

00048414 - APEEE / BOARD

## MEMORANDUM OF LEGAL ADVICE

**To** APEEE Giles Houghton-Clarke  
**From** Joan DUBAERE and Stijn CLAEYS  
**Date** 11/01/2021  
**Subject** GDPR compliance

### Executive summary:

APEEE is a data controller and processor of personal data as per the GDPR. It thus has an obligation to implement appropriate technical and organizational measures to ensure and to be able to demonstrate that processing is performed in accordance with this Regulation. The confidentiality agreements signed by the board members and the policy to process such data only on trusted IT environments is given the way the APEEE is organized, and given the information that is shared within the APEEE necessary to ensure GDPR compliance and is common best practice within similar organizations.

Failure to manage GDPR compliance could give rise to huge penalties and liabilities not only for the APEEE, but also for each individual board member involved.

## I. INTRODUCTION

We refer to the questions you have submitted to us on December 22th 2020 regarding the request of some members to organise an extraordinary general meeting on the decision of the board to request all board members to sign a confidentiality agreement.

In this memo we can confirm the necessity and legality of this confidentiality agreement.

## II. LEGAL FRAMEWORK

The board of the APEEE treats personal data of students and other confidential information, which it shares with the board members. Personal data includes “*any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person*”.

When treating such personal data (e.g. by sharing it with the individual members), the APEEE, as Data Controller must implement appropriate technical and organisational measures to ensure and to be able to demonstrate that processing is performed in

accordance with the GDPR. It is for the board to decide on how compliance with the GDPR is organized but this should include that all persons that have access to personal data must commit to comply with the requirements of the GDPR and therefor respect the measures put in place by the APEEE. The APEEE also has an obligation under the GDPR to ensure that any person that has access via the APEEE to personal data is sufficiently made aware of the requirements under the GDPR and the safety measures to which it must comply. The APEEE has a responsibility for its employees, staff and members and has an obligation to create sufficient GDPR awareness amongst its employees, staff and members.

The board has decided to do so by imposing a confidentiality agreement on its members, ensuring that Personal Data of the APEEE or transferred to the APEEE is only processed in the safe IT environment provided by APEEE (Woluweboard email addresses and related IT environment including shared protected work spaces as authorized by APEEE) or on any other system for which the individual board member must then guarantee and be sole responsible for the safety and protection of the personal data.

This is a valid way of ensuring compliance with the GDPR. Any breach by the APEEE or one of its board members can give rise to severe penalties and civil liabilities. It is therefore good practice to impose strict confidentiality undertakings and clearly set out the rules on how Personal Data must be treated. The content of this agreement is standard and not different then similar confidentiality undertakings imposed by similar organizations.

Without such confidentiality undertaking, the APEEE and its board cannot share Personal Data without jeopardizing the technical and organisational measures put in place to safeguard the integrity of the Personal Data.

### III. CONCLUSION

The APEEE board decision to request all board members to sign a confidentiality undertaking is given the way the APEEE is organized, and given the information that is shared within the APEEE necessary to ensure GDPR compliance and is common best practice within similar organization.