

Helsinki, 4 April 2014

Guidance for filing in the Declaration of Interest

(Decision by the Executive Director)

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AS THE EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

I HAVE DECIDED THE FOLLOWING:

1. The attached Guidance for filling in the Declaration of Interest is adopted.
2. This decision shall apply as of the date of signature and shall replace decision ED/67/2011 with the same title.

Done at Helsinki, 4 April 2014

[signed original available at the Executive Office]

Geert Dancet
Executive Director

GUIDANCE FOR FILLING IN THE DECLARATION OF INTEREST

1. INTRODUCTION AND LEGAL BASIS

Based on the REACH Regulation (and, in particular, Articles 87 & 88), the Biocidal Products Regulation and the Staff Regulations, all individuals working with the Agency should declare all interests which could be considered to be prejudicial to their independence, either via an annual declaration of interest or via a specific declaration at the start of a meeting or in connection to a specific dossier.

All annual declarations will be made based on the form annexed to the Procedure for Prevention and Management of potential Conflicts of Interests (MB/07/2014 final), and entered in a register held by the Agency. The annual declarations of the members of the Management Board, the Committees and the Forum, the members of the Board of Appeal, the ECHA management staff (Executive Director, Directors and Heads of Unit) and of the chairpersons of the ECHA Committees will be made publicly available via publication on the Agency's website.

Declarations of interest will be monitored and assessed in order to identify and avoid any potential conflicts and agree on appropriate actions, if needed.

2. WHO SHOULD DECLARE?

All members, their advisors, and invited experts, of the ECHA Management Board, the ECHA Committees and the Forum for Exchange of Information on Enforcement (hereinafter, 'the Forum') are bound by the rules on conflicts of interest and must at each meeting of the relevant Board, Committee, Forum or working group declare any interests which could be considered to be prejudicial to their independence with respect to any points on the agenda. Anyone declaring such interests shall not participate in any voting on the relevant agenda point. Besides that, the members of those ECHA bodies are requested to make an annual declaration of interest in writing.

Once appointed as a rapporteur or co-rapporteur, any Committee member is, in addition, requested to make the declarations referred to in Article 87(1) of the REACH Regulation. These declarations are, as a rule, signed in the context of the signature of the written contract between ECHA and the individual concerned, referred to in Article 87(3) of the REACH Regulation. A specific form is used for these declarations of absence of conflicting interests, but the guidance laid down in this document might be useful for that purpose as well.

All members of the Board of Appeal (regardless whether they are permanent, alternate or additional members) shall annually submit a declaration of interest. Additionally, when called up to work on a specific case, all such members shall make a case-specific no-interest declaration.

All staff members of the Agency are also bound by the rules on conflicts of interest. This shall include all statutory staff of the Agency, including all seconded officials, temporary agents, contract agents and seconded national experts. This declaration will be renewed annually. In addition, staff members must declare any potential *ad hoc* conflicts of interest to the relevant process owner or to their immediate superior. While not formally being staff members of the Agency interim staff and staff of external service providers and consultants shall be bound by the stipulations of the contract that applies to them, including the

confidentiality and conflict of interest provisions foreseen in them. In some cases such external staff may be requested to also sign a declaration of interest (using the same form), with a focus on the specific tasks assigned to them.

For networks and expert groups working under the authority of the Agency as advisory bodies, the risk of conflicting interests affecting the formal work of the Agency is minimal. However, where necessary, members of such networks and expert groups may be requested to declare conflicting interests at the start of a meeting and/or through annual declarations of interest.

3. WHEN TO DECLARE?

Initial declaration: Upon appointment as a member of the Management Board, the Biocidal Products Committee, the Member State Committee, or the Forum, or after signing an employment contract as an ECHA staff member, each individual is required to fill in a declaration of interest form.

In line with Article 11 of the Staff Regulations also all candidates that may be offered a position in the Agency are requested to make a written declaration of interest in order for the Appointing Authority to be able to assess, before recruitment, any potential conflicts of interest in relation to the specific position that may be offered.

Similarly, candidates for the position of Executive Director or Accounting Officer and all candidates for appointment as members of an ECHA body for which the Management Board is the Appointing Authority (i.e. the Board of Appeal, the Risk Assessment Committee and the Committee for Socio-economic Analysis) shall be requested to complete a declaration following their placement on the list of candidates by the Commission or the nomination by their respective Member State. This should allow the Management Board to analyse the declarations made, in order to take an informed decision on each appointment.

Appointment as a rapporteur: A Committee/Forum member should not accept an appointment as a rapporteur or co-rapporteur if they indicate any interests that might be prejudicial to the independent consideration of a given case. For each case, the rapporteurs and co-rapporteurs must make a declaration of absence of conflicts of interest in writing. The declarations will normally be signed in the context of the signature of the written contract between ECHA and the individual concerned, referred to in Article 87(3) of the REACH Regulation.

Update of an initial declaration: Declarations must be updated annually or without delay once relevant changes have occurred.

Spontaneous/specific declarations: At each meeting, members, their advisors, and invited experts of the Management Board, the Committees and the Forum or its working groups, must declare any interests that could be considered to be prejudicial to their independence with respect to any points on the agenda. Anyone declaring such interests shall not participate in any voting on the relevant agenda point. The spontaneous declarations will be recorded in the minutes of the meeting. The same is true for the members of the Board of Appeal who will be requested to make a case-specific no-interest declaration before starting to work on an appeal case.

If, at any time in the course of their duties, a staff member becomes aware of any potential or likely conflict of interest, they must immediately inform the relevant process owner who will determine any appropriate action. For example, if either an individual who is involved in a matter, or who is in a position to influence a related decision-making process through the procedures laid down within the Agency, or a member of their family, owns shares in a

company involved in the matter, this fact should be made known immediately to the process owner of the process concerned.

4. PROCEDURE TO UPDATE THE DECLARATION OF INTEREST

The respective secretariats of the Management Board, the Committees and of the Forum will keep a register of all declarations made and will be in contact with the individual members to ensure that the annual declarations are made. For ECHA staff, the Human Resources (HR) unit will keep a register of declarations and ensure that annual updates are made. For the Board of Appeal, the Chair will manage the register of declarations and ensure the annual updates.

In the case of any member of the Management Board, the Committees, the Forum or the Board of Appeal, or any ECHA staff member wishing to review and update their declaration of interests between two annual updates, for instance when relevant changes have occurred, they should contact the respective secretariat or the HR unit (for staff members).

5. WHAT TO DECLARE?

5.1 Definition of a conflict 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.

More specifically, this means that a conflict of interest can arise if private interests of those involved in the activities of ECHA interfere with the work of the Agency and its duty to take impartial and objective decisions in the public interest. A conflict of interest situation can also exist if personal interests are perceived by others as interfering with the work of ECHA and, thus, undermining the public's trust in the integrity of the Agency and its work.

5.2 Definition of other elements

All interests that may interfere with the work of the Agency and its duty to take impartial and objective decisions in the public interest shall be declared.

Timeframe: all current interests and those that existed during the last 5 years. One should count 5 years from the date of submitting the declaration.

For interests held by close family members, investments and intellectual property rights, only current interests need to be declared.

Family ties: all current interests held by any members of the declarant's household (spouse, partner and dependent children) should be declared.

The names of the members of the declarant's household do not need to be declared and the declaration shall be limited to the interests that the declarant is aware of to the best of his/her knowledge.

Staff members should also recall that Article 13 of the Staff Regulations creates an obligation for them to inform the Appointing Authority of their spouse's employment situation.

Commercial entity: includes any commercial business, consultancy, research institute or other enterprise, whose funding is significantly derived from commercial sources. It also includes independent own commercial businesses, law offices, consultancies or other.

Organisation: includes governmental, international and non-profit organisations active in the regulatory field of activity of ECHA, as well as interest groups (i.e. organisations and self-employed individuals engaged in activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the Agency).

The regulatory field of activity of ECHA: all interest that may interfere with the work of the Agency shall be declared. This means that all interests in a commercial entity or other organisation which is subject to the authority of ECHA (i.e. duty-holders under REACH, CLP, Biocides or PIC) or which has dealings with ECHA shall be declared.

Only direct interests in duty-holders are considered and not interests in (potential) competitors or (potential) co-registrants.

The above means that interests in e.g. IT companies do not need to be declared, not even by the Director of Information Systems, as possible conflicts of interest in this field only become relevant for procurement procedures for instance, while strict controls and specific mitigating measures are in place for preventing any such conflicts in this process (e.g. via specific declarations to be signed by all procurement panel members, etc.).

Confidential interests: when bound by a professional or contractual duty of secrecy, for instance with regard to former clients represented (e.g. as lawyer or consultant), one shall only declare the employment with the law firm or consultancy firm concerned. The declarant shall then proactively make a specific declaration of absence of conflict of interest, each time a task is assigned to him/her related to a former client operating in the regulatory field of activity of the Agency. In some instance also the identity of substances worked on can be considered confidential, in which case they do not need to be included.

5.3 Employment, consultancy, legal representation or advice

Employment is to be interpreted as covering all forms of employment (also self-employment), part-time and full-time, either paid or unpaid, in any organisation (profit or non-profit, public or private) whose activities fall within the regulatory field of activity of ECHA.

Consultancy, legal representation or advice within the regulatory field of activity of ECHA, regardless of whether they charge a fee or not, is to be considered as well. Any contracts or collaborations with ECHA should also be specified. As stated above, the obligation to declare shall not prejudice any professional or contractual duty of secrecy with regard to the identity of (former) clients or substances worked on.

For members and invited experts of ECHA bodies, all current employment with a Member State Competent Authority shall also be covered. For ECHA staff members, outside activities which have been previously authorised by the Agency shall also be mentioned here.

Information about subsidiaries/parent companies of a former employer shall be declared, but only to the extent that such corporate links are known to the declarant.

5.4 Membership of a Governing Body, Scientific Advisory Body or equivalent structure

Membership of a Governing Body is to be interpreted as any participation in the internal decision-making (e.g. board membership, directorship) of a public or private organisation or commercial entity operating in the regulatory field of activity of ECHA.

Participation in a scientific advisory body is to be interpreted as meaning that the person concerned is participating or has participated in the works of a scientific advisory body operating in the regulatory field of activity of ECHA with a right to vote on the outputs of that entity (e.g. voting on scientific output adopted by that entity).

For this purpose the fact of whether this activity is remunerated or not is irrelevant.

5.5 Other membership or affiliation

This shall include active membership of or involvement in any organisation relevant to the regulatory field of activity of ECHA, other than the above. This shall in particular concern membership of interest groups (i.e. organisations engaged in activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the Agency). However, membership of bodies established under public law serving a public interest (e.g. universities), in a religious group, a political party, a trade union or comparable entity does not need to be declared.

Active membership or involvement shall include the making of donations beyond the regular membership fee; active participation to events or other contributions to activities; active involvement in the internal working of the organisation; et cetera.

5.6 Research funding

This includes any funding for research provided by a private or public entity, including grants, rents, sponsorships and fellowships and received in a personal capacity or via the research entity to which one belongs (as long as it is related to projects to which the declarant has or had direct links) and falling within the regulatory field of activity of ECHA. Non-monetary support is also envisaged (e.g. equipment, facilities, research assistants, paid travel to meetings, et cetera). The declarant is requested to specify the estimated value if possible.

5.7 Investments

A conflict of interest would arise if an individual working with ECHA were to handle a matter or otherwise take part in a decision-making process (including through consultation) involving a commercial entity in which the person(s) concerned holds securities or otherwise has a financial interest.

For ECHA staff members, such situations are expressly covered by Article 11a of the Staff Regulations. Paragraph 3 states: "*He [the official] may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.*"

Consequently, the Agency has decided that the holding of a current financial interest of more than 10,000 EUR per commercial entity is considered as such a substantial value that it should be declared. In addition and notwithstanding their financial value, holding of shares, stocks or comparable amounting to a voting right of 5 % or more in a company, should be declared. Several investments in the same commercial entity made by different persons in the same household shall be counted together for calculating the threshold. Interests below the threshold are to be declared on a voluntary basis. In view of frequent changes in the price value of such investments one shall update the declaration when the price has been fixed for a certain period of time above the threshold. The declarant is requested to specify the estimated value at the time of submission.

The term 'financial interest' or 'investment' shall mean any financial interest in undertakings which are subject to the authority of ECHA or which have dealings with ECHA, including the holding of stocks and shares, stock options, equity, bonds, and/or partnership interest in the capital of such an undertaking. This includes 'financial interests' or 'investments' in a subsidiary of the said undertaking or in a commercial entity in which the said undertaking holds capital.

Partnerships in law-firms or other managerial stakes are to be considered as well, if not already covered under one of the other sections (e.g. 5.3 or 5.4).

However, the holding of financial interest through an investment fund, pension fund and/or interests in non-nominal unit trusts or similar arrangements would not, in principle, need to be declared, provided that these investments are broadly diversified and the individual has no influence on their financial management.

5.8 Intellectual Property

These are the rights granted to creators and owners of works that are the result of human intellectual creativity and that pertain to a domain falling within the regulatory field of activity of ECHA. These can be publications or can be in the industrial, scientific and artistic domain. They can be in the form of an invention, a manuscript, a suite of software, or a business name (e.g. copyrights, trademarks, patents, et cetera). Proprietary know-how in a substance, technology or process can also be relevant. The declarant is requested to specify the estimated value at the time of submission if possible.

5.9 Public statements and positions

Public statements should be interpreted as the provision of an 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.

Public office or other positions should be interpreted as the holding of an office or other position, paid or unpaid, where the declarant represents interests or defends an opinion in the regulatory field of activity of ECHA.

With regard to ECHA staff members who intend to stand for public office, or have been elected or appointed to public office, Article 15 of the Staff Regulations establishes the obligation to inform the Appointing Authority, who will decide whether and under what modalities the staff member may continue to discharge his/her duties.

5.10 Other relevant information

In addition to the interests above, a declarant should declare any other interest or fact that might prejudice their independence.

These other elements may for instance include:

- *relevant interests held beyond the past 5 years;*
- *close personal relationships (such as those with adult offspring, parents or siblings, close personal friendships, et cetera) and interests held by such individuals;*
- *the delivery of speeches or training for a commercial entity or other organisation with an interest in the regulatory field of activity of ECHA, regardless of whether any payment was provided;*

- *continuing rights of return to previous employment or positions and standing offers or agreements about future employment;*
- *gifts received exceeding 50 EUR (including travel, hospitality or other forms of valuable benefit).*

ANNEX - SPECIFIC PRIVACY STATEMENT

for processing of personal data related to Declarations of Interests

The ECHA Procedure for Prevention and Management of potential Conflicts of Interest foresees that all individuals working for the Agency shall declare any interests which could be considered to be prejudicial to their independence. As a consequence a lot of personal data needs to be provided to the Agency. Below you will find more information about the processing and the Data Protection safeguards put in place by the Agency to make sure any processing of your personal data is in line with *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*.

What is the legal basis for processing your personal data?

For the Executive Director and for members of the ECHA bodies (Management Board, Committees, Forum and the Board of Appeal), the legal basis for processing personal data contained in the declarations of interests is foreseen in Articles 87, 88 and 90 of the REACH Regulation, while for the staff of the Agency, Articles 11-17 of the Staff Regulations lie at the basis of this obligation. For both groups, as well as for any other individual working for the Agency, reference can also be made to the Management Board decision adopting the Procedure for Prevention and Management of potential Conflicts of Interests (MB/07/2014/final).

What is the purpose of the collection of personal data?

Any personal data shall be collected and processed solely for detecting potential conflicts between the private interests held by the individuals working for the Agency and the duty of the Agency to make impartial and objective decisions, opinions and recommendations.

What personal data is collected?

Name and position in the ECHA organisation and private interests held, or entrusted to, the individuals working for the Agency, including those of their close family members (spouse, partner and/or dependent children).

Who has access to your personal data and to whom is it disclosed?

For transparency purposes the declarations of interest of the main actors behind ECHA's decision- and opinion-making are made available to the general public. The declarations of the members of the ECHA bodies and of the ECHA management staff are published on the ECHA website.

The declarations of interest submitted by the ECHA staff are stored in an electronic register, managed by the Human Resources (HR) Unit, and to which the process owners (and possible delegates) and line managers of the staff concerned have access. This allows the managers to make an informed decision when assigning tasks to the staff under their supervision.

If the specific case warrants it, the Executive Director may decide to consult the Conflicts of Interest Advisory Committee to advise on how to handle a potential conflict of interest.

Furthermore, declarations may be transferred to bodies in charge of a monitoring or inspection task in conformity with Community law, including the European Court of Auditors, the Internal Audit Service, the Internal Audit Capability, OLAF, the European Ombudsman and the European Data Protection Supervisor.

Who is the data controller?

With regard to the ECHA bodies, the respective secretariat shall exercise the tasks of the data controller. For what the ECHA staff is concerned, it shall be the Head of the Human Resources Unit who is the controller. Please use the respective functional mailboxes for any questions:

- mb@echa.europa.eu
- msc@echa.europa.eu
- rac@echa.europa.eu
- seac@echa.europa.eu
- biocides-committee-secretariat@echa.europa.eu
- BPC-WGs@echa.europa.eu
- forum@echa.europa.eu
- doi.support@echa.europa.eu (for staff)

How long are your personal data kept?

The declarations of interest submitted by the members of the ECHA bodies and by the ECHA staff members are entered into a register kept by the respective secretariats. As annual renewal of these declarations is required, old declarations are removed from the above mentioned register, but stored and archived by the secretariats for auditing purposes for a maximum period of 5 years after the discharge for the budgetary year to which the declaration relates, after which they are destroyed.

What are your rights?

Anyone submitting a declaration of interest has the right to access it and to update or correct it at any time. To exercise these rights, contact the respective data controller via the above mentioned functional mailboxes.

If you feel your Data Protection rights have been breached you can file a complaint with ECHA's Data Protection Officer (data-protection-officer@echa.europa.eu) or have recourse to the European Data Protection Supervisor.