



CENIEH
Centro Nacional de Investigación
sobre Evolución Humana

**Prevention, Detection and Reaction to situations of
conflict of interest-Ed1**

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PREVENTION, DETECTION AND REACTION TO SITUATIONS OF CONFLICTS OF INTERESTS

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1. OBJECT AND SCOPE OF APPLICATION

- 1.1. The Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of July 18th 2018, on the financial rules applicable to the general budget of the Union (the "Financial Regulation"), imposes the obligation to avert and/or manage any situation that could be perceived as a conflict of interests.

In the same vein, article 6.4 of the Order HFP/1030/2021, of September 29th, which defines the management system for the Recovery, Transformation and Resilience Plan (PRTR), stipulates that evaluation of the risk of fraud, completion of the Declaration of Absence of Conflicts of Interest (the "DACI"), and the availability of a procedure for addressing conflicts of interest, are mandatory actions for the managing bodies.

To fulfill this obligation, the CENIEH has approved an anti-fraud and conflict of interests policy, and this document, to establish the rules for action and the appropriate measures for preventing, identifying, and managing potential conflicts of interest arising out of all actions and procedures relating to projects with public funding, including those from the funds of the Recovery and Resilience Facility (RRF).

- 1.2. This protocol shall apply to all persons who intervene in any manner in the projects so funded, both in the preparation and submission phases, and in management and implementation, so that the persons bound by it include:
- i. The governing and administrative bodies, and employees, of the CENIEH who perform tasks of management, control, and payment, and other agents to whom any of these tasks have been delegated, as well as participants in purchasing panels and expert or technical committees which prepare evaluation reports.
 - ii. All beneficiaries, contractors, and subcontractors, whose actions are financed by such funds, which could act to advance their own interests in a manner contrary to the financial interests of the European Union, if there were a conflict of interests.

2. REFERENCES.

- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of July 18th 2018, on the financial rules applicable to the general budget of the Union.
- Order HFP/1030/2021, of September 29th, which defines the management system for the Recovery, Transformation and Resilience Plan.
- Act 40/2015, of October 1st, on the legal regime for the public sector.

- Act 19/2013, of December 9th, on transparency, access to public information, and good governance.
- Code of Ethics of the CENIEH.
- Anti-fraud and conflict of interests policy of the CENIEH.
- Protocol for action when there is suspicion of fraud and disciplinary regime.
- Guide to using and managing the whistleblower channel.

3. RESPONSIBILITIES.

- **Governing Council:** Approval of the Anti-Fraud Measures Plan.
- **Operational managers** (in the sense of managing body): Set out a procedure to address conflicts of interest and take charge of implementing the measures and controls in the Plan for preventing, detecting, and averting such conflicts. Assess the risk of conflicts of interest. Formalize and safeguard the declarations of absence of conflicts of interest.
- **Management:** Decide whether to withdraw persons under investigation for a possible conflict of interests from the projects in question as a precaution and report such situations, along with relevant information, to the competent authorities. Appoint the members of the Fraud Control Committee. Evaluate and adopt, if appropriate, proposals issued by the Fraud Control Committee. Make periodic reports to the Governing Council.
- **Fraud Control Committee:** Track implementation of the measures to prevent conflicts of interest. Embark on internal investigations when there is suspicion of a conflict of interests, designate an investigator, and propose a resolution. Communicate the steps taken to the workers' representatives. Compile an annual report for the Governing Council, including the investigations carried out and measures adopted, and proposals to update or review the protocol which they deem relevant.
- **Participants in financed projects:** Sign the appropriate declarations and act in accordance with the principles and rules herein.

4. CONCEPT AND CLASSIFICATION OF CONFLICT OF INTERESTS

4.1. CONCEPT

According to the delimitation of the concept in article 61 of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of July 18th 2018, on the financial rules applicable to the general budget of the Union (the "Financial Regulation"), there exists a conflict of interests "where the

impartial and objective exercise of the functions of a financial actor or other person participating in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest".

The entry into force of this Regulation gave a horizontal, clearer, and broader focus, emphasizing that the conflict of interests defined in the indicated terms:

- Is applicable to all the administrative and operational items in all the institutions of the European Union and to all methods of management.
- Covers all types of personal interests, direct or indirect.
- Must lead to action in any situation which is "perceived" as a potential conflict of interests.
- National authorities at all levels must avert and/or manage potential conflicts of interests.

Furthermore, article 23.2 "Abstention", of the Act 40/2015, of October 1st, on the legal regime for the public sector, establishes that authorities and staff at the service of the authorities must abstain from intervention in a procedure when any of the following circumstances apply:

- a) Possessing a personal interest in the matter in question or any other whose resolution could influence the former; being an administrator of a company or entity which is an interested party, or when there are legal questions pending with some interested party.
- b) Possessing a relationship of marriage or assimilable civil partnership, or relationship up to the fourth degree of consanguinity or the second degree of affinity, with any of the interested parties, with the administrators of entities or companies that are interested parties or with the advisers, legal representatives or managers intervening in the procedure, sharing a professional practice or being an associate of the latter for the purposes of consultancy, representation, or management.
- c) Having a close friendship or clear enmity with any of the persons mentioned in the previous section.
- d) Having intervened as expert witness or witness in the procedure in question.
- e) Having a service relationship with any natural or legal person with a direct interest in the matter, or have provided professional services of any type and in any circumstance or place to the same, within the last two years.

4.2. CLASSIFICATION.

The following types of situations giving rise to conflicts of interests can be distinguished:

- **Apparent conflict of interests:** this arises when the private interests of a public employee or beneficiary could compromise the objective performance of their duties or obligations, although finally no identifiable or individual link with specific aspects of the conduct, behavior, or relationships of that person (or any other repercussion) is found.
- **Potential conflict of interests:** this arises when a public employee or beneficiary has private interests of such a nature that they could give rise to a conflict of interests in the event the person had to assume certain official responsibilities in the future.
- **Real conflict of interests:** this entails a conflict between the public duty and the private interests of a public employee, or where the public employee has personal interests that could unduly influence the performance of their official duties and responsibilities. In the case of a beneficiary, it would entail a conflict between the obligations assumed on applying for aid from the funds and their private interests, which could unduly influence the fulfillment of those obligations.

5. PRINCIPLES AND MANDATORY RULES FOR ACTION

The CENIEH, as a publicly owned Unique Scientific and Technical Infrastructure (ICTS), its governing and administrative bodies, and all its staff, and as recognized in its **Code of Ethics**, undertakes to respect the provisions of its own **Anti-Fraud and Conflict of Interests Policy**, those of the Spanish Constitution and the rest of the legal order, and to promote respect for fundamental rights and civil liberties, in all of its actions.

The CENIEH, its governing and administrative bodies, and all its staff, shall tailor its activity to the following principles:

1. Act with transparency in the fulfillment of its own ends, in accordance with the principles of efficacy, economy, and efficiency, managing public resources properly and prohibiting their use for activities other than those permitted by the regulations applicable, with full dedication directed to satisfying the general interest, while refraining from any conduct that could be contrary to these principles.
2. Respect the principle of impartiality, to maintain independence of judgment that is at arm's length from any individual interest. Not to avail of their position to obtain personal or material advantages, and acting with full respect for the norms regulating incompatibilities and conflicts of interest, eschewing situations, activities, or interests incompatible with their duties, refraining from intervention in matters when their objectivity could be affected for any reason,

and reporting any situation that could constitute a conflict of interests to their immediate superior.

Members of the governing and administrative bodies and employees of the CENIEH shall specifically refrain from intervention in procedures in which any of the circumstances set out in section 4.1 of this protocol is applicable.

3. Act with due diligence in compliance with their obligations and strive for quality in the appropriate projects or actions.
4. Assume responsibility for their own decisions and actions and those of bodies they direct, without prejudice to other liabilities that could be legally enforceable.
5. Maintain all facts or information learned in the course of their duties in the appropriate confidence.
6. Report any irregular action they become aware of to the competent bodies.
7. Decline gifts of other than minor or courtesy value, and decline favors or services under advantageous conditions that could affect the performance of their duties. In the case of gifts of greater institutional relevance, these shall be incorporated as assets of the CENIEH.

6. PREVENTIVE MEASURES FOR CONFLICTS OF INTERESTS

1. Communication and information to CENIEH staff about the different modes of conflicts of interests and how to avert them.
2. All workers who participate in any way in projects with public financing, as well as those intervening in purchasing panels and the expert or technical committees that compile evaluation reports must sign a **“Declaration of absence of conflicts of interests (DACI)”** (see Annex 9.1).
3. Communication and information to beneficiaries of aids, contractors and subcontractors for projects with public funding about the existence and binding nature of this procedure, in addition to formalization of the **“Declaration of absence of conflicts of interests and commitment with regard to execution of the actions”** (see Annex 9.2).

The contracts signed must include clauses providing for sanctions for improper conduct. The sanctions could range from early termination of the contract to exclusion from CENIEH procurement procedures for a period of three years.

The declarations indicated above must be formalized prior to participation in any action related to the projects mentioned (preparation, submission, management, monitoring, execution, or

conclusion). The managing body shall be responsible for the formalization and custody of all the declarations, and it must ensure that the persons in question are aware of the need to declare any change in their situation without delay. The declarations must appear as documented information in the administrative file for the project.

7. DETECTIVE MEASURES FOR CONFLICTS OF INTERESTS

1. The Fraud Control Committee will conduct periodic checks to verify that the measures directed at preventing conflicts of interest are working properly.
2. With regard to the declarations, the truthfulness of the information given will be verified through the databases of the commercial registries and those of Spanish and EU bodies, employee files (bearing in mind the data protection regulations) or using tools for prospecting (data mining) or risk rating (ARACHNE), should there exist good reason to doubt the DACI submitted.
3. Any member of the CENIEH who is aware of any circumstance that could constitute a conflict of interests and which affects another member (employee or collaborator) must lodge a complaint using the envisaged whistleblower channel or such other channel as they see fit.

8. REACTIVE MEASURES FOR CONFLICTS OF INTERESTS

1. Once aware of any situation that could constitute a conflict of interests, CENIEH Management shall ensure that the person affected shall cease all activity in the project in question as a precaution while the importance of that situation to the execution of the project is investigated, and shall decide:
 - a. Whether the person in question should be definitively withdrawn from the project.
 - b. Whether they should be assigned duties where the conflict of interest does not impinge, or maintained with their initial duties while simply requiring that they abstain from taking decisions where the conflict of interests could play a role.

In any case, it must be ensured that the decision taken is completely transparent, that it sets precise limits to the contribution of that employee or expert to the project, and that the authorizing body awarding the funds is notified.

2. In the event that it is discovered that a person affected by a conflict of interest has not communicated this to their superior, to the project manager or, if applicable, to CENIEH Management or its governing bodies, that person shall be subject to the appropriate disciplinary action.

When the duty to communicate a conflict of interests has been infringed by an external collaborator, professional relations with that collaborator shall be suspended.

3. The facts should be notified to the authorizing body awarding the funds or, if applicable, to the Servicio Nacional de Coordinación Antifraude (SNCA), the public prosecutor, or the competent courts. All the known information and details shall be furnished to the authorities to facilitate investigation.

A breach of the obligation to communicate a possible conflict of interests by alleging a possible benefit for the CENIEH shall not exonerate the person from potential liability.

4. The actions that could have been affected by the conflict of interests discovered should be examined, and an evaluation performed of the harm that could have been occasioned to the project in question, with the appropriate remedial measures taken and communication of these measures to the managing body for the funds.

Similarly, in the event of noncompliance with the duty to communicate a conflict of interests, whether the noncompliance is a single event or systematic should be appraised. If it is a single event, the consequences for the specific case should be corrected. However, if it is systematic, in addition to correcting the consequences, how the truthfulness of the declaration was verified should be reviewed so that the appropriate corrective measures can be taken.

A summary of the procedures performed should be communicated internally, at least to the staff and the governing bodies, stating the facts discovered and the corrective or disciplinary measures adopted.

5. The CENIEH shall create and maintain a register of all conflicts of interests that have been declared and/or investigated, including references to the disciplinary procedures opened for the undeclared conflicts and, if applicable, the sanctions imposed.

9. ANNEXES.

9.1. DECLARATION OF ABSENCE OF CONFLICTS OF INTERESTS (DACI)

Project/File:

To ensure the integrity, objectivity, and impartiality of all CENIEH staff who participate in any way in the processes of selection, submission, and execution of the project/file referred to above,

I, Mr./Ms., of DNI

HEREBY DECLARE:

ONE. I have been informed that:

1. Article 61.3 ("Conflict of interests"), of the Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of July 18th 2018 (EU "Financial Regulation"), establishes specifically that "there shall exist a conflict of interests where the impartial and objective exercise of the functions [...] is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest".

2. Article 64 ("Fight against corruption and prevention of conflicts of interests") of the Act 9/2017, of November 8th, on public sector contracts, whose purpose is to avoid any distortion to competition, guarantees transparency in the procedure, and ensures equality of treatment for all candidates and bidders.

3. Article 23.2 ("Abstention"), of the Act 40/2015, of October 1st, on the legal regime for the public sector, establishes that "authorities and staff at the service of the authorities must abstain from intervention in a procedure when any of the following circumstances apply":

- a) Possessing a personal interest in the matter in question or any other whose resolution could influence the former; being an administrator of a company or entity which is an interested party, or when there are legal questions pending with some interested party.
- b) Possessing a relationship of marriage or assimilable civil partnership, or relationship up to the fourth degree of consanguinity or the second degree of affinity, with any of the interested parties, with the administrators of entities or companies that are interested parties or with the advisers, legal representatives or managers intervening in the procedure, sharing a professional practice or being an associate of the latter for the purposes of consultancy, representation, or management.
- c) Having a close friendship or clear enmity with any of the persons mentioned in the previous section.
- d) Having intervened as expert witness or witness in the procedure in question.

- e) Having a service relationship with any natural or legal person with a direct interest in the matter, or have provided professional services of any type and in any circumstance or place to the same, within the last two years.

TWO. At the moment of signature hereof, I am not affected by any situation that could be regarded as a conflict of interests from among those indicated in article 61.3 of the EU Financial Regulation, and I am not affected by any grounds for abstention of those set out in article 23.2 of the Act 40/2015, of October 1st, on the legal regime for the public sector, which could affect any procedure or the tender/award.

THREE. I undertake to inform my hierarchical superior of any situation of conflict of interests or grounds for abstention that is applicable or could give rise to such a situation.

FOUR. I am aware that any declaration of absence of conflicts of interests that is shown to be false shall entail the disciplinary/administrative/legal consequences established by the regulations applicable.

Date and signature, full name and DNI.

9.2. DECLARATION OF COMMITMENT AND ABSENCE OF CONFLICTS OF INTEREST WITH REGARD TO EXECUTING THE ACTIONS OF THE RECOVERY, TRANSFORMATION AND RESILIENCE PLAN ("PRTR")

Project/File:

I, Mr./Ms., of DNI
in the capacity of
.....
of the entity
and registered office at
.....

as a beneficiary of aid/ contractor/ subcontractor for the project/file indicated above that has received public funding

HEREBY DECLARE:

ONE. The commitment of the person/entity I represent to the most demanding standards of compliance with the legal, ethical, and moral norms, by adopting the measures necessary to prevent and detect fraud, corruption, and conflicts of interests, and communicating any noncompliances observed to the appropriate authorities.

TWO. Likewise,

I declare that I have NO relationship of marriage or assimilable civil partnership, of relationship (consanguinity up to the fourth degree or affinity up to the second), or close friendship, condition of

partnership, or business or commercial relationships (either directly or through a linked person) with any member of the governing or administrative bodies of the CENIEH.

I declare the following relationship of marriage or assimilable civil partnership, of relationship (consanguinity up to the fourth degree or affinity up to the second), or close friendship, condition of partnership, or business or commercial relationships (either directly or through a linked person) with a member of the governing or administrative bodies of the CENIEH:.....

THREE. In addition, for cases when the action is financed by funds from the PRTR and to perform the actions necessary to meet the objectives set out in Component XX "....." I undertake to respect the principles of the circular economy and to do no significant harm ("DNSH") in executing the actions under this Plan, I declare that there is no dual financing, and that I am not aware of any risk of incompatibility with the regime for State aid.

FOUR. I am aware that any declaration of absence of conflicts of interests that is shown to be false shall entail the administrative or legal consequences established by the regulations applicable.

Date and signature, full name and DNI.

VERSION HISTORY

<i>Version</i>	<i>Changes</i>
1	First edition