

(To be filled out in the EDPS' office)

NOTIFICATION FOR PRIOR CHECKING

DATE OF SUBMISSION: 23/05/2013

CASE NUMBER: 2013-0538

INSTITUTION: ECHA

LEGAL BASIS: ARTICLE 27-5 OF THE REGULATION CE N° 45/2001⁽¹⁾

INFORMATION TO BE GIVEN²

1/ NAME AND ADDRESS OF THE CONTROLLER

European Chemicals Agency, Annankatu 18, 00120 Helsinki, Finland

2/ ORGANISATIONAL PARTS OF THE INSTITUTION OR BODY ENTRUSTED WITH THE PROCESSING OF PERSONAL DATA

The Human Resources Unit is responsible for the management of the annual declarations of interest of the staff members. The registry of the Board of Appeal is responsible for the management of the annual declarations of the Board of Appeal members, while the respective secretariat of each ECHA body (Committees, the Forum and the Management Board) is responsible for the management of the annual declarations of their members.

With regard to the members of the ECHA bodies (Management Board, Committees and Forum), the Chair will be responsible for taking all necessary measures to ensure the impartiality of the body. Interests are checked and documented at the time of appointment and conflicts of interest raised at meetings and the mitigating measures taken are documented in the meeting minutes. In case of doubt, the advice of the Conflicts of Interest Advisory Committee may be requested.

With regard to the ECHA staff, each process owner at ECHA (management functions, usually the Head of Unit or Director) is made responsible for the prevention of conflicts of interest in his or her processes. He/she will first decide whether interest checks will need to be performed in the process and if yes, document such checks. When potential conflicts are discovered, mitigating measures are put in place and documented to prevent them from materialising. When a conflict materialises nonetheless into a real or perceived conflict of interest incident, the Director will be responsible for

¹ OJ L 8, 12.01.2001.

² **Please attach all necessary backup documents**

investigating the issue and to take measures if necessary, potentially also asking the advice of the Conflicts of Interest Advisory Committee.

The Executive Office of the Agency was responsible for the selection of the external expert to the Conflicts of Interest Advisory Committee, while the Legal Affairs Unit is responsible for the Secretariat of this Committee and thus for the safe processing of personal data by it. The selection of the external expert to the Conflicts of Interest Advisory Committee took place through an open call for expression of interest. To a large extent the selection of this expert followed the standard procedures for selections, also with regard to the Data Protection safeguards, and reference is thus made to ECHA's prior checking notification for selection and recruitment (EDPS case 2010-0109).

3/ NAME OF THE PROCESSING

Management of potential conflicts of interest

4/ PURPOSE OR PURPOSES OF THE PROCESSING

The purpose of the processing of personal data is to enable the Agency to avoid conflicts of interest to ensure the impartiality of the Agency's decision-making (a duty foreseen in its founding regulation).

5/ DESCRIPTION OF THE CATEGORY OR CATEGORIES OF DATA SUBJECTS

The data subjects include the members of ECHA's Management Board, the Committees and the Forum, as well as the statutory staff of the Agency and of the Board of Appeal (i.e. TAs and CAs, as well as SNEs, but excluding trainees and interims).

The reason why the duty to declare interests annually was expanded to the whole staff of the Agency is that the AST staff in the Agency do not merely perform secretarial duties, but due to the nature of ECHA's work also perform scientific work on actual cases (there are a lot of scientific assistants for instance). While their work is of course supervised and signed off by AD staff and ECHA's management, their role and influence in the final outcome is significant, especially in the high-volume processes, where hundreds to thousands of dossiers are treated every year.

In an indirect way also the spouse and dependent children of the above persons are concerned, as the obligation to declare interests is extended to their private interests as well. Although it is requested that they are not mentioned by name, it can be possible that they are anyway identifiable via other means.

6/ DESCRIPTION OF THE DATA OR CATEGORIES OF DATA (*including, if applicable, special categories of data (Article 10) and/or origin of data*).

Annual declarations:

- Name and function of the declarant (for family members: only function, no name)
- Private interests held currently and up to 5 years back, which include among others: past employment, membership of governing and scientific bodies, membership of associations, research funding received, investments and financial interests held, intellectual property held, public statements made and public positions held, any other relevant information that may jeopardise the impartiality of the individual.

Specific/spontaneous declarations during meetings or when tasks are assigned:

- Name and function of declarant
- Specific interest declared
- Action taken (e.g. assignment of case to another staff member)

Records of conflict of interest checks performed:

- Name and function of staff member
- No conflicting interest found/ conflicting interest found
- Action taken (e.g. assignment of case to another staff member)

7/ INFORMATION TO BE GIVEN TO DATA SUBJECTS

ECHA has made a specific privacy statement and a Q&A including aspects on Data Protection available on its intranet to inform the data subjects of their rights (see annexes 2 and 13). A Data Protection notice is also included in the declaration of interest template.

ECHA has also organised multiple awareness and training events to inform staff of their duties and of their rights (including also their rights under the Data Protection Regulation).

In the letters inviting the nominating or appointing authorities of the experts in the ECHA bodies (mainly the Member States), a lot of information is included on ECHA's Policy for prevention of Conflicts of Interest, in order to inform potential candidates that they will be required to fill in a declaration of interest, which will be made public via the ECHA website (see annex 17).

As ECHA managers are required to provide a declaration of interest already at the stage between the completion of the selection procedure and the actual recruitment, such fact is already notified in the vacancy notice, which is published on the ECHA website when the selection procedure is launched (see annex 18). Here, I have advised the HR Unit to update the notice to include also a mention of the fact that the declaration will be made publicly available on the ECHA website. They have accepted to include such statement in the next vacancy notice for a management post.

8/ PROCEDURES TO GRANT RIGHTS OF DATA SUBJECTS

(Rights of access, to rectify, to block, to erase, to object)

The data subjects are informed of their rights and of the procedure to exercise them (through direct contact with the responsible controller) via the specific privacy statement and the Q&A, available on the intranet site.

Everyone is entitled to access and/or rectify their declaration of interest at any time. Keeping the declaration up-to-date is even an obligation.

9/ AUTOMATED / MANUAL PROCESSING OPERATION

All new staff members are required to sign a declaration of interest in the first days of their employment. For management positions, the vacancy notice already indicates that a declaration of interest will need to be provided after the selection has been finalised, but before the recruitment in a certain management post can take place. Such initial declaration of interest then has to be updated annually.

For members of the ECHA bodies (MB, Committees and Forum) and the Board of Appeal a similar procedure applies. For those persons appointed by the Agency (i.e. members of the Risk Assessment Committee, the Committee for Socio-economic Analysis and the Board of Appeal) the declaration of interest is requested before appointment in order for the appointing authority (i.e. the MB) to be able to assess their potential conflict of interests with the post. The members of the other bodies are appointed directly without the involvement of the Agency and here a declaration of interest is only requested once the member is appointed. Annual updates are requested also here.

All annual declarations of interest are sent to the Agency in paper or electronic format and are kept in an electronic register. These documents are thus processed both manually and electronically by the Agency.

Specific or spontaneous declarations of interest during meetings or when a task is assigned are made orally or in writing and are recorded in the minutes or documented in the case file related to the task at hand (both in paper and electronic).

Proactive conflict of interest checks performed before assigning a task are recorded in paper or electronic format.

10/ STORAGE MEDIA OF DATA

All paper versions of annual declarations of interest are stored in a secure location (locked cupboard for members of an ECHA body and the personal file for the staff). An electronic version of each annual declaration of a staff member is stored in an electronic tool with restricted access. The annual declarations by the members of the Management Board, the Committees and the Forum are also stored in an electronic register, but this register is made available on the ECHA website.

The records documenting the conflict of interest checks performed by the process owners and/or the specific case or meeting-related declarations of interest are stored in the case-file to which they relate. There is no uniform template and the format can thus be paper-based or electronic, based on the practice of the unit in question, the IT tools used, etc. In any case it is required that access is restricted on a 'need-to-know' basis.

Also for the procedure for investigating information on potential conflicts of interest or the requests for advice from the Conflicts of Interest Advisory Committee, no storage media is prescribed, so the keeping of records in paper or electronic format will depend largely on the administrative practices

of the Director involved. So far neither procedure has been used. In any case it is required that access is restricted on a 'need-to-know' basis.

11/ LEGAL BASIS AND LAWFULNESS OF THE PROCESSING OPERATION

The processing of personal data is necessary for the performance of tasks carried out in the public interest (see Article 5(a) of Regulation (EC) No 45/2001).

Its legal basis can be found in:

- Articles 87, 88 and 90 of Regulation (EC) No. 1907/2006 (the 'REACH Regulation');
- Article 11a and 13 of the Staff Regulations;
- ECHA's Management Board decision MB/45/2011 final: ECHA Policy for Managing potential Conflicts of Interest;
- The respective Rules of Procedure of the ECHA Management Board, Committees and Forum;
- ECHA's Work instruction 105: Prevention of Conflicts of Interest;
- ECHA's Work instruction 106: Processing information related to potential conflicts of interest;
- Several guidance documents adopted by Executive Director decision.

12/ THE RECIPIENTS OR CATEGORIES OF RECIPIENT TO WHOM THE DATA MIGHT BE DISCLOSED

The annual declarations of the members of the ECHA bodies (Management Board, Committees, Forum and Board of Appeal) and of the ECHA managers (Executive Director, Directors, Heads of Unit) and the Chairs of the Committees (which are Agency staff) are published on the ECHA website. Any ad hoc declarations made in the course of a meeting of the above ECHA bodies is documented in the meeting minutes of such body, which are also published on the ECHA website.

The annual declarations of the staff members are stored in an electronic register to which the process owners (i.e. usually the Heads of Unit and Directors) receive access in order to perform interest checks where necessary. The process owners have the possibility to delegate this task to another staff member (e.g. in case a high volume of checks needs to be performed which is not feasible for the manager to handle alone).

In cases where the Executive Director wishes to receive the advice of the Conflicts of Interest Advisory Committee, the members of this Committee may receive access to the declaration(s) of interest in question as well as to any other background information necessary.

13/ RETENTION POLICY OF (CATEGORIES OF) PERSONAL DATA

The retention period of the declarations of interest is kept to the minimum period needed for management and (financial) auditing purposes, which could be reasonably set at 5 years after the discharge of the financial year to which the declarations refer (i.e. 7 years in total). This retention period assures the Agency that it can take action in case discharge would not be granted with regard to a certain incident, while at the same time giving also auditing authorities enough time to do their work. As declarants are requested to declare private interests of up to five years in the past, it also

would allow for the Agency to verify the accuracy of such declarations (e.g. by linking it to previous declarations), as was requested by the European Court of Auditors.

The conservation period of records documenting the conflict of interest checks performed and/or specific case/meeting-related declarations of interest are stored in the case-file and follow the retention period of the case file. E.g.: specific declarations of interest made by members of a procurement evaluation panel are stored in the procurement file and follow its retention period (see prior checking notification of procurement and contract management).

13 A/ TIME LIMIT TO BLOCK/ERASE ON JUSTIFIED LEGITIMATE REQUEST FROM THE DATA SUBJECTS

All requests are handled without undue delay, in line with ECHA's Code of Good Administrative Behaviour in relations to the public (replies within 15 working days).

(Please, specify the time limits for every category, if applicable)

14/ HISTORICAL, STATISTICAL OR SCIENTIFIC PURPOSES

If you store data for longer periods than mentioned above, please specify, if applicable, why the data must be kept under a form which permits identification.

Not applicable.

15/ PROPOSED TRANSFERS OF DATA TO THIRD COUNTRIES OR INTERNATIONAL ORGANISATIONS

Not applicable.

16/ THE PROCESSING OPERATION PRESENTS SPECIFIC RISK WHICH JUSTIFIES PRIOR CHECKING *(Please describe):*

Article 27.2(b) of Regulation (EC) No 45/2001: The processing operation is intended to evaluate personal aspects relating to the data subject, including his or her ability, efficiency and conduct.

17/ COMMENTS

PLACE AND DATE: 23 May 2013

DATA PROTECTION OFFICER: Bo Balduyck

INSTITUTION OR BODY: European Chemicals Agency (ECHA)

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