

APEL's position statement - Consultation LEX 4.1.1

EPFL, July 19, 2021,

Dear Colleagues,

An email was sent to all professors and MER. We received three comments, pasted below.

This modification of LEX 4.1.1 raises questions that must be clarified.

- The community service work (from reviewing papers to sitting in committees) is an integral part of our work and is not properly considered in the LEX.
- Activities that can harm the reputation of EPFL must be carefully defined. For instance, if a computer scientist criticizes the SwissCovid app, or if a biologist criticizes RNA based vaccines, or if APEL criticizes the Direction, are these conflicts of interest?
- The wording in (at least in the english translation of) the LEX is sometimes poorly chosen. For example:
 - the word “loyalty” is a poor choice. EPFL professors and staff have a duty to be responsible, professional, and objective, but do not have a duty to be loyal.
 - “However, conflicts of interest can be perceived or can arise from these interactions.” The word “perceived” makes this directive very vague, since different people perceive things differently. This directive should clearly define what constitutes a conflict of interest and what doesn't. If something does not constitute a conflict of interest, then it doesn't matter if somebody perceives it as such. This same issue is with “or may appear biased“ in article 1b.
 - reference to “EPFLs interests” are very vague. Who determines EPFLs interests? How can an employee know what EPFLs interests are in a given situation?
- Article 20.”² The professor or employee is notified by the mediator that the dossier is being submitted to the President or respectively the Director of Legal Affairs for settlement.” If such a dossier is being submitted, all parties must receive a copy, and must be given the opportunity to comment on any mistakes/misinterpretations that they believe exist in the document.
- The new directive removes the previously existing rights of employees to use the personal computer placed at their disposal, the telephone, as well as secretarial support up to one day per month. Removing these rights are extremely impractical, and will, in essence, require a contract between EPFL and all third parties if an employee has any outside activity that requires email or a personal computer. Employees would no longer be allowed to receive emails pertaining to their external activities on their EPFL email account (which is problematic for editorial or conference organization duties), be allowed to check their non EPFL-emails for outside activities, or be allowed to take video calls on the personal computer at their disposal from people that they work with as part of their outside activities. This would clearly create an environment strongly discouraging outside activities, which is not in the best interest of the employee or EPFL. We therefore strongly request that the existing rights of using these minimal resources be maintained.

Best regards on behalf of APEL, the committee,

Ardemis Boghossian, Georg Fantner, Andras Kis, Daniel Kressner, Marco Picasso

I think this very detailed rewording of this LEX fails to give a proper framework to address all our "community service" work (from reviewing to being in committees and writing reference letters).

This is (or at least should be!) an integral part of our work, and not something that should enter into the 1 day a week of "other activities". The wording of the current document is extremely unclear and can easily be read as in "all of these activities are something you do on the side of your duties as an EPFL prof, just as being a member of the board of a company".

Furthermore, there is a major translation error between French and English in the part that discusses the use of EPFL websites - this is not the first time it happens and it makes the whole operation look amateurish.

Article 1:

"toute situation dans laquelle une action ou une prise de position du professeur ou du collaborateur dans son activité extérieure pourrait constituer un risque réputationnel pour l'EPFL"

Je trouve que la notion de "risque réputationnel" ouvre la voie à une forme de dictature et entrave les libertés individuelles. Liberté académique. Liberté d'opinion politique. Liberté de religion. Etc. Cette phrase de l'article 1 signifie qu'il faut que le professeur entre dans le moule de ce que l'EPFL a défini comme étant la manière correcte de prendre position.

Un exemple concret: si je dis à un journaliste que SwissCovid a de nombreuses failles de sécurité et ne protège pas la vie privée (ce que je fais à présent en toute liberté), cela nuit à la réputation de l'EPFL. C'est pourtant la vérité. Ce n'est pas un conflit d'intérêt. C'est un cas de conscience.

Je trouve aussi que l'article 5 va trop loin. Un professeur n'a pas à se récuser quand cela ne plaît pas à l'EPFL. Il doit tout au plus annoncer son possible conflit d'intérêt.

Idem pour l'article 7 lettre d.

De manière générale, cette révision est fortement biaisée pour l'EPFL. Elle définit le conflit d'intérêt comme étant ce qui nuit à l'EPFL et suppose que tout ce que fait l'EPFL est exempt de conflit d'intérêt. C'est une farce. Il n'y a pas de justice dans cette vision du conflit d'intérêt. Il faudrait ajouter ce qui se passe lorsque des membres de la direction prennent position de manière injuste mais pour ce qu'ils considèrent comme le bien de l'EPFL.

Il ne faut pas mélanger le conflit d'intérêt et la divergence d'opinion.

Article 1:

The directive defines conflict of interest as "all situations that, due to an external activity, can harm the interests of EPFL", defining "external" activity as "all activities exercised by a professor or employee outside of their working relationship with EPFL." The directive further specifies that conflicts of interests may arise from "activities relating to mandates performed on behalf of EPFL or mandates that EPFL must allocate on short notice." If an employee receives a mandate from EPFL to perform an activity, and even more so to do so on behalf of EPFL, then this is not an external activity, but rather one within the framework of their existing relationship and one that, by virtue of the mandate itself, is in the interest of EPFL. Therefore I do not think it is appropriate to include these examples in a directive that is specific to activities that are supposed to be "external" to EPFL, as these activities are being executed in the framework of the employee's existing employment with EPFL and should be governed within the framework of the appropriate regulations on employment obligations.

This is also supported by Article 8 which governs the declarations of "all" external activities and further specifies that "activities exercised on behalf of EPFL are not subject to this mandatory declaration."

Article 2:

The directive states that "The present directive applies to all staff, regardless of their status, having a work relationship with EPFL or with the ETH Board and occupying a post at EPFL" and it also states that "The present directive is not applicable to members of the EPFL Direction, whose external activities are governed by Article 7a of the Ordonnance sur le domaine des EPF." The EPFL Direction consists of staff that have a working relationship with EPFL. The directive should clarify this apparent contradiction.

Article 5:

The directive states that "Employees exercising an external activity must ensure that, in this context, no influence is exerted in favour of, or to the detriment of, the interests of EPFL." Nearly every external activity can be perceived as having an influence that is either in favour or to the detriment of the interests of EPFL. Even something as standard as being an editor of a prestigious journal would, for example, have a positive influence in favor of EPFL simply through affiliation of the journal with a researcher, who is presumably considered accomplished in their field and who is employed by EPFL. Therefore, as written, this statement would seemingly block nearly all activities. It needs to be specific with regard to the extent and context of the influence.

Furthermore, since conflict of interest is only defined in the Directive as "all situations that, due to an external activity, can harm the interests of EPFL", it seems unclear how, in this framework, having an influence that is in favor of the interests of EPFL is considered a conflict of interest within EPFL. If the concern is more so that the employee will somehow unjustly favor EPFL when they are performing their external activity, then this aspect seems more appropriately governed by the contract between the external body and the employee,

rather than "conflict of interest" within EPFL, which is only defined in the framework of activities that are detrimental to EPFL.

Article 6:

The directive states, "In particular, for all consulting or experts' mandates, or for similar contracts, the professor or employee shall obtain written confirmation for EPFL from their mandator or co-contractor concerning intellectual property belonging to EPFL and the fact that the mandate does not involve EPFL." If the employee is mandated by EPFL, and especially if this mandate is given in the framework of the employee in fulfilling their obligations for employment, then this activity does, in fact, involve EPFL (see also point above for Article 1). Otherwise, this article makes the employee perform under their own name an activity that was forced on them and specifically mandated by EPFL within the framework of their employment and work obligations.

In addition, the new rules now specify that the EPFL mandate must now be written. This rule is now being proposed in the current directive, which governs all staff except those of the EPFL Direction.

(i) If it is the case that staff other than the EPFL Direction can issue EPFL mandates to other staff members, then this directive must clarify under which circumstances this holds (can all professors give mandates? What about students, admin, and other researchers? For example, what about the case where a professor mandates a student to ask for a price quotation for a specific chemical? Is a mandate from one professor to another also considered an EPFL mandate?)

(ii) If it is the case that mandates can only be issued by the EPFL Direction, then this rule would be more appropriately included as Article 7a of the Ordonnance sur le domaine des EPF to specify that their mandates must now be written. Including this rule in the current directive in this case does not make any sense, since it is the responsibility of the mandator to follow the regulations in how they issue their mandates, especially in this case, where the mandator would be a member of the Direction, which includes legal counselors that have vastly more extensive knowledge of the school's legal framework, as opposed to students, new professors, tenure-track professors, foreign employees, and the other more vulnerable employees of our institution. As written, this directive now exposes these vulnerable employees to circumstances where they would receive mandates orally from the legal counselors of the school, either through phone or in an official meeting, act in good faith on executing these mandates as instructed, and then be held themselves responsible for following a mandate that was inappropriately issued by the Direction and at the fault of the Direction.

Article 8

Article 7 specifies that the employee must receive authorization to conduct an external activity. What does this authorization entail? If they receive authorization, then does that mean that the activity fulfills the conditions of Article 5 and Article 6 are fulfilled? Who is responsible if that is not the case? The authorizer or the professors (or both)?

Article 13

"Research work undertaken within EPFL shall not be used or divulged within the context of an external activity."

This rule, as written without any exceptions, does not make sense in the event of a start-ups where researchers can obtain NDA and patenting agreements for developing their technologies into commercial products. As written, this rule would eliminate the possibility of licensing patents and issuing start-ups based on EPFL technology, aspects that are crucial for the institution's success.

In addition to the points above, I would like to express two general concerns:

1. A lot of EPFL reputational success has been built on the successes of their talented employees, specifically professors that hold prestigious positions outside the institution and roles of important significance in the scientific community. I am concerned that the added restrictions, namely in terms of seeking authorization for every requested activity, would discourage employees from engaging the outside domain and limit EPFL's success in establishing its reputation as a world leader with renowned scientists.
2. The directive is riddled with various ill-defined circumstances and terms that give rise to numerous ambiguities that remain open to interpretation. For example, it makes reference to protecting "EPFL's reputation" and "EPFL's interests", but both aspects are subjective and open to interpretation. For example, if a student plagiarizes a manuscript (as defined by LEX 1.3.3), publishing it with the EPFL affiliation, the obvious argument is that retracting the manuscript would be in EPFL best interest. On the other hand, the student can argue that retracting the manuscript is not in the best interest, since the retraction will be done in affiliation with EPFL's name. Based on the subjective interpretations in the current direction, both taking action and not taking action puts the employees at risk for attack based on interpretation, even though only one of these options (retraction) is in agreement with the school's LEX policy. Who or what determines what is in the best interest of EPFL? Is it determined by the written directives? Is it determined by the subjective interpretations of certain members of the Direction? If it is the latter, not only does this raise concerns about conflict of interests of interest of the own Direction in their interpretations, but it also raises the issue of having to communicate with everyone every possible circumstance and position of the school on every matter before the matter evolves, which is impractical