



EBA DC 104rev1

10 May 2017

Decision of the Executive Director on the EBA's Policy on Independence and Decision Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Staff and other Contractual Parties

The Executive Director of the European Banking Authority

Having regard to: Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), (hereinafter "EBA") and in particular Article 70 thereof;

Having regard to: The EBA Ethics Guidelines (EBA DC 171) for staff of the European Banking Authority, approved by the EBA's Executive Director (hereinafter "EBA's Staff Ethics Rules");

Having regard to: The Staff Regulations of Officials of the European Communities and Conditions of Employment of Other Servants of the European Communities¹, and in particular Article 16 thereof;

Having regard to: The Financial Regulation applicable to the General Budget² of the European Communities as well as the detailed rules for the implementation of the Financial Regulation³,

¹ 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.

² Regulation (EC, Euratom) N° 1605/2002 on the Financial Regulation applicable to the General Budget of the European Communities, OJ L 248, 16/9/2002, p.1 as last amended.

³ Regulation (EC, Euratom) N° 2342/2002 laying down detailed rules for the implementation of the Financial Regulation, OJ L 357, 31/12/2002, p.1, as last amended

Whereas:

- (1) Independence and high standards of professional conduct by all those involved in the activities of the EBA, i.e. EBA staff and contractors, are crucial for the EBA's excellence and reputation;
- (2) Transparency and openness 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 individuals completing their declaration;
- (4) High quality of expertise is by nature based on prior experience and knowledge acquired in the relevant domain. Interests are therefore a natural and inevitable consequence of attaining recognition at international level in a given field. Some of those interests may however conflict with the EBA's tasks and powers;
- (5) Any conflict of interests should be promptly identified, disclosed and managed without delay. To this end, a system of declaration of interests and their subsequent screening and evaluation is required to ensure that informed decisions on the appropriate measures, including the mitigation or removal of unacceptable conflicts of interest can be taken;
- (6) In order to ensure a coherent level of detail in the declarations of interests, a set of activities that might cause potential Conflicts of Interest should be defined;
- (7) To ensure consistent reporting and evaluation, a set of comprehensive declaration of interests' forms should be used;
- (8) A transparent procedure should be followed by establishing inter alia the following aspects:
 - a) Guidelines to the EBA's Ethics Officer and Executive Director performing the screening and evaluation of declarations of interest;
 - b) A specific procedure should be established for the screening of declarations of interest of the Chairperson and Executive Director, and for the adoption of measures to address any conflicts of interests identified;
 - c) Transparent consequences linked to the interests declared; and
 - d) An enforcement procedure to deal with the most serious cases of breach of these rules.
- (9) Regulation (EC) No 1093/2010 requires the Authority to establish and maintain an efficient and fruitful cooperation with bodies active in the Member States carrying out tasks similar to those entrusted to the EBA. Without prejudice to the responsibility of each Member State and of its authorities for the appointment of their representatives, including in relation to preventing conflicts of interest, it is therefore appropriate to establish a dedicated set of rules enabling the EBA to optimise the use of resources available and foster a real and effective network of organisations active within its remit.

Has decided as follows:

TITLE I - GENERAL PRINCIPLES AND INTERESTS TO BE DECLARED

SECTION I - GENERAL PRINCIPLES

Article 1 – Scope and definitions

- 1.1. The present decision is applicable to:
 - a) EBA staff⁴;
 - b) contractors⁵ and their employees;
- 1.2. For the purposes of this decision:
 - a) Interest meaning 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 the EBA that create, or have the potential to create a Conflict of Interest;
 - b) A Conflict of Interest (Col) being a conflict between the public duty of the EBA and private interests of an individual, in which an individual has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities⁶;
 - c) Interests of close family members meaning interests in the subject matter held by a partner or spouse of the EBA staff member;
- 1.3. For the purposes of this decision, the following interests shall be considered as a source of Col, actual or potential, (non-exhaustive list):
 - a) Economic interest meaning any economic stake or share in a body, in particular any financial institutions that are under the EBA's scope of action (as defined in Article 1(2) and (3) of Regulation (EU) No 1093/2010 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, collective investment funds⁷ or deposits contracted as a regular customer;
 - b) Member of a managing body or equivalent structure meaning any participation in the internal decision-making (e.g. board membership, directorship) of a public or private entity with an interest in the subject matter;
 - c) Employment meaning any form of regular occupation or business, part-time or full-time, paid or unpaid, including self-employment (e.g. consultancy), in any body with an interest in the subject matter. Employment by industry shall mean any form of employment by any legal or

⁴ EBA staff includes temporary agent, contract agent and seconded national experts

⁵ For the purpose of this declaration, interim employees, trainees and consultants are considered as contractors.

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

⁷ Units in collective investment undertakings, as long as they are not allowed to invest more than 20% of the funds in shares of credit institutions, investment firms, financial conglomerates, or their group companies, do not require a declaration

natural person carrying out any of the activities on which the EBA's outputs impact directly or indirectly,

- d) Ad hoc or occasional consultancy meaning any ad hoc or occasional activity in which the concerned person provides advice or services to undertakings, trade associations or other bodies with an interest in the subject matter (ex-ante hierarchical approval for speaking commitments are not included). 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;
 - e) Intellectual property rights meaning rights on the subject matter granted to creators and owners of works that are the result of human intellectual creativity⁸ 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;
 - g) Other relevant interest meaning any interest not falling under the definitions provided above and relevant for the purposes of the present decision.
- 1.4. In addition to the interests defined under Article 1.3 above of the present decision, and as arranged in the EBA's Ethics Guidelines, the following sources of conflict of interest shall apply to the EBA's staff:
- Gainful employment of a spouse or partner;
 - Gifts and hospitality⁹; and
 - Outside activities.
- 1.5. At the time when an offer is made when negotiating prospective employment the prospective employee should declare any conflict of interest, including the gainful employment of the spouse. The declared conflicts of interest should be taken into account within the decision to employ or not employ a candidate.

Article 2 – General principles of declarations and assessment of interests

- 2.1. The EBA applies the principle that individuals are informed of their obligations vis-à-vis the declaration of CoI and the risks attached to not declaring them. The EBA will ensure individual awareness through periodical information organised by the EBA on the subject of CoI.
- 2.2. It is incumbent to the individual to volunteer the information of the existence of the potential or existing conflict to the EBA in the first place, for the EBA to assess the related risk.
- 2.3. The following general principles shall be applicable to all persons subject to the present Decision:

⁸ E.g. patents, trademarks *et cetera*.

⁹ As defined in the EBA Ethics Guidelines (EBA DC 171)

- a) The responsibility for a complete and truthful declaration shall lie exclusively with the person completing the declaration.
- b) The identification and handling of conflict of interests as defined in Article 1 shall be based on the evaluation of declarations, general, annual or ad-hoc, submitted by the concerned persons and/or staff as specified in the present decision.
- c) Only activities having taken place in the five years preceding the submission of the declaration shall be declared.
- d) For efficiency reasons, the EBA has a risk-based approach to the assessment of declared interests.

SECTION II - DECLARATIONS

Article 3 – Declaration of Intention concerning confidentiality and declaration of commitment

- 3.1 Contractors or their representatives identified in Article 1.1(b) shall make a declaration in writing concerning confidentiality and commitment in accordance with the template provided in Annex I to the present decision.
- 3.2 The EBA staff members shall sign Annex I to confirm their commitment of confidentiality, even if already embedded in their employment contract.
- 3.3 Individuals will continue to be bound by the terms of their declaration after the end of their engagement to carry out work for the EBA, and without limit of time, in line with Article 70 (1) of the EBA Regulation.
- 3.4 For staff, the specific rules on cooling-off periods on external activities and on the continued obligation to inform the EBA on their employment for two years following departure from the EBA, are specified in the EBA Ethics Guidelines and other relevant provisions.

Article 4 – Annual Declaration of Interest (ADoI)

- 4.1 The EBA staff members shall make an annual declaration of interest (ADoI). They herewith shall declare having read Article 11a of the Staff Regulations, the EBA Ethics Guidelines as well as the present Rules, and confirm their awareness of their obligations. They shall declare their financial interest and any other interest belonging to the categories defined in Article 1 with respect to all activities in which they are involved or have been involved during the five years preceding the submission of the ADoI and which fall within the EBA's remit.
- 4.2 Staff members shall indicate whether interests declared are current (when activities are currently ongoing); or they refer to a past period (when they are no longer ongoing but have been completed during the five years preceding the submission of the DoI).
- 4.3 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 (town and country) and nature (private or public).

- 4.4 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.
- 4.5 The Chairperson and the Executive Director shall undertake to act independently in the public interest in accordance with Articles 49 and 52 respectively of the EBA's Regulation and Article 11a of the Staff Regulations. For this purpose, their annual declaration shall be made available on the EBA's website.

Article 5 – Interests to be declared on an ad hoc basis

- 5.1 The individuals identified in Article 1.1 shall declare on the basis of the Specific declaration of interests (SDoI) any event of potential conflict of interest that may arise.
- 5.2 In the case of staff members, the present Article applies to potential conflict arising between the submission of ADoIs.
- 5.3 The specific rules on gainful employment of spouses/partners, gifts, hospitality and outside activities are specified in the EBA Ethics Guidelines, which provides for the specific declarations that staff members should submit in case of potential conflict of interests.

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

SECTION I – SCREENING PROCESS

Article 6 – Principles of Assessment of Interest

- 6.1 In addition to the general principles laid down in Article 2, interests should also be assessed by considering whether the specific interests declared by a person are compatible with the tasks to be assigned by the EBA to him or her, having regard to the mandate of the group where the person participates and/or the role and function that he or she is required to take on or perform.

Article 7 – Screening of Annual and Specific Declaration of Interest

- 7.1 Annual and Specific Declarations of Interest (“the declarations”) shall be submitted to the EBA's Ethics Officer (E.O.).
- 7.2 Upon receipt, the E.O. shall screen the declaration in order to assess potential CoI arising from any of the categories described in Article 1.3 and 1.4. The screening shall be performed according to the criteria specified under Article 8.
- 7.3 The E.O. shall inform the Executive Director on the outcome of the screening, including a proposal for a preventive measure in case of a potential conflict of interest. The decision on the outcome of the screening rests with the Executive Director, without prejudice to the procedure laid out in Articles 9 and 10.

Article 8 – Criteria for the screening of Declarations

- 8.1 Upon receipt of the declaration, the E.O. shall screen it in order to assess potential CoI arising in any of the categories described in Article 1.3 and 1.4. The screening shall be made according to the following criteria:

- a) Interests can only be assessed by considering whether the specific interests declared by a person are compatible with the tasks assigned or to be assigned by the EBA to him or her;
- b) In the case of a declaration made in the context of a meeting, having regard to the items on the agenda of that meeting of the group where the person participates and the role and function that he or she is required to take on or perform in that meeting;
- c) An activity described in Article 1.3. that is overlapping with the activities of the individual and that is ongoing at the moment of the screening shall be considered as a source of Col.

SECTION II - DECISION ON THE ASSESSMENT OF THE DECLARATION

Article 9 – Process for addressing declared Col of persons of the EBA’s Staff Members

- 9.1 At receipt of the E.O.’s screening report with, where relevant, a proposal for a preventive measure, the Executive Director shall take a decision within 30 working days after having heard the member of the staff concerned.
- 9.2 The Executive Director may decide to reassign the person in question or take any measure considered appropriate to ensure the potential conflict of interest in question does not occur, or to remedy a Col within 30 working days.
- 9.3 Any change regarding interests already declared shall result in a swift update of the ADol, which shall be submitted to the Ethics Officer without delay. The procedure laid down above applies to updated ADols.
- 9.4 The procedure laid down in this Article is without prejudice to disciplinary measures that may be taken by the Executive Director in accordance with the Conditions of Employment of other servants of the European Union.
- 9.5 EBA staff members can avail themselves of the procedure laid down in Article 90 of the Staff Regulations to appeal any measures adopted against him/her by the Executive Director.
- 9.6 Any preventive measure taken to address potential conflicts of interests shall be recorded by the E.O.

Article 10 – Process for addressing declared Col of the Chairperson and the Executive Director

- 10.1 The Chairperson and the Executive Director shall submit their ADols to the E.O., who shall forward them immediately to the Advisory Committee on Conflict of Interest (ACCI).
- 10.2 The ACCI consists of a nominated staff member of the EBA as Chair and two other members: a person appointed by the Management Board among its members and a Voting Member of the Board of Supervisors appointed by the Board of Supervisors.
- 10.3 The ACCI shall apply the principles laid down in Articles 6-8 of this Decision mutatis mutandis for the assessment of interests and screening of declarations of interest.
- 10.4 In case an actual or potential Col is identified, the ACCI shall provide initial advice, including any preventive measure, to the EBA’s Management Board, which shall be chaired by the Alternate Chairperson, for its approval.

10.5 Any preventive measure taken to address potential conflicts of interests shall be recorded by the Ethics Officer.

Article 11 – Process regarding omissions of declarations

11.1 In case the EBA is aware, or is made aware, of some information that is not consistent with, or that is missing from, the declaration of an individual and a preliminary assessment suggests that it concerns a declarable interest, the EBA's E.O. shall seek additional information from the individual with regard to the omission. At the same time, the individual shall be requested to update the missing details of the declarations.

11.2 Upon completion of the update, the declaration shall be processed and screened in accordance with the present Decision.

11.3 The Executive Director may take any appropriate preventive action regarding the individual's participation in the EBA's activities.

11.4 For the case of the Chairperson and the Executive Director, the E.O. shall immediately inform the ACCI, which shall process and screen the new or updated declaration in accordance with the present Decision.

Article 12 – Process regarding breaches of the EBA's rules on declarations of interest

12.1 In case the assessment of the DoI results in the identification of a breach of the EBA's rules on declarations of interest, the Executive Director shall submit the case to the ACCI for an initial advice for this review.

12.2 For the EBA's staff, decisions taken in consequences of a breach of trust may include disciplinary measures such as:

- warnings;
- reprimands;
- temporary reduction in salary;
- reassignment, temporary or permanent;
- dismissal;
- reduction in pension;
- demotion; and
- judicial prosecution.

12.3 If the EBA finds an individual to be in breach of the present rules, the Executive Director may ask the ACCI to perform a review of the draft instruments adopted by the groups to which that person contributed. Upon receipt of such a request, the ACCI shall clarify whether, and if appropriate the extent to which, that individual influenced the outputs adopted by the EBA. The ACCI shall report its findings to the Executive Director and to the Management Board. The Executive Director shall take all the appropriate measures to address these findings.

12.4 For the case of the Chairperson and the Executive Director, the disciplinary measures shall be advised by the ACCI and approved by the Management Board which, in such occasions, shall be chaired by the Alternate Chairperson.

Article 13 – Granting of Waivers

13.1 In the context of Articles 10, 11 and 13, when a potential CoI has been identified for an individual which would exclude him or her from performing a task and his or her expertise is considered essential for the completeness of certain outputs, the availability of alternative experts in the field shall be considered.

13.2 In exceptional cases, when the concerned individual's involvement in a particular task is considered essential and where no suitable alternative individual is found to carry out that particular task, the competent Head of the Department/Unit may request a waiver to the Executive Director.

13.3 The Executive Director shall inform the Management Board on the conclusion reached. This shall include all pertinent information on which the conclusion is based.

13.4 Waivers shall be recorded by the E.O.

13.5 Should a waiver be granted, the concerned individual shall be allowed to take part in the discussions, and in the drafting phase of the output, but not to be, or act as chairman, vice-chairman or rapporteur of the EBA's Working Groups.

Article 14 – Review of the Decisions of the Executive Director

14.1 In case a specific complaint is filed by the concerned individual, the Executive Director shall submit the file to the ACCI for advice.

14.2 On the basis of the advice provided by the ACCI, the Executive Director may review the decision in question taking all measures necessary to rectify the deficiencies identified therein.

14.3 Should the review by the Executive Director identify a conflict of interest regarding a decision that has already been adopted, Articles 8 to 11 shall apply by analogy.

TITLE III – PROCUREMENT PROCEDURES

Article 15 – Declaration by tenderers to the EBA's procurement procedures

15.1 The principles applying to the management of conflict of interest in the context of a procurement process are laid down in the European Commission's Vade-Mecum on Public Procurement.

15.2 Legal or natural persons applying to the EBA's public procurement procedures shall submit a true, accurate and up to date declaration of honour, using the template provided by the EBA and a self-statement of no conflict of interest that are submitted together with the offer.

15.3 Tenderers shall update their declarations without delay in case of any change.

15.4 To interpret the concepts and definitions contained in the template declaration, tenderers shall make reference to the definitions laid down in the Financial Regulations.

15.5 Contractors or their representatives shall submit, where relevant, the declaration concerning confidentiality (as per Article 3.1) to the procurement team.

Article 16 - Declaration by staff members and consultants in the context of procurement procedures of the EBA

16.1 The EBA's Authorising Officer shall request each staff member appointed as a Member of the Opening Board and/or Evaluation Committee to sign declaration of absence of conflict of interest and of confidentiality, using the appropriate template of procurement procedures.

Article 17 – Screening of the Declarations

17.1 The screening of the declarations submitted under 15.2. shall be performed by the EBA's Evaluation Committee designated for each procurement procedure.

17.2 Should a potential conflict of interest be identified, the Evaluation Committee shall request the tenderer to put in place within a set time period measures appropriate to prevent the occurrence of that conflict, such as the replacement of the individual(s) with the identified conflict.

17.3 The Evaluation Committee shall assess the measures taken by the tenderer and the above sequence shall be repeated until no potential conflict of interest is identified, or until the tenderer is excluded from the procedure for his or her inability to adopt the appropriate measures. In that case, the tenderer shall be excluded and his or her offer shall not be retained for contract award.

17.4 The screening of the declarations submitted under 16.1. shall be performed by the EBA's Authorising Officer.

17.5 Should a potential conflict of interest be identified, the Authorising Officer shall replace the staff member in the Opening Board and /or Evaluation Committee.

TITLE IV - COMMON PROVISIONS

Article 18 - Publication and Protection of Personal Data

18.1 Without prejudice to Regulation 1093/2010, the EBA shall process all Declarations of Interest pursuant to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

18.2 The purpose of the data processing is to safeguard the independence of the EBA and its constituent bodies.

18.3 The legal basis for Declaration of Interests processing is provided in:

- a) As concerns Annual Declarations of Interest of the EBA staff, Article 11 and 11(a) of the Staff Regulations;
- b) Article 94 of the Financial Regulation applicable to the General Budget of the European Communities as well as Article 133a of Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the Financial Regulation.

18.4 The EBA's Executive Director is the controller of handling the declarations of interest.

18.5 The nature of interests to declare, the obligation to do so, as well as possible consequences of not declaring and the publication of declarations are explained in the present decision, available on the EBA's website.

18.6 The recipients of the Declarations of Interest are the persons and bodies identified in the present document. Furthermore, Declarations of Interest 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.

18.7 The conservation period of Declarations of Interest per category of data subjects shall be:

- a) For the Chairperson and Executive Director, 5 years after the discharge for the budgetary year in which the Chairperson and Executive Director terminate their mandate at the EBA;
- b) For the EBA staff, 5 years after the discharge for the last budgetary year in which they worked for the EBA;
- c) For Dols submitted in the context of procurement, 5 years after the discharge for the budgetary year in which the contract was terminated.

18.8 Data subjects with active EBA involvements have a right to access their Declaration of Interest and to update or correct it at any time. In case the EBA has knowledge of information that is not consistent with the declared interest, or in case of failure to submit a Declaration of Interest, the data subject concerned will be contacted with the purpose to update the Declaration on the missing information. In case an internal procedure is opened as referred to in Article 13 of this decision, the data subject will be notified.

18.9 Data subjects also are entitled to have recourse at any time to the European Data Protection Supervisor (<http://www.edps.europa.eu>)

Article 19 - Entry into force and transitional measures

19.1 The present decision shall enter into force with a four months transition period from the date of its approval.

Done at London, [date]

Adam Farkas

Executive Director

Annex I - CONFIDENTIALITY UNDERTAKING

to be signed by Individual(s)

I, (Title) (Name) (Surname).....
 (Organisation/Company)
 (Country)

In view of the following definitions:

“The EBA Activities” encompass (but are not restricted to) activities related to my role and responsibilities at the European Banking Authority (further referred to as the “EBA”), any meeting (including meeting preparation and follow-up), associated discussion or any other related activity of the EBA’s Boards, Working Groups, Standing Committees, colleges, or any other meeting related to the EBA.

“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 EBA activities.

“Confidential Documents”, for the purposes of this decision, mean all drafts, preparatory information, documents and any other material, together with any information contained therein, to which I have access, either directly or indirectly, as a result of my participation in the EBA’s Activities. Furthermore, any records or notes made by me relating to Confidential Information or Confidential Documents shall be treated as Confidential Documents.

I acknowledge that I may, in the course of the work that the EBA has asked me to carry out, obtain information (whether or not in documentary form) relating to the EBA and its internal affairs, and information about third parties. I also understand that I may be invited to participate either directly or indirectly in certain EBA activities and hereby undertake:

1. to treat all Confidential Information and Confidential Documents under conditions of strict confidentiality.
2. not to disclose (or authorise any other person to disclose) in any way to any third party any Confidential Information and Confidential Documents without the EBA’s prior written consent.
3. not to use (or authorise any other person to use) any Confidential Information and Confidential Documents other than for the purposes of my work in connection with the EBA’s activities.
4. to dispose of Confidential Information and Confidential Documents as soon as I have no further use for them.

Upon termination of my temporary placement with the EBA, all confidential information held should be collected and returned to the EBA. This includes electronic and print versions.

I also understand that I am subject to the EBA Management Board Decision on Professional Secrecy and Confidentiality (EBA DC 004), Article 70 of Regulation (EU) No 1093/2010, and Article 339 TFEU.

This undertaking shall not be limited in time, but shall not apply to any document or 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.



I acknowledge that, where disclosure of the information I obtain is controlled by statutory provision, I may be prosecuted for wrongful disclosure.

I HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO ITS TERMS.

I acknowledge having received a fully executed copy of this agreement and of the EBA's Rules on Professional Secrecy and Confidentiality (EBA DC 004), Article 70 of Regulation (EU) No 1093/2010, and Article 339 TFEU.

Signature	Date/ Place
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Please provide this form to Human Resources.