

Implementation of the ECHA policy on managing potential conflict of interests: Code of Conduct for the Management Board and administrative decisions

Meeting of the Management Board on 22-23 March 2012

Item	15
Action	For decision
Status	Final - Public

1. Summary

Several proposals are submitted to the Board in the broader context of the implementation of the ECHA policy on managing (potential) conflicts of interest (MB/45/2011 final).

Following best practice examples from EU Agencies and preliminary recommendations made during by the Court of Auditors in the context of a special audit on the management of potential conflict of interest in four sample agencies, the Management Board is in particular presented a draft Code of Conduct.

The other proposed decisions are of more administrative nature and concern:

- the remuneration of the outside expert for the "Ethical Committee",
- the establishment of eligibility criteria for members of the Risk Assessment (RAC) and the Socio-economic Analysis (SEAC) committees,
- Declaration of interest form for the Forum (approval of change to Annex of the Forum Rules of Procedures).

Finally, the Management Board is provided with a general update on the implementation activities related to the new policy.

2. Matters for consideration

The Code of Conduct

A "code of conduct" is a set of rules outlining the responsibilities of or proper practices for an organisation. In 2007, the International Federation of Accountants provided the following definition (Wikipedia):

"Principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organisation in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations."

The code of conduct is not legally required and part of the principles contained therein stem from other sources, foremost the REACH Regulation, ECHA's Financial Regulation, the ECHA policy on potential conflict of interest management or the Management Board's Rules of Procedures. The adoption of a dedicated Code gives, however, a strong signal and fosters the high ethical standards applied by the Management Board.

The draft Code of Conduct contained in annex to this note is based on the Code of Conduct adopted by the Management Board of the European Food Safety Agency in 2011.

The Board could recommend to the Committees to follow its example and adopt own Codes of Conduct in line with the Management Board's Code.

Remuneration of the outside expert for the "Ethical Committee"

According to the policy on conflict of interest, the Ethical Committee consists of

- The Head of ECHA's Legal Affairs Unit (Chair)
- A person designated by the Management Board
- An outside expert designated by the Executive Director for its competence in the field of conflict of interests.

At its December 2011 meeting the Board designated Mr Antonello Lapalorcia as member of the Ethical Committee.

The search for a qualified external member appointed by the Executive Director is ongoing. The Secretariat has established draft eligibility criteria and screened public resources for potential candidates. Once the criteria are established by the Executive Director, it is planned to establish a larger pool of potential experts by consulting relevant European or international institutions, the Board or MSCAs. Once all members have been appointed, a first meeting will be convened, where the Terms of Reference will be agreed upon and submitted to the Management Board for adoption.

When establishing the criteria for selecting an outside expert for appointment by the Executive Director, it became apparent that it would be necessary to provide for a remuneration of the outside expert of the Committee. The reason is that the policy foresees for this member a specific expertise and she or he will, thus, be required to deliver specific services to the Committee in the context of potential cases to be dealt with by the Committee.

In line with the current rules, the post of the person designated by the Management Board is unpaid. There are no specific rules for the participation of the outside expert designated by the Agency. Attendance at meetings is reimbursed in accordance with the ECHA Guide on reimbursement. The Committee is expected to meet 2-3 times a year.

The Management Board decision on the remuneration of (MB/77/2008) could possibly cover the payment of a EUR 300 *per diem*, Article 1 of the decision defines the scope of remuneration as follows (highlight by the Secretariat):

"1. The scale of remuneration set in Article 2 of this decision shall apply to

- *co-opted members of the Committees of the Agency and the Forum for their meeting attendance,*
- *experts invited by the Committees of the Agency for their meeting attendance, and*
- ***experts requested by the Agency to provide a service when the need to request their services can be justified by the scientific and technical context or the high level of expertise required.***

2. Remuneration shall not be paid to co-opted members and invited experts who are employed in the public service of a Member State."

However, the Decision was adopted under Article 87 of the REACH Regulation and Article 15 of the REACH Fee Regulation which mainly deal with scientific work related to Committee proceedings and respective working groups. For this reason, the Management Board's approval is sought to provide remuneration of the outside expert on the basis of said

decision and include this aspect in the call for selecting a expert.

Eligibility criteria for Committee members

At ECHA's Management Board meeting held on 13/14 February 2008, the Management Board did not approve a proposed decision on eligibility criteria for members of the Risk Assessment (RAC) and the Socio-economic Analysis (SEAC) committees. Instead, when appointing RAC and SEAC members, the Management Board agreed to use guiding principles, to be applied on a case-by-case basis. Similar to the establishment of a Code of Conduct for the Management Board, the Court of Auditors' preliminary recommendations also remark the need for clear criteria for Committee appointments.

ECHA will have to carefully analyse the final recommendations from the Court of Auditors which are expected in form of a special report by the end of June 2012 and then take appropriate action. As intermediate measure, it is hereby proposed to formalise and apply the criteria for Committee appointments at this point in time. The criteria will have to be further developed in future in order to also address potential actual and perceived conflicts of interest situations arising due to past employment and past participation in various professional or industry associations. For the moment, it is proposed to formalise the guiding principles established in 2008:

- 1. Candidates being employed by a commercial enterprise that could have any direct interest in the matter dealt with by the relevant Committee shall not be appointed.*
- 2. Appointed members of the Committees of the Agency shall resign from the Committee before they enter into service in any such enterprise.*
- 3. Candidates being an active member of, or employed by, an association or other body (except a body established under public law of a Member State serving a public interest) which can be considered as an interest group in the context of the field dealt with by the relevant Committee shall not be appointed. Appointed members shall resign from the Committee before they enter into service in any such association.*
- 4. Candidates who work as private consultants or who are employed by a consultancy company (including employees of universities or public institutes providing such services on an occasional basis) and who currently have contracts with chemical industry or downstream users associations, chemical companies, or other potential registrants or authorisation applicants after having been appointed as members, should (a) withdraw from current contracts and (b) refrain from entering into any new contracts with potential registrants, applicants and chemical industry or downstream user associations.*

Declaration of interests of Forum members

Part of the new policy on managing (potential) conflicts of interest was a new form for Management Board members' declarations of interest under Article 88(2) of the REACH Regulation. Subsequently, the Committees have aligned their declarations with the Management Board declaration and the Board has approved revised annexes to the Committees Rules of Procedure by written procedure in January 2012 (MB/WP/01/2012 – see report submitted to this meeting). Also the Forum has now aligned its declaration with the new form and submits it as new annex to the Forum Rules of Procedure for adoption of the Management Board in accordance with Article 86(4) of the REACH Regulation. Technically, the Management Board is, therefore, asked to adopt a revised annex 2 of the Rules of Procedures of the Forum (MB/36/2011 final) which is, thereby, aligned with the new ECHA declaration of interests as used by the Management Board and the Committees.

3. Update on implementation of the ECHA Policy on Managing potential Conflicts of Interest

Since the adoption of the Conflict of Interest Policy by the ECHA Management Board in September 2011, a lot of work has been done to implement its principles into the daily practices of the Agency.

ECHA Secretariat

As a first step, the guidance for filling in the declarations of interests (as presented to the Management Board for information in its September 2011 meeting) was adopted by the Executive Director. Consequently the new declaration of interest form was introduced for all staff of the Agency, which was accompanied by a large awareness campaign via news flashes, a conflict of interest page on the intranet site of the Agency and information sessions for all staff. The staff was then requested to make a renewed declaration by the end of 2011 at the latest. This exercise was successfully completed and the Heads of Unit and the Directors have received access to the declarations of the staff under their supervision. This will allow them to make informed decisions when assigning tasks.

At the beginning of 2012, the declarations of interest of the ECHA managers and of the Chairs of the Committees have then also been published on the ECHA website, as decided by the Management Board in September 2011.

The Secretariat is also finalising implementing rules to the Policy, which will be divided over several working instructions and other formal decisions. These include, but are not limited to, a working instruction on the management of declarations of interest, a working instruction on handling of potential conflict of interest incidents and rules on occupational activity after leaving the service (post-employment).

Management Board & Committees and Forum

The members of the Management Board have all been asked to make an updated declaration of interest based on the new template. The Chair, with the assistance of the Secretariat, formally reviewed all declarations and took action where necessary. The Deputy Chair reviewed the declaration of the Chair. This exercise is now completed and the declarations have been published on the ECHA website.

A written procedure was launched in January 2012 to have the Management Board adopt the revised Rules of Procedure of the MSC, the RAC, as well as of the SEAC. The revision of the RoPs concerned solely the inclusion of the renewed declaration of interest template. A sufficient amount of positive replies had been received by the deadline (set at 31 January 2012) to adopt the revised RoPs of all three Committees.

Now that the new form is included in the respective RoPs, all Committee Secretariats have started to request the Committee members to make an updated declaration.

Also the Forum has agreed on inclusion of the new template in their Rules of Procedure. This was done via written procedure and these revised RoPs are now presented to the Board for formal adoption.

Finally it is worth to mention that a specific Code of Conduct for the Committee Chairs was adopted end 2011 by ED decision.

ECA audit

On 3 – 7 October 2011 the European Court of Auditors (ECA) visited ECHA to undertake an audit of ECHA's Management of Conflicts of Interest. The audit forms part of a larger audit of 4 selected EU Agencies that aims to:

- Evaluate the European Agency's policies and procedures for managing conflict of interest situations;
- Benchmark them against European and OECD standards and guidelines;
- Test how these policies are implemented in practice.

ECHA and three other agencies – the European Aviation Safety Agency (EASA), the European Food Safety Authority (EFSA) and the European Medicines Agency (EMA) – have been selected for this audit.

ECHA has recently received the preliminary findings of the Court and will give its reply as well as a detailed action plan containing corrective measures to the ECA in the coming weeks. Based on this input the Court of Auditors will then publish their draft report by end June 2012.

With the new Policy for Managing potential Conflicts of Interest and the actions mentioned above, the Agency has already implemented a good amount of the recommendations of the Court, but more actions will be necessary in the coming months to ensure the full implementation of all ECA recommendations.

4. Action requested

The Management Board is invited to:

- take note of the information provided;
- adopt the Code of Conduct of the Management Board of the European Chemicals Agency as contained in annex to this note; and mandate the Executive Director to inform the Committee Chairs of the decision and to invite them to adopt own Code of Conducts amongst the same lines;
- approve the application of its Decision MB77/2008 final of 18 December 2008 for the remuneration of the outside expert of the Ethical Committee designated by the Executive Director;
- formalise the guiding principles for the appointment of Committee members as agreed upon at its meeting of 13/14 February 2008 by converting them into eligibility criteria, and to invite the Executive Director to present a proposal for revised eligibility criteria at the next meeting of the Management Board;
- adopt a revised annex 2 of the Rules of Procedures of the Forum (MB/36/2011 final), in order to align the declaration with the form for annual declarations of interest as adopted by the Management Board in September 2011 (MB/45/2011/D final).

Attachment:

Annex: Draft code of conduct of the Management Board

**CODE OF CONDUCT
OF THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY***Article 1*
Scope

1. With the present Code of Conduct¹ the members of the Management Board of the European Chemicals Agency² commit to meet the highest standards in performing their duties in the public interest. The Code of Conduct provides guidance and sets ethical conventions, probity standards and benchmarks for Board members when acting independently in the public interest, also — where applicable — after termination of their mandate.
2. The Code is without prejudice to other rules that apply to the Board members, for example under Article 88 or 105 of the REACH Regulation (EC) No 1907/2006 or the Rules of Procedure of the Management Board.

Article 2
Principles

1. Board members shall act independently in the public interest guided by and observe the following principles of conduct: integrity, diligence, discretion, honesty and accountability. They shall act impartially, avoiding any situation liable to give rise to potential conflicts of interest. Taking into account the public character of their function they shall conduct themselves in a way that maintains and promotes the public's trust in the Agency.
2. The Board is a collegial body and assumes responsibility for its decisions.
3. When questions arise which are not explicitly covered by this Code, adherence to the generally accepted principles of probity shall determine the Board members' behaviour.

Article 3
Duties

Board members shall in particular:

- exercise due diligence in supervising and steering the Agency against background of relevant EU legislation;
- respect the professional standing of the other Board members;
- not engage in any practice detrimental to the reputation and interests neither of the Board nor of the Agency;
- ensure that the Board operates within the limits of its statutory remit, including having due regard to best practice regarding sound financial management.

Article 4
Relations with media, stakeholders and the general public

1. Board members are the ambassadors of ECHA and shall always set an exemplary conduct in all their activities linked to the Agency. The 'ambassador' function of the Board members entails the promotion of ECHA to its stakeholders and to the general public and preparedness to be accountable for the decisions of the Board whilst supporting the Agency.
2. If Board members wish to respond to a media query or otherwise communicate on an ECHA-related topic but in a non-ECHA capacity, they should make it clear to the journalist

¹ Hereinafter also referred to as "the Code".

² Hereinafter also referred to as "the Board".

or requestor in which capacity they are speaking, and whenever possible, inform the Secretariat of the Management Board about the matter.

3. Board members, when communicating on a matter on which the Board has taken a view, shall represent the views of the Board. If Board members are communicating on a matter that falls within the remit of the ECHA but on which the Board has not taken a view so far, they should give their own personal view but should make clear that this does not necessarily represent the view of the Board or the Agency.

Article 5

The role of the Chair and the Vice-Chair

The Chair and the Vice-Chairs of the Board shall in particular:

- be responsible that the Board fulfills its main role, i.e. to supervise an effective and efficient functioning of the Agency;
- endeavour to ensure that the Board is properly managed, addressing its key tasks and devoting sufficient time to address each of them properly.

Article 6

Professional secrecy

1. Board members are required, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy.

2. The above is without prejudice to the sharing of documents with persons assisting the members in the discharge of their duties as Board members, provided that those persons are subject to an equivalent duty of confidentiality. Board members shall take all necessary measures to ensure that the persons having access to their information also respect the above obligations they are subject to.

3. Board members undertake not to use to the advantage of their personal benefit any facts or information covered by the duty of professional secrecy and coming to their knowledge in the course of or in connection with the performance of their duties.

Article 7

Gifts and hospitality

Board members shall neither apply for, nor receive or accept from any source any advantage, direct or indirect (e.g. as a gift or in form of hospitality, entertainment, travel or other form of benefit of significant value), which is in any way connected to their role as members of the Board.

Article 8

Independence

1. All members of the Board shall sign on an annual basis written Declarations of Commitment and Declarations of Interests. Further details regarding these declarations are set out in Regulation (EC) No 1907/2006 of the European Parliament and of the Council and in the Agency's Policy on potential conflicts of interest management (MB/45/2011 final).

2. Board members shall inform the Chair and Secretariat of the Agency without undue delay of any changes to their declared interests and update their Annual Declaration of Interests accordingly.

3. Board members shall declare at each meeting any interests which could be considered to be prejudicial to their independence with respect to any of the points on the agenda.

4. The interests of a Board member, and those of persons belonging to the same household or family, shall not take precedence over those of the Board and members shall refrain from involving themselves or being involved in any activity that could result in a conflict of interests or is likely to provoke the perception of an existing conflict of interests by the general public.
5. Board members are committed not to exploit their position in order to influence in any way the scientific experts of the Agency or ECHA's scientific outputs.
6. Furthermore, the members shall consider the possible public perception in all facets of their professional and private life — in particular as regards any activities, which are pertinent to raise doubts related to even only potential conflicts of interests.
7. Bearing in mind that independence is a fundamental principle and a core value of ECHA, Board Members shall not hold positions or interests that are considered incompatible with their role as a Board member and the role of the Board. This is without prejudice to those members that were appointed by the Commission to represent interested parties without voting rights.
8. Board members undertake to produce on request by the Chair or the Executive Director supporting information, data or documents. In accordance with the Agency's policy on potential conflict of interest management, the Chair may request the Executive Director to refer matters to the advisory committee established under this policy, or, in case of a problem which hampers the functioning of the Board, send a formal notification to the appointing authority.

Article 9

Acceptance of the Code of Conduct

1. All Board members, including any new members who may subsequently assume office as from the date of the signature of this Code, shall sign the present Code of Conduct.
2. The signed original of the Code shall be held by the Secretariat of the Management Board.
3. Upon their signature Board members shall receive a copy of the signed original for their own record.

Place/Date

Name (in capital letters)

Signature