

Policy for Managing potential Conflicts of Interests

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I. Objectives

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.¹

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.

II. Scope

This 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, the observers participating to their meetings, the staff of the ECHA Secretariat and of the Board of Appeal and any third parties working for the Agency.

III. Definition

There is a conflict of interests 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.

¹ See also recital 95 of the REACH Regulation

IV. General principles

1. Independence

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 processes within the Agency. As a first step all potential conflicting of interests shall be declared. Each process owner² shall then be responsible for putting in place the necessary checks in the daily working practices, including regular checks for potential conflicting interests.

2. Transparency

Transparency is another core value of ECHA and is strongly embedded in its founding Regulation³. Decisions and opinions are formed as openly as possible. For this reason, declarations of interests of the main actors behind ECHA's decision- and opinion-making are made available to the general public.

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)⁴. 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 an element for preventing information leaks.

4. Awareness

As the Agency 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 and set up further implementing procedures for identifying and handling conflict of interest situations.

² A process owner is a person 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.

³ See for instance Articles 77(2) (e) to (n), 106 to 109 and 117 to 119 of the REACH Regulation (EC) No 1907/2006.

⁴ See Article 10 of the respective Rules of Procedure of the Management Board, of the Committees and of the Forum.

V. Responsibilities

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.

On request of the Executive Director, possibly prompted by the Chair of an ECHA body, the Ethical Committee issues a reasoned advice, without prejudice to the decision-making powers of the Agency body requesting it.

VI. Implementation

1. Preventing conflicts of interest: general obligations

All individuals working for the Agency have to comply with the legal obligations bestowed upon them, as well as with the respective rules of procedure of the ECHA bodies and the codes of conduct applicable. As one of the main obligations they shall declare any interests which could be considered to be prejudicial to their independence.

2. Preventing conflicts of interest: declaration of interests

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

The **timeframe** for declaring interests includes all current interests and those that existed during the last 5 years preceding the declaration.

With regard to **family ties**, all relevant interests held by any members of household (spouse, partner and dependent children) need to be declared.

Financial investments in any commercial entity are to be declared when they amount to above 10,000 EUR per company acquired. 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 are to be declared. Interests below this threshold are declared on a voluntary basis.

Other potential interests include among others professional relationships such as employment, and consultancy, membership of a managing body or scientific advisory body, other memberships or affiliations, research funding, intellectual property, public statements and positions.

2.1 Management Board, Committees and Forum

2.1.1 Initial and 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 which could be considered to be prejudicial to their independence. Subsequently every such declaration is published on the ECHA website. The members of the Risk Assessment Committee and the Committee for Socio-economic Analysis are requested to fill in the declaration already after their nomination by their respective Member State, but before their appointment by the Management Board.

The initial declarations are renewed annually. The Secretariat of the Management Board and of the respective Committees and Forum are 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.

2.1.2 Specific declarations

Additionally, 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.

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.

2.2 The ECHA Secretariat staff

The ECHA Secretariat staff includes all temporary agents, contract agents and seconded staff that are employed by or work for the Agency.

The Staff Regulations (Articles 11 to 16), the Rules on the secondment of national experts to ECHA and ECHA's Code of Good Administrative Behaviour⁵ impose a number of obligations on all ECHA Secretariat staff that guarantee their independence.

Dedicated procedures are in place for managing the compatibility of outside-engagements with the status of a member of the ECHA Secretariat staff (prior agreement needed)⁶ and an individual declaration of interests is required in the manner described below.

2.2.1 Initial, annual & specific declarations

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 entered in a register which is accessible to the public, on request, at the Agency's offices.

If at any point in time changes occur to the situation of the staff member's interests, or his/her independence to work on a very specific dossier is at risk, the person involved must update his/her declaration without delay or declare the specific interest in the dossier at hand to his/her line manager.

2.2.2 Post-employment

When a staff member leaves service at ECHA, he/she shall be reminded of his duties under the Staff Regulations and shall duly sign a document regarding integrity, discretion and confidentiality.

⁵ Rules on the secondment of national experts to the European Chemicals Agency (ED/09/2009), ECHA's Code of Good Administrative Behaviour (MB/11/2008).

⁶ Commission decision on outside activities and assignments of 28 April 2004, adopted by analogy.

After leaving the Agency service, former ECHA staff has to notify the Agency for a period of two years of any employment that could constitute a conflict of interest with the previous ECHA post. The Agency 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).

2.3 Networks and partner expert groups

Several networks and partner expert groups (related to guidance drafting & update) support the Agency in its work. As these networks and partner 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.

2.4 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 observers⁷ 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 the Member State Committee foresee in the possibility to invite case owners of evaluation draft decisions to participate in a meeting or part of it as observers. As these case owner 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 declaration of interests. Strict compliance with the Code of conduct for case owners shall be enforced.⁸

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.

2.5 Working with third parties

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 interests' 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 intramuros or not) to make a specific declaration of interests with regard to the work performed for ECHA, in case they would be involved in the preparation of decision-making at the Agency.

⁷ Code of conduct for observers from stakeholder organisations at ECHA meetings (ED/62/2008).

⁸ ECHA Code of conduct for case owners of evaluation draft decisions as observers at meetings of the Member State Committee (ED/05/2010).

3. Identifying and Handling of potential Conflicts of Interests

3.1 Management Board, Committees & Forum

It shall be the task of the respective Secretariat to regularly monitor the initial and annual declarations made by the members and to bring any potential conflict of interests 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 conflict identified, the chairperson shall decide on the appropriate level of participation in the work of the ECHA body. In case of a problem which hampers the functioning of the ECHA body, the Chair in consultation with the Executive Director shall send a formal notification to the appointing authority⁹ stating the nature of the problem. The same procedure will apply for any false declaration, wilful omission or refusal to declare interests, which will be considered as a breach of trust towards the Agency.

In case the Executive Director is not satisfied with the remedies put in place by the Chair, he/she shall inform the Management Board/Committee/Forum of this fact in its next meeting and have it noted in the minutes of the meeting.

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 conflict identified, the chairperson shall decide on the appropriate level of participation.

In all stages of the process of handling a potential situation of conflicting interests, the Chair can ask the Executive Director to consult the Ethical Committee to seek their advice on the individual case at hand.

3.2 ECHA Secretariat

Declarations of interests of the Executive Director and of the members of the Board of Appeal are reviewed by the Chair of the Management Board. When he/she detects a potential conflict of interests, he brings the matter to the attention of the Management Board that shall then decide on the action to take.

For all other Agency staff potential issues shall be assessed by the respective line managers and escalated towards the appointing authority for decision if necessary. The appointing authority shall have the possibility to consult the Ethical Committee before deciding on the action to take.

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

⁹ 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 and the Forum are the respective Member States (Article 85(3) and 86 REACH Regulation), while for 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.

4. Further technical implementation

The template for Declarations of Interests annexed to the present policy may be amended by the Management Board on the basis of a proposal by the Executive Director.

The Executive Director shall adopt codes of conduct and implementing rules to the policy documents containing the detailed procedures for preventing and handling conflicts of interests, including criteria for assessing potential conflicting interests, and inform the Management Board thereof.

Furthermore the Executive Director shall adopt implementing rules related to Article 16 of the Staff Regulation concerning post-employment.



ANNEX:

ECHA DECLARATION OF INTERESTS

There is a conflict of interests 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 for Managing potential Conflicts of Interests.

First Name:

Last name:

ECHA involvement:

Hereby declares to have the following interests
*(Please specify the interest that you or your close family members¹⁰
currently have or have had in the **past 5 years.**)*

¹⁰ 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).

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 entity¹¹ or other organisation¹² with an interest in the field of activity of ECHA?

- No
- Yes, and more in particular:

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

II. Membership of Managing 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 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:

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

¹¹ 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.

¹² An 'organisation' includes governmental, international or non-profit organisations.

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:

Activity	Time period (from...until month/year)	Name of commercial entity or organisation	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 field of activity of ECHA, including grants, rents, sponsorships, fellowships, non-monetary support?

- No
- Yes, and more in particular:

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

V. Investments

*Do you (or your close family members) have current investments in a commercial entity with an interest in the 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?*¹³

- No
- Yes, and more in particular:

Investment	Name of commercial entity or organisation

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 field of activity of ECHA that might create a potential conflict of interests?

- No
- Yes, and more in particular:

Intellectual Property	Name of commercial entity or organisation	Description

¹³ 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 (or your close family members) provided any expert opinion or testimony in the 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 field of activity of ECHA?

- No
- Yes, and more in particular:

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

VIII. Other relevant information

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

I hereby declare that I have read both the Policy on Managing potential Conflicts of Interests at the European Chemicals Agency and the related ECHA Guidance document and that the above Declaration of Interests is at my best knowledge complete. I understand that for all members of the ECHA bodies and the Executive Director 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.)