

Policy for the Prevention and Management of potential Conflicts of Interest at ECHA

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.

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 Policy document¹ 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.

For the members of ECHA bodies and ECHA statutory staff this policy and its underlying procedures apply in full. For the specific groups below, the general principles of this policy equally apply, but adaptations are made in view of their specific mandate:

Advisers and invited experts

The REACH Regulation provides that members of ECHA bodies may be accompanied by advisers on scientific, technical or regulatory matters.

Invited experts are experts in technical or scientific fields who can, upon proposal of a member or the Secretariat and in agreement with the ECHA body or with the chairperson be invited by the Agency to participate for one or more points of the agenda in a meeting of the ECHA body or its working groups.

¹ Adopted by the Management Board on 21 June 2023: Management Board Decision 18/2023, reference document MB/19/2023 final.

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In addition, REACH foresees that Member States shall transmit to the Agency the names of experts who would be available to serve on working groups of the Committees.

The relevant procedure applies in principle to all advisers and invited experts, however due to their specific role, they do not have the same personal duties as members besides the duty to make a specific declaration of interest at the meeting if such occurs.

Indeed, while advisers and invited experts may attend meetings of ECHA bodies, they do not usually do so on a regular basis, they do not hold a vote, nor take up any other formal role (e.g., rapporteurship) and therefore annual declaration of interest or other measures are not normally considered necessary.

However, under certain circumstances, e.g., where a working group of an ECHA body is on a more permanent basis staffed by advisers or invited experts, not being the formally appointed members of the ECHA body, the chairperson may decide to apply parts of the relevant procedure (e.g., the duty to submit annual declarations of interest) in full to such advisers or invited experts. Such solutions have been put in place for instance for the permanent working groups of the Biocidal Products Committee and the RAC working group on the Drinking Water Directive.

Besides the option available in certain ECHA bodies to appoint alternate members (who have to comply with all duties under the relevant procedures as other members), the rules of procedure may provide that the members, when prevented from attending a meeting, can identify a person to attend the meeting on their behalf as invited expert or person of trust, without voting rights. Such persons shall also declare potential conflicts of interest before the start of the meeting, to be assessed by the chairperson.

Expert groups

Several expert groups support the Agency in its work, e.g.:

- PBT expert group;
- Endocrine Disruptor (ED) expert group;
- Nanomaterial expert group.

They are not formal bodies of the Agency and function merely as advisory bodies. They are composed of Member State representatives and several members from selected stakeholders, with a balanced composition. While the risk of conflicting interests affecting the formal work of ECHA is minimal, the chairs and members of each of the three expert groups listed above shall make an annual declaration of interest (with the exception of the members representing stakeholders, who have an obvious bias), which is published on the ECHA website for full transparency. Each meeting shall start with the request to declare competing interests, which are recorded.

Networks

The Agency also runs a number of networks and other discussion for a. As they are merely platforms for communication and the exchange of ideas, they are not subject to conflict of interest management.

Policy for the Prevention and Management of potential Conflicts of InterestStakeholder observers

ECHA welcomes the attendance of observers of the stakeholder organisations at the meetings of the Committees, the Forum and informal ECHA expert groups and networks selected by the respective body, expert group or network. These stakeholder observers have to comply with the Code of conduct for observers².

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 enforced³.

Contractors and interim staff

Whenever the Agency is contracting external service providers to support it in its tasks, these contractors are contractually bound by confidentiality duties and to ensure that potential conflicts of interest are avoided. Based on those contractual provisions, the Agency may require external consultants (regardless of the fact whether the person is working intramuros or not) or interim 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.

Seconded national experts and trainees

The general principles of this policy apply to the seconded national experts (SNEs) and trainees of the Agency, but as they are not given tasks where they would have a qualitative impact on the decision making of ECHA, they are not required to fill out an annual declaration of interest.

Candidates for employment

Also candidates for employment at the Agency are subject to this policy in so far that they shall be required to fill out a full declaration of interest once placed on a reserve list and be subject to a pre-recruitment conflict of interest check when offered a post at ECHA (see hereunder).

² Code of conduct for observers at ECHA meetings (ED-0035 of 18 December 2020).

³ See ECHA Code of conduct for case owners of evaluation draft decisions as observers at meetings of the Member State Committee (ED/88/2022) and ECHA Code of conduct for applicants participating in the Biocidal Products Committee and its Working Groups (ED/104/2013).

3. Contents

Declaring and assessing competing interests

All ECHA staff and members of ECHA bodies have the duty to **declare** all competing interests held by them by submitting and keeping up-to-date an annual declaration of interest compliant with the form FOR-0039 and submitting any specific declaration as required, in line with the procedures described in PRO-0067 for members of ECHA bodies and the applicable Implementing Rules for ECHA staff.

The chairpersons of the respective ECHA bodies (for members of ECHA bodies) and the respective line managers (for the staff of the Agency) have the duty to **assess** all competing interests declared and to put in place effective controls and to impose mitigating measures where such interests carry a risk of turning into *conflicts* of interest, in line with the procedures described in PRO-0067 for members of ECHA bodies and the applicable Implementing Rules for ECHA staff.

Conflict of Interest Advisory Committee

A Conflict of Interest Advisory Committee (CoIAC) is established as an advisory body in the context of this 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, acting as Chair; of a person designated by the Management Board from among its members; and of an outside expert designated by the Management Board, on a proposal by the Executive Director, for its competence in the field of conflicts of interest. All members shall make an annual declaration of interest, which is published on the ECHA website.

The Executive Director can consult the Conflict 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 Conflict of Interest Advisory Committee. On request of the Executive Director, possibly prompted by the chair of an ECHA body, the Conflict 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 subgroup. This subgroup can also provide advice on issues related to (potential) conflicts of interest. Where necessary and as appropriate, the subgroup 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. It shall in any case mandate the CoIAC to perform a review of possible conflict of interests before the appointment of any members of the Board of Appeal.

In case one of the members of CoIAC is prevented from exercising their functions (e.g., due to a conflict of interest or a long-term absence), he/she shall be replaced for that particular case or time period by an ad hoc member appointed by the Chair of the Management Board. The Chair of CoIAC shall be replaced for matters related to the Board of Appeal.

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 rules for preventing and handling conflicts of interest. He/she shall regularly report on the implementation of the policy and its underlying procedures 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 policy and its underlying procedures 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.

For operational processes of ECHA where Member State authorities perform specific tasks and prepare proposals which are later subject to ECHA's opinions or decisions, a common understanding and approach towards the independence and impartiality of the work performed shall be sought and laid down in Guidelines on the topic.