



Overarching guidelines on preventing and managing conflict of interest at the ETF

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1. Background

Serving the public interest is a fundamental mission of any public institution. Citizens expect public officials to perform their duties with integrity, in a fair and unbiased way. Public officials should not allow their private interest and affiliations to compromise official decision-making and public management and should operate in a general culture of honesty, integrity and transparency.

As highlighted by the European Court of Auditors¹ conflict of interest situations can occur in any workplace at any time. If they are not handled correctly they can negatively affect the decision-making process and cause reputational damage. An inadequate management of conflicts of interest has the potential to weaken citizens' trust in public institutions.

Management of conflict of interest should seek to maintain an adequate balance between risks and benefits, by identifying risks to the integrity of public organisations and public officials, prohibiting unacceptable forms of conflict, managing and preventing conflict situations appropriately, making public organisations and individual officials aware of the incidence of such conflicts, ensuring effective procedures are deployed for the identification, management, and resolution of conflict of interest situations.

As reported by the European Parliament, the EU Ombudsman² pointed out that although effective management of conflicts of interest is a key part of good governance and sound ethical conduct, not all problems relating to governance and ethics necessarily imply a conflict of interest. Conflicts of interests need to be addressed within their strict limits, giving importance to the need for training and prevention strategies and promotion awareness raising actions.

The ETF has already in place a number of procedures which address the issue of conflict of interest in line with the relevant ETF regulatory framework. The implementation of its internal procedures and controls and their effectiveness is also subject to an annual risk based self-assessment by the ETF management.

In the above context and during the annual risk based self-assessment on the effectiveness of internal control systems carried out in December 2012, the ETF management identified two additional mitigation actions to be put in place:

- Draw up overarching guidelines on conflict of interest with the aim to collect and summarise in a single reference document all relevant and existing rules and procedures. The document should be readily available to ETF staff and stakeholders; and
- Strengthen awareness raising actions within the organisation on these guidelines.

¹ European Court of Auditor special report N° 15//2012: management of conflict of interest in selected EU agencies.

² European Parliament resolution of 17 April 2013 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2011: performance, financial management and control (2012/2214(DEC))

2. Definition of conflict of interest

The European Court of Auditors³ in its special report N° 15//2012 uses the definition of the OECD guidelines for managing conflict of interest the public service⁴. Conflict of interest is therefore defined as follows:

A 'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.

In this definition, private interests are not limited to financial or pecuniary interest, or those interest which generate a direct personal benefit to the public official. A conflict of interest may involve otherwise legitimate private-capacity activity, personal affiliations and association and family interests, if those interests could reasonably be considered likely to influence improperly the official's performance of their duties.

Both the Staff Regulations and the Financial Regulation adopt a definition of conflict of interest, which contains the main elements described above.

The Staff Regulations at Article 11a), forbids staff⁵, in the performance of their duties, to deal with a matter in which directly or indirectly they have any personal interest such as to impair their independence and in particular family or financial interests.

This includes situations that compromise independence of ETF staff, during the performance of their duties, or that are perceived or might be perceived as compromising such independence. Such situations arise when:

- There is some link between staff members' work and their private interest, or those of their family or partner;
- Staff members find themselves in a situation that could reasonably lead to allegations being made of bias or partiality, in light of their personal interests;
- The staff member grants oneself or others unjustified direct or indirect advantages

The obligation not to be in a situation of conflict of interest derives also from the Financial Regulation (Article 57 FR2012) and the Rules of Application (Articles 32, 157, 158 RAP).

ETF staff acting as financial actors involved in budget implementation and management, including preparatory acts, audit or control should not take any action which may bring their own interests into conflict with those of the ETF and the European Union.

The Financial Regulation specifies that a conflict of interest exists where the impartial and objective exercise of the functions of a staff acting as financial actor is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.

³ European Court of Auditor special report N° 15//2012: management of conflict of interest in selected EU agencies.

⁴ Managing conflict of interest in the Public Service: OECD Guidelines and country experiences, OECD, Paris, 2003

⁵ Temporary Agents, Contract Agents and Local Agents

3. Aims of the guidelines

Having regard to the outcome of the annual risk based self-assessment on the effectiveness of internal control systems carried out in December 2012 by the ETF management (section 1.

Background) these overarching guidelines aim to support ETF staff to:

- Prevent wrongdoing through awareness and clear understanding of ETF Staff Regulations, Financial regulation and other rules related to conduct on conflict of interest;
- Promote an organisation culture which is intolerant of conflicts of interest, maintains the highest standards of ethics and integrity and sustains open communication and dialogue on this subject;
- Protect working relationships and the delivery of work; and
- Recognise and minimise risk situations.

The guidelines summarise the detailed rules contained in the ETF regulatory framework and ETF staff are encouraged to refer, when necessary, to the specific applicable regulation or procedure through the hyperlinks contained in this document.

4. ETF core principles and values for managing conflict of interest

ETF staff is expected to observe, in particular, the following core principles and values⁶ in dealing with conflict of interest matters and to promote integrity in the performance of their duties and responsibilities:

Transparency

The ETF acts in an open, reliable and clear manner and documents its decision making processes and the resulting decision.

Public interest

The ETF acts in the public interest and independently of any external influence

Integrity

The behaviour and decisions of the ETF and its staff reflect honesty, openness and fairness.

Loyalty

ETF staff act in the interest of the ETF, they demonstrate loyalty towards the ETF and the European Union; as the ETF is loyal towards the European Union and its legitimate interests.

These core principles and values are coherent with the recent statements of the European Parliament on the subject: “the eradication of conflicts of interest can only be achieved through the implementation of simple and appropriate rules, and their effective enforcement, as part of a general

⁶ The ETF mandate Regulation (EC) N° 1339/2008; The ETF rules of procedures (GB/11/DEC/018) and The ETF Code of good administrative Behaviour (ETF/01/DEC/001)

culture of honesty, integrity and transparency; a high level of transparency is a key element to mitigate risks of conflict of interest”⁷.

5. Scope of the guidelines

In the 2012 risk based self-assessment on the effectiveness of internal control systems, the ETF management identified three areas of work where potentially conflicts of interest could arise impacting on the ETF’s integrity in public management and reputation. The three areas of work are related to the following:

1. Individual staff members (Temporary Agents, Contract Agents and Local Agents);
2. Processes; and
3. Governing Board (GB) members.

The scope of these guidelines covers comprehensively the areas related to ETF staff and ETF processes in sections 5.1 and 5.2.

Concerning ETF staff and ETF processes, the ETF management assessed the residual⁸ likelihood risk of a conflict of interest situation to materialise as low, considering the mandate of the ETF, its modus operandi, size and resources. Additionally, the ETF regulatory environment and internal procedures already provide detailed rules for staff members to avoid a priori conflict of interest situations and on the measures to be taken should such a situation occur.

The area related to GB members goes beyond the remit of these guidelines and therefore section 5.3 only makes reference to the existing relevant legal base and its current implementation.

5. 1. Rules applicable to ETF staff members

Management of conflict of interest is primarily based on individual responsibility of the staff member concerned and his/her self-declaration to be in a situation of conflict of interest.

If a staff member is in such a situation or is in doubt as to whether the circumstances could give rise to concern over a conflict of interest, he/she should immediately inform his/her direct line manager or immediate superior and the ETF Director who shall take any appropriate measure, and may in particular relieve the staff member from responsibility in this matter.

Where a private interest has compromised the proper performance of staff member duties, that specific situation is better regarded as an instance of misconduct or ‘abuse of office’, or even an instance of corruption, rather than as a ‘conflict of interest’. In this case the management of the conflict of interest goes beyond the remit of these guidelines as it falls under the scope of the Ombudsman or the OLAF investigation⁹.

⁷ European Parliament resolution of 17 April 2013 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2011: performance, financial management and control (2012/2214(DEC))

⁸ Residual risk: Risk after internal controls are considered taking into account effectiveness ETF Risk management Policy ETF/10/DEC/034

⁹ Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office Investigations (ETF/99/DEC/0066)

Article 22a of the Staff Regulations requires that if a staff member becomes aware of facts which gives rise to a presumption of the existence of possible illegal activity, or which may constitute a serious failure to comply with the obligations in the Staff Regulations he/she shall inform without delay his/her immediate superior and the Director or the OLAF directly.

As per article 86 of the Staff Regulations, where the ETF Director or OLAF becomes aware of evidence of staff or ex-staff member's failure to comply with his/her obligations, they may launch administrative inquiry to verify whether such failure has occurred.

5.1.1. Potential conflict of interest situations and related guidance

Considering the above, a summary of the main situations where a conflict of interest could arise at the ETF is described below. The specific detailed obligations of staff members are detailed within the dedicated procedures, which may accessed through the hyperlinks:

- **A) Participating in ETF selection procedures as member of a Selection Assessment Board (SAB):**

In application of Article 11 a of the Staff Regulations for selection procedures, upon receipt of the applications, the members of the SAB sign a statement on conflict of interest declaring if they know one or more applicants in a professional and/or personal manner and confirm if they can maintain independence. The statement is submitted to the Appointing Authority/ ETF Director, who may decide to change the SAB composition in case of potential conflict of interest. When considering the situation, the Appointing Authority should assess the interests of the ETF, the public interest, the legitimate interest of the staff member, including the level and position held, and the nature of the conflict.

[\(Link to the ETF recruitment procedure and form\)](#)

- **B) Financial actors and members of opening and evaluation committees:**

ETF staff acting as financial actors is bound to impartiality and independence in the performance of their duties. Delegated and sub delegated Authorising officer(s) (DAO(s)) in their delegation form undersign a declaration on their honor that they will declare any personal interest that might compromise their independence from and objectivity towards any other person, financial transaction and/ or procurement procedure.

In addition the delegation form includes a reference to the relevant regulatory sources such as the ETF Financial Regulation, the Code of Good Administrative Behavior, the ETF Internal Control Standards and performance management principles and the relevant financial procedures.

The ETF procedure call for tender (ETF/12/DEC/008) requires that the members of the opening and evaluation committee sign a "Declaration on the absence of conflict of interest and confidentiality". Any appointed person that knows to be in this situation must inform the Authorising officer (AO) declaring the reasons of the potential conflict (professional or personal) and to confirm whether they can maintain independence. When informed of a conflict of interest, the AO may decide to appoint a different member or to confirm the member that has raised a potential conflict of interest situation, but

can maintain independence. When considering the situation, the AO should assess the interests of the ETF, the public interest, the legitimate interest of the staff member, including the level and position held, and the nature of the conflict.

Within the meaning of the financial regulatory framework, acts likely to be affected by a conflict of interests may take one of the following forms without prejudice of their qualification as illegal activities:

- granting oneself or others unjustified direct or indirect advantages;
- refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
- committing undue or wrongful acts or failing to carry out acts that are mandatory; and
- the participation in an evaluation committee for a public procurement or grant procedure when the person may, directly or indirectly, benefit financially from the outcome of these procedures.

A conflict of interest is presumed to exist if a staff member submits an offer in a tendering procedure launched by the ETF.

Additionally, this is also the case if an ETF staff member possesses any kind of direct interest in a contractor's or beneficiary's business through for example:

- Ownership of shares or through any other rights of assets derived from the past, present or future action.

Or if such shares or other participations are owned by:

- The spouse (see point E) below), co-habitee or other relatives; and/or
- A legal person over whose operations the ETF staff member has an influence or with whom she/he or the spouse, a relative or co-habitee or several of them together have a financial relationship.

Or if the ETF staff member

- has an indirect relationship with the contractor or the beneficiary;
- administers any holding or shares in the contractor or beneficiary; and/or
- has a joint financial relationship with a contractor or a beneficiary, one of its employees, a member of the board or a stakeholder.

[\(Link to the ETF call for tender procedure/form\)](#)

- C) Selection of external experts

The rules applicable for members of opening and evaluation committees also apply when selecting external expert(s)/consultant(s) for a specific assignment under a running ETF framework contract.

Similarly to the rules applicable to tenderers and contractors, the selected expert(s)/consultant(s) should sign upon acceptance of the assignment a declaration of absence of conflict of interest.

- D) Acceptance of gifts and hospitality

ETF staff members should not accept any direct or indirect gift, favour or payments/donation offered by third parties without obtaining prior permission from the ETF Director.

This rule applies also to former staff members if the gift/favour/donation has any link with their work at the ETF.

In line with the latest guidelines of the EC (SEC(2012)167) the ETF has adopted by analogy specific guidelines¹⁰.

A gift is understood to mean:

- A sum of money or 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, or
- Any other advantage with pecuniary value such as transport costs.

Low value items given for purely information purposes are not considered as gifts in this context.

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

Gifts that are offered to the ETF as an institution of the EU are not covered by these guidelines.

If a staff member is offered any gift, favour or donation by the same source with a combined value of more than €50 given in any given year, to accept such gift, favour or donation, he/she must apply for permission, providing a justification. In particular:

- (1) Staff members are allowed to keep without the need for prior authorisation gift/favours/donations worth €50 or less, providing the total value of gift/favours/donations received by one source in one given year does not exceed €50; and
- (2) Staff members may be authorised to keep gift/favour/donation worth between €50 and €250; and
- (3) for gifts with a value higher than €250 the ETF Director may decide to keep the gift as the property of ETF, or put it for sale, with the proceeds going to charity.

Hospitality offers are considered to be one particular type of favour. Hospitality is defined as an offer of food, drink, accommodation, and/or entertainment from any source outside the ETF.

[\(Link to ETF decision on gifts and hospitality and form\)](#)

- E) Outside activities for staff in active employment:

The Staff Regulations (Article 12b) and the General implementing provisions on outside activities and assignments state that any official or agent must first obtain in advance permission from the ETF Director before:

- Undertaking any type of work outside the ETF, whether paid or unpaid, or
- Holding any office outside the ETF.

At a practical level such external activity should not:

- Be so time consuming as to impact negatively on the staff member work at the ETF, or constitute a job in itself;

¹⁰ ETF/13/DEC/007

- Give rise to any possible appearance of a conflict of interest or be in some other way discreditable, so as to risk bringing the ETF into disrepute.

Furthermore, the amount of remuneration should be modest and whether the external activity could be of use for the ETF may be also considered.

No outside work can be performed either on the premises of the ETF or during normal working hours.

ETF staff members are not allowed, to carry out any of the following types of work, for example:

- Outside work, whether paid or unpaid, in a “profession” (such as architect, lawyer, economist, accountant, IT professional, engineer, interpreter, doctor, translator, etc.);
- Work in private companies, even if it is unpaid and the role is merely nominal such as non-executive director, unpaid adviser, etc.); and
- Teaching or other pedagogical work, whether paid or not, for more than 100 hours per academic year to declared and proved by the staff member, unless the ETF director, after consulting HR, deems such work beneficial to the ETF.

The maximum net annual remuneration staff members may receive for any authorised external activities undertaken outside the ETF is € 4500 (after taxes). Anything over this amount must be turned over to the ETF.

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

- F) Spouses in gainful employment

Upon recruitment, staff members shall declare, where applicable, gainful employment (i.e. paid work) of their spouse or legally recognised partner and provide the related tax declaration.

The nature of the employment can be considered incompatible with the staff member’s statutory functions. If it is impossible to give an undertaking that this activity will cease within a specific period, the ETF Director can decide to transfer the staff member to another post. If there is any change in the spouse’s situation, the staff member is obliged to declare this during his employment period.

[\(Link to the determination of rights ETF form\)](#)

- G) Professional activity during leave on personal grounds

In exceptional circumstances and upon request, a staff member can be granted leave without pay for compelling personal reasons. However, if the staff member plans to carry out a professional activity during their exceptional unpaid leave, prior authorisation must be attained to avoid any potential conflict of interest. The request for prior authorisation must be sent at least 2 months before the beginning of the activity.

[\(Link to the ETF form\)](#)

- H) Activities of staff having left the ETF (end of contract, retirement)

After leaving the service, former ETF staff members are still subject to specific obligations. Former ETF staff members must “behave with integrity and discretion” as stipulated in the Staff Regulations (Article 16, 17(2) and 19). They must sign a declaration provided by the ETF stating that they are aware of their continuing obligations towards the ETF.

As per article 16 of the Staff Regulations, former staff members are therefore bound to not accept any duties or professional activities for 2 years after leaving the service that would be incompatible with the interests of the ETF and the Union.

The ETF is entitled to impose adequate restrictions on any staff and their new employment when they leave the ETF. In order to comply with the Staff Regulations, Indeed, former staff intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service, must inform the ETF Director. They shall provide all the elements related to the activity they intend to engage in for the Director to evaluate the risks of potential conflict of interest with the legitimate interest of the ETF. This can be done by completing the form “Application for authorisation to engage in an occupational activity after leaving the service”.

As per articles 17(2) and 19 of the Staff Regulations former ETF staff must refrain from any unauthorised disclosure of information received in their line of duty at the ETF, unless that information has already been made public or is accessible to the public.

[*\(Link to the ETF form for staff having left ETF\)*](#)

- I) Publications, speeches and compensation for them: on professional or EU matters

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

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

They must provide the ETF Director with any information, in particular a copy, of the document they intend to publish.

Where the ETF Director can demonstrate that the matter is liable to prejudice seriously the legitimate interests of the European Union, he/she has to inform the staff member of its decision 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.

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

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

While the Staff Regulations (Article 17a (1) grant staff members the right to freedom of expression, when it comes to the professional activity of staff members this is subject to the following conditions being met: they must show restraint and caution in expressing differing opinions, in particular when the latter are closely linked to the subject and nature of their duties in the two preceding years; such

opinions or any others regarding Union policies must be expressed with moderation and under their sole responsibility (i.e. with a disclaimer). In this respect, the duty of loyalty requires that the staff member clearly indicates in the article, which he/she is writing under his/her own name, - and under the freedom of expression as recognised by the Staff Regulations - and engaging himself/ herself and not the responsibility of his institution. They are also subject to the rules concerning non-disclosure of information and the confidentiality requirement.

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

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

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

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

If the publication (including its writing/preparation) or speech would entitle staff members to any financial payment, they must ask the ETF Director for prior authorisation to accept it.

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

- F) Detached National Expert

Upon signature of acceptance of a secondment at the European Training Foundation, have to sign a declaration of absence of conflict of interest as of Article 3 paragraph 4 of the rules on the secondment of National Experts to the ETF.

[\(END Declaration of absence of conflict of interest.doc\)](#)

5.2. Rules applicable to ETF processes

The ETF regulatory framework provides, in particular, specific mechanisms to prevent conflict of interest situations when the ETF operates with external tenderers and contractors. These rules are summarised below:

Pursuant to Article 107 of the Financial Regulation contracts shall not be awarded to candidates or tenderers who, during the procurement procedure are subject to a conflict of interest.

When submitting an offer, tenderers are requested to provide a completed and signed declaration of honour on exclusion criteria and absence of conflict of interest. On conflict of interest tenderers are requested to state that they are not in a situation of conflict of interest in connection with the contract and that they will inform the ETF, without delay, of any situation considered a conflict of interest or which could give rise to a conflict of interest.

In case tenderers refuse to submit a signed declaration or are later found to be in any of the situations listed in the declaration, including that of conflict of interest, they will be excluded from the tendering procedure. The ETF may ask tenderers to provide additional documentation to support their declaration at any time.

[\(Link to Declaration of honour on exclusion criteria and absence of conflict of interest\)](#)

All contracts signed by the ETF include a clause on conflict of interest to cover for situations arising during contract implementation. Contractors need to take all the necessary measures to prevent conflicts of interest and, in the case a conflict of interest occurs, they are obliged to inform without undue delay the ETF and to rectify the situation. These obligations are passed on to the Contractor's personnel, to any natural person with power to represent the Contractor and to subcontractors.

[\(Link to model ETF contracts\)](#)

5.3. Legal base applicable to ETF Governing Board members

Pursuant to Article 11 of the Regulation (EC) № 1339/2008, the members of the Governing Board shall act in the public interest and independently of any external influence. To this end they shall make a written declaration of commitment and a written declaration of interests every year.

Furthermore, the Governing Board Rules of procedure (GB/09/DEC/017) Article 1 (6) "membership and appointment of the Chair person", in application of the above rule foresees an annual declaration of GB members that shall cover a declaration of commitment to pursue the interests of the ETF as well as the EU public interest. The GB members shall also declare their independence from any external influence with regards to:

- Direct interest (financial benefits arising from, for example, employment, contracted work, investments, fees, etc.);
- Indirect financial interest (e.g. grants, sponsorships, other kind of benefits, etc.);
- Interest deriving from the professional activities of the GB member or his/her close family members;
- Any role or affiliation that the GB member has in organisations/bodies/clubs with an interest in the work of the ETF; and
- Other interests that the GB member considers relevant.

[\(Link to the form on the declaration of commitment and interest of ETF Governing Board\)](#)

It is within the powers and responsibility of the GB members to decide, upon adoption by the European Commission of the common policy on prevention and management of conflicts of interest within decentralised agencies, how and if to address further the issue of conflict of interest within the ETF.

6. Awareness raising action in the ETF

The ETF aims to raise awareness on keeping the highest standards of ethics and integrity in the organisation. To this aim the ETF will:

- Provide these guidelines to all staff;
- Periodically identify and promote specific actions in the field of conflicts of interest as an awareness raising action for all staff members. Possible actions are specific trainings, flyers, ex post assessments; and
- Include these guidelines as an integral part of the induction programme for newly recruited staff.

