the staff member shall be held in the personal file; similar treatment as per seconded national experts. Hard copies of the Dols submitted by the independent experts shall be held within the documentation of the Agency project and/or service.

according to Regulation (EC) No 1049/2001 and processed in accordance with Regulation (EU) 2018/1725. The DoI of the Executive Director shall be made available on the Agency website<sup>13</sup> as well as the DoI of the staff members taking decisions on the new tasks<sup>14</sup>. The risk and the degree of exposure to conflicts of interest is particularly higher with regards to staff members taking decisions under the regulatory tasks.

All measures adopted to manage the conflict of interests are filed in the personal file of each staff member<sup>15</sup>. All measures adopted to manage the conflict of interests of independent experts shall be held in the conflict of interest situation register.

## 5. Principle of collegiality and transparency in decision-making

Regarding the risk on potential conflict of interest when taking decisions, the Agency applies the “no single point of decision” approach as the most appropriate mitigating control for prevention of potential and actual conflict of interest situations within the Agency context. Impartiality and independence of the decision making in the Agency operational processes is guaranteed through the collegiality of the technical assessment and the decision-making process. Concerning the decision making process, decisions during the operational process are not taken by individual experts in isolation, but only after assessment by a team of experts, which significantly minimizes the possibility of single expert influence. Furthermore, every decision is reviewed and endorsed by hierarchical superiors in line with the delegation powers received from the Agency’s Executive Director or the Agency’s Management Board<sup>16</sup>.

Since 2015, the Agency has defined and continuously improves its Integrated Management System (IMS). As part of the ERA IMS activities, the Agency describes and manages its processes. This important activity of the ERA IMS supports the implementation of the principle of collegiality, among other principles and requirements, in all Agency procedures. The description and publication of Agency IMS documents supports also the principle of transparency in decision making.

## 6. Principle of declaration of interests

In order to prevent, detect, monitor, mitigate and deal with situations of potential and actual conflict of interest, the Agency applies the *principle of declaration of interests* to be filled by Agency staff and assessed by the reporting officers as specified below.

It should be noted that having an interest does not necessarily mean having a conflict of interest.

### 6.1 Category of interests

For the purpose of this principle, the following categories of interests have been defined:

1. Employment: any form or regular occupation or business, part-time or full-time, paid or unpaid, including self-employment, in any legal or natural organization or company falling within the Agency’s remit; both active and inactive employment (employees on leave of absence without pay, on temporary invalidity or temporary secondment) are within scope of the declaration of interest.
2. Consultancy, legal representation, advice: any activity in which the concerned person provides advice or services related to the field of the activities of ERA to organizations, companies, associations or other bodies which are active in the railway sector regardless of contractual arrangements or any form of remuneration.

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<sup>13</sup> In line with art 46 and 77 of Regulation 796/2016.

<sup>14</sup> Pursuant to art.14, 20, 12 and 22 of Regulation (EU)2016 /796 and art.1(2) of MB Decision 194.

<sup>15</sup> Pursuant to Art 26 of Staff Regulations and CEOS. A similar treatment shall be implemented for SNE.

<sup>16</sup> Decision n°183 of the Management Board of the European Union Agency for Railways establishing procedures for decision making by the Executive Director in relation to authorisations for placing vehicles on the market, single safety certificates, and ERTMS track-side approvals.

3. Membership of a Management Board/Advisory Board or equivalent structure: any participation in the internal decision-making (with the right to vote/influence the outputs) of any legal or natural organisation which is active in the railway sector in which the individual is expressing opinions on the (future) strategy, direction and development activities either in terms of general strategy or product related strategy, regardless of contractual arrangements or any form of remuneration.
4. Other memberships or affiliations: any membership or affiliation not falling under the categories above and relevant for the purposes of the present framework, to any entity with an interest in the field of the activities of ERA, including professional organizations.
5. Research funding: any funding for research or developmental work in the field of the activities of ERA received from any public or private body by the concerned person in his or her personal capacity or falling under the professional sphere of influence of that person. It includes grants, rents and reimbursement of expenses, sponsorships and fellowships.
6. Intellectual property rights: rights in the field of the activities of ERA granted to creators and owners of works that are the result of human intellectual creativity (e.g. patents, trademarks, etc.) and may lead to a financial gain.
7. Financial Investments: any economic stake or share in an undertaking which is active in the railway sector, including holding of stocks, stock options equities or bonds thereof, or in one of its subsidiaries or in a company in which it has a holding amounting to a value above 10.000 euros per company or shares, stocks or comparable entitling to a voting right of 5% or more in such undertaking. Independent management investment funds/pension schemes that are not exclusively based on the railway sector are out of the scope.
8. Public statement or position: any expert opinion or testimony in the field of the activities of ERA for a commercial entity or other organization as part of a regulatory or judicial process. Any office or other position (paid or unpaid), where the concerned person represented interests or defended opinion in the field of the activities of ERA.
9. Other relevant interest: any interest not falling under the categories provided above and relevant for the purposes of the present framework.

## 6.2 Types of declaration of interests

### 6.2.1 General principles of declaration of interests

The following general principles shall be applicable to all persons subject to the present framework:

- a. The identification and handling of conflict of interest as defined in this Framework shall be based on the evaluation of the Declarations of Interests (DoI), the Declaration of absence of conflict of interest (DACoI) and Oral Declarations of Interests (ODOI) submitted by the concerned persons and staff<sup>17</sup> as specified in the present framework. The templates for DoI and DACoI shall be developed and implemented internally in accordance with the Framework.
- b. The responsibility for a complete and truthful declaration shall lie exclusively with the person completing the declaration.

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<sup>17</sup> In line with art 11, before being recruited, candidates shall also submit a DoI.

- c. Only activities having taken place in the three years preceding the submission of the declaration shall be declared. This shall cover also activities of close family members<sup>18</sup> of the Agency staff.

#### 6.2.2 *Declaration of Interests (DoI)*<sup>19</sup>

All staff members are requested to submit an annual DoI and declare any interest belonging to the categories defined in section 6.1 with respect to all activities in which they are involved or have been involved during the three years preceding the submission of the DoI and which fall within the Agency's remit.

Individuals shall indicate whether interests declared are "current" (when activities are currently ongoing); or they refer to a "past period" (when they are no longer ongoing but have been completed during the three years preceding the submission of the DoI).

Details on the name of body or organization of relevance for each declared interest shall be given. This is to be interpreted as meaning the full name, location of the seat (town and country) and nature (private or public).

Details on the subject matter of each declared interest shall be given, indicating the domain in which the activity is, or was, carried out and clarifying the interest and role of the concerned body or organization in the matter and the role of the concerned person.

Staff members shall update and resubmit their DoI without delay following any change in their interests.

#### 6.2.3 *Declaration of absence of conflict of Interests (DACoI)*

A specific declaration in the form of a 'Declaration of conflict of interest' (DACoI) shall be submitted by the staff member in relation to a specific activity to which he/she is assigned if deemed necessary by the line manager (in case of staff) and the manager responsible for the specific activity (in case of external experts) and if it is not already covered by the annual declaration of interests.

#### 6.2.4 *Oral Declaration of Interests (ODOI)*

The Oral Declaration of Interests is related to meetings.

Each programme manager/project manager/service manager shall determine, in line with the applicable EU and ERA regulations and procedures, where it is deemed necessary to request an Oral Declaration of Interests (ODOI) at the beginning of a meeting related to a project/service/application s/he is responsible of, if this meeting is not already covered by the DoI and the DACoI.

When a meeting is subject to an ODOI, the participants shall declare orally any interest at the beginning and during the meeting that might be considered prejudicial to their impartiality and independence in relation to the items on the agenda of and/or the items discussed during that meeting.

This declaration shall be recorded, with its assessment and related decision, in the minutes of the meeting.

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<sup>18</sup> For this purpose, 'close family members' are considered to be the persons forming a household with the person making the declaration (spouse, life partner, dependent children). Only current interests held by close family members are of relevance and not past ones.

<sup>19</sup> The declaration of an activity in a declaration of interest does not exempt a staff member from the obligation to obtain prior permission from the appointing authority before engaging in an outside activity according to Article 12b of the Staff Regulations. In case an activity has already been authorised under Article 12b of the Staff Regulations, the Staff Member shall indicate so in the declaration of interest.

## 6.3 Assessment of declarations and decisions

### 6.3.1 Ethics officer

For the purpose of this framework, the Ethics officer appointed by the Executive Director shall make preliminary appraisal of compatibility of interests declared within DoI<sup>20</sup> with the general duties of the individual concerned. The Ethics officer may be consulted regarding the DACoI and ODoI.

The Ethics Officer issues reasoned opinions, upon request or on its own initiative without prejudice to the decision-making powers of the Executive Director.

### 6.3.2 Declaration of interests of the Executive Director

The DoI (and the DACoI if deemed necessary) of the Executive Director shall be screened by the persons who discharge the function of Reporting Officer for the Executive Director to identify if an interest could present a potential conflict with regard to the work of the Executive Director. A reasoned opinion may be requested from the Ethics Officer in this context.

### 6.3.3 Declaration of interests of other Agency staff

#### a. First Declaration of Interests

Before engagement in the Agency, the first DoI shall be assessed by the Executive Director with the assistance of the assigned reporting officer.

The Executive Director may decide to take any measure considered appropriate to ensure the potential conflict of interest does not occur or to remedy the actual Conflict of Interest. The Executive Director may also grant a waiver according to section 6.5.

#### b. Declaration of Interests

The staff members already employed at the date of the entry into force of the present decision shall submit the annual DoI within a period of maximum 45 days after such entry into force. The Ethics officer shall assess the declarations and make preliminary appraisal of compatibility of interests declared with the general duties of the staff member concerned. If a potential or an actual CoI is identified this shall be highlighted to the reporting officer. The reporting officer shall document his/her decision of the checks for potential conflict of interest and the reason for assigning a staff member to the specific duty. When the reporting officer confirms a potential CoI, he or she shall bring the matter to the attention of the Executive Director. A reasoned opinion may be requested from the Ethics officer in this context.

At all stages, the concerned shall be kept informed of the ongoing assessment of his or her DoI. The reporting officers may hear the concerned staff in order to facilitate the assessment.

The Executive Director, after having heard the member of staff concerned if necessary, may take any measure considered appropriate to ensure the potential conflict of interest does not occur or to remedy to the actual Conflict of Interest. The Executive Director may also grant a waiver according to section 6.5.

When, as a result of the procedure above, a staff member is transferred to another structure within the Agency, his or her DoI shall be updated and submitted for screening to the Ethics officer and the new reporting officer.

The procedure laid down above also applies to updated DoIs.

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<sup>20</sup> Except for the DoI of the Executive Director (see section 6.3.2)

Any change regarding interests already declared shall result in a swift update of the DoI and shall be submitted to the reporting officer and Ethics Officer. The procedure laid down above applies to updated DoIs.

#### 6.3.4 *Declaration of absence of conflict of interest (DACoI)*

If requested, the DACoI shall be screened by the line manager (for staff members) or the manager responsible for the specific activity (for external experts). A reasoned opinion may be requested from the Ethics officer.

#### 6.3.5 *Oral Declarations of Interests (ODOI)*

Oral Declarations of Interests (ODOI) shall be assessed by the Chair of the meeting in relation to which the ODOI is made. The Chair shall take any measure considered appropriate to ensure the potential conflict of interest does not occur or to remedy the actual conflict of interest (e.g.: cancellation of the meeting, replacement of the participant, no voting right or exclusion from discussion on the concerned item, etc.).

The related decision shall be recorded in the minutes of the meeting.

### 6.4 **Request for review of the Ethics officer opinion**

The Staff Member can send a request to the Ethics officer for a review of his opinion on his/her declaration of interests. In accordance to the applicable procedure, the Ethics officer will review the opinion and may provide a new reasoned opinion or confirm the first one.

If the Ethics Officer identifies a need to change the first opinion, this shall be highlighted to the reporting officer who took the first opinion. When the reporting officer confirms a potential CoI or the absence thereof, he or she shall take the appropriate measures and bring the matter to the attention of the Executive Director.

### 6.5 **Granting of waiver**

The Agency's staff member shall not be assigned to a project/service/application where a known potential or actual conflict of interest exists. Any staff member confronted with such situation shall immediately inform his reporting officer(s). To prevent the risk to impair his/her independence, objectivity and impartiality in the performance of his duties and thus remove the CoI situation, the reporting officer shall take any measures considered appropriate including the reallocation of the project or task to another staff member.

When no other suitable staff member is available and his/her competence/expertise is considered essential for the completion of the task, safeguards should be put in place to ensure that impartiality in decision making is guaranteed and that the outcome and/or completion of that task is not compromised by a CoI.

In such cases, when the staff member is considered essential and where no suitable alternate is found, a waiver can be granted by the Executive Director. The reporting officers/ shall submit all relevant information on which the conclusions are based supporting the request to the Executive Director to grant a waiver.

Should a waiver be granted, the concerned staff member shall be entitled to:

- › formulate his/her recommendations on the task or project under strong supervision and after consultation (in agreement of) with at least one of his peers and prior clearance on the content shall be given by the line managers;

- › contribute to particular working groups in which his/her expertise and involvement are considered essential for the completeness of the draft output;
- › take part in the discussions (working groups, meetings, etc.) and in the drafting phase of the output. However, he/she shall not be allowed to act as chair or vice-chair or secretary of an Agency working group linked to his or her interest.

## 6.6 Protection of personal data

The Agency shall process all Dols in accordance with Regulation (EU) n°2018/1725<sup>21</sup>. The Resources and Support Unit manages the handling of the declarations of interests made by staff before engagement and the Ethics Officer manages the electronic Conflict of Interest Register including all DoI submitted by staff members after engagement.

The retention period of the Dols their assessment and the related decision and/or waiver, if any, shall be 7 years.

The Agency's staff members have the right to access their declarations of interests, to update and/or correct them at any time.

In cases where the Agency has knowledge or information that is not consistent with the declared interests, or in cases of failure to submit a declaration of interests when requested, the concerned staff member will be contacted in order to update the declaration related to the missing information. In cases where an internal procedure should be opened as referred to in *Section 8 – Enforcement*, the staff member shall be notified.

## 7. Outside activities and post-employment

There are fundamental reasons behind the need to ensure that all the Agency's staff members ask for prior authorization from the Executive Director in order to take on an external professional activity, paid or unpaid, thus ensuring the staff member concerned, and subsequently the Agency's independence, integrity and credibility are maintained.

By MB DEC 182, the Agency applies by analogy the Commission Decision C(2018)1597 on outside activities and assignments. These rules apply to the Agency's staff members employed under the Staff Regulations (SR) and Conditions of Employment of Other Servants of the European Union (CEOS).

The MB Decision No 173 laying down rules on the secondment to the Agency of seconded national experts and national experts in professional training, makes seconded national experts subject to the same rules and conditions laid down for staff with regard to prior authorization related to outside activities.

Persons working at the Agency who are not employed under the SR and CEOS such as trainees or external experts, others than seconded national experts, are not covered by nor subject to the provisions laid down in MB Decision 173 and MB Decision 182.

With reference to Article 16 of the SR, after leaving the service, former Agency's staff members are still subject to certain obligations. Former staff members are therefore bound not to accept any duties or professional activities after leaving the service that would be incompatible with the interests of the Agency. A former staff member intending to engage in an occupational activity within two years of leaving the service must inform the Agency. If the activity could lead to a conflict with the legitimate interests of

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<sup>21</sup> Regulation (EU) 2018/1725 of the European parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L295, 21.11.2018)

the Agency, the Executive Director could forbid the former staff member from undertaking this activity or could give his approval subject to any conditions he sees fit in accordance with applicable rules.

## 8. Enforcement

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

The disciplinary system, which essentially involves administrative inquiries and disciplinary procedures, applies to any failure by a staff member or former staff member to comply with his obligations under the SR and CEOS, whether intentionally or through negligence.

As explained in the preceding sections:

- › any infringements to Articles 5, 6 7, 8, 9 and 11 to the ERA Code of Conduct in the performance of the duties,
- › any infringements to the procedures laid down in the current framework or to the MB and ED Decisions referred to in this framework,

may expose the staff member or former staff member concerned to the risk of administrative inquiries and/or disciplinary actions in accordance with Article 86 and Annex IX of the Staff Regulations.

In cases where a staff member fails to declare a potential or actual conflict of interest or fails to comply with this Framework, this may be considered as a failure by the staff member/former staff member to comply with the rules and obligations of the Agency staff members/former staff members. If and when the breach of rules is confirmed, the Agency shall request an administrative inquiry be opened which may lead to disciplinary measures as referred to in Article 86 and Annex IX of the Staff Regulations.

If a member of the staff was involved in a decision-making procedure without having declared an interest, in addition to possible disciplinary measures as mentioned above, the Executive Director may decide to 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. The appropriate remedial action shall take into account the reasons for the failure to declare, such as negligence or justified lack of knowledge (for example due to confidentiality connected to the profession of the household member), etc.

The individual concerned may request the Executive Director to review any decisions taken in this respect.

For other staff working at the Agency who are not employed under the SR and CEOS, such as interims, trainees, seconded national experts and external experts, the Executive Director shall take the appropriate decision which may result in the termination of their contract with the Agency.

## 9. Training and information

All staff shall attend a mandatory training on the Framework for Good Administrative Behaviour of the European Union Agency for Railways. The training shall cover all aspects implemented by the Agency to manage the area of conflict of interest as defined in this framework.

Refreshment trainings to Agency's staff members shall be delivered. Interims, trainees and seconded national experts shall also receive the same trainings as the Agency staff members on the management of conflict of interest at the Agency.

The Agency will advertise on its Intranet an information page on the management of conflict of interest at ERA.

## 10. Measures for external experts

For the purpose of this framework, the Agency has identified the following categories of external experts to whom this framework is also applicable as follows:

1. Seconded National Expert (SNE)<sup>22</sup>: All sections of the framework are applicable to SNEs. In addition, the employer is requested to complete the “employer declaration” form certifying the absence of conflict of interest with the duties to be performed by the SNE at the Agency. The “employer declaration” will be annexed to the declaration of interests to be completed by the SNE;
2. Independent experts<sup>23</sup>: in accordance with section 6.2.2 shall submit a DoI. In accordance with section 6.2.3 and 6.2.4 a DACoI and/or ODoI may also be required, where applicable. The assessment and related decision, if any, shall be done by the Head of the unit responsible for the project/service where the expert is assigned. The relevant provisions of sections 8 and 9 apply to these external experts by analogy.

All DoIs of external experts submitted in accordance with this Framework may be disclosed in the context of a request of access to documents according to Regulation (EC) No 1049/2001.

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<sup>22</sup> Experts from public administrations/universities seconded to the Agency via a specific selection procedure for a duration of 2-4 years as per art.6.5 of the Decision 173 of the Management Board laying down rules on the secondment to the Agency applies.

<sup>23</sup> Natural person (excluding legal entities) recognised as an expert in a specific domain, selected by the Agency in order to provide his/her expertise and knowledge in a specific domain, where such expertise is needed.

## Rules for the Assessment of Declarations of Interests<sup>24</sup>

<b>A = acceptable</b> <b>O = case-by case assessment</b> <b>X = not acceptable</b>			
<i>Type of interest</i>	<i>ERA staff involved in regulatory tasks</i>	<i>External experts involved in regulatory and advisory tasks</i>	<i>Other ERA staff</i>
<b>ASSESSMENT OF INTERESTS</b>			
<p><b>1. Employment</b></p> <p><b><i>Obligation to declare:</i></b> any form or regular occupation or business, part-time or full-time, paid or unpaid, including self-employment, in any legal or natural organization or company falling within the Agency’s remit; both active and inactive employment (employees on leave of absence without pay, on temporary invalidity or temporary secondment) are within scope of the declaration of interest.</p> <p><i>Note: The obligation to declare concerns “any company which is active in the railway sector = any company operating in railways. However, the incompatibilities are only defined in respect to companies who are applicants or potential applicants pursuant to Articles 14, 20, 21 and 22 of the Agency Regulation (EU) 2016/796 (companies operating in the same market/s = any RU/manufacturer/infrastructure manager) Includes also supply or service companies which contribute to the research, development, production and maintenance of a railway product.</i></p>			
Current interest	<b>X</b>	<b>O</b>	<b>X</b>
Inactive employment	<b>O</b>	<b>O</b>	<b>O</b>
Past interest	<b>O</b>	<b>O</b>	<b>A</b>
<p><b>2. Consultancy, legal representation, advice</b></p> <p><b><i>Obligation to declare:</i></b> any activity in which the concerned person provides advice or services related to the field of the activities of ERA to organizations, companies, associations or other bodies which are active in the railway sector regardless of contractual arrangements or any form of remuneration.</p>			

<sup>24</sup> The table is not prejudicial to the obligation of ERA staff members to comply with the provisions of Staff Regulations regarding individual obligations and the Decision no 182 of the Management Board on the adoption of Commission Decision on outside activities and assignments.

Current interest	O	O	O
Past interest	O	O	A
<b>3. Membership MB/Advisory Board or equivalent</b>			
<b><u>Obligation to declare:</u></b> any participation in the internal decision-making (with the right to vote/influence the outputs) of any legal or natural organization active in the railway sector in which the individual is expressing opinions on the (future) strategy, direction and development activities either in terms of general strategy or product related strategy, regardless of contractual arrangements or any form of remuneration).			
Current interest	X	O	X
Past interest	O	O	A
<b>4. Other memberships of affiliation</b>			
<b><u>Obligation to declare:</u></b> any membership or affiliation not falling under the categories above and relevant for the purposes of the present framework, to any entity with an interest in the field of the activities of ERA, including professional organizations.			
Current interest	O	O	O
Past interest	O	O	A
<b>5. Research funding</b>			
<b><u>Obligation to declare:</u></b> any funding for research or developmental work in the field of the activities of ERA received from any public or private body by the concerned person in his or her personal capacity or falling under the professional sphere of influence of that person. It includes grants, rents and reimbursement of expenses, sponsorships and fellowships.			
Current interest	O	O	O
Past interest	O	O	A
<b>6. Intellectual property rights</b>			
<b><u>Obligation to declare:</u></b> rights the field of the activities of ERA granted to creators and owners of works that are the result of human intellectual creativity (e.g. patents, trademarks, etc.) and may lead to a financial gain. Plain authorship and publications shall not be declared.			
Current interest	O	O	O
Past interest	A	A	A
<b>7. Financial Investments</b>			
<b><u>Obligation to declare:</u></b> any economic stake or share in an undertaking which is active in the railway sector, including holding of stocks, stock options equities or bonds thereof, or in one of its subsidiaries or in a company in which it has a holding amounting to a value above 10.000 euros per company			

or shares, stocks or comparable entitling to a voting right of 5% or more in such undertaking. Independent management investment funds/pension schemes that are not exclusively based on the railway sector are out of the scope.			
Current interest	X	X	X
Past interest	O	A	A
<b>8. Public statement/position</b>			
<b><u>Obligation to declare:</u></b> any expert opinion or testimony in the field of the activities of ERA for a commercial entity or other organization as part of a regulatory or judicial process. Any office or other position (paid or unpaid), where the concerned person represented interests or defended opinion in the field of the activities of ERA			
Current interest	O	O	O
Past interest	O	O	A
<b>9. Other relevant interests</b>			
<b><u>Obligation to declare:</u></b> any interest not falling under the categories provided above and relevant for the purposes of the present framework			
Current interest	O	O	O
Past interest	O	O	A

# Annex 2 – Framework on gifts and hospitality

## 1. Background

The Article 11(2) of the Staff Regulations provides rules relating to gifts to be followed by the Agency staff members. The Agency staff working at the Agency shall seek permission before accepting any honour, decoration, favour, gift, invitation, hospitality or payment of any kind whatever, except for services rendered prior to their duties at the Agency.

The current framework is addressed to staff members covered by Article 35 of the Staff Regulations and by the CEOS, i.e. in active employment, on secondment, on leave on personal grounds, on parental or family leave, and on military leave.

However, for Agency staff who are not in active employment at the Agency, any gifts, invitations and hospitality that they might receive which are not related, and may not be reasonably perceived to be related, in any way to their capacity as staff members (including, for example, gifts received in a new professional capacity while they are on leave on personal grounds) are not deemed to be covered by Article 11 of the Staff Regulations or by this framework.

Although staff members who have left the service are not obliged to seek authorization under Article 11 (and therefore are not subject to the current framework), Article 16 (1) of the Staff Regulations provides that they continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain benefits.

This framework reflects the European Commission's guidelines on gifts and hospitality adopted on 7th March 2012<sup>25</sup>, which also apply to the Agency.

## 2. Definitions

### 2.1 Gifts

A gift is understood to 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 complimentary tickets for sports events, concerts, theatre, conferences etc.),
- › any other advantage with a pecuniary value such as transport costs.

Low value items given for purely information purposes (brochures, booklets, catalogues...) are not considered as gifts in this context.

Indirect gifts are those which are not offered directly to staff members, but to a third party that is close to the staff member.

Gifts that are offered to the institution (Article 24 of the ERA Financial Regulations<sup>26</sup>) are not covered by these Framework.

### 2.2 Hospitality and invitations

Invitation and hospitality offers are considered to be a type of favour and should be treated like gifts.

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<sup>25</sup> <http://myintracomm.ec.testa.eu/hr/en/news/Pages/2012-03-07-gifs-hospitality-guidelines.aspx>

<sup>26</sup> AB Decision 93/2013 adopting the Financial Regulation of the Agency

Hospitality is defined as an offer of food, drink, accommodation and /or entertainment from any source outside the Agency.

Invitation is defined as an offer (unpaid or paid) to participate to an event, a conference or equivalent; or to publish a book or article or to perform a speech from any source outside the Agency.

### **3. Principles**

#### **3.1 General considerations**

As a general rule, staff members should not accept any direct or indirect gifts, invitations or hospitality from third parties.

This is most evident where gifts are offered by person, authorities, organizations or other external bodies of the Agency which are involved in or are seeking official action by the Agency especially in a sensitive area in which the staff member is, has been or will likely be active in the foreseeable future. Any situation, where the acceptance of a gift, invitation or hospitality may lead to or may be perceived as a potential or actual conflict of interest (see Annex 1 of this Code), should be absolutely avoided. Any gifts entailing a sum of money, regardless of the amount, must always be refused.

Acceptance of gifts, invitations or hospitality may, exceptionally, be authorized (within the limits indicated under "Specific provisions related to Gifts" below) when it is clear that this will not compromise or reasonably be perceived to compromise the staff member's objectivity, impartiality and independence and will not damage the Agency's public image. This evaluation can only be based in the first place on sound judgment from the staff member in the given circumstances, and then should be confirmed by the Executive Director in the relevant cases.

#### **3.2 Relevant criteria**

Criteria to be considered in this context are, in particular, if the acceptance of the gift, invitation or hospitality is counter to the interest of the service or presents a real or perceived conflict of interest for the staff member concerned, or if such acceptance would be in accordance with diplomatic and courtesy usage.

In this respect, certain factors may point towards the likelihood that authorization could be granted, for instance when the offer of a gift, invitation or hospitality has a low value or is addressed to a large number of persons. On the other hand, there are factors which may point towards the likelihood that authorization would be refused, for instance when the offer of a gift, invitation or hospitality has a high value or, is addressed to a single staff member.

In general terms, for the purposes of the assessment of a given request, the following factors could be relevant – it being understood that the factors mentioned are not exhaustive, and that they will be neither individually nor collectively decisive but form part of a case-by case analysis:

- › depending on the context, the nature of the source offering the gift, invitation or hospitality (private/public);
- › the apparent motive behind the offer of the gift, invitation or hospitality;
- › the link between the entity offering the gift, invitation or hospitality and the Agency (for example procurement procedures, cases under investigation, financial interests in a special EU or Agency policy, etc.);
- › the nature and estimated value of the gift, invitation or hospitality, including whether there have been one or several offers from the same source;
- › the individual or collective destination of the offer;
- › the functions of the staff member;
- › the benefits for the service expected from the participation of the staff member at the event in question.

Gifts, invitations and hospitality motivated solely by a family relationship or personal friendship, or in a context not related in any way to the staff member's duties do not, in principle, fall under the provisions of Article 11 of the Staff Regulations. However, even here situations may arise when acceptance can be perceived as compromising the staff member's independence.

## 4. Specific provisions

### 4.1 Gifts

In the first place staff members should always remember that they should not accept any gifts as a general rule and should make use of sound judgment in order to assess, in the given circumstances, if acceptance could be exceptionally envisaged.

Subject to the general principles set out in chapter above, gifts should therefore only be accepted if in line with or if required by social, courtesy or diplomatic usage. In that case, the following administrative arrangements apply:

1. Prior permission by the Executive Director is presumed to be granted, in accordance with Article 11 of the Staff Regulations and in the interest of expedient administrative procedures for a gift worth less than €50.

In this respect it is important to stress that this threshold does not mean that any staff member may consider himself or herself at liberty to accumulate a number of gifts below the set value, bearing in mind that an accumulation may be seen to compromise the staff member's impartiality and independence, or may damage the Agency's public image.

2. Explicit prior permission by the Executive Director is required for a gift worth between €50 and €150.

If the Executive Director authorizes acceptance, the gift may be kept. Again, it is stressed that this threshold does not mean that any staff member may consider himself or herself at liberty to accumulate a number of gifts – which will also be an element that will be taken into consideration by the Executive Director.

3. Authorization for gifts with a higher than €150 value will be refused by the Executive Director.

Such gifts must thus be refused. For the sake of transparency, the staff member should inform the respective Head of Unit, preferably in written form, that the gift or sum of money has been offered and refused. Offers of any sum of money must always be refused by the staff member.

4. General considerations.

In general terms, the following applies:

- › If the Executive Director refuses to authorize acceptance or if a gift is unwanted, it can be returned to the source, if this is feasible;
- › alternatively it can be sent to the Gifts Register. The gifts transmitted by the staff members based in any location, are donated by the Agency to an appropriate charitable organization;
- › as far as gifts returned to the source or sent to Gifts Register are concerned, such action shall not be considered as "acceptance" in the meaning of the Staff Regulations, provided that the staff member immediately informs his/her respective Head of Unit;
- › as a courtesy, the staff member should inform the sender, unless this would be diplomatically inappropriate, that the gift cannot be accepted and will be transmitted to charity;
- › where the staff member is in doubt as to whether the refusal of a gift would be contrary to social, courtesy or diplomatic usage or might create otherwise embarrassing situations, he/she should bring the matter to the attention of the Executive Director who will decide on a possible refusal;
- › finally, the value amounts mentioned above should be estimated in good faith.

## 4.2 Hospitality and invitations

### 4.2.1 *In general*

In the first place staff members should always remember that they should not accept any invitation or hospitality as a general rule and should make use of sound judgment in order to assess, in the given circumstances, if acceptance could be exceptionally envisaged.

Subject to the general principles set out in chapter above, invitations and hospitality should therefore only be accepted if in line with or if required by social, courtesy or diplomatic usage. In that case, the following administrative arrangements apply:

1. Prior permission by the Executive Director is presumed to be granted, in accordance with Article 11 of the Staff Regulations and in the interest of expedient administrative practice:

- › for invitations or hospitality in the form of lunches or dinners strictly linked to the function of the staff member, and as such not prejudicial to the interests and public image of the Agency, and in which the staff member participates in agreement with his/her hierarchy and in the interest of the service;
- › for occasional offers of simple meals, refreshments, snacks etc. Even if such invitation or hospitality offers can be accepted without prior formal authorization, in the interest of transparency and in the interest of the person concerned, staff members shall inform their immediate hierarchical superior in writing of the acceptance of an invitation or hospitality offer.

As in the case of gifts, it is important to stress that this presumption of authorization does not mean that any staff member may consider himself or herself at liberty to accumulate a number of hospitality offers, bearing in mind that an accumulation may be seen to compromise the staff member's objectivity and independence, or may damage the Agency's public image.

2. Explicit prior permission by the Executive Director is required.

As a general rule staff members should keep in mind that there is no such a thing as a free lunch. In cases not covered by the previous heading, or if the staff member judges that there is a doubt as to the appropriateness of accepting or refusing an invitation or an hospitality offer, prior authorization should be received from the Executive Director. If prior authorization is not feasible, the Executive Director's agreement should be sought as soon as possible subsequent to the event.

In any event the immediate superior of the staff member should be informed. Again, it is stressed that this does not mean that any staff member may consider himself or herself at liberty to accumulate a number of invitations and/or hospitality offers – which will also be an element that will be taken into consideration by the Executive Director.

In any case of doubt, staff members are invited to consult their hierarchy or the Ethics Officer.

### 4.2.2 *Hospitality and invitations during mission*

The mission order will as a rule cover all predictable offers of hospitality or invitations, based on the mission programme – notably meals, accommodation and transport. These will not be considered as invitations and/or hospitality offers if the programme of the mission and the participation of the staff member has been authorized – as they form part of the performance of his/her duties in the interest of the service. The acceptance of these offers will then be declared in the mission claim.

Particular prudence is necessary in sensitive situations. For instance staff members participating in inspections and similar missions should whenever possible inform their immediate superior or team leader on an ad hoc basis, and in accordance with any other specific provisions, when hospitality is offered in the course of such missions. If this is impossible, they should exercise their individual judgment and act according to the principles set out in these guidelines. Any invitation or hospitality thus accepted should be declared in the mission claim.

In this respect, in addition to the general approach as defined in points 1 and 2 above, practical advice on what can be considered as usual and acceptable practice in view of avoiding real or perceived potential conflicts of interest can be provided by the Ethics Officer.

#### 4.2.3 *Invitation to publish, give speeches or lectures*

One must distinguish between publications, speeches or lectures in an official capacity on behalf of the Agency and private publications, speeches or lectures. When an Agency staff member is acting in an official capacity, advance clearance for the content by the line managers is required.

Staff wishing in a private capacity to publish a text, give a speech, an interview or lecture, blog on a subject related to the work of the Agency or the European Union must inform the Executive Director in advance in writing, in accordance with Article 17a of the Staff Regulations and the Agency's rules on outside activities<sup>27</sup>. If the staff member acts in a private capacity (publications, speeches, presentations etc.) he/she shall make that clear by giving a statement in form of a disclaimer (e.g. that the views presented are those of the individual and may not be understood or quoted as being made on behalf of the Agency or reflecting the position of the Agency). Permission will usually be granted unless the content of the publication, speech or lecture or blog would not be in the interest of the Agency or the European Union. Permission will not be granted if networking or gaining influence must be assumed to be the major objective of the organizer when issuing the invitation to speak or publish.

Staff shall provide the Executive Director with any information, in particular a copy, in electronic form, of the document he/she intends to publish accompanied, when relevant, by a summary in English. Where the Executive Director considers that the matter is liable to prejudice seriously the legitimate interests of the Agency, he/she has to inform the staff member within 30 working days of receipt of the information. If he/she does not reply within this time limit, it is considered to have had no objections.

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 his/her duties, where they relate to EU matters and are or may be published.

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

- › the staff member shall show restraint and caution in expressing differing opinions, in particular when the latter are closely linked to the subject and nature of his/her duties in the two preceding years;
- › such opinions or any others regarding EU policies must be expressed with moderation and under the staff member sole responsibility (i.e. with a disclaimer).

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

On some occasions, it may not be appropriate for anyone from the Agency to attend or participate in any way. Therefore, if permission is refused for an invitation to speak, publish or participate at a meeting, conference or to represent the Agency, it is not acceptable to attend during a weekend or by taking leave.

In accordance with the Agency rules on outside activities, staff must also obtain advance permission concerning the acceptance of any payment for publications, speeches or lectures which are not directly related to their work at the Agency.

### 4.3 **Honours or decorations**

If a staff member is offered an honour or decoration, permission to accept must be requested in writing and obtained in advance from the Executive Director. All cases, whether granted or not, are recorded by

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<sup>27</sup> MB DEC 182

Resources and Support Unit for a period of five years from the date of the request in the personal file of the concerned staff member.

Only national honours and decorations awarded by a sovereign state or official medals awarded by a sovereign state or an official organ of that state (ministry, regional or local authorities, etc.) or recognized by an official authority (e.g.: Prix Charlemagne, Carnegie Hero Fund, etc.) are subject to the restrictions outlined in Article 11 of the Staff regulations.

In deciding, the Executive Director will take into considerations the following factors:

- › The motive behind giving the decoration;
- › The possible consequences for the Agency's interests.

The rules also apply to former staff members if the decoration or honour has any link with their work at the Agency.

## **5. Gifts register handling and protection of personal data**

The Agency shall establish and maintain a Gifts Register for the purpose of the registration of authorizations for gifts, invitations and hospitality offers in accordance with this framework. This Register shall be recorded as evidence of the implementation of this framework.

Any gift of a value of €50 and more shall be entered into the Gifts Register.

The Agency shall process all authorizations and Gifts Register in accordance to Regulation (EU) n°2018/1725.

The Ethics Officer manages the Gifts Register.

The Agency staff have a right to access their data within the Gifts Register to update or correct them at any time.

In case the Agency has knowledge of information that is not consistent with the declared authorization, or in case of failure to request an authorization in accordance with this framework, the staff member will be contacted with the purpose to update the request for an authorization. In case an internal procedure is opened as referred to Section 6 - Enforcement, the Agency staff will be notified.

Agency staff members are also entitled to have recourse at any time to the European Data Protection Supervisor: <https://www.edps.europa.eu>

## **6. Enforcement**

Staff members are reminded that infringements of Article 11 of the Staff Regulations may expose them to the risk of administrative inquiries and/or disciplinary actions in accordance with Article 86 and Annex IX of the Staff Regulations. For other staff such as interims, trainees, seconded national experts and external experts, the Executive Director shall take the appropriate decision that may consist in the termination of their contract with the Agency.

## Annex 3 – Framework for staff on the use of Social Media

Agency staff are increasingly called upon to communicate with the general public and stakeholders via a wide variety of channels. One recent development is that social media such as Twitter, Facebook or professional networks like LinkedIn and Yammer are growing more popular for people-to-people communication. In fact, social media are becoming one of the busiest media platforms where citizens are spending more and more time. Based on user participation and user generated content, social media provide a means of gathering and sharing information, knowledge and opinions in an easy, conversational manner.

### What are social media?

‘Social media’ is the term used for online technologies and practices to share content, opinions and information, promote discussion and build relationships. Social media services and tools involve a combination of technology, telecommunications and social interaction. They can use a variety of formats, including text, pictures, audio and video.

### Who can take part in this new form of communication?

Everyone can participate in social media, in their own personal capacity. However, your statements and opinions will remain personal and cannot be regarded as representing the Agency's official position. You do not speak on behalf of the Agency and you should point this out in the appropriate manner.

As a general rule, only the Executive Director and the Communications Team is entitled to speak on behalf of the Agency and to relay political messages. In response to the growing interest in social media, ‘mandated staff’ in every Unit, working in close cooperation with the Spokesperson of the Agency, will be added to this group. Their role is to relay political messages and to provide support and assistance on social media.

What follows are a few principles and guidelines to ensure the appropriate use of social media.

### Core principles

How to deal with social media?

Many Agency staff members use social media in various ways. However, the ‘personal’ style of social media can make it difficult to draw the line between public/professional and private use.

As staff member of the Agency, you are bound by the Staff Regulations and the Code of Good Administrative Behaviour, which apply to your contributions to social media in the same way as they do when you communicate with other media or speak at conferences, etc. The five core principles from the Staff Regulations set out below are the guiding principles which you must always respect whenever you get involved in the Internet or in social media:

1. Objectivity – which means presenting any situation in a reasoned and unprejudiced manner (Staff Regulations, Article 11);
2. Impartiality – which means weighing opinions in a balanced manner and without taking a position: for example, explaining the reasons behind an Agency position, while acknowledging differing views (Staff Regulations, Articles 11a and 17);
3. Loyalty to the Agency – which means presenting the Agency’s views within your field to the best of your ability and clearly in line with the views previously expressed by the Executive Director (Staff Regulations, Articles 11 and 17a);
4. Discretion – which essentially means non-divulgence of any information that has not yet been made public (Staff Regulations, Article 17);
5. Circumspection – which means exercising caution, carefulness, moderation and a due sense of proportion and propriety.

## How to act responsibly?

Putting something on the Internet is not a gratuitous act. Even if you write in your personal capacity, you remain and will be perceived as an EU official. You should therefore refrain from any act or behaviour which might reflect adversely upon your position and the Agency (Staff Regulations, Article 12). Obviously, you are entitled to freedom of expression, but there are limits, which you can look up in Article 17a(2) of the Staff Regulations. In particular, when activities on the Internet amount to actual publications on EU-related matters, prior authorisation is required.

For further information, please refer to:

[http://myintracomm.ec.europa.eu/hr\\_admin/en/ethics/obligations/Pages/freedom\\_expression.aspx](http://myintracomm.ec.europa.eu/hr_admin/en/ethics/obligations/Pages/freedom_expression.aspx) and

[http://myintracomm.ec.europa.eu/hr\\_admin/en/idoc/Pages/index.aspx](http://myintracomm.ec.europa.eu/hr_admin/en/idoc/Pages/index.aspx)

You should be aware that the Agency will take action against breaches of these principles.

## Golden rules on participation in any social network

As mentioned in the introduction of this annex, staff members who are not part of the group of mandated staff must bear in mind that they do not represent the official position of the Agency.

You should participate using your own name or under a chosen alias, as the profiles referring to the Agency are reserved for mandated staff. Here are some golden rules on participation in any social network:

- › Remember that you are speaking in your personal capacity: all your statements and opinions are personal and you should not give the impression that you are speaking on behalf of the Agency.
- › Don't forget that you are responsible for what you write: Remember that your words will stay online. Exercise good judgement and common sense whenever you write. Even when you write in your personal capacity, you are still an Agency staff member. Ask yourself: 'What could someone do with this information?' and 'Could it compromise me and/or the Agency?' Do not go into detail about your tasks in the Agency or its working procedures. Never discuss sensitive or classified issues.
- › Be credible, consistent and respectful: Social media request users to be accurate, fair and consistent. Encourage response and debate. Whenever possible, align online participation with other offline communication. Use appropriate, inoffensive language and show respect for the opinion of others. Users might include current or potential stakeholders, along with current, past or future staff members. Be aware that libel and defamation laws apply.
- › Be vigilant: Think about your own personal reputation. Very few things on the Internet are genuinely anonymous. Don't publish anything that you would not want your colleagues or family to see.
- › Respect copyright: If you have any doubts or need advice, contact the Legal Office ([legal@era.europa.eu](mailto:legal@era.europa.eu)).
- › For your own protection, be aware of Internet security: all social media platforms have their own privacy and data protection statements. Read them carefully. There is always a risk of virus attacks and identity theft, so take the necessary precautions and avoid giving personal details (e.g. your home address or phone numbers).
- › Observe the rules on use of ICT equipment which 'may be used for private purposes as long as it is on a purely occasional basis and does not amount to extensive use of the equipment for private purposes' ([ED Decision 638/2013 on Use of ERA ICT owned resources](#)).

If you have doubts or any questions about social media activity, contact the ERA Communication team ([communication@era.europa.eu](mailto:communication@era.europa.eu)) and/or the DG COMM social media team ([COMM-social-mediateam@ec.europa.eu](mailto:COMM-social-mediateam@ec.europa.eu)).

If you notice debates or developments mentioning, or any misuse of, the name of the Agency in your social media community, please inform the Communications team ([Communications@era.europa.eu](mailto:Communications@era.europa.eu)) or the Legal Office ([legal@era.europa.eu](mailto:legal@era.europa.eu)).