



THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY

DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY ON CONFIDENTIALITY, INDEPENDENCE AND MANAGING POTENTIAL CONFLICTS OF INTEREST

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007¹ of 27/03/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it (hereinafter "the Statutes"), and in particular Article 6(3)(k) thereof,

Whereas:

- (1) The Joint Undertaking should lay down practical arrangements for managing potential conflicts of interest for members of the Governing Board, Executive Committee and Scientific Programme Board.
- (2) The Joint Undertaking should take measures to ensure that confidential information is not divulged to third parties.

THE GOVERNING BOARD OF THE JOINT UNDERTAKING HAS ADOPTED THIS DECISION:

Article 1

Independence and Conflicts of Interest

1. Representatives of the Governing Board, members of the Executive Committee, members of the Scientific Programme Board, as well as alternates and external experts participating in their meetings or in ad-hoc groups, shall declare at each meeting any interests which might be considered prejudicial to their treatment of items on the agenda. This declaration shall be made in writing or verbally, at the request of the Chair.
2. The Representatives on the Governing Board shall act in the general interest of the Joint Undertaking.

For this purpose, the Representatives on the Governing Board shall make a declaration of commitment (Annex I).

¹ O.J. L 90, 30.03.2007, p. 58.

3. The members of the Executive Committee shall not be bound by any instructions, shall be completely independent in the performance of their duties and shall act in the general interest of the Joint Undertaking.

For this purpose, the members of the Executive Committee shall make a declaration of independence and commitment (Annex II) and an annual declaration of interests (Annex IV) indicating either the absence of any interests which might be considered prejudicial to their independence or performance of their tasks, or any direct or indirect interests which might be considered prejudicial to their independence or performance of their tasks.

4. The members of the Scientific Programme Board shall not be bound by any instructions, shall be completely independent in the performance of their duties and shall act in the general interest of the Joint Undertaking.

For this purpose, the members of the Scientific Programme Board shall make a declaration of independence and commitment (Annex III).

Article 2

Confidentiality

1. Representatives of the Governing Board, members of the Executive Committee and members of the Scientific Programme Board as well as external experts and alternates participating in meetings or ad-hoc working groups, even after their duties have ceased, shall be subject to the requirements of confidentiality pursuant to Article 194 of the Euratom Treaty and Article 287 of the EC Treaty. They shall sign an initial written declaration (Annex V) to that effect.
2. The Joint Undertaking shall not divulge to third parties confidential information that it receives for which confidential treatment has been requested and justified.
3. During meetings of the Governing Board, Executive Committee or Scientific Programme Boards, agenda points for which confidentiality is requested shall be clearly indicated by the Chair and subject to closed meetings unless decided otherwise.

Article 3

Guidance on Conflicts of Interest

The guidance on the management of conflicts of interest shall be annexed to this decision (Annex VI).

Article 4

Final Provisions

This Decision shall have immediate effect.

Done at Barcelona, 28 June 2007

For the Governing Board

A handwritten signature in black ink, appearing to read 'Pablo', with a stylized flourish at the end.

Pablo Fernández Ruiz

Chair of the Governing Board

ANNEX I

DECLARATION OF COMMITMENT FOR THE GOVERNING BOARD

Name: _____

Position:

- Chair of the Governing Board
- Representative on the Governing Board
- Expert participating in a meeting of the Governing Board
- Other (please specify)

I hereby undertake to act in the performance of my duties in the general interest of the Joint Undertaking. In particular, I am aware that I am obliged to declare at each meeting of the Governing Board any interest which might be considered prejudicial to the treatment of items on the agenda.

DONE AT _____ ON _____

SIGNATURE:

ANNEX II

**DECLARATION OF INDEPENDENCE AND COMMITMENT FOR THE
EXECUTIVE COMMITTEE**

Name: _____

Position:

- Chair of the Executive Committee
- Member of the Executive Committee

I hereby undertake not to be bound by any instructions and shall be completely independent in the performance of my duties, in the general interest of the Joint Undertaking. In particular I am aware that I am obliged to make an annual written declaration of interests (Annex IV) and to declare at each meeting of the Executive Committee any interest which might be considered prejudicial to my independence in relation to the items on the agenda.

DONE AT _____ ON _____

SIGNATURE:

ANNEX III

**DECLARATION OF COMMITMENT FOR THE
SCIENTIFIC PROGRAMME BOARD**

Name: _____

Position:

- Chair of the Scientific Programme Board
- Member of the Scientific Programme Board
- Expert participating in a meeting of the Scientific Programme Board
- Other (please specify)

I hereby undertake not to be bound by any instructions, shall be completely independent in the performance of my duties and shall act in the general interest of the Joint Undertaking. In particular I am aware that I am obliged to declare at each meeting of the Scientific Programme Board any interest which might be considered prejudicial to my independence in relation to the items on the agenda.

DONE AT _____ ON _____

SIGNATURE:

ANNEX IV

ANNUAL DECLARATION OF INTERESTS

Name: _____

Position:

- Chair of the Executive Committee
- Member of the Executive Committee

Information on direct or indirect interests of relevance to the tasks and activities of the Joint Undertaking:

1. Direct interests (e.g. personal benefits arising from employment, contracted work, directorships, board membership, investments, fees etc.):

5. Indirect interests

- 5.1. Financial benefits (e.g. grants to an institution, or other kind of benefits)

5.2. Benefits deriving from the professional activities of members of your family/household (e.g. spouse or partner and dependent children living in the same household):

5.3. Interests arising from any membership role or affiliation that you have in organisations/bodies/club with an interest in the work of the Joint Undertaking:

6. Any other direct or indirect interests or facts that the undersigned considers pertinent:

Declaration:

I declare on my word of honour that the information provided above is true and complete.

Done at _____ on _____

Signature: _____

ANNEX V

DECLARATION CONCERNING CONFIDENTIALITY

Name: _____

Position:

- Chair or Representative of the Governing Board
- Chair or member of the Executive Committee
- Chair or member of the Scientific Programme Board
- Expert participating in a meeting of the Governing Board
- Expert participating in a meeting of the Scientific Programme Board
- Other (please specify)

I hereby declare that I am aware of my obligation to respect confidentiality. I know that I am obliged not to disclose information acquired as a result of my membership of the Governing Board, Executive Committee or Scientific Programme Board, even after my duties have ceased, if this information is subject to a request for confidentiality or for reasons of professional secrecy. I shall also respect the confidential nature of the opinions expressed by other members during discussions in meetings or provided in written form.

DONE AT _____ ON _____

SIGNATURE:

ANNEX VI

GUIDANCE ON THE MANAGEMENT OF CONFLICTS OF INTEREST

1. INTRODUCTION

1. Integrity and high standards of professional conduct by all those involved in the tasks and activities of the bodies of the Joint Undertaking including the Governing Board, Executive Committee and Scientific Programme Board is crucial for the independence and reputation of the Joint Undertaking.
2. One aspect of integrity is to demonstrate that those persons involved in the work of the Governing Board, Executive Committee and Scientific Programme Board act in the general interest of the Joint Undertaking and that proportionate measures are taken to manage potential conflicts of interest.
3. Since it is impossible to lay down a set of prescriptive rules to cover every single eventuality, the basic principle to be applied is that a conflict of interest occurs when a member of the public may reasonably think that such an interest could influence or bias the judgement of the individual concerned.
4. The primary responsibility for assessing whether an interest might impede independence or influence judgement and for declaring any possible conflict of interest is placed on the individual concerned. This guidance therefore aims at supporting such persons in complying with their obligations.
5. It is well understood that individuals involved in a particular process inherently have a professional interest in the subject and being involved in the process. Members of the Governing Board, Executive Committee and Scientific Programme Board have a professional interest in the work they are involved in and in the outcome of their activities for the good of the Joint Undertaking.
6. An "interest" is not automatically considered as a negative or undesirable element. The intention of this guidance is not to ban or sanction the holding of interests. Instead the Joint Undertaking recognises that the expertise of the members of the Governing Board, Executive Committee and Scientific Programme Board of the Joint Undertaking is crucial the fulfilment of its tasks and that the quality of such expertise is inherently based upon prior experience.

2. LEGAL BASIS

7. Article 6(3)(k) of the Statutes annexed to the Council Decision (Euratom) No 198/2007² of 27/03/2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy states that the Governing Board shall adopt and apply measures and guidelines to [...] *manage potential conflicts of interest.*

3. WHO SHOULD DECLARE INTERESTS?

8. Each individual is responsible for the declaration of his³ interests. Interests may be held by members of his family or household (e.g. spouse or partner and dependent children in the same household). In order to maintain privacy, the names of family/household members do not need to be declared.
9. Taking into account the sensitivity of the tasks, in particular the approval of the award of contracts, and the need to ensure their independence, annual declarations of interest should be requested from the members of the Executive Committee.

4. WHAT TO DECLARE?

4.1. What is an interest?

10. There are essentially three categories of interests: (a) financial interests, (b) professional interests and (c) intellectual interests. These can be further divided into direct and indirect interests.
11. Any interests stemming from prior experience or affiliations of the individual should be declared only insofar as they relate directly to the activities of the individual in the Joint Undertaking.

4.1.1. *Financial Interests*

12. Financial interests shall include the holding of stocks and shares, equity, bonds, partnership interests in the capital of an organisation related to the activities of the Joint Undertaking, one of its subsidiaries or a company in the capital of which it has a holding.
13. Financial interests need not be disclosed unless they have a market value of greater than 10,000 Euros. Share portfolios need not be disclosed if the management arrangement is in the form of a blind trust or equivalent where the individual has not control whatsoever over its management.

² O.J. L 90, 30.03.2007, p. 58.

³ "His" shall include "his/her" throughout

4.1.2. *Professional Interests*

14. Professional interests shall include those performed in the last five years for, or on behalf of organisations related to the activities of the Joint Undertaking with direct or indirect pecuniary or material benefits, e.g.:
- Permanent or temporary employment or work contracted out through consultancy or otherwise;
 - Participation in internal decision-making bodies (e.g. directorships, board membership, executive or non executive directorship, etc.);
 - Grants for travel, study or research, fellowships or sponsorships.

4.1.3. *Intellectual Interests*

15. During the preceding five years, interests of non-pecuniary or material benefit to the individual, arising from professional activities or affiliation with national or international organisations or bodies with tasks mirroring those of the Joint Undertaking. Intellectual interests also include participation in public interest groups, professional/scientific societies, communication media, clubs or organisations which have an agenda or an interest or involvement in the Joint Undertaking's work.
16. Examples of intellectual interests include the participation of the individual in scientific projects and the (co)authorship of scientific documents or literature. As explained already intellectual interest is often a prerequisite for the scientific excellence of the work and is not necessarily considered an undesirable bias as long as the interest is known to all individuals involved in the activity. The various interests of individuals in a group (e.g., a panel) once put together may well result in a balanced interest of the group as a whole.

4.2. **What are direct and indirect interests?**

17. Interests can be direct or indirect depending on their likely or potential impact on the individual's behaviour at a given point in time.
- Direct interests: Interests of personal benefit to the individual at the time of the declaration that are likely to influence or give the appearance of influencing his behaviour (e.g. direct employment with an organisation related to the activities of the Joint Undertaking, financial interests of a certain magnitude, etc.)
 - Indirect interests: Other interests that may have some influence over the individual's behaviour and therefore have to be declared and neutralised (e.g. indirect financial benefits, benefits deriving from the professional activities of members of the individual's family/household, etc).
18. The holding of direct interests of a certain breadth could be incompatible with membership of the Governing Board, Executive Committee or Scientific Programme Board of the Joint Undertaking. The holding of indirect interests is

not prohibited but should be scrutinised so that precautions can be taken in order to ensure impartiality of decision making. Appropriate actions could include precluding the individual from certain functions or tasks (e.g. acting as Chair) or requiring abstention from part of the relevant proceedings or voting in a meeting.

5. WHEN TO DECLARE?

5.1. Initial declaration

19. Upon nomination or appointment, each individual concerned is required to complete a commitment of independence and, in the case of the members of the Executive Committee, an annual declaration of interests is also required.

5.2. Role of the Chair

20. The Chair should be substituted for a given meeting if items on the agenda could lead to a conflict of interest.

5.3. Spontaneous declarations

21. If during a meeting, an individual becomes aware that he has an interest that may be in conflict with an agenda point, then this must be declared immediately to the Chair who will notify the Secretariat and consider appropriate action. This could include, for example, where an individual is asked to approve the award of a contract to an organisation with which he is employed or otherwise affiliated.

5.4. Updates

22. Declarations of interest must be updated at least annually or as soon as an update is required for any new situation arising.

6. OPERATIONAL ASPECTS

6.1. Tasks of the Joint Undertaking Secretariat

23. The secretariat of the Governing Board, Executive Committee and Scientific Programme Board of the Joint Undertaking, under the responsibility of the Chair and Director, shall undertake:

- To monitor regularly declarations and preliminary appraisal of compatibility of interests declared with the tasks of the individuals concerned;
- To initiate and facilitate handling of issues in close liaison with the meeting Chair.

24. With the prior consent of with the individual concerned, the Joint Undertaking should ensure that the annual declarations of interests are publicly available.

25. Declarations made at meetings and the outcome of discussions related to declarations of interest shall be duly recorded in the minutes of the meeting.

6.2. Obligations of Individuals

26. Individuals have a primary obligation to disclose at any time the existence of possible conflict of interests that may place the impartiality of the Joint Undertaking at risk. Individuals should state, in particular, the type and nature of interests.

6.3. Meeting proceedings

27. Individuals have the primary responsibility for spontaneously declaring any conflict of interest at all times.
28. Chairs should at each meeting request whether interests with specific items on the agenda exist. The outcome should be recorded in minutes of meetings by the secretariat together with statements on interests declared.
29. On the basis of the type and nature of interests noted, the Chair, in consultation with the secretariat, could consider various options, including:
- Fundamental incompatibility with membership of the body;
 - Temporary exclusion from the meeting;
 - Passive participation in proceedings;
 - Active participation in proceedings.