

## **Guidelines for Member State Competent Authorities to ensure the independence of Member State services to be provided to the European Chemicals Agency**

### **Introduction**

The management of (potential) conflict of interest situations is a key element of governance and management of public institutions and crucial for maintaining the trust of stakeholders and citizens in its integrity.

As ECHA and the Member State cooperate closely to implement the objectives of the regulations under ECHA's mandate, it is important that they share a common understanding and approach towards the independence and impartiality of the work performed. This document lays down certain key principles to achieve this goal.

### **Nomination and appointment of members to ECHA bodies**

In line with the provisions of Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)<sup>1</sup>, the Member States shall nominate or appoint members to the ECHA Management Board, Committees and Forum for Exchange on Information on Enforcement. In line with the provisions of Regulation (EC) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (BPR), the Member States also appoint members to the Biocidal Products Committee and its working groups.

During this nomination / appointment process, the Member State authority should ensure that their nominees/ appointees comply with ECHA's six generic exclusion criteria for members of ECHA bodies as stipulated in annex 2 to the ECHA Procedure for Prevention and Management of potential Conflicts of Interest for members of ECHA bodies<sup>2</sup>.

Once appointed, REACH<sup>3</sup> stipulates that these members shall make annual declarations of interests which could be considered prejudicial to their independence, as well as declare such interests at each meeting with respect to the agenda points, and that anyone declaring such interests shall not participate in any voting on the relevant agenda point.

The Member State authorities shall ensure that their nominees / appointees observe these duties. In case that the Member State authority is informed by ECHA of a conflict of interest of a general nature or a breach of trust, they should take the necessary mitigating measures to ensure the continued independency of the ECHA body in question. Such decision may vary from a letter of reprimand to the request or duty to resign or the revocation of the nomination / appointment.

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<sup>1</sup> See in particular Articles 79, 85 and 86 REACH

<sup>2</sup> Management Board Decision 19/2023, ref MB/19/2023 final.

<sup>3</sup> Article 88(2-3) REACH, which applies mutatis mutandis to the Biocidal Products Committee, Article 75(4) BPR.

## **Avoidance of conflicts of interest in regulatory processes with joint responsibility between ECHA and the Member State authorities**

In line with the ECHA Policy for Prevention and Management of potential Conflicts of Interest<sup>4</sup>, it is crucial that the independence of the work carried out to implement the legislation under ECHA's mandate is guaranteed, not only by the Agency itself, but also by all other actors contributing to the implementation, including the competent authorities of the Member States.

For certain operational processes of ECHA, Member State authorities perform specific tasks and prepare proposals which are later subject to ECHA's opinions or decisions. For preserving the integrity of the overall process, it is of the utmost importance that conflict of interest checks are performed already at Member State level as well as by ECHA with regard to all persons contributing to the work, especially also if subcontractors are involved.

More in particular when the Member States contribute to a regulatory process under the mandate of ECHA or when preparing opinions or decisions that will be reviewed by ECHA (and especially for the processes of Substance Evaluation, Restriction and Authorisation for which the Member States have concluded cooperation agreements with the Agency)<sup>5</sup>, the Member State Competent Authorities shall be responsible for:

- Refraining from giving the members of the relevant committees and subgroups, or their scientific and technical advisers and experts, any instruction which is incompatible with the individual tasks of those persons or with the tasks, responsibilities and independence of the Agency<sup>6</sup>.
- Putting in place measures to ensure that their experts (incl. subcontractors) participating in the work at national level for services provided to the Agency, including experts appointed as (Co)-Rapporteurs<sup>7</sup>, have no conflicting private interests which could affect their impartiality.
- Ensuring that any request by the European Court of Auditors, Internal Audit Service and/or the European Anti-Fraud Office to access, inspect and/or audit the records on the handling of conflicts of interests can be accommodated within a reasonable timeframe.
- Avoidance of conflicts of opinion. Public sector experts that have earlier contributed to the same case at Member State level may be at risk of being put in a position of conflict of opinion when asked by ECHA to review this earlier work. Therefore, members of ECHA bodies may, where appropriate, be asked to refrain from voting on proposals for opinion or decision that they have contributed to themselves or that are otherwise stemming from the Member State that has nominated or appointed them.

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<sup>4</sup> Management Board Decision 18/2023 of 21 June 2023, ref. MB/19/2023 final.

<sup>5</sup> See Article 13.2 of the cooperation agreements in particular.

<sup>6</sup> See Articles 85(7) and 86(3) REACH

<sup>7</sup> See Article 87(1) REACH, Article 75(4) BPR.

## **OECD Guidelines for Managing Conflict of Interest in the Public Service**

Based on the above, the Member States are invited, in establishing, amending or reviewing their conflict of interest policies in accordance with their own political, administrative and legal context, to take due account of the Guidelines for Managing Conflict of Interest in the Public Service of the OECD<sup>8</sup> and of the policies established by ECHA in this regard (which are based on the OECD Guidelines).

This OECD standard encompasses that the Member States as a minimum should:

- Provide and implement adequate management policies, processes, and practices in the working environment to encourage the effective control and management of conflict of interest situations.
- Encourage public officials to disclose and discuss conflict of interest matters, and provide reasonable measures to protect disclosures from misuse by others.
- Create and sustain a culture of open communication and dialogue concerning integrity and its promotion.
- Provide guidance and training to promote understanding and dynamic evolution of the public organisation's established rules and practices, and their application to the working environment.

Moreover, all public officials from the Member States should:

- Make decisions and provide advice on the basis of the relevant law and policy, and the merits of each case, without regard for personal gain (i.e. be "disinterested"). The integrity of official decision-making, in particular in the application of policy to individual cases, should not be prejudiced by the religious, professional, party-political, ethnic, family, or other personal preferences or alignments of the decision-maker.
- Dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations.
- Avoid private-capacity action which could derive an improper advantage from 'inside information' obtained in the course of official duties, where the information is not generally available to the public, and are required not to misuse their position and government resources for private gain.
- Not seek or accept any form of improper benefit in expectation of influencing the performance or non-performance of official duties or functions.
- Be expected not to take improper advantage of a public office or official position which they held previously, including privileged information obtained in that position, especially when seeking employment or appointment after leaving public office.
- Be expected to act at all times so that their integrity serves an example to other public officials and the public.
- Accept responsibility for arranging their private-capacity affairs, as far as reasonably possible, so as to prevent conflicts of interest arising on appointment to public office and thereafter.
- Accept responsibility for identifying and resolving conflicts in favour of the public interest when a conflict does arise.
- Be expected to demonstrate their commitment to integrity and professionalism through their application of effective Conflict of Interest policy and practice.

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<sup>8</sup> <http://www.oecd.org/governance/ethics/2957360.pdf>