

Report from the Chair of the Conflict of Interests Advisory Committee

Meeting of the Management Board 19-20 March 2015

Item	14
Action	For information
Status	Final - Public

Key messages

The Management Board is invited to take note of the Annual Report of the Conflict of Interest Advisory Committee summarising the very first opinion given by the Committee.

The opinion concerned an established practice in RAC and SEAC to treat a member's concurrent employment in the competent national authority as a potential/perceived Col situation when the Committee deals with a dossier coming from that body. In such a case, according to the rules the Chairman has a duty to take the necessary measures and as a minimum, excludes the member from voting. The Conflict of Interest Advisory Committee found that the current practice does not breach the existing legal and policy framework and supported it as a precautionary approach and recommended some measures, such as the streamlining of policy related documents.

In 2014, the mandates of the members of the Committee have been renewed for two years.

Background

The Management Board established a Conflicts of Interest Advisory Committee ("COIAC") in 2011, prompted by the *Policy for Managing potential Conflicts of Interests*. The COIAC is available to the Management Board and to the Executive Director for consultation on matters related to potential conflict of interests of the individuals staffing the Agency and its bodies.

Rationale

According to the Terms of Reference the Chair of the COIAC prepares an annual report to the Management Board on the activities of the COIAC.

Based on the advice received in 2014, the Secretariat has continued its practice as confirmed by CoiAC and is in the progress of implementing the additional recommendations.

Attachment:

- Annual report of the Conflict of Interest Advisory Committee for 2014

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Annual report of the Conflict of Interest Advisory Committee for 2014

1. Introduction

The Conflict of Interest Advisory Committee ("COIAC") is established as an advisory body in the context of the Agency's Policy for Managing Potential Conflicts of Interest (MB/07/2014). 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.

Where necessary and as appropriate, the Management Board working group for the issues related to the Board of Appeal 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.

According to the Terms of Reference the Chair of the COIAC prepares an annual report to the Management Board on the activities of the COIAC. This is the second report given.

2. Renewal of mandates

The Terms of Reference of COIAC provide that the mandate of the two members appointed by the Management Board and the Executive Director shall have a term of two years. The mandates of these two members were about to expire in 2014.

The mandate of Mr. Thomas Henökl has been extended as from 1 July 2014 for two years by the decision of the Executive Director of 13 May 2014.

The mandate of Mr. Antonello Lapalorcia was renewed for the period of two years on 17 June 2014 by a decision of the Management Board (MB/28/2014).

The Chair of the COIAC remained the Head of ECHA's Legal Affairs Unit - Minna Heikkilä.

3. First advice of COIAC

As indicated in the *Annual report of the Conflicts of Interest Advisory Committee for 2013*, on 14 November 2013 the Executive Director for the first time submitted a request for advice to the Chair of COIAC.

The COIAC met in November and December 2013 to discuss the issue. There were no physical meetings in 2014 as the advice was finalised by written procedure and was subsequently submitted to the Executive Director on 3 March 2014.

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The request originated from the Chairmen of the Committee for Risk Assessment ("RAC") and the Committee for Socio-economic Analysis ("SEAC"). It concerned an established practice in RAC and SEAC to treat a member's concurrent employment in the competent national authority ("MSCA") as a potential/perceived Col situation when the Committee deals with a dossier coming from that body. In such a case, according to the rules the Chairman has a duty to take the necessary measures and as a minimum, excludes the member from voting. The request was:

"Are there any justified grounds for changing the current practice, of regarding concurrent employment of members of RAC and SEAC by a MSCA, which has submitted a dossier for review by RAC or SEAC to be considered as a potential conflict of interest and to be declared even if the member has not been involved in the preparation or review of that dossier?"

In order to gain better understanding of the background, the COIAC invited the Chairmen of RAC and SEAC to its meeting on 21 November 2013. Mr Tim Bowmer (RAC) and Mr Tomas Öberg (SEAC) accepted the invitation and were heard on the functioning of RAC and SEAC. In addition, mandated by the COIAC, the Chair of COIAC contacted the member of the Management Board, whose questions had triggered this request. On 2 December 2013, the COIAC received the reply that was discussed on 4 December 2013.

The COIAC analysed the practice in RAC and SEAC i.a. by looking into the recording of Col declarations and checks as well as the minutes of both Committees with the conclusion that the practice of checking the interests regarding the employment in the competent national authority has been established in both bodies. The COIAC was not able to establish a similar practice in other similar bodies such as EFSA, EMA or SCOEL.

The COIAC put emphasis on the difference between "declaration of interests", "conflict of interest" and "assessment of interests". These are separate notions in the management of interests in the Committees. COIAC recommended applying a clear distinction between declaring and assessing interests across the whole management process of interests in RAC and SEAC.

The COIAC was of the opinion that past employment in a public authority as such is not considered as giving rise to a potential conflict of interest. However, taking into account that also mere perception can be seen as creating a conflict, it cannot be ruled out that under specific circumstances, some instances of current employment in a public authority may be perceived as a potential conflict situation, especially when an assigned task requires a certain degree of autonomy and independence from the employer from which the same task originates.

Unlike the Member State Committee or the Biocidal Products Committee, the RAC and SEAC are not committees composed of representatives of Member States, but are independent scientific committees, to which members are nominated in their independent capacity and appointed by the Management Board of ECHA. It is thus clear that RAC and SEAC members must be independent and they cannot work on the basis of Member State instructions. However, it appears that Committee members themselves ask the question whether there could be a potential conflict and pointing out the link to 'their' MSCA which has been recorded in the minutes. The COIAC concluded that although a strict approach may be precautionary and seen as in line with the Col policy, it is difficult to take into account all the different organisational constellations in different MSCAs and to have a proportionate approach.

COIAC analysed the possibility of mitigating measures against the relatively rigid approach at stake. Based on the wording of the relevant legal provisions, it seems that minority positions can be provided only by members having a right to vote which therefore excludes those members who are working in the MSCA submitting the dossier. On the other hand, based on the hearing with RAC and SEAC Chairmen, these members' opinions would be recorded in the

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minutes. It should be noted that the fact of voting is relatively rare in both Committees. For instance, according to the Chairman of RAC, at the material time in approximately 110 opinions agreed by RAC, there have only been 3 non-consensus conclusions requiring an actual vote. In two cases, one minority position each was recorded and in a third case, a vote of 23 in favour and 3 members taking a minority position was recorded. Additionally, the members concerned can fully participate in the committees' deliberations.

Based on these lines of reasoning, COIAC put forward the following recommendations to the Executive Director:

- Although RAC and SEAC members are independent, concurrent employment in MSCA can create a perception of conflict or a potential conflict of interest as observed in the minutes of RAC and SEAC. Therefore, the current practice cannot be viewed as breaching the existing legal and policy framework.
- Due to the different structures in organising the civil service of the MS, COIAC can support a precautionary approach. However, participation to the meeting should be positively viewed, including the necessity to be able to record a separate opinion in the minutes. There can be cases that may overly scrutinise the interest; however, due diligence justifies the approach and this does not seem to hamper the functioning of the Committees given that voting is rare.
- The current practice allowing meeting participation and recording in the minutes of different opinions should be formalised. Details on the practice including criteria for the Chairs to assess the interests would add transparency.
- Redrafting the rules could be preceded by a discussion at the Committees to ensure an inclusive/participatory approach.
- The different CoI documents could be streamlined.