



EIOPA REGULAR USE  
EIOPA-MB-20-064  
14 July 2020

## **Decision of the Management Board**

### **Adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff**

THE MANAGEMENT BOARD OF THE EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY,

Having regard to Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)<sup>1</sup>, (hereinafter "EIOPA") and in particular Articles 42, 46 and 70 thereof,

Having regard to the Staff Regulations of Officials and the Conditions of Employment of other Servants of the European Union<sup>2</sup>, and in particular Article 16 thereof,

Having regard to the Agreement on the European Economic Area (the EEA Agreement)<sup>3</sup>, as amended by Decision of the EEA Joint Committee No 200/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement<sup>4</sup> to the effect of incorporating Regulation (EU) No 1094/2010 into the EEA Agreement,

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<sup>1</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p.48).

<sup>2</sup> Staff Regulations and conditions of employment replaced the Staff Regulations of officials and the conditions of employment of other servants of the European Economic Community and the European Atomic Energy Community laid down by Council Regulations No 31 (EEC) and No 11 (EAEC) of 18.12.1961 (OJ 45, 14.6.1962 - Special Edition 1959-62, November 1972), as last amended.

<sup>3</sup> OJ L 1, 3.1.1994, p. 1.

<sup>4</sup> OJ L 46, 23.2.2017, p. 13.

Whereas:

- (1) Independence and high standards of professional conduct by all those involved in the activities of EIOPA are crucial for EIOPA's excellence and reputation.
- (2) Transparency and openness of EIOPA's activities and decision-making processes are essential to ensure public confidence.
- (3) The responsibility for declaring any interest that might be considered prejudicial to their independence can only be placed on the concerned persons themselves.
- (4) High quality of expertise is in its essence based on prior professional experience and knowledge acquired in the relevant domain. Some of those interests may however conflict with EIOPA's objectives and responsibilities.
- (5) In order to ensure a coherent and sufficient level of detail in the declarations of interests to be submitted by non-staff, a set of activities that might cause potential conflict of interests should be defined.
- (6) Any conflict of interests should be promptly identified, handled and mitigated without delay. To this end, a system of declaration of interests and their subsequent screening and evaluation is required.
- (7) A transparent procedure should be followed by establishing *inter alia* the following aspects:
  - (a) Guidelines to the Chairperson, the Management Board, the Board of Supervisors, panels which prepare decisions of the Board of Supervisors and EIOPA's Ethics Officer performing the screening and evaluation of declarations of interest received from non-staff;
  - (b) Transparent consequences linked to the interests declared.
- (8) Regulation (EU) No 1094/2010 requires EIOPA to establish and maintain an efficient and fruitful cooperation with bodies active within the European System of Financial Supervision ('ESFS'). Without prejudice to the responsibility of each competent authority for the appointment of their representatives including in relation to preventing conflict of interests, such representatives are covered by this Decision.
- (9) Regulation (EU) 2019/2175 amending Regulation (EU) No 1094/2010 introduced the independent panels. Furthermore, in 2016 Regulation (EU) No 1094/2010 was incorporated in the EEA Agreement Decision (MB-13-055), based on which the EEA EFTA became members of the BoS in the same role as permanent representatives. Decision of the Management Board Adopting a Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff should therefore be amended in order to incorporate those changes and to

clarify certain other provisions, and should therefore be repealed and replaced by this Decision.

- (10) Regulation (EU) 2019/2175<sup>5</sup> amended Regulation (EU) No 1094/2010 in relation to certain independence requirements for the Board of Supervisors and Management Board members in the context of meetings and written procedures. This Decision does not cover those potential conflicts of interests, as they are identified and handled in accordance with specific procedures set out in the Rules of Procedure of the Board of Supervisors and Rules of Procedure of the Management Board.

HAS ADOPTED THE FOLLOWING DECISION:

## TITLE I - GENERAL PRINCIPLES AND INTERESTS TO BE DECLARED

### SECTION I - GENERAL PRINCIPLES

#### **Article 1 – Scope and definitions**

1. The present Decision is applicable to:
  - a) The Voting Members of the Board of Supervisors, the Members of the Management Board and their officially nominated Alternates;
  - b) The Permanent and Common Representatives and the EEA EFTA Members on the Board of Supervisors, and any representatives of national competent authorities referred to in Article 40(4) and (6) of Regulation (EU) No 1094/2010;
  - c) The non-voting Members of the Board of Supervisors (representatives of the European Commission, ESRB, the EBA, ESMA and the EFTA Surveillance Authority), and the representative of the European Commission in the Management Board;
  - d) The Observers (heads of national competent authorities of acceding countries, competent for the supervision of financial institutions, and any other observers participating in the meetings of the Board of Supervisors or Management Board);
  - e) The Members of the Independent Panels established in accordance with Article 41 for the purposes of Article 17 (Breach of Union Law), 19 (Settlement of disagreements between competent authorities in cross-

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<sup>5</sup> Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ L 334, 27.12.2019, p. 1.

border situations) and 22(4) (Systemic risk inquiry) of Regulation (EU) No 1094/2010.

The Conflict of Interest Policy for EIOPA Staff (EIOPA-13-480\_Rev2) is applicable to the Chairperson and the Executive Director of EIOPA and therefore the present Decision does not apply to them.

In the event of any doubt, relating to the provisions laid down in this Decision or their practical application, the opinion of the Ethics Officer shall be sought.

2. For the purposes of this Decision:

- a) **interest** means the relation of being objectively concerned in something, e.g. by having a right or title thereto, a claim thereupon, or a share therein, falling within fields of competence of EIOPA that creates, or has the potential to create a conflict of interest;
- b) **interests of close family member** means interests (as defined above) held by partners or persons dependent on persons subject to this Decision (spouse/partner/dependent family member);
- c) **conflict of interest (CoI)** means a conflict between the public duty of EIOPA and private interests of an individual or interests of his/her close family members, in which an individual has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities<sup>6</sup> or be considered prejudicial to his/her impartiality, objectivity or independence;
- d) **forum** means any type of participation in EIOPA's Management Board's and Board of Supervisors' activities (e.g. meetings, written procedure);
- e) **financial institutions falling under EIOPA's scope of action means** any financial institutions as defined in Article 4(1) of Regulation (EU) No 1094/2010.

3. For the purposes of this Decision the following interests shall be considered as a source of CoI, actual or potential, (non-exhaustive list):

- a) Economic interest meaning any economic stake or share in a body, in particular in any financial institutions that are under EIOPA's scope of action (as defined in Article 1(2) and (3) of Regulation (EU) No 1094/2010), including the stocks, equities or bonds thereof, or of one of its subsidiaries or of a company in which it has a holding. This does not include personal insurance policies or deposits contracted as a regular customer;
- b) Member of a managing body or equivalent structure, other than the parties of the ESFS, meaning any participation in an internal decision-

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<sup>6</sup> Definition based on the OECD definition, as published in "Managing conflict of interest in the public service" (ISBN 92-64-10489-5, OECD 2003)

making body (e.g. board membership, directorship) of a public or private entity carrying out any of the activities falling under EIOPA's scope of action (as defined in Article 1(2) and (3) of Regulation (EU) No 1094/2010), or a trade association of such persons;

- c) Employment or consultancy meaning any form of regular, occasional or ad hoc occupation or business, part-time or full-time, paid or unpaid, including self-employment in or to any legal or natural person carrying out any of the activities falling under EIOPA's scope of action (as defined in Article 1(2) and (3) of Regulation (EU) No 1094/2010), or a trade association of such persons. This includes also services provided on an honorary basis (i.e. for free or without the payment of fees or emoluments) and any advice related to products, their development and/or assessment methods thereof;
  - d) Intellectual property rights meaning rights on the subject matter granted to creators and owners of works that are the result of human intellectual creativity and may lead to a financial gain;
  - e) Intellectual property rights meaning rights on the subject matter granted to creators and owners of works that are the result of human intellectual creativity<sup>7</sup> and may lead to a financial gain;
  - f) Other memberships or affiliations meaning any membership or affiliation not falling under the definitions provided above and relevant for the purposes of the present Decision, to anybody with an interest in the subject matter, including professional organisations.
4. In addition to the interests defined in paragraph 3 of this Article, the persons identified in points (a) (except the Alternates) and point (b) (except the Alternates) of paragraph 1 of this Article shall inform EIOPA about prospective employment.

## **Article 2 – General principles of declarations and assessment of interests**

1. EIOPA applies the principle that persons subject to this Decision are informed of their obligations vis-à-vis the declaration of CoI and the risks attached to not declaring them. EIOPA shall ensure individual awareness through adequate information on the subject of CoI.
2. It is the obligation of the concerned person to provide the information of the existence of the potential or existing conflict, including the ones of a close family member, to EIOPA in the first place, for EIOPA to assess the related risk.
3. The following general principles shall be applicable to all persons subject to this Decision:
  - a) the responsibility for a complete and truthful declaration shall lie exclusively with the person completing the declaration;

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<sup>7</sup> E.g. patents, trademarks.

- b) the identification and handling of CoI as defined in Article 1(2)(c) shall be based on the evaluation of the following declarations, submitted by the concerned persons as specified in the present Decision:
- the general declaration on confidentiality and commitment whereby the person declares having read the present document, and confirms his/her awareness of his/her obligations (Declaration of Intention; Annex I);
  - the Declaration of Interests (DoI) (Annex II);
- c) only interests/activities from the two years preceding the submission of the declaration shall be declared.

## SECTION II - DECLARATIONS

### **Article 3 – Declaration of Intention**

1. Upon their appointment, the persons identified in Article 1(1) shall make a declaration in writing concerning commitment and confidentiality (Declaration of Intention) in accordance with the template provided in Annex I to this Decision.
2. The declarations of the persons identified in Article 1(1)(a) shall be made public via EIOPA's website.
3. Persons subject to this Decision shall continue to be bound by the terms of their declaration after the end of their involvement in EIOPA's activities.
4. Declarations shall be submitted to EIOPA's Ethics Officer.

### **Article 4 – Declaration of Interests (DoI)**

1. The persons identified in Article 1(1) shall declare on the basis of the Declaration of Interest (DoI) template (Annex II) any interest that creates a Conflict of Interest as defined in Article 1(2)(c) with respect to all activities in which such persons are involved or have been involved during the two years preceding the submission of the DoI and which fall within EIOPA's scope of action, as defined in Article 1(2) and (3) of Regulation (EU) No 1094/2010.
2. Persons identified in Article 1(1) shall indicate whether interests declared are current (when activities currently exist); or if they refer to a past period (when activities stopped existing during the two years preceding the submission of the DoI).
3. Details on the name of body or organisation of relevance for each declared interest shall be given. This is to be interpreted as meaning the full name, location of the seat (city and country) and nature (private or public).

4. 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 organisation in the matter and the role of the concerned person.
5. DoI shall be submitted to EIOPA's Ethics Officer.
6. DoI shall be made public via EIOPA's website.
7. The Management Board may invite the persons identified in Article 1(1) for an annual DoI to be provided within a specified time frame.

#### **Article 5 – Ad-hoc declaration of interest**

1. Where a situation of a CoI, not covered by a DoI already submitted, arises, the persons identified in Article 1(1) shall inform EIOPA's Ethics Officer immediately. This requirement does not concern potential conflicts of interests in the context of meetings or written procedures, which shall be declared according to the Rules of Procedures of the Board of Supervisors and the Management Board, respectively.
2. Any ad-hoc declaration shall be recorded by EIOPA's Ethics Officer, together with the specific mitigating measures imposed. In addition, the DoI already submitted might be updated and submitted to the EIOPA's Ethics Officer.

#### **Article 6 – Declaration of prospective employment**

1. The persons identified in points (a) (except the Alternates) and (b) (except the Alternates) of Article 1(1) are requested to inform EIOPA on their employment for two years following departure from EIOPA's Boards.
2. Declarations shall be submitted in written form to EIOPA's Chairperson.

### TITLE II - PROCEDURE FOR IDENTIFYING AND HANDLING POTENTIAL CONFLICT OF INTEREST

#### SECTION I – SCREENING PROCESS

#### **Article 7 – Screening of the Declarations of Interest**

1. Upon receipt, the Ethics Officer shall screen the declaration in order to assess actual or potential CoI arising in any of the categories described in Article 1(3). The screening shall be performed according to the criteria specified in Article 8.

2. The Ethics Officer shall inform the Chairperson on the outcome of the screening including a proposal for a preventive measure in case of a potential CoI.

### **Article 8 – Criteria for the screening of Declarations**

The Ethics Officer or in case of Article 6 the Chairperson in consultation with the Ethics Officer shall screen the declarations according to the following criteria:

- a) interests can only be assessed by considering whether the specific interests declared by a person are compatible with EIOPA's activities and interests;
- b) in the case of an ad-hoc declaration, the assessment should take into account the context in which the declaration is made, including the items on the agenda of a meeting in which the person participates and the role and function that he or she is required to take on or perform in that context.

## SECTION II - DECISION ON THE ASSESSMENT OF THE DECLARATION

### **Article 9 – Process for addressing declared CoI of persons identified under Article 1(1)**

1. Upon being informed of an actual or potential CoI of a person identified under Article 1(1) by EIOPA's Ethics Officer, the Chairperson shall take his/her decision with the shortest possible delay.
2. The decision on the outcome of the screening rests with the Chairperson, who shall take a decision containing appropriate measures/action to remove or adequately mitigate an identified actual or potential CoI.
3. Upon being informed of a prospective employment by a person identified in points (a) (except the Alternates) or (b) (except the Alternates) of Article 1(1), under Article 6(1) the Chairperson shall, with the shortest possible delay, take a position whether or not the prospective employment is seen as a CoI from EIOPA's perspective. The relevant National Competent Authority, current employer of the declaring person, shall, where possible, be informed about the position of the Chairperson prior to taking its decision on the clearance of the prospective employment.
4. The Chairperson may on his/her own discretion submit the complete file for decision to the Management Board if he/she deems this appropriate.
5. Any preventive measure taken to address potential CoI shall be recorded by the Ethics Officer.

### **Article 10 – Process regarding omissions of declarations**

1. In case EIOPA is aware, or is made aware, of some information that is not consistent with, or that is missing from, the declaration of a person and that a preliminary assessment suggests that it concerns a declarable interest, EIOPA's Ethics Officer shall seek additional information from the concerned person with regard to the omission. At the same time, the concerned person shall be requested to update the missing details of the DoI.
2. Upon completion of the update, the DoI shall be processed and screened in accordance with the present Decision.
3. The Chairperson may take any appropriate preventive action regarding the person's participation in EIOPA's activities.

### **Article 11 – Process regarding breaches of EIOPA's rules on Declarations of Interest**

1. In case the assessment of the DoI results in the identification of a breach of EIOPA's rules on CoI, EIOPA's Ethics Officer shall inform the Chairperson.
2. The Chairperson shall perform a review of the draft instruments adopted by the forum in which that person participated. The Chairperson shall clarify whether, and if appropriate the extent to which, that person influenced the outputs adopted by EIOPA. The Chairperson shall take all the appropriate measures to address these findings.

### **Article 12 – Review of the decisions of Chairperson and/or the Management Board**

1. In the case a specific complaint filed by the concerned person on a decision taken by the Chairperson, the Chairperson shall submit the complete file to the Management Board for its review and decision.
2. In the case of a specific complaint filed by the concerned person on a decision taken by the Management Board pursuant to Article 9(4) of this Decision, the Management Board shall submit the complete file to the Board of Supervisors for its review and decision.

## TITLE III - COMMON PROVISIONS

### **Article 13 – Publication and protection of personal data**

1. Without prejudice to Regulation (EU) No 1094/2010, EIOPA shall process all DoI pursuant to 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

2. The purpose of the data processing is to safeguard the independence of EIOPA and its constituent bodies.
3. The recipients of the DoI are the persons and bodies identified in the present Decision. Furthermore, DoI may be transferred to bodies in charge of a monitoring or inspection task in conformity with Union Law, including the European Court of Auditors, the Internal Audit Service, OLAF, the European Ombudsman and the European Data Protection Supervisor.
4. The conservation period of DoI shall be two years after the discharge for the budgetary year to which the DoI relates.
5. Data subjects with active EIOPA involvements have a right to access their DoI and to update, correct, erase or restrict it at any time in accordance with Regulation (EU) No 2018/1725. In case EIOPA has knowledge of information that is not consistent with the declared interest, or in case of failure to submit a DoI, the data subject concerned shall be contacted with the purpose to update the DoI with regard to the missing information. In case an internal procedure is opened as referred to in Article 12 of this Decision, the data subject shall be notified.
6. Data subjects also are entitled to have recourse at any time to EIOPA's Data Protection Officer and/or to the European Data Protection Supervisor: <http://www.edps.europa.eu>.

#### **Article 14 – Entry into force**

This Decision shall enter into force on the date of its adoption and shall repeal and replace Decision (EIOPA-MB-13-055-rev1) of the Management Board on Conflict of Interest Policy for Non-Staff.

Done at Frankfurt am Main, on 14 July 2020.

[signed]

Gabriel Bernardino

Chairperson of the Management Board

## Overview of declarations

	To complete by:	To be published on EIOPA website:
<b>Declaration of intention</b>	<b>1. BoS Voting Members</b> <b>2. BoS Voting Members' Alternates</b> <b>3. MB Members</b> <b>4. MB Alternates</b> <b>5. EEA EFTA Members and BoS Permanent and Common Representatives of national competent authorities, as referred to in Article 40(4) and 40(6) of regulation (EU) No 1094/2010</b> <b>6. BoS Non-voting Members</b> <b>7. MB representative of the European Commission</b> <b>8. BoS and MB Observers</b> <b>9. Members of the Independent Panels</b>	<b>1. BoS Voting Members</b> <b>2. BoS Voting Members' Alternates</b> <b>3. MB Members</b> <b>4. MB Alternates</b>

<p><b>Declaration of Interests</b></p>	<p><b>1. BoS Voting Members</b></p> <p><b>2. BoS Voting Members' Alternates</b></p> <p><b>3. MB Members</b></p> <p><b>4. MB Alternates</b></p> <p><b>5. EEA EFTA Members, BoS Permanent and Common Representatives of national competent authorities referred to in Article 40(4) and 40(6) of regulation (EU) No 1094/2010</b></p> <p><b>6. BoS Non-voting Members</b></p> <p><b>7. MB representative of the European Commission</b></p> <p><b>8. BoS and MB Observers</b></p> <p><b>9. Members of the Independent Panels</b></p>	<p><b>All shall be published</b></p>
<p><b>Declaration of prospective employment</b></p>	<p><b>1. BoS Voting Members</b></p> <p><b>2. MB Members</b></p> <p><b>3. The EEA EFTA Members, BoS Permanent and Common Representatives of national competent authorities referred to in Article 40(4) and 40(6) of regulation (EU) No 1094/2010</b></p>	<p><b>None shall be published</b></p>

## Annex I



### Declaration of Intention

<b>First Name</b>	
<b>Surname</b>	
<b>Authority/ Member State</b>	
<b>Current EIOPA Involvement</b>	

**I hereby declare that I have read EIOPA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff [EIOPA-MB-20-064] and am aware of my obligations.**

**I hereby agree and acknowledge as follows:**

1. I am subject to EIOPA Management Board Decision on Professional Secrecy and Confidentiality (EIOPA-MB-17/039) of 20 April 2017.
2. "EIOPA Activities" includes (but is not limited to) activities related to my role and responsibilities at EIOPA, including any attendance at any meeting whether or not with attendees who are not staff of EIOPA; and the production or review of any documents.
3. "Confidential Information" means all information, facts, data and any other matters of which I acquire knowledge, either directly or indirectly, as a result of my EIOPA activities whether or not contained in a document of any kind (electronic or on paper or any other medium).
4. "Third party" means any legal or natural person other than EIOPA, its staff and the parties of the ESFS<sup>9</sup>.

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<sup>9</sup> Defined in Article 2(2) of the EIOPA Regulation

5. I will treat all Confidential Information as information subjected to professional secrecy.
6. I will not disclose (or permit any other person to disclose) in any way to any third party, any Confidential Information without EIOPA's prior written consent.
7. I will not use (or permit any other person to use) any Confidential Information other than for the purposes of my work in connection with EIOPA activities.
8. This undertaking shall not apply to any information that I can reasonably prove was known to me before the date of this undertaking or which becomes public knowledge otherwise than as a result of a breach of any of the above undertakings.
9. I acknowledge that improper disclosure of Confidential Information may constitute serious misconduct and I may be subject to disciplinary measures and may be required to make good, in whole or in part, any damage suffered by the Union as a result of such disclosure.
10. I shall continue to be bound by the terms of my declaration after the end of my involvement in EIOPA's activities, in line with Article 70(1) and (2a), as applicable, of Regulation (EU) No 1094/2010.
11. I acknowledge that, where improper disclosure of information is a criminal offence, I may be prosecuted for such disclosure before a court with relevant jurisdiction, which may include the court of a Member State of the Union.

**I have read and understood this undertaking, and agree to its terms.**

Date:	Signature:
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*Please send a signed copy of this form to EIOPA's Ethics Officer*  
[EthicsBoard@eiopa.europa.eu](mailto:EthicsBoard@eiopa.europa.eu)

## Annex II



### Declaration of Interests

<b>First Name</b>	
<b>Surname</b>	
<b>Authority/ Member State</b>	
<b>Current EIOPA Involvement</b>	

- I declare that I have read the Decision adopting a Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff [EIOPA-MB-20-064] and that this declaration is truthful and complete.
- I do hereby declare on my honour that, to the best of my knowledge, the only interests that create a Conflict of Interest as defined in Article 1(2)(c) of the Decision in respect of my activities which fall within EIOPA's scope of action are those listed in the Annex.
- Whenever I have a Conflict of Interest, I will alert EIOPA.

Date:	Signature:
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*Please send a signed copy of this form to EIOPA's Ethics Officer*  
[EthicsBoard@eiopa.europa.eu](mailto:EthicsBoard@eiopa.europa.eu)

### **Annex to Declarations of Interests**

*In all cases, please provide as many details as possible (in the case of a body or employer, full name, location, private or public nature and your role).*

<b>Nature of conflict</b>	<b>Period (from /till)</b>	<b>Organisation</b>	<b>Subject matter/ Reasons why my independence may be impaired</b>
I. Economic Interest	1. 2.		
II. Membership	1. 2.		
III. Employment or Consultancy	1. 2.		
IV. Intellectual Property Rights	1. 2.		
V. Other	1. 2		
VI. Interests of close family members	1. 2.		