

## Review of the policy for managing potential conflicts of interest

33<sup>rd</sup> Meeting of the Management Board 19-20 March 2014

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|---------------|----------------|
| <b>Item</b>   | 10             |
| <b>Action</b> | For adoption   |
| <b>Status</b> | Final - public |

### Action requested

The Management Board is invited to adopt the attached Procedure for Prevention and Management of potential Conflicts of Interest, as well as the Declaration of Interest template<sup>1</sup>.

At the same time the Management Board is invited to:

- Replace Annex 1 of the Rules of Procedure of the Management Board with the revised Declaration of Interest template;
- Approve that the Annex to the relevant Rules of Procedure of the other ECHA bodies can be aligned with the revised Declaration of Interest template.

### Background

The ECHA Conflict of Interest Policy was adopted in September 2011 by the Management Board. Now, two and a half years later, the documents warrants a review based on the experience gained over the years and the novelties brought by the adoption of several important implementing rules (e.g. eligibility criteria, codes of conducts, work instructions, several guidance documents, etc.). ECHA also needs to make sure that all recommendations put forward by the European Court of Auditors (in their [special report](#) of September 2012) are carefully implemented, as well as those of the external audit firm Moore Stephens (report of December 2013, as presented to the MB Audit WG). A final reason to start the review process at this point in time is that the Commission has adopted in December 2013 [Guidelines for decentralised agencies on the prevention and management of conflicts of interest](#). With these guidelines the Commission has adopted a baseline that all agencies should meet when formulating their conflict of interest policies. It should be noted that ECHA exceeds this baseline to some extent in certain areas as the risk level of the Agency is rather high (e.g. the scope of the Procedure covers the whole Agency and its activities and does not exclude stakeholders nor members of ECHA bodies that merely represent Member State views).

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<sup>1</sup> replacing MB/45/2011 final

## Matters for consideration

All in all, the ECHA Conflict of Interest Policy as adopted in 2011 is still relatively accurate also today. Therefore, a drastic overhaul of the current system is not proposed, but rather a brush-up and update of the exiting procedures where needed.

An overview of the main changes and novelties:

- The document will be adopted by the Management Board as before, but will also be turned into a public Procedure (PRO) to fit it into the Agency's IQMS<sup>2</sup>;
- The structure of the document is reshuffled slightly. Now there are two main chapters:
  - Prevention of CoI
    - Before working for ECHA
    - During work for ECHA
    - After working for ECHA
  - Handling potential CoI when they do appear
    - Case-related mitigating measures
    - Dealing with persistent CoI and breach of trust
- Several inclarities and redundancies are removed and references to new documents and new bodies (e.g. the BPC<sup>3</sup>) are inserted;
- The new name of the Ethical Committee (i.e. Conflicts of Interest Advisory Committee) is introduced;
- Clarifications with regard to the Board of Appeal are added;
- Sample checks of DoIs of the members of ECHA bodies are introduced to detect inaccurate and incomplete DoIs (required by the COM guidelines);
- Past interests of close family members are no longer considered relevant for interest management;
- A list of possible mitigating measures available to chairs of MB, Committees and Forum (as already available to the Committees via ED/53/2013, which can then be repealed), now inserted into the Procedure (both the European Court of Auditors and external audit firm recommended to better define the mitigating measures);
- More extensive section on possible mitigating measures for CoI of a general nature (persistent CoI) and breach of trust (both the European Court of Auditors and external audit firm recommended to better define the mitigating measures and to improve the breach of trust procedures);
- Introduction of a (simple) review procedure for breach of trust decisions and ex-post review of Agency decisions affected by CoI (both procedures are a requirement stemming from the COM guidelines);

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<sup>2</sup> Integrated Quality Management System

<sup>3</sup> Biocidal Product Committee

- Reporting obligation introduced (as required by the European Parliament in the context of the discharge and also foreseen in the COM guidelines);
- The template for the annual declaration of interest is brushed up in line with the other changes above.

With these changes the new Procedure now covers all basic aspects of prevention and management of conflicts of interest at the Agency and can be seen as the single reference document for our stakeholders ("Everything you need to know about CoI management at ECHA").

**Attachments:**

- Annex I: Procedure for Prevention and Management of potential Conflicts of Interest (including the Declaration of Interest template);
- Annex II: Same document with track changes (as compared to MB/45/2011 final, Policy for Managing potential Conflicts of Interest).

## **DECISION OF THE MANAGEMENT BOARD ON THE PREVENTION AND MANAGEMENT OF POTENTIAL CONFLICTS OF INTEREST**

### **1. Purpose**

The management of (potential) conflict of interest situations is a key element of governance and management of every EU institution, body or agency and crucial for maintaining the trust of stakeholders and citizens in its integrity. Effective management of conflicts of interest and assuring legality and regularity of its processes is thus a crucial requirement if ECHA wants to play a pivotal role in ensuring that chemicals legislation and the decision-making processes and scientific basis underlying it have credibility with all stakeholders and the public. For this reason it is vital to ensure ECHA's independence and transparency.<sup>1</sup>

In order to achieve this, ECHA has to strike a delicate balance between getting the right expertise to guarantee high quality science-based decision making and at the same time strictly avoiding conflicting interests influencing or seen as influencing the decision-making process. Important tools to achieve this balance are awareness raising, methods for detecting risks to the Agency's integrity, the establishment of clear boundaries for (un)acceptable interests and the appropriate management of conflict of interest situations, including underlying clear procedures. In this, it is not so much a matter of eliminating any possibility of conflict of interest, but of detecting them at an early stage, recording them and handling them appropriately.

### **2. Scope**

This Procedure document applies to the entire ECHA organisation and all of its activities, whether administrative or scientific in nature. The scope thus includes all members, their advisers and invited experts of the ECHA bodies and networks, including the Board of Appeal, the observers participating to their meetings, the statutory staff of the ECHA Secretariat and any contractors working for the Agency.

### **3. Description**

#### **3.1. General principles**

##### **3.1.1. Independence and impartiality**

Independence from all external interests is one of the core values of the Agency. In all of its processes ECHA shall ensure that it is independent from all external interests and that impartial and science-based decisions are taken. To achieve this, detailed guarantees and checks need to be implemented in the processes of the Agency.

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<sup>1</sup> See also recital 95 of Regulation (EC) No 1907/2006 (the "REACH Regulation").

### **3.1.2. Transparency**

Transparency is another core value of ECHA and is strongly embedded in its founding Regulation<sup>2</sup>. Decisions and opinions are formed as openly as possible. For this reason, declarations of interest of the main actors behind ECHA's decision- and opinion-making are made available to the general public.

### **3.1.3. Confidentiality**

Article 105 of the REACH Regulation imposes on the members of the Management Board, the Committees and the Forum as well as on all staff members of the Agency the duty not to disclose information of the kind covered by the duty of professional secrecy, and this even after their duties have ceased. This confidentiality duty is also included in the respective Rules of Procedure of the ECHA bodies and a written declaration of confidentiality is required (the same applies to the advisors, invited experts and observers)<sup>3</sup>. For the ECHA Secretariat staff also Articles 17 and 19 of the Staff Regulations impose a duty of strict confidentiality. The confidentiality duty shall furthermore also imply that the individuals working for the Agency shall not seek to gain any improper advantages from the information to which they have access and that is covered by the duty of professional secrecy. The management of conflicts of interest is also an element for preventing information leaks.

### **3.1.4. Awareness**

As the Agency's role is to promote the public interest in an independent and transparent manner with respect for confidentiality rules, it is crucial that the individuals working with the Agency understand that the exercise of public authority comes with certain duties. The Agency shall support these individuals in fulfilling their duties, raise awareness, organise training and set up further implementing procedures for identifying and handling conflict of interest situations.

## **3.2. Preventing conflicts of interest**

The first responsibility with regard to preventing conflicts of interest and with respect to confidentiality rules shall lie with the public officials and other individuals working for the Agency. To this effect, they must submit and keep up-to-date declarations of interest compliant with the template in annex 1.

### **3.2.1 Before working for the Agency**

For the positions for which the ECHA Management Board is the Appointing Authority, it has adopted eligibility criteria (MB/45/2013 final) with which candidates for the position of Executive Director, Accounting Officer, member of the Board of Appeal or member in the Committee for Risk Assessment and the Committee for Socio-economic Analysis have to comply to be considered for appointment.

To this end, such candidates are invited to fill in a declaration of interest already after inclusion on the list of candidates proposed by the Commission or after their nomination by their respective Member State, but before their appointment by the Management Board.

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<sup>2</sup> See for instance recital 95 and Articles 77(2) (e) to (n), 106 to 109 and 117 to 119 of the REACH Regulation.

<sup>3</sup> See Article 10 of the respective Rules of Procedure of the Committees and of the Forum and Article 13 of the Rules of Procedure of the Management Board.

For the positions for which the ECHA Management Board is not the Appointing Authority (membership in the Management Board, the Member State Committee, the Biocidal Products Committee and the Forum), the Management Board has adopted eligibility guidelines (MB/45/2013 final) to which the relevant Appointing Authorities are invited to adhere, with the exception of the Commission when appointing the three Management Board members to represent interested parties.

In line with Article 11 of the Staff Regulations, before recruitment, all candidates for a position in the Agency as statutory staff member are requested to make a written declaration of interest in order for the Appointing Authority to be able to assess any potential conflicts of interest in relation to the specific position that may be offered and to take appropriate mitigating measures if necessary.

### **3.2.2 While working for the Agency**

#### ECHA bodies and ECHA Secretariat

##### *Annual declarations*

According to Article 88(2) of the REACH Regulation, all members of the Management Board and of the Committees and the Forum shall, when taking up their duties, make a written declaration of interest which could be considered to be prejudicial to their independence. Also all members of the Board of Appeal are required to make an annual declaration of interest in writing.

The initial declarations are renewed annually. The secretariat of the respective ECHA body is in contact with members in order to ensure that regular updates are provided. If at any point in time changes occur to the situation of the member's interests, he/she makes an updated declaration without delay.

The respective secretariat of the ECHA body shall enter the declarations of interest in a register, which is also published on the ECHA website. Subsequently, the respective secretariat and chair shall monitor the declarations regularly to identify potential risks and handle situations of potential conflicting interests in compliance with the present procedure (see further under chapter 3.3.) and specific implementing rules. The respective secretariat shall also undertake sample checks to guarantee the accuracy and completeness of the declarations submitted by the members of the ECHA bodies.

Upon entry into the service at the Agency, the duty to declare all interests annually which is imposed on the Executive Director by the REACH Regulation is extended to all staff of the Agency. Besides filling in an initial declaration at the start of their employment, all staff members shall thus provide an annual update of this declaration. For the management staff (Executive Director, Directors and Heads of Unit) and the chairpersons of the ECHA Committees, these declarations shall be published on the ECHA website.

If at any point in time changes occur to the situation of the staff member's interests, the person involved must update his/her declaration without delay.

##### *Specific declarations*

At each meeting the Management Board members and the members of the Committees and the Forum (and their advisors), observers and any experts participating in the meeting are explicitly asked by the chair to declare any interests which could be considered to be prejudicial to their independence with respect to any of the points on the agenda. Such

conflicting interests are recorded in the minutes together with the specific mitigating measures imposed (see also chapter 3.3).

When a Committee member is appointed as Rapporteur or Co-Rapporteur, he or she needs to make for each case a written declaration of absence of conflict of interest in line with Article 87(1) of the REACH Regulation. A member of a Committee is not appointed rapporteur for a particular case if he/she indicates any interest that might be prejudicial to the independent consideration of that case.

The members of the Board of Appeal are required to make an ad-hoc declaration for each specific case before the allocation of that case to them.

If at any point in time the staff member's independence to work on a specific dossier is at risk, the person involved must declare the specific interest in the dossier at hand to the process owner of the process in which he/she operates.

#### Networks and expert groups

Several networks and expert groups support the Agency in its work. As these networks and expert groups have a balanced composition, and as they are only advisory bodies, the risk of conflicting interests affecting the formal work of ECHA is minimal. However, it shall be a standard practice that the person chairing these meetings requests, when relevant, that any conflicting interests are declared at the start of each meeting and documented in the minutes. Where necessary, ECHA may also impose other preventive measures, including e.g. annual declarations of interest.

#### Observers

As set out above, ECHA welcomes the attendance of observers of the stakeholder organisations at the meetings of the Committees, the Forum and informal ECHA networks selected by the respective body or network. These stakeholder observers have to comply with the Code of conduct for observers<sup>4</sup> and need to declare any interest in the cases dealt with by the respective Committee or network at the start of the meeting.

Furthermore, the Rules of Procedure of an ECHA body may foresee the possibility to invite case owners or applicants to participate in a meeting or part of it as observers. As these case owner/applicant observers clearly are attending the meeting to defend the interests of their organisation in a particular dossier, it is unnecessary that they make a declaration of interest. Strict compliance with the applicable Code of conduct shall be enforced<sup>5</sup>.

#### Contractors

Whenever the Agency is contracting external service providers to support it in its tasks, it shall ensure that these contractors are bound by confidentiality duties and that potential conflicts of interest are avoided. Both a confidentiality clause and a conflict of interest clause are included in all such contracts that ECHA concludes. Based on those contractual provisions, the Agency may require external consultants (regardless of him/her working intra-muros or not) or interim

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<sup>4</sup> Code of conduct for observers at ECHA meetings (ED/62/2008).

<sup>5</sup> See ECHA Code of conduct for case owners of evaluation draft decisions as observers at meetings of the Member State Committee (ED/89/2013) and ECHA Code of conduct for applicants participating in the Biocidal Products Committee and its Working Groups (ED/104/2013).

staff to make a specific declaration of interest with regard to the work performed for ECHA, in case their participation has a qualitative impact on the decision-making at the Agency.

### **3.2.3 After work for the Agency has ended**

Members of the ECHA bodies, staff members of the Agency, members of networks or expert groups, observers and third parties working with the Agency shall be required, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy<sup>6</sup>.

When a staff member leaves the service at ECHA, he/she shall continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. They shall be reminded of their duties under the Staff Regulations and shall duly sign a document regarding integrity, discretion and confidentiality.

Furthermore, when leaving the Agency service, former ECHA staff have to notify the Agency for a period of two years any new occupational activity they intend to engage in. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict with the legitimate interests of the Agency, the Appointing Authority can, if needed, either forbid the former staff member from undertaking it or give its approval subject to any conditions it thinks fit (Article 16 Staff Regulations).

## **3.3. Identifying and Handling potential conflicts of interest**

### **3.3.1. General assessment criteria**

The interests to be assessed shall include all private interests in the field of activity of the Agency, and more in particular employment, consultancy, legal representation or advice; membership of a governing body or scientific advisory body; other memberships and affiliations; research funding; investments; intellectual property; public statements and positions and any other interests that may interfere (or may be seen as interfering) with the work of the Agency (see annex 1, declaration of interest template).

When assessing whether certain of the above interests held by an individual working for the Agency are to be considered as constituting an actual or perceived conflict of interest, the following minimum criteria shall be taken into account:

- Not only personal interests, but also all relevant interests held by close family members (i.e. members of the same household: spouse, partner and dependent children) need to be considered;
- Not only current interests, but also those that existed during the last 5 years preceding the assessment shall be considered (with an exception for investments, intellectual property and interests held by close family members for which only current interests are of relevance);
- All financial investments in a commercial entity that amount to a value above 10,000 EUR per company or shares, stocks or comparable amounting to a voting right of 5% or more in a company (notwithstanding their financial value) are to be considered;

Besides these minimum criteria, the assessor (chair of ECHA body, line manager/process owner for ECHA staff) shall take into account the other elements of the case, including the importance of the interest declared, the role of the individual holding the interest, specific

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<sup>6</sup> See e.g. Article 105 of the REACH Regulation and Article 12 of ED/62/2008.

mitigating measures and controls imposed, the importance and impact of the decision or opinion to be drafted, the availability of alternates or other experts, etc.

### **3.3.2. Mitigating measures for case-specific conflicts of interest**

#### *Management Board, Committees and Forum*

Members who have not submitted the annual declaration of interest shall not take part in meetings of the ECHA body and its working groups or decisions by written procedure.

The annual declaration of interest of the Executive Director is reviewed by the Chair of the Management Board.

It shall be the task of the respective secretariat to regularly monitor the annual declarations made by the members and to bring any potential conflict of interest to the attention of the respective chair. The Executive Director shall also be informed of any such cases. On the basis of the type and nature of the potential conflict identified, the chairperson shall decide on the appropriate level of participation in the work of the ECHA body.

Furthermore, the chair will ask members and their advisors as well as invited experts and observers to declare any interests at the beginning of each meeting and any declared interests will be recorded in the minutes. On the basis of the type and nature of the potential conflict identified, the chairperson shall decide on the appropriate level of participation. This applies accordingly for the cases of written procedures in ECHA bodies. As a minimum, such person shall not participate in any voting on the relevant agenda point (see Article 88(3) of REACH). Such person shall also not transfer his/her voting right by proxy to another member, which does not preclude the replacement by an alternate. The member concerned shall also not be appointed as (co-)rapporteur for a particular case if he indicates any conflicting interests (see Article 87(1) of REACH).

Additionally, where further steps are deemed necessary, the chair shall at least have at his/her disposal any of the following instruments to mitigate the issue:

- The member concerned can participate to the discussions but shall not participate to the final deliberations on the relevant agenda point;
- The member concerned shall not participate to the discussions or final deliberations on the relevant agenda point;
- The member concerned is to leave the room for the duration of the relevant agenda point;
- The member concerned shall participate only as an expert witness in order to testify and give specialist advice on a specific issue by providing information and replying to any questions;
- In the case that an alternate can be appointed in the pertinent ECHA body, the member concerned may be replaced by his/her alternate for the relevant agenda point;
- Where the Chair is concerned, he/she is to be replaced for the relevant agenda point.

#### *Board of Appeal*

The annual declarations of the Board of Appeal members are monitored by its Chair. The Chairman's declarations are monitored by the longest serving member of the Board of Appeal. Specific, case-related declarations by a member of the Board of Appeal are assessed by the other Board of Appeal members, who shall decide as to the action to be taken.

If a member of the Board of Appeal considers that because of a conflict of interests he must not take part in the specific legal proceedings, he shall inform the Board of Appeal accordingly. The Chairman may replace that member by an alternate.

Likewise, members of the Board of Appeal may be objected to by any party to the appeal proceedings on the grounds of possible conflicts of interest. In this situation, the Board of Appeal shall decide as to the action to be taken without the participation of the member concerned. For the purpose of taking this decision, the member concerned shall be replaced by an alternate.<sup>7</sup>

#### *ECHA Secretariat*

The process owners shall, based on a risk assessment, define the processes in the Agency that require interest management. In such processes, conflict of interest checks shall be performed each time a staff member is assigned to a role in the process. Such interest checks are performed on the basis of the annual and specific declarations made by the staff members concerned and documented by the process owner. If there is a potential conflict of interest, another staff member shall be assigned, unless appropriate mitigating measures are imposed to guarantee the independent outcome of the procedure.

### **3.3.3. Mitigating measures for conflicts of interest of a general nature and breach of trust**

#### *ECHA bodies*

Any false declaration, wilful omission or refusal to declare interests or any other failure to comply with this procedure may be seen as a breach of trust towards the Agency. The same applies for any persistent conflict of interest which seriously hampers the functioning of the ECHA body.

The respective chair of the ECHA body can decide on remedial actions to address an alleged breach of trust. In case the remedial actions do not bring the expected outcome, the chair in consultation with the Executive Director shall send a formal notification to the Appointing Authority<sup>8</sup> stating the nature of the problem.

The respective Appointing Authority is responsible for adopting any formal decision as a consequence of a (potential) conflict of interest when they are informed of a situation which may be detrimental to the Agency. Such decision may vary from a letter of reprimand to the request or duty to resign or the revocation of the nomination / appointment.

The members of the Board of Appeal may not be removed from office unless there are serious grounds and only by decision of the Commission, after obtaining the opinion of the Management Board.

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<sup>7</sup> See Article 90 (5)-(7) REACH Regulation.

<sup>8</sup> For the Management Board the appointing authority is either the European Council (for the members nominated by the Member States), the Commission or the Parliament (Article 79 REACH Regulation). The appointing authority for the Member State Committee, the Biocidal Products Committee and the Forum are the respective Member States (Article 85(3) and 86 REACH Regulation and Article 75(2) BPR), while for the Board of Appeal, the Committee for Risk Assessment and the Committee for Socio-economic Analysis the appointing authority is the ECHA Management Board or the Committee in the case of co-opted members.

In case the Executive Director is not satisfied with the remedies put in place by the chair or by the Appointing Authority, he/she shall inform the ECHA body concerned of this fact in its next meeting and have it noted in the minutes of the meeting.

Anyone affected by a decision of the chair of an ECHA body to implement remedial actions can request the Chair of the Management Board for a review of such decision. The Chair of the Management Board, in consultation with the Executive Director, shall decide on the follow-up, with the possibility to consult the Conflicts of Interest Advisory Committee.

#### *ECHA staff*

Any persistent conflict of interest that may hamper the proper functioning of an ECHA staff member in his/her current function shall be assessed by the respective line managers and escalated towards the Appointing Authority for decision if necessary. Where necessary, appropriate mitigating measures will be implemented (e.g. change in task description, move to another position in the interest of service, etc.)<sup>9</sup>. The Appointing Authority shall have the possibility to consult the Conflicts of Interest Advisory Committee before deciding on the action to take.

Any false declaration or wilful omission of potential conflicts of interest, as well as the refusal to declare interests may result in disciplinary action under the Staff Regulations.

#### *Ex-post review*

If the person concerned by an established breach of trust was involved in an opinion- or decision-making procedure, the Agency may carry out an ex post review of the person's activities and contributions to the Agency's output.

### **3.3.4. Conflicts of Interest Advisory Committee**

A Conflicts of Interest Advisory Committee (CoIAC) is established as an advisory body in the context of this Procedure. It is available to the Management Board, the Committees and the Forum as well as to the Executive Director for advice on matters related to (potential) conflicts of interest of individuals staffing the Agency or members of its bodies. It is composed of the Head of the Legal Affairs unit of the Agency, Chair, of a person designated by the Management Board and of an outside expert designated by the Executive Director for its competence in the field of conflicts of interest.

The Executive Director can consult the CoIAC in all stages of the process of handling a potential situation of conflicting interests, to seek their advice on the individual case at hand. The chair of any of the ECHA bodies can also request the Executive Director to consult CoIAC. On request of the Executive Director, possibly prompted by the chair of an ECHA body, the CoIAC issues a reasoned advice, without prejudice to the decision-making powers of the Agency body requesting it.

For issues related to the Board of Appeal, the Management Board has established a standing working group. This working group can also provide advice on issues related to (potential) conflicts of interest. Where necessary and as appropriate, the working group may ask the Chair of the Management Board to consult the CoIAC in order to guarantee consistency in the application of conflict of interest criteria within the Agency.

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<sup>9</sup> For the regular members of the Board of Appeal (who are also ECHA staff) the provisions of Article 90 of the REACH Regulation will apply.

### 3.4. Further implementation

As the legal representative of the Agency and responsible for the daily management of the Agency, the Executive Director shall adopt implementing rules to this policy, containing the detailed procedures for preventing and handling conflicts of interest. He/she shall regularly report on the implementation of the policy to the Management Board and in the annual activity report of the Agency.

The ECHA bodies shall include detailed provisions for the implementation of this procedure into their respective Rules of Procedures, Codes of Conduct and working procedures. Where necessary and if applicable, the chair may decide to impose the same requirements on the regular members of working groups established by the respective ECHA bodies.

The staff of the ECHA Secretariat shall further comply with all other obligations that are imposed on them by the Staff Regulations (see Articles 11 to 19) and its implementing rules.

Done at Helsinki, 20 March 2014.

*signed*

For the Management Board

Nina Cromnier

## 4. Definitions

| Term or abbreviation | Definition   |
|----------------------|--|
| Breach of trust      | Any false declaration, wilful omission or refusal to declare interests or any other failure to comply with the agency's conflict of interest policy.   |
| Conflict of interest | There is a conflict of interest where the impartiality and objectivity of a decision, opinion or recommendation of the Agency, including its bodies, is or might in the public perception be compromised by an interest held by, or entrusted to, an individual working for the Agency.  |
| ECHA body            | The ECHA bodies shall include the Management Board, the Member State Committee, the Risk Assessment Committee, the Committee for Socio-economic Analysis, the Biocidal Products Committee, the Enforcement Forum and the Board of Appeal.  |
| ECHA Secretariat     | The ECHA Secretariat works under the leadership of the Executive Director and provides technical, scientific and administrative support for the Committees and the Forum and ensures appropriate coordination between them. It shall also undertake the work required of the Agency under the procedures for pre-registration, registration and evaluation as well as preparation of guidance, database maintenance and information provision (Article 76.1(g) of REACH) |
| Process owner        | A process owner is a person (staff member of the ECHA Secretariat) designated by the Executive Director, responsible for the efficient and effective functioning of the process and has the necessary authority to take action or make decisions with an impact on the process performance. In general, the process owner ensures that proper action is taken with respect to the implementation, maintenance, control and improvement of the process.                   |

## 5. Annexes

Annex 1 - Template for Declaration of Interest

## **Annex 1 - ECHA DECLARATION OF INTEREST**

There is a conflict of interest where the impartiality and objectivity of a decision, opinion or recommendation of the Agency and/or its bodies, is or might in the public perception be compromised by an interest held by, or entrusted to, an individual working for the Agency.

Please note that having an interest does not necessarily mean having a conflict of interest. In particular, high quality of (scientific) expertise is by nature based on prior experience. Declaring an interest does therefore not automatically disqualify you or limit your participation in the activities of the European Chemicals Agency.

On the other hand it should be emphasised that this declaration of interest form does not contain an exhaustive list of potential interests and that all other elements that might jeopardise your independence when working with the Agency should thus also be indicated. Your answers will then be reviewed and dealt with in accordance with the ECHA Procedure for Prevention and Management of potential Conflicts of Interest.

**First Name:**

**Last name:**

Position in ECHA:

**hereby declares to have the following interests:**

## I. Employment, consultancy, legal representation or advice

Within the past 5 years, were you employed or have you had any other professional relationship with a commercial entity<sup>10</sup> or other organisation<sup>11</sup> with an interest in the regulatory field of activity of ECHA?

- No  
 Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

## II. Membership of Governing Body, Scientific Advisory Body or equivalent structure

Within the past 5 years, have you participated in the internal decision-making of a commercial entity or other organisation with an interest in the regulatory field of activity of ECHA (e.g. board membership, directorship) or have you participated in the works of a Scientific Advisory Body with voting rights on the outputs of that entity?

- No  
 Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

<sup>10</sup> This includes any commercial business, consultancy, research institution or other enterprise whose funding is significantly derived from commercial sources. It also includes independent own commercial businesses, law offices, consultancies or similar.

<sup>11</sup> An 'organisation' includes governmental, international or non-profit organisations, as well as interest groups.

### III. Other membership or affiliation

*Within the past 5 years, have you had any membership or affiliation other than the above that can be perceived as creating a potential conflict of interest?*

- No  
 Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

### IV. Research funding

*Within the past 5 years, have you or the research entity to which you belong received any support from a commercial entity or other organisation with an interest in the regulatory field of activity of ECHA, including grants, rents, sponsorships, fellowships, non-monetary support?*

- No  
 Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

## V. Investments

*Do you have current investments in a commercial entity with an interest in the regulatory field of activity of ECHA, including holding of stocks and shares, stock options, equity, bonds, partnership interest in the capital of such undertaking, one of its subsidiaries or a company in the capital of which it has a holding and which amounts to more than 10,000 EUR per commercial entity or entitling you to a voting right of 5% or more in such commercial entity?<sup>12</sup>*

- No  
 Yes, and more in particular:

| Investment | Name of organisation or commercial entity |
|------------|---|
|            |   |

## VI. Intellectual Property

*Do you have any intellectual property rights (e.g. patent, trademark, copyright or proprietary know-how) in the regulatory field of activity of ECHA that might create a potential conflict of interest?*

- No  
 Yes, and more in particular:

| Intellectual Property | Name of organisation or commercial entity | Description |
|-----------------------|---|-------------|
|                       |   |             |

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<sup>12</sup> You may exclude financial interests held through an investment fund, pension fund and/or interests in non-nominal unit trusts or similar arrangements, provided that these investments are broadly diversified and you have no influence on their financial management.

## VII. Public statements and positions

*Within the past 5 years, have you provided any expert opinion or testimony in the regulatory field of activity of ECHA for a commercial entity or other organisation as part of a regulatory, legislative or judicial process? Have you held an office or other position, paid or unpaid, where you represented interests or defended an opinion in the regulatory field of activity of ECHA?*

No

Yes, and more in particular:

| <b>Function/Activity</b> | <b>Time period<br/>(from...until<br/>month/year)</b> | <b>Name of<br/>organisation or<br/>commercial<br/>entity</b> | <b>Description</b> |
|--------------------------|--|--|--------------------|
|                          |  |  |                    |

## VIII. Other relevant information

*Are there any other elements that could be seen as jeopardising your independence when working for the Agency?*

### IX. Interests held by close family members<sup>13</sup>

Does any of your close family members hold any current interests in the regulatory field of activity of the Agency (as specified above in the sections I.-VIII.)?

| Function/Activity | Name of organisation or commercial entity | Description |
|-------------------|---|-------------|
|                   |   |             |

I wish to have any reference to interests held by close family members removed if this declaration is to be made public on the ECHA website.<sup>14</sup>

**I hereby declare that I have read both the ECHA Procedure on Prevention and Management of potential Conflicts of Interest and the related ECHA Guidance document and that the above Declaration of Interest is at my best knowledge complete.** I understand that for all members of the ECHA bodies, the Executive Director and the other ECHA management staff (Directors and Heads of Unit), as well as for the chairpersons of the ECHA Committees this declaration will be published on the ECHA website.

Please note that the European Chemicals Agency will ensure on its part that your personal data hereby submitted is processed as required by [Regulation \(EC\) No 45/2001 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](#). You have the right to access and rectify that data. To exercise these rights, please contact the relevant secretariat.

**Date:** \_\_\_\_\_ **Signature:** \_\_\_\_\_

(If you need more sheets to declare your interests, do not hesitate to use blank ones, but please sign each one of them and attach them to this form.)

<sup>13</sup> For this purpose 'close family members' are considered to be the persons forming a household with the person making this declaration (spouse, partner, and/or dependent children). For privacy reasons neither the relationship nor the name is to be included. Only current interests held by close family members are of relevance and not past interests.

<sup>14</sup> As full transparency is one of the general principles of this Procedure, this option should only be used in case the consent of the individual concerned has not been obtained, when he/she has objected to the disclosure on compelling legitimate grounds or if there is reason to believe that the legitimate interests of the individual involved might be prejudiced by the disclosure (see also Regulation (EC) No 45/2001 on the protection of personal data).

20.3.2014 (MB/07/2014 ANNEX II FINAL)

## Prevention and Management of potential Conflicts of Interest

### 1. Purpose

The management of (potential) conflict of interest situations is a key element of governance and management of every EU institution, body or agency and crucial for maintaining the trust of stakeholders and citizens in its integrity. Effective management of conflicts of interests and assuring legality and regularity of its processes is thus a crucial requirement if ECHA wants to play a pivotal role in ensuring that chemicals legislation and the decision-making processes and scientific basis underlying it have credibility with all stakeholders and the public. For this reason it is vital to ensure ECHA's independence and transparency.<sup>1</sup>

In order to achieve this, ECHA has to strike a delicate balance between getting the right expertise to guarantee high quality science-based decision making and at the same time strictly avoiding conflicting interests influencing or seen as influencing the decision-making process. Important tools to achieve this balance are awareness raising, methods for detecting risks to the Agency's integrity, the establishment of clear boundaries for (un)acceptable interests and the appropriate management of conflict of interest situations, including underlying clear procedures. In this, it is not so much a matter of eliminating any possibility of conflict of interest, but of detecting them at an early stage, recording them and handling them appropriately.

### 2. Scope

This ~~Procedure Policy~~ document applies to the entire ECHA organisation and all of its activities, whether administrative or scientific in nature. The scope thus includes all members, their advisers and invited experts of the ECHA bodies and networks, including the Board of Appeal, the observers participating to their meetings, the statutory staff of the ECHA Secretariat ~~and of the Board of Appeal~~ and any third parties/contractors working for the Agency.

**Comment [BB1]:** TA, CA and SNE, but not trainees, and interims. The latter ones can be covered also under 'contractors'.

### 3. Description

#### 3.1. General principles

##### 3.1.1. Independence and impartiality

Independence from all external interests is one of the core values of the Agency. In all of its processes ECHA shall ensure that it is independent from all external interests and that impartial and science-based decisions are taken. To achieve this, detailed guarantees and checks need to be implemented in all the processes within of the Agency. ~~As a first step all potential conflicting of interests shall be declared. Each process owner shall then be~~

<sup>1</sup> See also recital 95 of Regulation (EC) No 1907/2006 (the "REACH Regulation").

## Prevention and Management of potential Conflicts of Interest

~~responsible for putting in place the necessary checks in the daily working practices, including regular checks for potential conflicting interests.~~

Comment [BB2]: Unnecessary repetition.

### 3.1.2. Transparency

Transparency is another core value of ECHA and is strongly embedded in its founding Regulation<sup>2</sup>. Decisions and opinions are formed as openly as possible. For this reason, declarations of interest of the main actors behind ECHA's decision- and opinion-making are made available to the general public.

### 3.1.3. Confidentiality

Article 105 of the REACH Regulation imposes on the members of the Management Board, the Committees and the Forum as well as on all staff members of the Agency the duty not to disclose information of the kind covered by the duty of professional secrecy, and this even after their duties have ceased. This confidentiality duty is also included in the respective Rules of Procedure of the ECHA bodies and a written declaration of confidentiality is required (the same applies to the advisors, invited experts and observers)<sup>3</sup>. For the ECHA Secretariat staff also Articles 17 and 19 of the Staff Regulations impose a duty of strict confidentiality. The confidentiality duty shall furthermore also imply that the individuals working for the Agency shall not seek to gain any improper advantages from the information to which they have access and that is covered by the duty of professional secrecy. The management of ~~the~~ conflicts of interest is also an element for preventing information leaks.

### 3.1.4. Awareness

As the Agency's role is to promote the public interest in an independent and transparent manner with respect for confidentiality rules, it is crucial that the individuals working with the Agency understand that the exercise of public authority comes with certain duties. The Agency shall support these individuals in fulfilling their duties, raise awareness, organise training and set up further implementing procedures for identifying and handling conflict of interest situations.

<sup>2</sup> See for instance recital 95 and Articles 77(2) (e) to (n), 106 to 109 and 117 to 119 of the REACH Regulation.

<sup>3</sup> See Article 10 of the respective Rules of Procedure ~~of the Management Board,~~ of the Committees and of the Forum and Article 13 of the Rules of Procedure of the Management Board.

Prevention and Management of potential Conflicts of Interest

**IV. Responsibilities**

Comment [BB3]: Duplication. Moved under the relevant sections.

**1. Individuals working for the Agency**

~~The first responsibility in avoiding and declaring any potential conflicting interests and in respecting confidentiality rules shall lie with the public officials and other individuals working for the Agency. To this effect, they must submit declarations of interests compliant with the template in annex 1.~~

**2. Secretariat & Chair of the ECHA bodies**

~~The respective Secretariat of the Management Board, the Committees and the Forum shall keep a register of the declarations of interests submitted. Subsequently, the respective Secretariat and Chair shall monitor the declarations regularly to identify potential risks and handle situations of potential conflicting interests in compliance with the present policy and specific implementing rules.~~

**3. ECHA Secretariat**

~~For the staff of the ECHA Secretariat, the Executive Director is responsible for keeping a register of declarations accessible to the line managers, who shall be responsible for monitoring the declarations regularly to identify potential risks and handle situations of potential conflicting interests appropriately.~~

~~As the Executive Director is the legal representative of the Agency, he bears a special responsibility in making sure that rules are in place to prevent and address (potential) conflicts of interest and raise any issues to the Management Board for consideration where appropriate.~~

**4. Appointing authority**

~~The respective appointing authority is responsible for adopting any formal decision as a consequence of a (potential) conflict of interests, when they are informed of a situation which may be detrimental to the Agency.~~

**5. Ethical Committee**

~~An Ethical Committee with a consultative function is established within the Agency. It is available to the Management Board, the Committees and the Forum as well as to the Executive Director for consultation on matters related to potential conflict of interests of the individuals staffing the Agency and its bodies.~~

~~The Ethical Committee is composed of the Head of the Legal Affairs unit of the Agency, Chair, of a person designated by the Management Board and of an outside expert designated by the Executive Director for its competence in the field of conflicts of interest. The secretariat of this Committee is organised by its Chair.~~

Prevention and Management of potential Conflicts of Interest

### 3.2. Preventing conflicts of interest

The first responsibility ~~in avoiding and declaring any~~ with regard to preventing conflicts of interest ~~potential conflicting interests and in respecting~~ with respect to confidentiality rules shall lie with the public officials and other individuals working for the Agency. -To this effect, they must submit and keep up-to-date declarations of interests ~~s~~ compliant with the template in annex 1.

#### 3.2.1 Before working for the Agency

For the positions for which the ECHA Management Board is the Appointing Authority, it has adopted eligibility criteria (MB/45/2013 final) with which candidates for the position of Executive Director, Accounting Officer, member of the Board of Appeal or member in the Committee for Risk Assessment and the Committee for Socio-economic Analysis have to comply to be considered for appointment.

To this end, such candidates are invited to fill in a declaration of interest already after inclusion on the list of candidates proposed by the Commission or after their nomination by their respective Member State, but before their appointment by the Management Board.

For the positions for which the ECHA Management Board is not the Appointing Authority (membership in the Management Board, the Member State Committee, the Biocidal Products Committee and the Forum), the Management Board has adopted eligibility guidelines (MB/45/2013 final) to which the relevant Appointing Authorities are invited to adhere, with the exception of the Commission when appointing the three Management Board members to represent interested parties.

In line with Article 11 of the Staff Regulations, before recruitment, all candidates for a position in the Agency as statutory staff member are requested to make a written declaration of interest in order for the Appointing Authority to be able to assess any potential conflicts of interest in relation to the specific position that may be offered and to take appropriate mitigating measures if necessary.

#### 3.2.2 While working for the Agency

##### ECHA bodies and ECHA Secretariat

##### *Annual declarations*

According to Article 88(2) of the REACH Regulation, all members of the Management Board and of the Committees and the Forum shall, when taking up their duties, make a written declaration of interests ~~s~~ which could be considered to be prejudicial to their independence. Also all members of the Board of Appeal are required to make an annual declaration of interest in writing.

The initial declarations are renewed annually. The secretariat of the ~~Management Board and of the respective Committees and Forum~~ respective ECHA body ~~are~~ is in contact with members in order to ensure that regular updates are provided. If at any point in time changes occur to the situation of the member's interests, he/she makes an updated declaration without delay.

**Comment [BB4]:** New headings, organised by time of involvement with the Agency: before, during and after work with the Agency

**Comment [BB5]:** Link with the eligibility criteria, which are a (rather new) key element of the ECHA procedures

**Comment [BB6]:** New requirement from revised Staff Regulations as of 1/1/2014

**Comment [BB7]:** Current practice, but not prescribed in REACH or the Procedure until now.

## Prevention and Management of potential Conflicts of Interest

The respective secretariat of the ~~Management Board, the Committees and the Forum~~ ECHA body shall enter the declarations of interest in a register, which is also published on the ECHA website. Subsequently, the respective secretariat and chair shall monitor the declarations regularly to identify potential risks and handle situations of potential conflicting interests in compliance with the present ~~procedure policy (see further under chapter 3.3.)~~ and specific implementing rules. ~~The respective secretariat shall also undertake sample checks to guarantee the accuracy and completeness of the declarations submitted by the members of the ECHA bodies.~~

**Comment [BB8]:** Requirement stems from COM guidelines and was observed also by European Court of Auditors – Proposal to verify accuracy by comparing with CV that is provided at the same time.

Upon entry into the service at the Agency, the duty to declare all interests annually which is imposed on the Executive Director by the REACH Regulation is extended to all staff of the Agency. Besides filling in an initial declaration at the start of their employment, all staff members shall thus provide an annual update of this declaration. ~~For the management staff (Executive Director, Directors and Heads of Unit) and the chairpersons of the ECHA Committees, these declarations shall be published on the ECHA website.~~

**Comment [BB9]:** Clarified now in the procedure itself, as earlier it was decided by the MB but only documented in the MB minutes

If at any point in time changes occur to the situation of the staff member's interests, the person involved must update his/her declaration without delay.

### Specific declarations

At each meeting the Management Board members and the members of the Committees and the Forum (and their advisors), observers and any experts participating in the meeting are explicitly asked by the chair to declare any interests which could be considered to be prejudicial to their independence with respect to any of the points on the agenda. ~~Such conflicting interests are recorded in the minutes together with the specific mitigating measures imposed (see also chapter 3.3).~~

**Comment [BB10]:** Requirement stems from COM Guidelines and was observed both by the European Court of Auditors and in the external audit.

When a Committee member is appointed as Rapporteur or Co-Rapporteur, he or she needs to make for each case a written declaration of absence of conflict of interests in line with Article 87(1) of the REACH Regulation. A member of a Committee is not appointed rapporteur for a particular case if he/she indicates any interest that might be prejudicial to the independent consideration of that case.

~~The members of the Board of Appeal are required to make an ad-hoc declaration for each specific case before the allocation of that case to them.~~

**Comment [BB11]:** Clarification stemming from REACH with regard to BoA

If at any point in time the staff member's independence to work on a ~~very~~ specific dossier is at risk, the person involved must declare the specific interest in the dossier at hand to the ~~process owner of the process in which he/she operates.~~

**Comment [BB12]:** Clarification that according to ECHA's IQMS, the process owner is responsible and not line manager.

### Networks and expert groups

Several networks and expert groups support the Agency in its work. As these networks and expert groups have a balanced composition, and as they are only advisory bodies, the risk of conflicting interests affecting the formal work of ECHA is minimal. However, it shall be a standard practice that the person chairing these meetings requests, when relevant, that any conflicting interests are declared at the start of each meeting ~~and documented in the minutes. Where necessary, ECHA may also impose other preventive measures, including e.g. annual declarations of interest.~~

**Comment [BB13]:** As suggested by the recent external audit

## Prevention and Management of potential Conflicts of Interest

### Observers

As set out above, ECHA welcomes the attendance of observers of the stakeholder organisations at the meetings of the Committees, the Forum and informal ECHA networks selected by the respective body or network. These stakeholder observers have to comply with the Code of conduct for observers<sup>4</sup> and need to declare any interest in the cases dealt with by the respective Committee or network at the start of the meeting.

Furthermore, the Rules of Procedure of an ECHA body may foresee ~~in~~ the possibility to invite case owners ~~or applicants~~ to participate in a meeting or part of it as observers. As these case owner/~~applicant~~ observers clearly are attending the meeting to defend the interests of their organisation in a particular dossier, it is unnecessary that they ~~fill in a written~~ make a declaration of interests. Strict compliance with the applicable Code of conduct shall be enforced<sup>5</sup>.

Comment [BB14]: To accommodate BPC procedures

~~Other observers at meetings of ECHA bodies or networks may include staff of the Agency and of the European Commission, the European Parliament or other European Agencies, representatives of other relevant international bodies, or of pre-accession countries or third countries. When relevant, this category of observers shall make a specific declaration of interests at the start of each meeting.~~

### Working with third parties Contractors

Whenever the Agency is contracting external service providers to support it in its tasks, it shall ensure that these contractors are bound by confidentiality duties and that potential conflicts of interests are avoided. Both a confidentiality clause and a conflict of interest clause are included in all such contracts that ECHA concludes. Based on those contractual provisions, the Agency may require external consultants (regardless of him/her working intra-muros or not) or interim staff to make a specific declaration of interests with regard to the work performed for ECHA, in case their participation has a qualitative impact on the they would be involved in the preparation of decision-making at the Agency.

### 3.2.3 After work for the Agency has ended

Members of the ECHA bodies, staff members of the Agency, members of networks or expert groups, observers and third parties working with the Agency shall be required, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy<sup>6</sup>.

When a staff member leaves the service at ECHA, he/she shall continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. They shall be reminded of their duties under the Staff Regulations and shall duly sign a document regarding integrity, discretion and confidentiality.

<sup>4</sup> Code of conduct for observers at ECHA meetings (ED/62/2008).

<sup>5</sup> See ECHA Code of conduct for case owners of evaluation draft decisions as observers at meetings of the Member State Committee (ED/89/2013) and ECHA Code of conduct for applicants participating in the Biocidal Products Committee and its Working Groups (ED/104/2013).

<sup>6</sup> See e.g. Article 105 of the REACH Regulation and Article 12 of ED/62/2008.

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Furthermore, ~~after when~~ leaving the Agency service, former ECHA staff have to notify the Agency for a period of two years any new occupational activity they intend to engage in employment that could constitute a conflict of interest with the previous ECHA post. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict with the legitimate interests of the Agency, the Appointing Authority can, if needed, either forbid the former staff member from undertaking it or give its approval subject to any conditions it thinks fit (Article 16 Staff Regulations).

**Comment [BB15]:** Text now closer to text of Article 16 Staff Regulations.

### 3.3. Identifying and Handling potential conflicts of interest

#### 3.3.1. **General assessment criteria**

The interests to be assessed shall include all private interests in the field of activity of the Agency, and more in particular employment, consultancy, legal representation or advice; membership of a governing body or scientific advisory body; other memberships and affiliations; research funding; investments; intellectual property; public statements and positions and any other interests that may interfere (or may be seen as interfering) with the work of the Agency (see annex 1, declaration of interest template).

**Comment [BB16]:** Existing criteria grouped into new chapter

When assessing whether certain of the above interests held by an individual working for the Agency are to be considered as constituting an actual or perceived conflict of interest, the following minimum criteria shall be taken into account:

- Not only personal interests, but also all relevant interests held by ~~any members of household~~ close family members (i.e. members of the same household: (spouse, partner and dependent children) need to be considered;
- Not only current interests, but also those that existed during the last 5 years preceding the assessment shall be considered (with an exception for investments, intellectual property and interests held by close family members for which only current interests are of relevance);
- All financial investments in a commercial entity that amount to a value above 10,000 EUR per company or shares, stocks or comparable amounting to a voting right of 5% or more in a company (notwithstanding their financial value) are to be considered;

**Comment [BB17]:** As decided by ECHA management past interests of household members were excluded. See also COM guidelines.

Besides these minimum criteria, the assessor (chair of ECHA body, line manager/process owner for ECHA staff) shall take into account the other elements of the case, including the importance of the interest declared, the role of the individual holding the interest, specific mitigating measures and controls imposed, the importance and impact of the decision or opinion to be drafted, the availability of alternates or other experts, etc.

#### 3.3.2. Mitigating measures for case-specific conflicts of interest

*Management Board, Committees and Forum*

Members who have not submitted the annual declaration of interest shall not take part in meetings of the ECHA body and its working groups or decisions by written procedure.

**Comment [BB18]:** This was an observation by the European Court of Auditors and is now also included in the RoPs of the respective ECHA bodies.

The annual declaration of interest of the Executive Director is reviewed by the Chair of the Management Board.

**Comment [BB19]:** Already current practice, but not yet documented in the procedure.

### Prevention and Management of potential Conflicts of Interest

It shall be the task of the respective secretariat to regularly monitor the annual declarations made by the members and to bring any potential conflict of interest to the attention of the respective chair. The Executive Director shall also be informed of any such cases. On the basis of the type and nature of the potential conflict identified, the chairperson shall decide on the appropriate level of participation in the work of the ECHA body.

Furthermore, the chair will ask members and their advisors as well as invited experts and observers to declare any interests at the beginning of each meeting and any declared interests will be recorded in the minutes. On the basis of the type and nature of the potential conflict identified, the chairperson shall decide on the appropriate level of participation. This applies accordingly for the cases of written procedures in ECHA bodies. As a minimum, such person shall not participate in any voting on the relevant agenda point (see Article 88(3) of REACH). Such person shall also not transfer his/her voting right by proxy to another member, which does not preclude the replacement by an alternate. The member concerned shall also not be appointed as (co-)rapporteur for a particular case if he indicates any conflicting interests (see Article 87(1) of REACH).

Comment [BB20]: See above

Additionally, where further steps are deemed necessary, the chair shall at least have at his/her disposal any of the following instruments to mitigate the issue:

- The member concerned can participate to the discussions but shall not participate to the final deliberations on the relevant agenda point;
- The member concerned shall not participate to the discussions or final deliberations on the relevant agenda point;
- The member concerned is to leave the room for the duration of the relevant agenda point;
- The member concerned shall participate only as an expert witness in order to testify and give specialist advice on a specific issue by providing information and replying to any questions;
- In the case that an alternate can be appointed in the pertinent ECHA body, the member concerned may be replaced by his/her alternate for the relevant agenda point;
- Where the Chair is concerned, he/she is to be replaced for the relevant agenda point.

Comment [BB21]: This makes transparent the potential mitigating measures and stems literally from ED/53/2013 which can then be repealed.

#### Board of Appeal

The annual declarations of the Board of Appeal members are monitored by its Chair. The Chairman's declarations are monitored by the longest serving member of the Board of Appeal. Specific, case-related declarations by a member of the Board of Appeal are assessed by the other Board of Appeal members, who shall decide as to the action to be taken.

If a member of the Board of Appeal considers that because of a conflict of interests he must not take part in the specific legal proceedings, he shall inform the Board of Appeal accordingly. The Chairman may replace that member by an alternate.

Likewise, members of the Board of Appeal may be objected to by any party to the appeal proceedings on the grounds of possible conflicts of interest. In this situation, the Board of Appeal shall decide as to the action to be taken without the participation of the member

Prevention and Management of potential Conflicts of Interest

concerned. For the purpose of taking this decision, the member concerned shall be replaced by an alternate.<sup>7</sup>

*ECHA Secretariat*

The process owners shall, based on a risk assessment, define the processes in the Agency that require interest management. In such processes, conflict of interest checks shall be performed each time a staff member is assigned to a role in the process. Such interest checks are performed on the basis of the annual and specific declarations made by the staff members concerned and documented by the process owner. If there is a potential conflict of interest, another staff member shall be assigned, unless appropriate mitigating measures are imposed to guarantee the independent outcome of the procedure.

**3.3.3. Mitigating measures for conflicts of interest of a general nature and breach of trust**

*ECHA bodies*

Any false declaration, wilful omission or refusal to declare interests or any other failure to comply with this procedure may be seen as a breach of trust towards the Agency. The same applies for any persistent conflict of interest which seriously hampers the functioning of the ECHA body.

The respective chair of the ECHA body can decide on remedial actions to address an alleged breach of trust. In case the remedial actions do not bring the expected outcome, the chair in consultation with the Executive Director shall send a formal notification to the Appointing Authority<sup>8</sup> stating the nature of the problem.

The respective Appointing Authority is responsible for adopting any formal decision as a consequence of a (potential) conflict of interests, when they are informed of a situation which may be detrimental to the Agency. Such decision may vary from a letter of reprimand to the request or duty to resign or the revocation of the nomination / appointment.

The members of the Board of Appeal may not be removed from office unless there are serious grounds and only by decision of the Commission, after obtaining the opinion of the Management Board.

In case the Executive Director is not satisfied with the remedies put in place by the chair or by the Appointing Authority, he/she shall inform the ECHA body concerned of this fact in its next meeting and have it noted in the minutes of the meeting.

Anyone affected by a decision of the chair of an ECHA body to implement remedial actions can request the Chair of the Management Board for a review of such decision. The Chair of

**Comment [BB22]:** Based on WIN-0105, which was first adopted in 2012.

**Comment [BB23]:** More extensive section on "Breach of trust", as required by COM guidelines and both the European Court of Auditors and the recent external audit found gaps in ECHA's approach here. The existing procedure is reinforced.

**Comment [BB24]:** Stemming literally from COM guidelines.

**Comment [BB25]:** Clarification stemming from REACH text.

<sup>7</sup> See Article 90 (5)-(7) REACH Regulation.

<sup>8</sup> For the Management Board the appointing authority is either the European Council (for the members nominated by the Member States), the Commission or the Parliament (Article 79 REACH Regulation). The appointing authority for the Member State Committee, the Biocidal Products Committee and the Forum are the respective Member States (Article 85(3) and 86 REACH Regulation and Article 75(2) BPR), while for the Board of Appeal, the Committee for Risk Assessment and the Committee for Socio-economic Analysis the appointing authority is the ECHA Management Board or the Committee in the case of co-opted members.

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the Management Board, in consultation with the Executive Director, shall decide on the follow-up, with the possibility to consult the Conflicts of Interest Advisory Committee.

**Comment [BB26]:** Requirement to have review procedure is stemming from COM guidelines.

*ECHA staff*

Any persistent conflict of interest that may hamper the proper functioning of an ECHA staff member in his/her current function shall be assessed by the respective line managers and escalated towards the Appointing Authority for decision if necessary. Where necessary, appropriate mitigating measures will be implemented (e.g. change in task description, move to another position in the interest of service, etc.)<sup>9</sup>. The Appointing Authority shall have the possibility to consult the Conflicts of Interest Advisory Committee before deciding on the action to take.

Any false declaration or wilful omission of potential conflicts of interest, as well as the refusal to declare interests may result in disciplinary action under the Staff Regulations.

### Ex-post review

If the person concerned by an established breach of trust was involved in an opinion- or decision-making procedure, the Agency may carry out an ex post review of the person's activities and contributions to the Agency's output.

**Comment [BB27]:** Stemming literally from COM guidelines.

### **3.3.4. Conflicts of Interest Advisory Committee**

**Comment [BB28]:** Existing section moved here and name changed, as agreed earlier.

A Conflicts of Interest Advisory Committee is established as an advisory body in the context of this Procedure~~Policy~~. It is available to the Management Board, the Committees and the Forum as well as to the Executive Director for advice on matters related to (potential) conflicts of interest of individuals staffing the Agency or members of its bodies. It is composed of the Head of the Legal Affairs unit of the Agency, Chair, of a person designated by the Management Board and of an outside expert designated by the Executive Director for its competence in the field of conflicts of interest. ~~The secretariat of this Committee is organised by its Chair.~~

**Comment [BB29]:** Covered in the Terms of Reference.

The Executive Director can consult the Conflicts of Interest Advisory Committee in all stages of the process of handling a potential situation of conflicting interests, to seek their advice on the individual case at hand. The chair of any of the ECHA bodies can also request the Executive Director to consult the Conflicts of Interest Advisory Committee. On request of the Executive Director, possibly prompted by the chair of an ECHA body, the Conflicts of Interest Advisory Committee issues a reasoned advice, without prejudice to the decision-making powers of the Agency body requesting it.

For issues related to the Board of Appeal, the Management Board has established a standing working group. This working group can also provide advice on issues related to (potential) conflicts of interest. Where necessary and as appropriate, the working group may ask the Chair of the Management Board to consult the ColAC in order to guarantee consistency in the application of conflict of interest criteria within the Agency.

<sup>9</sup> For the regular members of the Board of Appeal (who are also ECHA staff) the provisions of Article 90 of the REACH Regulation will apply.

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### 3.4. Further implementation

As the legal representative of the Agency and responsible for the daily management of the Agency, the Executive Director shall adopt implementing rules to this policy, containing the detailed procedures for preventing and handling conflicts of interest. He/she shall regularly report on the implementation of the policy to the Management Board and in the annual activity report of the Agency.

The ECHA bodies shall include detailed provisions for the implementation of this procedure into their respective Rules of Procedures, Codes of Conduct and working procedures. Where necessary and if applicable, the chair may decide to impose the same requirements on the regular members of working groups established by the respective ECHA bodies.

The staff of the ECHA Secretariat shall further comply with all other obligations that are imposed on them by the Staff Regulations (see Articles 11 to 19) and its implementing rules.

**Comment [BB30]:** Requirement stemming from the COM guidelines and requested by the European Parliament as well in the context of the discharge procedure.

**Comment [BB31]:** Especially relevant for the BPC which has many permanent WG, often with members that are not BPC members. This is already current practice in the BPC and for the Forum WG on restrictions.

### 4. Definitions

| Term or abbreviation    | Definition   |
|-------------------------|--|
| <u>Breach of trust</u>  | <u>Any false declaration, wilful omission or refusal to declare interests or any other failure to comply with the agency's conflict of interest policy.</u>  |
| Conflict of interest    | There is a conflict of interest where the impartiality and objectivity of a decision, opinion or recommendation of the Agency, including its bodies, is or might in the public perception be compromised by an interest held by, or entrusted to, an individual working for the Agency.  |
| <u>ECHA body</u>        | <u>The ECHA bodies shall include the Management Board, the Member State Committee, the Risk Assessment Committee, the Committee for Socio-economic Analysis, the Biocidal Products Committee, the Enforcement Forum and the Board of Appeal.</u>   |
| <u>ECHA Secretariat</u> | <u>The ECHA Secretariat works under the leadership of the Executive Director and provides technical, scientific and administrative support for the Committees and the Forum and ensures appropriate coordination between them. It shall also undertake the work required of the Agency under the procedures for pre-registration, registration and evaluation as well as preparation of guidance, database maintenance and information provision (Article 76.1(g) of REACH).</u> |
| <u>Process owner</u>    | <u>A process owner is a person (staff member of the ECHA Secretariat) designated by the Executive Director, responsible for the efficient and effective functioning of the process and has the necessary authority to take action or make decisions with an impact on the process performance. In general, the process owner ensures that proper action is taken with respect to the implementation, maintenance, control and improvement of the process.</u>                    |

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## 5. Annexes

Annex 1 - Template for Declaration of Interest

Prevention and Management of potential Conflicts of Interest

## Annex 1 - ECHA DECLARATION OF INTEREST

There is a conflict of interest where the impartiality and objectivity of a decision, opinion or recommendation of the Agency and/or its bodies, is or might in the public perception be compromised by an interest held by, or entrusted to, an individual working for the Agency.

Please note that having an interest does not necessarily mean having a conflict of interest. In particular, high quality of (scientific) expertise is by nature based on prior experience. Declaring an interest does therefore not automatically disqualify you or limit your participation in the activities of the European Chemicals Agency.

On the other hand it should be emphasised that this declaration of interest form does not contain an exhaustive list of potential interests and that all other elements that might jeopardise your independence when working with the Agency should thus also be indicated. Your answers will then be reviewed and dealt with in accordance with the ECHA [Policy Procedure](#) for [Prevention and Management of](#) potential Conflicts of Interest.

First Name:

Last name:

[Position in ECHA involvement:](#)

hereby declares to have the following interests:

~~(Please specify the interest that you or your close family members<sup>16</sup> currently have or have had in the **past 5 years**.)~~

Comment [BB32]: Only current interests of close family members are to be declared.

<sup>16</sup> For this purpose ~~'close family members'~~ are considered to be the persons forming a household with the person making this declaration (spouse, partner, and/or dependent children).

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**I. Employment, consultancy, legal representation or advice**

Within the past 5 years, were you ~~(or your close family members)~~ employed or have you ~~(or your close family members)~~ had any other professional relationship with a natural or legal/commercial entity<sup>11</sup> or other organisation<sup>12</sup> with an interest in the regulatory field of activity of ECHA?

- No  
 Yes, and more in particular:

**Comment [BB33]:** Ref. to 'close family members' deleted as it does not match with the 5 years period for declaring interests (only current interests relevant) and a new section is added for current interests held by close family members.

| <u>Function/Activity</u> | <u>Time period (from...until month/year)</u> | <u>Name of organisation or commercial entity</u> | <u>Description</u> |
|--------------------------|--|--|--------------------|
|                          |  |  |                    |

**II. Membership of ~~Managing-Governing~~ Body, Scientific Advisory Body or equivalent structure**

Within the past 5 years, have you ~~(or your close family members)~~ participated in the internal decision-making of a commercial entity or other organisation with an interest in the regulatory field of activity of ECHA (e.g. board membership, directorship) or have you ~~(or your close family members)~~ participated in the works of a Scientific Advisory Body with voting rights on the outputs of that entity?

- No  
 Yes, and more in particular:

| <u>Function/Activity</u> | <u>Time period (from...until month/year)</u> | <u>Name of organisation or commercial entity</u> | <u>Description</u> |
|--------------------------|--|--|--------------------|
|                          |  |  |                    |

<sup>11</sup> This includes any commercial business, ~~industry association~~, consultancy, research institution or other enterprise whose funding is significantly derived from commercial sources. It also includes independent own commercial businesses, law offices, consultancies or similar.

<sup>12</sup> An 'organisation' includes governmental, international or non-profit organisations, as well as interest groups.

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### III. Other membership or affiliation

Within the past 5 years, have you ~~(or your close family members)~~ had any membership or affiliation other than the above that can be perceived as creating a potential conflict of interests?

No

Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

### IV. Research funding

Within the past 5 years, have you ~~(or your close family members)~~ or the research entity to which you belong received any support from a commercial entity or other organisation with an interest in the regulatory field of activity of ECHA, including grants, rents, sponsorships, fellowships, non-monetary support?

No

Yes, and more in particular:

| Function/Activity | Time period (from...until month/year) | Name of organisation or commercial entity | Description |
|-------------------|---------------------------------------|---|-------------|
|                   |                                       |   |             |

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## V. Investments

Do you ~~(or your close family members)~~ have current investments in a commercial entity with an interest in the regulatory field of activity of ECHA, including holding of stocks and shares, stock options, equity, bonds, partnership interest in the capital of such undertaking, one of its subsidiaries or a company in the capital of which it has a holding and which amounts to more than 10,000 EUR per commercial entity or entitling you to a voting right of 5% or more in such commercial entity?<sup>13</sup>

- No  
 Yes, and more in particular:

| Investment | Name of organisation or commercial entity |
|------------|---|
|            |   |

## VI. Intellectual Property

Do you ~~(or your close family members)~~ have any intellectual property rights (e.g. patent, trademark, copyright or proprietary know-how) in the regulatory field of activity of ECHA that might create a potential conflict of interests?

- No  
 Yes, and more in particular:

| Intellectual Property | Name of organisation or commercial entity | Description |
|-----------------------|---|-------------|
|                       |   |             |

<sup>13</sup> You may exclude financial interests held through an investment fund, pension fund and/or interests in non-nominal unit trusts or similar arrangements, provided that these investments are broadly diversified and you have no influence on their financial management.

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**VII. Public statements and positions**

Within the past 5 years, have you ~~(or your close family members)~~ provided any expert opinion or testimony in the regulatory field of activity of ECHA for a commercial entity or other organisation as part of a regulatory, legislative or judicial process? Have you ~~(or your close family members)~~ held an office or other position, paid or unpaid, where you ~~(or your close family members)~~ represented interests or defended an opinion in the regulatory field of activity of ECHA?

- No
- Yes, and more in particular:

| <u>Function/Activity</u> | <u>Time period (from...until month/year)</u> | <u>Name of organisation or commercial entity</u> | <u>Description</u> |
|--------------------------|--|--|--------------------|
|                          |  |  |                    |

**VIII. Other relevant information**

Are there any other elements that could be seen as jeopardising your independence when working for the Agency?

**IX. Interests held by close family members<sup>14</sup>**

Does any of your close family members hold any current interests in the regulatory field of activity of the Agency (as specified above in the sections I.-VIII.)?

<sup>14</sup> For this purpose **'close family members'** are considered to be the persons forming a household with the person making this declaration (spouse, partner, and/or dependent children). For privacy reasons neither the relationship nor the name is to be included. Only current interests held by close family members are of relevance and not past interests.

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| Function/Activity | Name of organisation or commercial entity | Description |
|-------------------|---|-------------|
|                   |   |             |

I wish to have any reference to interests held by close family members removed if this declaration is to be made public on the ECHA website.<sup>15</sup>

I hereby declare that I have read both the ~~Policy~~ **ECHA Procedure on Prevention and Management of** potential Conflicts of Interest ~~at the European Chemicals Agency~~ and the related ECHA Guidance document and that the above Declaration of Interest is at my best knowledge complete. I understand that for all members of the ECHA bodies, ~~and~~ the Executive Director ~~and the other ECHA management staff (Directors and Heads of Unit), as well as for the chairpersons of the ECHA Committees~~ this declaration will be published on the ECHA website ~~and entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices. For the other ECHA management staff (Directors and Heads of Unit) and the chairpersons of the ECHA Committees, these declarations shall be entered in a register which is accessible to the public, on request, at the Agency's offices.~~

Please note that the European Chemicals Agency will ensure on its part that your personal data hereby submitted is processed as required by [Regulation \(EC\) No 45/2001 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](#). You have the right to access and rectify that data. To exercise these rights, please contact the relevant secretariat.

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

(If you need more sheets to declare your interests, do not hesitate to use blank ones, but please sign each one of them and attach them to this form.)

<sup>15</sup> [As full transparency is one of the general principles of this Procedure, this option should only be used in case the consent of the individual concerned has not been obtained, when he/she has objected to the disclosure on compelling legitimate grounds or if there is reason to believe that the legitimate interests of the individual involved might be prejudiced by the disclosure \(see also Regulation \(EC\) No 45/2001 on the protection of personal data\).](#)