



# **CONFLICT OF INTEREST POLICY**

## **ETC Foundation**

ETC	Management
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**For Approval:**

A handwritten signature in blue ink, appearing to be 'J.H.J. Dusseljee', written over a horizontal line.

J.H.J. Dusseljee  
Director ETC Foundation

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# 1. INTRODUCTION AND PURPOSE

ETC Foundation (the “Foundation”) requires its director, employees, subcontractors, associates, trainees and interns to observe high standards of business and personal ethics in the conduct of their duties and responsibilities. The Board of Trustees (the “Board”) of the Foundation, recognising that it is entrusted with resources devoted to not-for-profit purposes, has adopted this Conflict of Interest Policy (the “Policy”). The purpose of this Policy is to protect the Foundation’s interest when it is contemplating entering into a transaction or arrangement that might benefit the private interests of its director, employees, subcontractors, associates, trainees and interns or any other person in a position of authority within the Foundation. The Foundation strives to avoid conflicts of interest to ensure that it continues to operate in accordance with its purposes.

## 2. DEFINITIONS

### 2.1 Duty of Loyalty of Interested Persons

Conflicts of interest can place personal interests at odds with the fiduciary “duty of loyalty” owed to the Foundation. The duty of loyalty requires the director, employees, subcontractors, associates, trainees and interns (each an “Interested Person”) to refrain from using their positions for personal gain, and avoid acting on issues where their personal or financial interests could conflict with the interests of the Foundation.

### 2.2 Direct and Indirect Conflicts of Interest

Conflicts of interest arise from personal relationships or from a financial interest. Conflicts can arise either directly or indirectly. A direct conflict can arise where an Interested Person has a personal or financial interest in any matter involving the Foundation or has a financial or agency relationship (i.e. is a director, officer, manager, partner, associate, trustee or has a similar agency relationship) with an entity involved in a transaction or other business with the Foundation. An indirect conflict can arise where someone related to an Interested Person by business affiliation, or a “Family Member” (spouse, parents-in-law, ancestors, brothers and sisters (whether whole or half-blood), children (whether natural or adopted), grandchildren, great-grandchildren, and spouses of brothers, sisters, children, grandchildren, and great-grandchildren) of the Interested Person has dealings with the Foundation. As examples, an Interested Person has a financial interest if such person has, directly or indirectly, through business, investment or a Family Member:

- a) ownership or investment interest in any entity with which the Foundation has a transaction or arrangement;
- b) a compensation arrangement with the Foundation or with any entity or individual with which the Foundation has a transaction or arrangement; or
- c) ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Foundation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favours that are not insubstantial (i.e. above € 25).

## 2.3 Potential and Actual Conflicts of Interest

Acts that mix the personal or financial interests of an Interested Person with the interests of the Foundation are indicative of a potential conflict of interest. However, not every potential conflict is an actual conflict. An Interested Person who has a financial interest in a matter involving the Foundation may have a conflict of interest that requires application of the mitigating procedures described in this Policy only if the appropriate party designated in Article III, Section 3.3 decides that such a potential conflict of interest is actual or material. However, acts that have only the appearance of a conflict of interest can be damaging to the reputation of the Foundation. Consequently, the Foundation seeks to avoid potential and actual conflicts of interest, as well as the appearance of conflicts.

## 2.4 Activities that may present a Conflict of Interest

The following is a non-exclusive list of the types of activities or situations that may present a conflict of interest and should be disclosed in accordance with Article III.

- (a) **Adverse Interest.** Participation by an Interested Person in decisions or negotiations related to a contract, transaction or other matter between the Foundation and: (i) the Interested Person; (ii) an entity in which the Interested Person or a Family Member of that person has a financial interest; or (iii) an entity with which the Interested Person has an agency relationship.
- (b) **Use of Resources.** Use of the Foundation's resources (for example, staff, contracts, donor lists or contacts) for the personal purposes of the Interested Person or a Family Member of that person.
- (c) **Inside Information.** Disclosure or exploitation by an Interested Person of information pertaining to the Foundation's business for their personal profit or advantage or that of a Family Member or a person/entity with whom the Interested Person has an agency relationship.
- (d) **Receiving Gifts.** Gifts include any gratuity, favour, discount, entertainment, hospitality, loan, forbearance, honorarium or other item having monetary value. These include services as well as gifts in the form of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred. An Interested Person may accept unsolicited gifts having an aggregate value of no more than € 25.
- (e) **Competing Interests.** Competition by an Interested Person, either directly or indirectly, with the Foundation in the purchase or sale of property or property rights, interests or services and, in some instances, direct competition for the same donor or external resources.

## **2.5 Disclosure**

The primary obligation of any person subject to this Policy who could be involved in a conflict of interest situation is to bring this to the attention of those designated under the disclosure procedures in Article III so that the potential conflict can be evaluated and addressed. An Interested Person should not unilaterally decide whether or not a conflict of interest exists.

## **3. PROCEDURES TO DISCLOSE AND RESOLVE CONFLICTS**

### **3.1 Duty to Disclose**

An Interested Person shall make an appropriate disclosure of all material facts, including the existence of any financial interest, at the time that any actual or potential conflict of interest arises. This disclosure obligation includes instances where an Interested Person who is a director knows of the potential for a self-dealing transaction. It also includes instances where the Interested Person plans not to attend a meeting of the Board, or a Board committee with governing board-delegated powers (a “Committee”), at which he or she has reason to believe that the Board or Committee will act regarding a matter about which he or she may have a conflict. Depending on the circumstances, this disclosure may be made to the appropriate compliance officer or, if the potential conflict of interest first arises in the context of a Board or Committee meeting, to the entire Board or the members of the Committee considering the proposed transaction or arrangement that relates to the actual or possible conflict of interest. In addition, Interested Persons shall, in accordance with Article V, disclose ongoing relationships and interests that may present a conflict of interest.

### **3.2 Disclosure of Conflicts**

If an Interested Person becomes aware of any potential self-dealing or common directorship transaction or other conflict of interest involving another Interested Person, he or she should report it in accordance with the requirements of Article III.

### **3.3 Evaluation of a Potential Conflict**

After disclosure of all material facts and any follow-up discussion with the Interested Person regarding a potential conflict of interest, it has to be determined whether a material financial interest, self-dealing transaction or other kind of actual conflict exists. If the potential conflict is first disclosed during a Board or Committee meeting attended by the Interested Person with the potential conflict, the Interested Person shall leave the meeting while the existence of a conflict of interest is discussed, determined and voted upon.

If the disclosure is made outside the context of a meeting, then the potential conflict will be referred to the Board or Committee (the decision-making body) for decision and action. In both scenarios, the decision-making body will evaluate the disclosures made by the Interested Person and will determine, on a case-by-case basis, whether the disclosed activities constitute

an actual conflict of interest. Factors the decision-making body may consider when determining whether an actual conflict exists include (i) the proximity of the Interested Person to the decision-making authority of the other entity involved in the transaction, (ii) whether the financial interest or investment is above € 25 and (iii) the degree to which the Interested Person might benefit personally if a particular transaction was approved.

If it is determined that an actual conflict of interest exists which is not a self-dealing transaction, but involves participation by the Interested Person in decisions or negotiations related to a material contract, transaction or other matter between the Foundation on the one hand and, on the other, (i) the Interested Person, (ii) an entity in which the Interested Person or a Family Member of such person has a financial interest or (iii) an entity with which the Interested Person has an agency relationship, then the matter in question can only be authorised if approved by a vote as described in Section 3.5(b) after the Foundation has followed the procedures set out in Section 3.4.

In all other circumstances where it is determined that an actual conflict of interest exists, the decision-making body will recommend an appropriate course of action to protect the interests of the Foundation. All disclosures and the outcome of the deliberation about whether a conflict of interest exists will be recorded in the minutes of the appropriate deliberative meeting.

### **3.4 Procedures for Addressing a Conflict of Interest**

Prior to voting on a contract, transaction or other matter in which an actual conflict of interest is deemed to exist, the Foundation's Board will follow the procedures described in this Section.

- (a) The Interested Person may make a presentation at the Board meeting at which the transaction is being considered but, after the presentation, he or she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest. The Chairperson of the Board shall, if appropriate, appoint a disinterested person to investigate alternatives to the proposed transaction or arrangement.
- (b) After exercising due diligence, the Board shall determine whether the Foundation could, with reasonable efforts, obtain a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (c) If a more advantageous transaction or arrangement is not reasonably possible under circumstances that would not produce a conflict of interest, the Board shall determine whether the transaction or arrangement is in the Foundation's best interest, to its own benefit and whether it is fair and reasonable. In conformity with the above determination, the Board shall decide whether to enter into the transaction or arrangement by a vote as described in Section 3.5.

### **3.5 Vote Required for Approval of Conflict Transaction**

- (a) A self-dealing transaction must have prior approval from the Foundation's Board, granted with knowledge of the material facts of the transaction and the involved director's interest.

- (b) A transaction in which an actual conflict of interest exists but is not a self-dealing transaction must receive prior approval by the Board present at a meeting.

### **3.6 Violations of the Conflict of Interest Policy**

- (a) If the Foundation's Board has reasonable cause to believe that an Interested Person has failed to disclose actual or possible conflicts of interest, it shall inform the Interested Person of the basis for such belief and afford the Interested Person an opportunity to explain the alleged failure to disclose.
- (b) If, after hearing the Interested Person's response and making further investigation as warranted by the circumstances, the Board determines the Interested Person has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

## **4. RECORDS OF PROCEEDINGS**

The minutes of the meeting of the Foundation's Board convened to consider a transaction subject to the mitigating procedures described in Article III shall contain:

- (a) the names of the Interested Persons who disclosed or were otherwise found to have a financial or other interest in connection with an actual or possible conflict of interest, the nature of the financial or other interest, any action taken to determine whether a conflict of interest existed, and the Board's decision as to whether a conflict of interest in fact existed.
- (b) the names of the persons who were present in the discussions relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement considered.

## **5. AWARENESS**

Every person subject to this Policy shall receive a copy of the Policy, and is obliged to read and understand the Policy, and should understand that the Foundation is a not-for-profit organisation. In addition, Interested Persons, as necessary, shall disclose ongoing relationships and interests that **may** present a conflict of interest. Disclosures should address current affiliations, as well as past affiliations in the previous two years. Potential conflicts of interest should be submitted to the Director of the Foundation.