

Helsinki, 26 Oct 2018

Post-employment guidance

(Decision by the Executive Director)

<p>Owner: Eric Rieger Activity/ Process: 14.05.01 (Administration of rights and obligations of staff) Validity: Indefinite</p>	<p>Distribution: Executive Director Quality Manager All Directors All Heads of Unit ECHAnet</p>
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AS THE EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (hereinafter 'the REACH Regulation'), and in particular Articles 83(2)(g), 103(1) and 105 thereof,

Having regard to the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations') and the Conditions of Employment of Other Servants (hereinafter 'the CEOS'), and in particular Articles 16, 17 and 19 of the Staff Regulations, applicable by analogy according to Articles 11 and 91 of the CEOS,

Having regard to Commission Decision C(2018)4048 final of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the Service, and in particular Articles 19 to 21 thereof, applicable by analogy according to ECHA Management Board Decision MB/D/23/2018,

Having regard to ECHA Management Board Decision contained in PRO-0067 on the prevention and management of potential conflicts of interest,

Whereas:

- (1) Obligations that apply to staff members leaving the service need further implementing guidance,
- (2) ECHA's post-employment system must deal effectively with current and anticipated post-employment issues, covering all of the important risk areas for conflicts of interest related to occupational activities after leaving the service at ECHA,
- (3) Any restrictions and prohibitions contained in the post-employment system need to be applied proportionately and in a coherent and consistent manner. They must be communicated effectively to all staff,
- (4) The procedure and criteria for making approval decisions in individual post-employment cases should be made transparent and effective.

I HAVE DECIDED THE FOLLOWING:

1. The guidance on post-employment as contained in Annex to this Decision shall apply to all staff members subject to the provisions of the Staff Regulations.
2. Before leaving the service at ECHA staff members shall duly sign a declaration of honour in which they acknowledge their continuous obligations under the Staff Regulations regarding integrity, discretion and confidentiality.
3. They shall also inform ECHA about any occupational activity, gainful or not, within two years of leaving the service at ECHA and apply for approval of that activity. This obligation, however, does not apply to any employment at an EU Institution, Agency or body in the meaning of the Staff Regulations or activities that are not considered occupational.

Effective date

This decision shall take effect five (5) working days after the date of signature and shall revoke decision ED/54/2015.

Done at Helsinki, 26 Oct 2018

[signed original available at the Executive Office]

Bjorn Hansen
Executive Director

Annex to ED/72/2018

ECHA POST-EMPLOYMENT GUIDANCE

1. Introduction and legal basis

Any reference in this guidance to a person of the male gender shall be deemed also to constitute a reference to a person of the female gender, and vice-versa.

The present ECHA guidance on post-employment apply to all statutory staff members and provide guidance on the rules and procedures applicable when a staff member leaves the service at ECHA.

In cases of transition of staff members from ECHA to the private and non-profit sectors, it is important to maintain the confidence of the general public in ECHA and its staff. ECHA must act impartially and independently in relation to industry and stakeholders, and it is equally important that it is perceived by the outside world as doing so. Hence, ECHA must seek to prevent suspicions that a former member of its staff has profited of his position at ECHA to gain special advantages for his new private or non-profit clients or employer.

Moreover, ECHA must protect its strategies and plans with regard to its regulatory and administrative activities from disclosure to the outside world if such information is contained in documents drafted for internal use only. ECHA also has the obligation to prevent anyone not subject to the confidentiality rules of ECHA from gaining access to any confidential information that ECHA has received during its regulatory activities. All such knowledge could result in illegal competitive advantages.

Hence ECHA must strike an appropriate balance between fostering public integrity through an adequate post-employment system and to preserve a reasonable measure of employment and service freedom to its staff. In this regard it is important to note that ECHA predominantly employs temporary agents with expert knowledge relevant for its specific regulatory activities. It is inherent in such a system of specialists employed under contracts of limited duration that former staff members will continue their professional career in their field of expertise. This may involve industry which is subject to ECHA's regulatory activities and/or other relevant stakeholders of the agency. These guidance should ensure that staff members will generally be able to choose their future employment freely unless certain conditions apply that necessitate precautionary measures.

Staff members are bound, under Articles 17 and 19 of the Staff Regulations, to keep confidential any information they have received in the line of duty even after leaving the service at ECHA.

In addition, Article 16 of the Staff Regulations and its implementing rules oblige former staff members to behave with integrity and discretion as regards the acceptance of certain appointments or benefits after leaving the service and to inform ECHA, within two years thereof, about any intention to engage in an occupational activity, whether gainful or not. Based on the information received, the Executive Director will have to assess whether approval of that activity can be given. This obligation, however, does not apply to any employment at an EU Institution, Agency or body in the meaning of the Staff Regulations or activities that are not considered occupational.

In accordance with the Implementing Rules on outside activities and assignments and on occupational activities after leaving the Service¹, the following activities are not considered as occupational activities under Article 16(2) of the Staff Regulations and, hence, do not require prior authorisation, provided they do not give rise to lobbying or advocacy vis a vis staff of ECHA, are not remunerated and are carried out in the staff member's personal capacity:

– any activity that has no link with the activities of the European Union and is undertaken from time to time only, upon need, in particular:

(i) charitable and humanitarian activities;

(ii) activities relating to sport or wellbeing;

(iii) activities deriving from political, religious, trade unionist and/or philosophical convictions;

(iv) craftwork, artistic or cultural activities;

– teaching activities unless they are performed for a commercial entity;

– the mere ownership of assets or holdings, or the management of the personal or family fortune, whether in a private capacity or as a shareholder of a company, but not running a business;

– the mere membership of a professional order or association, unless the code of conduct of the order or association conflicts with the staff member's obligations under the Staff Regulations.

2. Post-employment duties while still working at ECHA

2.1. Pursuant to Article 11 of the Staff Regulations, staff members shall carry out their duties and conduct themselves solely in the interest of the service, to which they owe their loyalty. Therefore, staff members must not enhance their future occupation prospects in or for the private and non-profit sectors by giving preferential treatment to potential employers or - in case of a planned self-employed activity - clients during their service at ECHA.

2.2 Staff members must, in a timely manner, disclose their negotiating of employment or services and offers of employment or service contracts in the private and non-profit sectors that could constitute a conflict of interest. In practice this requires the staff member concerned to inform his line manager at once if he is in employment or service negotiation with a company or stakeholder that is subject to or affected by any ECHA decision, opinion, or recommendation under preparation, in which adoption process that staff member is actively involved. This requirement stems from the general obligation to abstain from any conflict of interest as enshrined in Article 11a of the Staff Regulations and European Ombudsman recommendations on the topic². Following the notification of employment negotiations the general conflict of interest procedures apply.

2.3 In order to prevent and manage potential conflict of interest situations after leaving the

¹ Commission Decision C(2018)4048 final of 29 June 2018, applicable by analogy.

² Decision of the European Ombudsman of 23 May 2013 closing his inquiry into complaint 775/2010/ANA against the European Food Safety Authority (EFSA).

service at ECHA, a staff member who wishes to engage in an occupational activity shall inform the Executive Director of the following:

- a description of his activity during his last three years of active service at ECHA;
- a description of the activity that he wishes to take up including information on the position he is to occupy and the expected duration of the activity;
- the name, address and telephone number of his potential employer as well as its fields of activity; and
- the links with his former functions at ECHA, if any.

To this end, the staff member will fill in and file with Executive Director the application form provided by the Agency's HR Unit in due time, i.e. either:

- before his employment contract with ECHA expires; or
- after the Executive Director received or sent out a notice of termination of the employment contract between ECHA and the staff member concerned.

3. Assessment and decision by the EXECUTIVE DIRECTOR following a request for approval of an occupational activity after leaving the service

3.1 Following the submission of the application form as contained in paragraph 2.3 of this guidance, the Executive Director has 30 working days to assess the envisaged employment or service and notify his decision whether the application for approval

- will be granted; or
- will be granted under certain conditions; or
- will be rejected.

If no such notification has been received by the end of this period, this is deemed to constitute implicit acceptance of the application. During the 30 working days, the Executive Director will consult the Head of Unit and Director of the Directorate from which the staff member concerned originates (other Heads of Unit and Directors may also be consulted where appropriate) and, if applicable, the Joint Committee.

In the event of conditional grant or rejection, the Human Resources Unit will draft a proposal, following recommendations of the line managers of the staff member in question and send it for a written consultation to the Joint Committee. If no comments or objections are received from the Joint Committee within a 5 working day period, the HR Unit will forward the proposal to the Executive Director for final decision.

3.2 Staff members who are in a position to potentially become involved in a conflict of interest should have an exit interview with the Head of Unit and/or other appropriate members of the Human Resources Unit of ECHA to examine potential conflict of interest situations and, if necessary, propose appropriate conditions for remedy.

3.3 The application for an occupational activity after leaving ECHA will generally be granted unless it refers to particular cases in which there is a very concrete link between a staff

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member's tasks and responsibilities at ECHA and his future employment in or services for the private and non-profit sectors. More specifically, it must be ensured that staff members after leaving the service at ECHA will not:

- represent their new employer or client before ECHA, its Board of Appeal or any law court in an ongoing procedure or negotiation on an issue for which they had responsibility during their service at ECHA;
- take unfair advantage of sensitive information that they acquired while being employed by ECHA to benefit themselves or their new employer; nor
- seek to influence outside of normal consultation processes their former colleagues to the benefit of themselves or their new employer.

In this regard the Executive Director will also take into account any safeguard measures of the staff member's new employer or company, including rules on professional ethics, ensuring to exclude any conflicts of interest.

3.4 In case the Executive Director considers it necessary to impose conditions in order to exclude any of the scenarios contained in the previous section, he may require one or several of the following conditions for a certain duration after the former staff member left the service, which shall not exceed two years:

- No intervention in any affair or dossier that the former staff member was personally involved in or, in case of a management position, which was dealt with by the service/unit headed by the former staff member. This condition particularly concerns dossiers which remain open after leaving the service;
- Abstain from having professional bilateral contact with former colleagues, and especially subordinates;
- No representation of companies towards ECHA (e.g. before ECHA's Board of Appeal or an advisory or regulatory committee/body);
- Limitations to participate in procurement procedures organised by the Agency;
- Not to engage in lobbying or advocacy vis-à-vis staff of ECHA for their business, clients or employers on matters for which they were responsible during the last three years in service (duty explicitly imposed on senior managers for 12 months, but could be extended to other staff members);
- Not to hold a senior consultative role in the regulated industry or its associations (especially applicable to senior management, but may be imposed on other staff members where needed);
- Limitations to advising companies that have been addressees or beneficiaries of any individual decision prepared by services under the authority of former staff member (applicable to senior management or senior advisors);
- Any other conditions he thinks fit.

The general principle of proportionality, taking into account the seniority of the former staff member while working for ECHA, his level of exposition to sensitive data and the type of activity he wishes to engage in after having left the service, must always be adhered to when deciding which conditions to apply and for how long these should be in place.

3.5 The staff member concerned may request a review of the decision by the Executive Director within ten working days of the date on which it was notified to him. The staff member can request a meeting with the Executive Director regarding the decision and may be accompanied to the meeting by a representative of his choice. The Executive Director has ten working days to respond to the request for review. If at the end of the period no reply to the request has been received, this shall be deemed to constitute an implied decision rejecting it.

3.6 Any permission granted pursuant to the application shall be limited to employment with or services for the named organisation, and any person with whom the organisation merges or transfers the undertaking by which the staff member is employed or provides services for.

3.7 For senior managers (Directors), the Appointing Authority shall, in principle, prohibit them during the first 12 months after leaving the service from engaging in lobbying or advocacy, vis-à-vis staff of the Agency, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service. ECHA publishes information annually on its website on how the provisions regarding former senior managers are implemented, including a list of the cases assessed.

4. Post-employment duties after having left ECHA

4.1 For a period of two years after leaving ECHA, a former staff member shall inform the Executive Director without delay of any change in one or more of the circumstances set out in paragraph 2.3 of this guidance that occur after approval has been given. The Executive Director shall examine whether to modify the conditions of or, in exceptional circumstances, to withdraw his approval in the light of such a change. Any such modification or exceptional rejection would require prior consultations with the Joint Committee.

4.2 Former staff members must neither use nor disclose confidential or other internal information after they leave the service at ECHA. This obligation stems directly from their duties pursuant to Articles 17 and 19 of the Staff Regulations, which former staff members will have signed to acknowledge after they left ECHA in accordance with the Declaration of honour.

4.3 They must not endeavour to influence their former colleagues at ECHA. The Executive Director may consider appropriate conditions before granting his approval to any occupational activity in the private and non-profit sectors in order to ensure a 'cooling off' period of the former staff member concerned.

4.4 Former staff members must not represent their new employer or client in an ongoing procedure or negotiation on an issue for which they had responsibility before they left the service at ECHA.

4.5 In case of flagrant breaches of the Staff Regulations, its implementing rules and the this guidance with regard to post-employment, the Agency shall reserve the right to take any appropriate action, including disciplinary proceedings or court action.