

EU Agencies and Conflicts of Interests



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STUDY

Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Petitions, takes stock and assesses the existing rules and policies on conflicts of interests in EU agencies and examines whether, and/or how, scrutiny can be improved and whether there is a need to streamline and enhance the coherence of the various rules in place.

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LIST OF ABBREVIATIONS

Abbreviations of EU decentralised Agencies falling under the scope of the study

Abbreviation	Name
ACER	Agency for the Cooperation of Energy Regulators
BEREC Office	Office of the Body of European Regulators for Electronic Communications
CdT	Translation Centre for the Bodies of the European Union
CEDEFOP	European Centre for the Development of Vocational Training
CEPOL	European Union Agency for Law Enforcement Training
CPVO	Community Plant Variety Office
EASA	European Aviation Safety Agency
EASO	European Asylum Support Office
EBA	European Banking Authority
ECDC	European Centre for Disease Prevention and Control
ECHA	European Chemicals Agency
EEA	European Environment Agency
EFCA	European Fisheries Control Agency
EFSA	European Food Safety Authority
EIGE	European Institute for Gender Equality
EIOPA	European Insurance and Occupational Pensions Authority
ELA	European Labour Authority
EMA	European Medicines Agency
EMCDDA	European Monitoring Centre for Drugs and Drug Addiction
EMSA	European Maritime Safety Agency
ENISA	European Union Agency for Network and Information Security
EPPO	European Public Prosecutor's Office
ERA	European Union Agency for Railways
ESMA	European Securities and Markets Authority
ETF	European Training Foundation
EUAN	EU Agencies Network
EUIPO	European Union Intellectual Property Office
EU-LISA	European Agency for the Operational Management
EU-OSHA	European Agency for Safety and Health at Work
EUROFOUND	European Foundation for the Improvement of Living and Working Conditions
EUROJUST	European Union's Judicial Cooperation Unit
EUROPOL	European Union Agency for Law Enforcement Cooperation
FRA	European Union agency for Fundamental Rights
FRONTEX	European Border and Coast Guard
GSA	European GNSS Agency
SRB	Single Resolution Board

Abbreviations of Executive Agencies

Abbreviation	Name
EASME	Executive Agency for Small and Medium-sized Enterprises
EACEA	Education, Audiovisual and Culture Executive Agency
CHAFEA	Consumers, Health, Agriculture and Food Executive Agency
INEA	Innovation and Networks Executive Agency
REA	Research Executive Agency
ERC	European Research Council Executive Agency

Further Abbreviations

Abbreviation	Word
CJEU	Court of Justice of the European Union
CEOs	Conditions for the Employment of Other Servants of the Union
CoA	Court of Auditors
Col	Conflict(s) of Interest(s)
COM	European Commission
DoI	Declaration of Interest(s)
ED	Executive Director
EP	European Parliament
ESAs	European Supervisory Authorities
EU	European Union
MB	Management Board
NGO	Non-governmental organisation
OECD	Organisation for Economic Cooperation and Development
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

EXECUTIVE SUMMARY

Notion of independence in relation to EU agencies

- **Independence** generally refers to a status which ensures that the body concerned can act completely freely, without taking any instructions or being put under any pressure. The different facets of independence can in essence be captured in institutional and functional independence. **Institutional** independence refers to a separate legal entity and normally encompasses aspects of organisational, budgetary and staffing independence. **Functional** independence guarantees that no instructions are given from actors outside the independent entity in the exercise of its tasks.
- The founding Regulations of EU decentralized **agencies** are not homogeneous as regards their provisions on independence, in particular on the degree of independence that agencies should maintain from **other institutions** and **Member States**.
- Given the **hybridity** of the governance structure of EU agencies, both their institutional and functional independence have to be assessed against this backdrop.

Concept of 'conflicts of interests' (Col)

- The term 'conflict of interest(s)' is defined in various legal acts and codes of conduct both at international and EU level. From a terminological point of view, the word '**interest(s)**' is used in singular or in plural without coherence. The use of the term **in plural** is more accurate, since the notion of conflict requires at least two different interests which are incompatible with each other and thus conflict. From a comparative perspective, most official languages of the EU use the term in plural.
- At the international level, the two main definitions of conflicts of interests have been developed by the **Council of Europe** and by the **Organisation for Economic Cooperation and Development** (OECD). The two definitions have in common that they both concern the conflict between the **public duties** of the official on the one hand and his or her **private interest** on the other. The subtle difference is that the Council of Europe's definition covers **actual** or **perceived** conflicts, whereas the OECD definition covers actual or **potential** conflicts. Both definitions however are silent on the possibility of a conflict between **different public interests**, in particular if the public official assumes or has assumed multiple public functions or roles. This type of conflict is of relevance especially in the context of the multi-level EU governance, where a national interest might conflict with the Union interest.
- At the EU level, definitions of conflict of interests are to be found both in legally binding rules, namely the **EU Staff regulations** and **Financial Regulation**, and in **codes of conduct** of a soft

law nature. Definitions in both Staff Regulations and the Financial Regulation cover instances where the public interest represented by the specific institutional position of a person may conflict not only with his/her private interests but **also with other professional or national interests** vested with the person. The main difference between the Financial Regulation and the Staff Regulations is that the latter regulates only **actual or potential** conflicts of interest, whereas the former includes also the obligation of hierarchical superiors to take appropriate measures to address situations which may objectively be **perceived** as a conflict of interests.

- The **European Commission Guidelines** on the prevention and management of conflicts of interest in EU decentralised agencies of 2013 explain that a perceived conflict of interest can constitute a reputational risk to the agency, even if it turns out to be unsubstantiated. Therefore, the Commission recommends that, while giving due consideration to proportionality, a risk of **perceived** conflict of interest should be treated as if it were an actual conflict.

Internal rules and policies of EU agencies based on the results of the questionnaire and case-studies

Definition of Col

- Most agencies follow for all actors the **definition** contained in the European Commission Guidelines on the prevention and management of Col in EU decentralised agencies of 2013. However, there is **no coherence** as to the extent that agencies' rules cover, apart from actual conflicts, also **potential or perceived** ones, and whether there can be a conflict between different **public interests** (Union v national interest).

Type of declaration for Col

- The European Parliament recommended in the 2017 discharge procedure to use **positive declarations** instead of asking staff or management actors to declare themselves out of Col through self-assessment. Our analysis reveals that most agencies follow a kind of '**intermediary**' approach; they divide the Declaration of Interest (DoI) in different areas, such as economic interests, family interests, previous professional experience, affiliations etc., and they require the relevant actor to declare if they have any relevant interest in each area.

Timing of declaration

- The majority of agencies require a **DoI upon appointment** both for staff members and for members of the Management Board (MB). The main difference among the policies of agencies is whether there is an obligation to **up-date** the relevant Dols, either annually or upon change of post.

Assessing actors and their powers

- The ways **Dols are screened and decisions** on the relevant consequences are made **differ** profoundly among agencies. Some agencies have developed very detailed policies as to which measure should be taken in each situation, thus providing specific **guidance** to those applying the rules and making the assessments (assessing actors) of a DoI. Such guidance is given in the form of so-called **blacklists or interest levels**.

Interest assessment for experts

- Many agencies closely involve **experts** in their work and apply to them a so-called **blacklist** of interests. A number of agencies do not allow the appointment of an expert on a scientific committee if this person has worked for the industry for a certain number of years before being called to such a committee. The required length of **time** between working in the industry and being called to a committee **varies** among different agencies.

Cooling off periods

- The phenomenon of ‘revolving doors’ may be damaging for the public trust and confidence in the EU institutions. For members of the MB and experts, who are not employed by EU agencies and thus not bound by the Staff Regulations and the post-employment provisions enshrined therein, it is difficult to enforce **post-mandate obligations**.

Internal investigative mechanisms

- In most decentralised agencies, whenever there is a need for an internal investigation, the Executive Director designates **staff members on a case-by-case basis**. Some agencies also provide for the possibility of external experts or staff members from other agencies to be called on an ad hoc basis.
- In 2015 the **EUAN** established an inter-agency pool of investigators. This instrument **lacks formal rules of procedure**.

Whistle-blower protection

- All 29 agencies which responded to our questionnaire have relevant internal rules or guidelines on whistle-blowing. 22 of them follow the Commission’s model guidelines on whistleblowing. Seven respondents indicated that they either follow their own rules or made adjustments to the Commission’s model guidelines, because these guidelines stem from the Commission’s own policy on whistleblowing and are not necessarily fully transposable to a much smaller organisation such as an agency.

Advisory mechanisms

- In the discharge procedure for the financial year 2017, the European Parliament recommended to agencies to set up a '**Conflicts of Interest Advisory Committee**', without however giving any more specific directions or without clarifying which exact need such a committee would cover. Our analysis revealed wide differences among the advisory committees of each agency.

Transparency

- Diffused control of conflicts of interests management by the public is enabled when an agency acts transparently and publishes sufficient information on its website. The European Ombudsman has already urged all institutions and agencies to implement the obligation under the Staff Regulations to **annually publish information on the occupational activities of former senior officials** after they leave the service. Only seven decentralised agencies have replied to our questionnaire that they have already published such information on the current occupational activities of former Executive Director and deputy Executive Director.
- Currently, Agencies do not have common rules as regards meetings of their Management Board members and senior staff with **interest representatives** and the individual policies differ greatly.

Recommendations (summary)

Governance v. control

- The founding regulations should make clear who is taking part of the **governance** of agencies and which actors function as **controlling** authorities. Their degree of dependence from the European Commission and Member States should be clarified.

Definition of Cols

- Agencies rules should **clarify** whether Col also cover **potential or perceived** ones, and what exactly these terms mean. Specific examples should be included in agencies' rules.
- Definitions of Cols should explicitly cover the conflict between the Union interest with **national or other professional interests**. For Management Board members such type of conflicts should be addressed in the founding regulations of an agency.

Declarations of Interests

- Agencies should require **positive Dols**, i.e. declaration of all interests for a given period, from key actors, such as Executive Directors.

- All actors involved in the governance of an EU agency should submit a **predefined CV**. Such CVs should be made **public** for all key managerial actors.
- Dols should be in principle **annually updated**. The annual up-date is crucial in particular for MB members and members of scientific committees. In addition, Dols should be updated upon **change of post**.
- Dols should cover not only interests **within the regulatory field** of the agency, but also in **linked fields** with the one in which the agency operates (e.g. chemicals and pharmaceuticals), with due regard to public perception. This will necessitate guidance as to which are considered as linked fields.

System of screening and assessing of declarations of interests

- It is not possible to design a one-size-fits-all policy for **screening and assessment of Dols**. The adequacy of a system depends on five main **factors**: the mission of the agency, its size and structure, its power to take binding decisions in its policy field of activity, the extent of the use of (external) experts and the agency's exposure to external pressure. What is crucial is that agencies follow a **holistic approach** for their Col management system. If an agency opts for a decentralised approach in which line managers take decisions, they should be provided with detailed instructions in order to ensure that decisions are taken consistently.

Experts

- A **coherent policy** should be developed for the required length of **time** between working in the industry and being called to a committee among agencies with a similar function, i.e. risk assessment (**EMA, ECHA, EFSA, ECDC**).

Cooling off periods

- It is difficult to enforce post-mandate obligations for members of the MB and experts, who are not employed by EU agencies and thus not bound by the Staff Regulations. However, **adequate reporting and publication** of relevant information enhances **transparency** and may induce compliance with ethical and integrity obligations.

Internal investigative mechanisms

- Based on the experience gained since 2015, the **EUAN** could reflect whether to formalise the inter-agency pool of investigators through the development of rules of procedure. Such rules could also identify the instances that agencies should make use of the pool in order to allow for somebody outside the agency to be involved in an investigation.

Whistle-blowing

- For small agencies, it is essential to explore the possibility of **cross-agency mobility**. The **European Parliament** through the discharge procedure should monitor the implementation of the Commission's guidelines on **whistle-blowers**.

Advisory body

- If Col procedures within an agency are decentralised, it is important for an agency to have an advisory body in order to streamline the understanding and implementation of the policy. By contrast, where procedures are centralised, an advisory committee is not strictly necessary.
- It appears expedient to reflect on the possibility to develop a common practice following an exchange of the so far acquired experience. Any discussion in this respect should start from determining what the exact rationale for the creation of advisory committees is and how this rationale should be reflected on their composition and mandate. It could also be explored whether it would be useful to establish a **cross-agency advisory committee**.

Transparency

- Agencies should **publish information on the activities of former senior officials** after they leave the service even if they do not assume a new profession, but they receive a pension or do voluntary work etc.
- Transparency will further be strengthened through publication of **statistics and information** on Col management in the agencies' annual reports.
- Agencies should enact **common rules** as regards meetings of their MB members and senior staff with **interest representatives** and be part in a future inter-institutional agreement on the Transparency Register.

1. INTRODUCTION

European Union (EU) agencies form an indispensable feature of the EU's institutional structure. The very existence of these agencies depends on the fact that they can deliver technical and scientific expertise to the EU institutions and Member States in the decision-making process¹ To this end, it is vital that the expertise that these agencies deliver is independent of commercial, national or political influence. It is equally true however that there is no such thing as complete and absolute independence and that at times there is no other expertise than for example expertise from industry available. Therefore, in these and other situations, transparency about conflicts of interests and the manner in which conflicts of interests are dealt with become crucial. After various incidents and discussions about the lack of independence of various agencies and problems relating to revolving doors, the European Parliament, the Commission and the Ombudsman called for EU agencies to draft and/or revise rules on conflicts of interests. Consequently, today many EU agencies have set in place their own policies and rules on conflicts of interests.

This study aims to take stock and to assess the existing rules and policies on conflicts of interests (Col) in EU agencies and to examine whether, and/or how, scrutiny can be improved and whether there is a need to streamline and enhance the coherence of the various rules in place.

To this end, the study analyses the relevant rules that are found in agencies' founding regulations (see Annexes 1-3), the EU Staff Regulations, the EU Financial Regulation and agencies' internal rules. The study concentrates on decentralised agencies. First, the concept of independence (chapter 2) and the notion of conflict of interests (chapter 3) is examined based on literature and legal and policy documents. Subsequently, the main features of the internal rules and policies of decentralised agencies are analysed. This is done on the basis of the results of a questionnaire (see Annexes 4 and 5), distributed to the EU agencies through the EU agencies network (chapter 4). All relevant rules and policies are assessed against recommendations made by various actors, such as the European Parliament (EP) in the context of the discharge procedure, the European Ombudsman, the Court of Auditors, NGOs and academics. In addition, the study examines in more depth the rules and policies of seven agencies: EFSA, ECHA, EMA, EEA, EMCDDA, EUIPO and Europol (chapter 5). In conclusion, the study puts forward the main findings and formulates a set of policy recommendations (chapter 6).

¹ Communication from the Commission, 'The Operating Framework for the European Regulatory Agencies', COM (2002) 718, 11 December 2002, at 5.

2. THE CONCEPT OF INDEPENDENCE

2.1. The Notion of Independence in EU Law

Although the term 'independence' is frequently used in the EU Treaties and secondary law,² it is nowhere defined and hence 'independence' remains a legal term without a general pre-defined meaning. It constitutes a relative notion, which very much depends on the specific wording of relevant legal texts and requires specification in relation to whom or what and at what level such independence must exist.³ In relation to a public body, independence generally refers to a status which ensures that the body concerned can act completely freely, without taking any instructions or being put under any pressure.⁴

The different facets of independence are often referred to as institutional, organisational, budgetary, staffing, financial and functional independence.⁵ These facets can in essence be captured in institutional and functional independence. *Institutional* independence refers to a separate legal entity and normally encompasses aspects of organisational, budgetary, staffing and financial independence. *Functional* independence guarantees that no instructions are given from actors outside the independent entity in the exercise of its tasks. In certain cases, independence is complemented with the adjective 'complete',⁶ which could indicate that there are different levels of independence.⁷

The EU Treaties refer to the independence of the EU administration in a two-fold way. First, Article 17(3) of the Treaty on European Union (TEU) requires the independence of the Commission as an institution and requires that the Commission members do not seek or take instructions from any government or other institution, body, office or entity. Second, Article 298 of the Treaty on the Functioning of the EU (TFEU) provides that, 'in carrying out their missions, the institutions, bodies, offices and agencies of the

² See for instance Art. 17(3) TEU and Art. 245 TFEU on the independence of the European Commission; Art. 19(2) TEU and Art. 252-254 TFEU on the independence of CJEU Judges and Advocates-General; Article 39 TEU, Art. 16 TFEU and Art. 8 EU Charter on the independence of national data protection authorities; Art. 228 TFEU on the independence of the Ombudsman. For the use of the term 'independence' in secondary law in relation to national regulatory or supervisory authorities, see in the energy sector (Art. 35 Directive 2009/72/EC; Art. 39 Directive 2009/73/EC), the telecommunications sector (Art. 3 and 3a Directive 2002/21/EC as introduced by Directive 2009/140/EC), the railway sector (Art. 55-57 Directive 2012/34/EU), the audiovisual media services (Art. 30 Directive 2010/13/EU as amended by Directive (EU) 2018/1808), the aircraft services (Art. 11 Directive 2009/12/EC), competition law (Art. 35 Council Regulation (EC) No 1/2003 and Art. 4-5 Directive (EU) 2019/1) and in the field of data protection (Art. 51-54 of the General Data Protection Regulation (EU) No 2016/679 (GDPR)).

³ See the Opinion of A. G. Mazak, 22.10.09, Case-518/07, *Commission v Germany*, para 16. On this relativity of the notion see also E. Vos, 'EU Agencies and Independence', in D. Ritleng (ed.) *Independence and legitimacy in the institutional system of the European Union* (Oxford 2016), p. 206.

⁴ ECJ, 9.3.10, Case C-518/07, *Commission v Germany*, para 18.

⁵ See the Opinion of A. G. Mazak, 3.7.12, Case C-614/10, *Commission v Austria*, para 26.

⁶ E.g. Art. 52 (1) GDPR on the 'complete independence' of data protection supervisory authorities.

⁷ See ECJ, 9.3.2010, Case C-518/07, *Commission v Germany*, para 19, which underlines that in certain instances 'the concept of 'independence' is complemented by the adjective 'complete', which implies a decision-making power independent of any direct or indirect external influence on the supervisory authority'.

Union shall have the support of an open, efficient and *independent* European administration’ (emphasis added). This second provision encompasses the whole administrative apparatus of the EU, including EU agencies, and seems to focus on the independence of the persons composing this apparatus. The independence of the persons forming the administration guarantees that they take administrative decisions fairly and impartially as enshrined in Article 41 of the Charter of Fundamental Rights of the EU (EU Charter) on the right to good administration.

2.2. Independence and EU agencies

2.2.1. Executive and decentralized agencies

EU agencies may be categorized as executive or decentralized EU agencies.⁸ Executive agencies are legal entities that are set up for a definite period of time in order to implement EU programmes, and are directly dependent on and exclusively accountable to the Commission.⁹ They constitute the Commission’s long arm and are all located at the place where the Commission and its departments are located (Brussels and Luxembourg).¹⁰ They have been characterized as ‘work horses tasked to carry out labor-intensive programmes’.¹¹ Since the Commission entrusts certain tasks to EU executive agencies instead of performing them itself, it is evident that these agencies have to fulfill the same standards of independence as the Commission. This means that they have to be independent from Member States, private interests and any other institution; yet they are very much dependent on the Commission.¹² Analysis of these agencies falls outside of the scope of this study.

For EU decentralised agencies, however, the situation is very different. They have been created as separate legal entities in order to accommodate the need for technical expertise, and for a ‘credible commitment’ to the implementation of a specific policy.¹³ The Commission so viewed that the main reason of resorting to decentralised agencies is that their decisions are based on purely technical

⁸ See in detail E. Chiti, ‘Les agences et l’administration directe dans l’Union européenne’, in J.-B. Auby/J. Dutheil de la Rochère (eds), *Droit administratif européen* (Bruylant 2007), p. 99 *et seq.*

⁹ See Art. 6 of Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes.

¹⁰ Art. 5(1) of Regulation (EC) No 58/2003. The Executive agencies located in Brussels are EASME, EACEA, INEA, REA, ERC. CHAFAEA is located in Luxembourg.

¹¹ See T. Koenig, *Managing Policy: Executive Agencies of the European Commission*, IHS Political sciences series, working paper 146, 2017, p. 17.

¹² See T. Koenig, *Managing Policy: Executive Agencies of the European Commission*, IHS Political sciences series, working paper 146, 2017, who recommends more in-depth research as to whether executive agencies are truly steered by their parental DGs, or whether they manage to gain independence (for example through informal expertise, or via collective identity building among their employees).

¹³ M. Busuioc, *The accountability of European agencies, legal provisions and ongoing practices* (Eburon 2010), p. 15; D. Fischer-Appelt, *Agenturen der Europäischen Gemeinschaft* (Duncker & Humblot 1999), p. 38.

evaluations of very high quality and are not influenced by political or contingent considerations.¹⁴ In addition, EU agencies very much rely on cooperation with national authorities or have as their explicit mandate to establish cooperation. For example, as regards the establishment of supervisory authorities at the EU level, such as the European Banking Authority, the underlying rationale was to ensure closer cooperation and exchange of information among national supervisors, facilitate the adoption of EU solutions to cross-border problems, and advance the coherent interpretation and application of EU rules.¹⁵

While executive agencies are all set up on the basis of Council Regulation (EC) No 58/2003, decentralised agencies do not fall under a homogeneous legal regime. Having acknowledged that the creation of such type of agencies was done on a case by case basis without an overall vision, the European Parliament, the Council and the Commission adopted in 2012 a Common Approach on key issues, such as the role of EU agencies in the institutional landscape and issues of structure, operation, supervision and management.¹⁶ Although this document is of a non-binding character, the institutions committed themselves to follow it, allowing for case-by-case adjustments.¹⁷ The only category of decentralized agencies not covered by these common principles is the category of agencies operating in the field of the Common Foreign and Security Policy.¹⁸ All other decentralized agencies fall under the Common Approach without any further categorizations depending on their tasks or powers. All of them are referred to in the Joint Statement of the three institutions accompanying the Common Approach as '*independent legal entities*' (emphasis added). The Common Approach itself does not refer to the independence of decentralized agencies, as such, but rather to the autonomy of the agencies,¹⁹ although it stresses the importance of independence of experts that work for internal committees of agencies, the members of appeal boards and management boards and agency staff.²⁰ In the literature, some authors argue that it is more accurate to use the term autonomy instead of independence in

¹⁴ Communication from the Commission, 'The Operating Framework for the European Regulatory Agencies', COM(2002) 718, 11 December 2002, at 5.

¹⁵ Report from the Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), COM(2014) 509, p. 3.

¹⁶ See the joint statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies from 19 July 2010 and the attached thereto Common Approach, available under https://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf.

¹⁷ See the Joint Statement of the European Parliament, Council and Commission, 19 July 2010. Yet, a recent study on the compliance of founding regulations with the Common Approach reveals that the latter is not always followed; see E. Vos, EU Agencies, Common Approach and Parliamentary Scrutiny, Study commissioned by the European Parliamentary Research Service, November 2018, available under [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS_STU\(2018\)627131_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS_STU(2018)627131_EN.pdf)

¹⁸ Ibid.

¹⁹ See Common Approach, para 16, in relation to the importance of setting open calls for the recruitment of agency directors. On the terminological issue between 'independence' and 'autonomy', see M. Scholten, 'Independent, hence Unaccountable? The Need for a Broader Debate on Accountability of the Executive', 4 REALaw (2011), p. 5.

²⁰ See Common Approach, paras 20 and 21.

relation to EU agencies.²¹ The use of the term autonomy is very suitable as it allows for a subtle assessment of the agencies' position vis-à-vis other parties and their accountability. The hybrid character of agencies already indicates that agencies are not independent and depend on the various institutions and national authorities and are submitted to their control. Yet, we consider that it is more appropriate to use the notion independence of agencies, not only to comply with the legal language used in the Treaties, the founding regulations and the case law of the Court of Justice but also as this would imply the concept of impartiality and underline the need for agencies to be independent from commercially driven interests (so-called market independence).²²

The founding Regulations of EU decentralized agencies are not homogeneous in requiring independence (see Annexes 1-3 to this study). Some of them require the independent functioning of the agency as a whole²³, whereas others refer only to the independence of the persons managing the agency.²⁴ The subtle difference between the two might indicate that the first wording emphasizes the functional independence of the agency as a separate institutional entity, whereas the second seems to lay the emphasis on the integrity or impartiality of the persons governing the agency.

2.2.2. Elements of institutional independence

Own legal personality

A first guarantee of agencies' independence is that all EU decentralized agencies have their own legal personality.²⁵ This requirement aims to achieve a structural separation from any private or public authority.

²¹ See e.g. M. Busuioac/M. Groenleer, 'The Theory and Practice of EU Agency Autonomy and Accountability: Early Day Expectations, Today's Realities and Future Perspectives', in M. Everson/C. Monda/E. Vos (eds.), *European Agencies in between Institutions and Member States* (Kluwer Law International 2014), p. 184-185.

²² See E. Vos, 'EU Agencies and Independence', in D. Ritleng (ed.), *Independence and legitimacy in the institutional system of the European Union* (Oxford 2016), p. 215.

²³ Art. 4(2) Regulation 1211/2009 on BEREC Office; Art. 1 Regulation 1093/2010 on EBA; Art. 6 Regulation 1922/2006 on EIIE; Art. 1 Regulation 1094/2010 on EIOPA; Art. 3(4) Regulation 526/2013 on ENISA; Art. 6 Regulation 2017/1939 on EPPO; Art. 1 Regulation 1095/2010 on ESMA; Art. 1 Council Regulation 168/2007 on FRA; Art. 56(3) Regulation 2016/1624 on FRONTEX; Art. 47(1) Regulation 806/2014 on SRB.

²⁴ Art. 12(7) Regulation 713/2009 on ACER; Art. 19(2) Regulation 851/2004 on ECDC, Art. 83 and 88(2) Regulation 1907/2006 on ECHA, Art. 37 Regulation 2019/473 on EFCA, Art. 37 Regulation 178/2002 on EFSA; Art. 63 Regulation 726/2004 on EMA; Art. 11 Regulation 1339/2008 on ETF.

²⁵ See the Joint Statement of the European Parliament, the Council of the EU and the European Commission on decentralised agencies from 19 July 2010, referring to 'independent legal entities'. Yet EU decentralized agencies do not dispose of an international legal personality, see A. Ott/E. Vos/F. Coman Kund, 'European agencies on the global scene: EU and international law perspectives', in M. Everson/C. Monda/E. Vos (eds.), *European Agencies in between Institutions and Member States* (Kluwer Law International 2014), p. 87.

Availability of necessary resources

The requirement of structural separation is further complemented with the requirement to make available to EU agencies the human, financial and technical resources as well as the expertise that are necessary for the effective performance of their duties. EU decentralized agencies dispose of their own budget within the General Budget of the European Union, unless they are fully self-financed through fees or stakeholders' contributions.²⁶

The partial or full financing of agencies by industry through fees or by national authorities might be problematic from the point of view of the independence of such agencies. For example, the European Parliament has criticized the partial funding of the three European Supervisory Authorities (ESAs) in the financial sector (EBA, ESMA, EIOPA) through contributions of the national public authorities competent for the supervision of financial institutions²⁷ precisely because this would pose a threat to the independence of the ESAs from national interests.²⁸ The Commission therefore subsequently proposed to replace the part of the ESA's budget which comes from national authorities (60%) by contributions from financial institutions supervised by the ESAs.²⁹ If the current Commission proposal is adopted by the legislator, it remains to be seen whether the new financing system would increase the influence of financial institutions over the ESAs.

The agencies' budget is autonomously implemented by their Executive Director, who acts as the agencies' legal representative under the control of the Management Board (MB).³⁰ EU decentralized agencies also dispose of the necessary infrastructure, resources and staff.³¹ However, for reasons of administrative efficiency, certain services, such as IT support, might be provided by the Commission or might be shared among different agencies.³²

In terms of expertise, agencies generally rely on internal scientific committees that, however, are composed of external experts who are employed either in the public or private sector, and provide services to the agencies only on a part-time basis against an allowance and reimbursement of costs. The lack of in-house scientific expertise has been recently criticized by the European Parliament in the case of glyphosate and more specifically in relation to the scientific assessments made by the European

²⁶ See Common Approach, paras 37-39.

²⁷ See Art. 62 Regulation (EU) No 1093/2010; Art. 62 Regulation (EU) No 1095/2010; Art. 62 Regulation (EU) No 1094/2010.

²⁸ See European Parliament resolution of 11 March 2014 with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review, 2013/2166(INL). On this see also M. Ortino, 'The case for truly independent EU regulatory authorities in the field of financial regulation', 29 *European Business Law Review* (2018), p. 465 at p. 484.

²⁹ See COM (2017) 536, draft Art. 62.

³⁰ See Common Approach, para 14.

³¹ See Common Approach, para 14.

³² See Common Approach, para 23. Currently the agencies have created a shared support office in Brussels. See <https://www.efsa.europa.eu/sites/default/files/event/mb180321/mb180321-p7.pdf>.

Chemicals Agency (ECHA) and the European Food Safety Authority (EFSA).³³ The Common Approach on EU agencies views that ‘the independence of the scientific experts should be fully ensured, inter alia by promoting the highest standards, setting sound selection criteria and promoting best practices’.³⁴ The management of conflicts of interests of experts is indeed a very complex issue, since in practice scientists of good repute who could serve on scientific committees of agencies may be, or have been, involved in industry or national affairs (see in more detail the following chapters of this study).

Personal independence of members of the boards and managers

The guarantees of the structural separation and availability of own resources would remain a dead letter without additional guarantees for the personal independence of the managers (Executive Directors) and members of the management boards of EU agencies. In general, key guarantees of the independence of such managerial actors is a selection procedure based on merits and a mandate of a sufficiently long duration, which can be ended only on predefined grounds pertaining to serious breach of duties or subsequent non-fulfillment of the appointment criteria.³⁵

Members of the Management Boards

The Common Approach on decentralized agencies provides that, as a general rule, each Member State designates one member of the Management Board, the Commission designates two members and, where appropriate, also the European Parliament or other stakeholders designate a member.³⁶ It is also mentioned that members are appointed in light of their expertise in the agency’s core business and their general managerial skills. The minimum duration of their mandate should be four years with a possibility of renewal.³⁷ The Common Approach does not require members of the Board to be independent from the Member State, institution or stakeholders who have appointed them. Only a few founding Regulations require explicitly that the members of the Board should exercise their tasks independently and solely in the interest of the Union.³⁸ Others provide the obligation of Board members to declare interests which are prejudicial for their independence³⁹, however they do not

³³ European Parliament resolution of 24 October 2017 on the draft Commission implementing regulation renewing the approval of the active substance glyphosate, 2017/2904(RSP), para 8.

³⁴ See Common Approach, para 20.

³⁵ See N. Athanasiadou, ‘Independent regulatory authorities at the EU and Member State level: towards different standards of independence?’, in J. B. Auby (ed.), *The Future of Administrative law* (LexisNexis 2019), p. 199 at p. 206.

³⁶ See Common Approach, para 10.

³⁷ Common approach, para 10.

³⁸ Art. 12(7) Regulation 713/2009 on ACER; Art. 46 Regulation 1093/2010 on EBA; Art. 37 Regulation 178/2002 on EFSA; Art. 46 Regulation 1094/2010 on EIOPA; Art. 46 Regulation 1095/2010 on ESMA; Art. 63 Regulation 726/2004 on EMA; Art. 11 Regulation 1339/2008 on ETF; Art. 47 Regulation 806/2014 on SRB. For the specific provisions, see Annex 1.

³⁹ Art. 19 Regulation 851/2004 on ECDC; Art. 88(2) Regulation 1907/2006 on ECHA; Art. 37 Regulation 2019/473 on EFCA; Art. 15 Regulation 526/2013 on ENISA; Art. 51(1)(s) Regulation 2016/796 on ERA; Art. 16 Council Regulation 168/2007 on FRA.

specify from whom this independence needs to be maintained and in particular whether it covers also the Member State, institution or stakeholders who have appointed them.

Having Member States presence on agency boards might nevertheless impact on agencies' independence and contribute to the agencies' hybridity. The latter has been argued to be in line with the conceptual understanding of the EU executive as an integrated administration⁴⁰ and is an expression of the composite⁴¹ or shared character of the EU executive.⁴²

Executive Director

The legal status of the Executive Director is clearer than the one of Board members. The Executive Director is always fully employed by the agency and thus fall under the Staff Regulations and Conditions for the Employment of Other Servants of the Union (CEOS), which require that staff members exercise their duties solely in the interest of the Union.⁴³ The Common Approach requires that Executive Directors of agencies are appointed by the Management Boards of the agency on the basis of a shortlist drawn by the Commission following an open and transparent selection procedure that guarantees a rigorous evaluation of candidates and a high level of independence.⁴⁴ In practice, there is a broad variety of appointment procedures.⁴⁵ The length of the mandate is determined ad hoc by the constituent act of the EU agency and it can be extended once.⁴⁶ Dismissal of the Executive Director of an agency may take place only for serious misconduct, recurring/serious irregularities or unsatisfactory performance.⁴⁷ These assessments are made by the Management Boards. However, performance criteria may indeed interfere with the independence of the person concerned unless they are assessed by other independent actors. This is acknowledged for example in the 2019 Directive aiming at safeguarding the independence of national competition authorities, which requires that dismissal of the head of the authorities may not take place for reasons related to the proper performance of the duties.⁴⁸

⁴⁰ E. Vos, 'European Agencies and the Composite EU Executive', in M. Everson/C. Monda/E. Vos (eds.), *European Agencies in between Institutions and Member States* (Kluwer Law International 2014), p. 11

⁴¹ See L. Besselink, *A Composite European Constitution* (Europa Law Publishing 2007) and G. Della Cananea, *L'Unione Europea. Un ordinamento composito* (Laterza 2003).

⁴² See D. Curtin, *Executive Power of the European Union: Law, Practices and the Living Constitution* (OUP 2009), p. 174; H. Hofmann/G. Rowe/A. Türk, *Administrative law and policy of the EU* (OUP 2011), p. 725.

⁴³ Art. 11 para 1 Staff Regulations.

⁴⁴ See Common Approach, para 16.

⁴⁵ see E. Vos, EU Agencies, Common Approach and Parliamentary Scrutiny, Study commissioned by the European Parliamentary Research Service, November 2018, available under [http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS_STU\(2018\)627131_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2018/627131/EPRS_STU(2018)627131_EN.pdf), p.45.

⁴⁶ Common approach, para 17.

⁴⁷ See Common Approach, para 19.

⁴⁸ See Art. 4(2) (d) Directive (EU) 2019/1 on national competition authorities. See N. Athanasiadou, 'Independent regulatory authorities at the EU and Member State level: towards different standards of independence?', in J. B. Auby (ed.), *The Future of Administrative law* (LexisNexis 2019), p. 199 at p. 207.

Personal independence of staff

The independence of the managers is complemented by guarantees for the independence of the staff. The staff of EU decentralized agencies fall under the administrative authority of the Executive Director, who has the so-called ‘appointing authority powers’ over the staff.⁴⁹ In terms of conflict of interests management and other ethical rules, staff of EU agencies fall under the Staff Regulations and the CEOS (the latter relevant for the most common staff categories in decentralised agencies, namely, temporary and contract agents), which concern all employees of the EU institutions. These rules require detailed declarations of interests upon any new appointment or change of post and impose also certain obligations after the term of office, notably a two-year notification period for all staff with regard to their subsequent occupations and a one-year cooling-off period for senior staff prohibiting them from engaging in lobbying and advocacy.⁵⁰

2.2.3. Elements of functional independence

The essence of functional independence could be brought down to the requirement neither to seek nor to take instructions from any other party.

It becomes clear that EU decentralized agencies do not enjoy full functional independence, when taking into account that the Commission has the competence to issue formal advice on their annual and multi-annual work programmes and be represented in the Management Boards.⁵¹ Through these arrangements, the Commission can influence the functioning of EU agencies not only institutionally but also as regards the performance of their tasks. This influence concerns more the general policy framework than individual files, cases or opinions.⁵² In this respect, the Commission stated already in 2002 that there is no question of it assuming a role of legal supervision in the sense of issuing instructions to decentralised agencies.⁵³ At the same time, it viewed that the ‘ultimate responsibility’ for EU agencies’ work would remain with the Commission.⁵⁴ In view of the hybrid character of EU agencies and the depiction of agencies as ‘inbetweeners’⁵⁵ this may be contested and would be up to further research.

⁴⁹ See Common Approach, para 12. For the provisions of the different founding Regulations see Annex 2.

⁵⁰ See Art. 11, 12 and 16 of the Staff Regulations.

⁵¹ See Common Approach, paras 10 and 29.

⁵² H. Hofmann/G. Rowe/A. Türk, *Administrative law and policy of the EU* (OUP 2011), p. 725.

⁵³ European Commission, Communication: The operating framework for the European Regulatory Agencies, COM(2002)718, para 12.

⁵⁴ Ibid.

⁵⁵ See E. Vos, ‘European Agencies and the Composite EU Executive’, in M. Everson/C. Monda/E. Vos (eds.), *European Agencies in between Institutions and Member States* (Kluwer Law International 2014), p. 11; D. Curtin, *Executive Power of the European Union: Law, Practices and the Living Constitution* (OUP 2009), p. 174.

While respecting these constitutional constraints, the constitutive acts of EU agencies may offer additional guarantees of functional independence depending on the exact mission and tasks of an EU agency (see Annex 1). This aim is apparent in the constitutive acts of the three ESAs in the financial sector, which explicitly require that when carrying out their tasks, the three authorities shall act 'independently, objectively and in the interest of the Union alone'.⁵⁶ Despite this clear Union identity of the ESAs, their Supervisory Boards are composed of the heads of the relevant national supervisory authorities.⁵⁷ The EU institutions' representatives in the Supervisory Boards, including the European Commission, have no voting rights.⁵⁸ The role of the European Commission is nevertheless crucial in the mission of the ESAs, because it is vested with the power to formally endorse the draft regulatory technical standards, which the ESAs produce as a tool of financial supervision.⁵⁹

⁵⁶ See Art. 1, last sentence, Regulation (EU) No 1093/2010; Art. 1, last sentence, Regulation (EU) No 1095/2010; Art. 1, last sentence, Regulation (EU) No 1094/2010.

⁵⁷ See Art. 40(1) Regulation (EU) No 1093/2010; Art. 40(1) Regulation (EU) No 1095/2010; Art. 40(1) Regulation (EU) No 1094/2010.

⁵⁸ Ibid.

⁵⁹ See Art. 10 et seq. Regulation (EU) No 1093/2010; Art. 10 et seq. Regulation (EU) No 1095/2010; Art. 10 et seq. Regulation (EU) No 1094/2010.

3. THE CONCEPT OF CONFLICT OF INTERESTS

As set forth above, accepting that independence is a relative concept and that there are various degrees of independence confirms the myth of complete independence of European agencies: in terms of institutional design, finances and operational activities agencies are intricately connected to their principals: agencies are often not really at ‘arm’s-length’ from the Commission, Parliament or the Member States, as these entities are frequently involved in the agencies.⁶⁰ Also private actors, such as experts employed in the private or public sector play a crucial role in agencies’ day-to-day work. Given this complex institutional design, a clear policy on conflicts of interests is indispensable.

The term ‘conflict of interest(s)’ is defined in various regulations and codes of conduct both at international and EU level. From a terminological point of view, it is interesting to note that the word ‘interest(s)’ is used in singular or in plural without coherence. One of the most recent legislative documents in this respect, the EU Financial Regulation of July 2018 (Regulation (EU, Euratom) 2018/1046), uses the term ‘conflict of interests’ (in plural).⁶¹ The use of the term in plural seems indeed to be more accurate, since the notion of conflict requires at least two different interests which are incompatible with each other and thus conflict. Also from a comparative perspective, most official languages of the EU use the term in plural.⁶² For the purpose of this study we will therefore adhere to the term ‘conflict of interests’, unless we are quoting an official document using the singular form.

3.1. Definitions at international and EU level

3.1.1. International level

The Council of Europe’s Recommendation on codes of conduct for public officials of 2000 reads:

‘Conflict of interest arises from a situation in which the public official has a private interest which is such as to influence, or appear to influence, the impartial and objective performance of his or her official duties.’⁶³

⁶⁰ E. Vos, ‘EU Agencies and Independence’, in D. Ritleng (ed.) *Independence and legitimacy in the institutional system of the European Union* (Oxford 2016), p. 206 at p. 212.

⁶¹ See recital 104 and Art. 61 Regulation (EU, Euratom) 2018/1046.

⁶² E.g. conflit d'intérêts (FR), Interessenkonflikt (DE), conflitto di interessi (IT), conflicto de intereses (ES), belangenverstrengeling (NL), σύγκρουση συμφερόντων (EL); for more languages see the EU terminology database at www.iate.europa.eu.

⁶³ Recommendation on codes of conduct for public officials Rec(2000) 10 of the Committee of Ministers of the Council of Europe on 11 May 2000, Art. 13(1).

According to this Recommendation, the public official's 'private interest' includes any advantage to himself or herself, to his or her family, close relatives, friends and persons or organisations with whom he or she has or has had business or political relations. It includes also any liability, whether financial or civil, relating thereto.⁶⁴

The OECD in its recommendations of 2003 defines conflict of interests as follows:

'A "conflict of interest" involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities.'

These recommendations clarify that 'private interests' are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit, but include any interest which could reasonably be considered likely to influence improperly the official's performance of their duties.⁶⁵

The two definitions have in common that they both concern the conflict between the public duties of the official on the one hand and his or her private interest on the other. The subtle difference is that the Council of Europe's definition covers actual or *apparent* conflicts, whereas the OECD definition covers actual or *potential* conflicts. The literature defines a potential conflict as a conflict which *may* influence the performance of the official's duties, objectively assessed, whereas an apparent conflict is assessed from the point of view of public perception, i.e. whether it appears to a third person that a conflict exists.⁶⁶ Since the OECD definition uses the wording 'could improperly influence' we argue that the OECD definition covers also potential conflicts. Both definitions however are silent on the possibility of a conflict between different public interests, in particular if the public official assumes or has assumed multiple public functions or roles.⁶⁷ This type of conflict is of relevance especially in the context of the multi-level EU governance, where a national interest might conflict with the Union interest.

3.1.2. EU level

At the EU level, definitions of conflict of interests are to be found both in legally binding rules and in codes of conduct of a soft law nature.

⁶⁴ Recommendation on codes of conduct for public officials, Rec(2000) 10 of the Committee of Ministers of the Council of Europe on 11 May 2000, Art. 13(2).

⁶⁵ OECD, Recommendation on guidelines for managing conflict of interest in the public service, June 2003, available under <https://www.oecd.org/gov/ethics/2957360.pdf>

⁶⁶ On the distinction between actual, potential or apparent conflict see J.-B. Auby, 'Conflict of interest and administrative law', in L. Handschin/A. Peters (eds.), *Conflict of Interest in Global, Public and Corporate Governance* (CUP 2012), p. 149 at p. 152.

⁶⁷ On the concept of conflict between public interests see J.-B. Auby, 'Conflict of interest and administrative law', in L. Handschin/A. Peters (eds.), *Conflict of Interest in Global, Public and Corporate Governance* (CUP 2012), p. 149 at p. 157.

Legally binding instruments

The main legally binding instruments providing for a definition are the Staff Regulations applicable to staff members of the EU institutions and agencies and the Financial Regulation applicable to the implementation of the EU budget.

Staff Regulations

The Staff Regulations distinguish between a conflict of interest which arises or might arise upon recruitment and conflicts which an employee might face throughout his or her employment. Article 11, para 3, of the Staff Regulations provides:

‘Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest.’

These provisions apply by analogy also to temporary and contract agents of the EU institutions.⁶⁸

The interesting point of this definition is that, unlike the OECD and Council of Europe definitions, it includes not only personal interests of the public official, but also ‘any other interest’ which might impair his or her independence. This definition thus implies that there might be also public interests which might conflict with the official’s independence and therefore seems to be more complete than the aforementioned international definitions. The weak point of the definition is that it uses the term ‘independence’ without clarifying from whom this independence has to be safeguarded. As mentioned in the previous chapter, ‘independence’ is a non-defined term which has to be specified as to whom and at what level it has to exist. The term independence needs therefore to be interpreted in conjunction with other provisions, such as Article 11, para 1, of the Staff Regulations, which requires that officials shall carry out the duties assigned to them objectively, impartially and in keeping with their duty of loyalty to the Union.

Another point, which has to be noted, is that Article 11, para 3, of the Staff Regulations requires that the appointing authority examines whether the candidate ‘has’ any interest such as to impair his or her independence, implying that the interest has to be actual, whereas it requires at the same time that the employee informs the appointing authority of any ‘actual or potential’ conflict of interest. As already explained, when discussing the OECD definition, a potential conflict is a conflict which may influence

⁶⁸ See art. 11 and 81 CEOS.

the performance of the official's duties. According to the administrative practice of the European Commission, candidates are obliged to submit an up-dated CV and to declare whether they have an actual or potential conflict of interest in relation to the particular position within the institution proposed to them. Given the difficulty for a candidate to anticipate all potential situations which may lead to a conflict of interest in the future, only the declaration of an actual conflict between the person's interests and the interests of the proposed position could be construed as a legally enforceable situation. At the stage of recruitment, a potential conflict can only be flagged by the appointing authority in case a risk arises in the future. For example, a lawyer who has worked in the past for a law firm on mergers in the energy sector and is being recruited by the European Commission to work on mergers in the telecommunications sector, might not have an actual conflict of interest but a potential one, in case he will be involved in the future in the energy sector. Such a risk should be noted down by the recruiting authority in order to be able to prevent the materialisation of the risk in the future.

After an official has been appointed, Article 11a (1) of the Staff Regulations requires that this person shall not, in the performance of his or her duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he or she has any personal interest such as to impair his or her independence, and, in particular, family and financial interests. It is interesting to note that although upon recruitment also 'other interests' are taken into account, when in service the concept of conflict of interest for an EU official entails only 'personal interests', in the sense that a conflicting public (i.e. national) interest is not foreseen by this provision.

Financial Regulation

Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union ('Financial Regulation') contains in Article 61 a definition of conflict of interests relevant for any person involved in the implementation of the EU budget. According to this provision,

'1. Financial actors (...) and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.'

This provision clarifies that for the purposes of the Financial Regulation, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or

national affinity, economic interest or any other direct or indirect personal interest. The same definition is used also in the Commission Delegated Regulation (EU) 2019/715 on the framework financial regulation for EU bodies, including EU agencies (see Art. 42). According to the case law of the General Court in respect to the implementation of the EU budget, a conflict of interests is assessed objectively, without there being any need to qualify it by having regard to the intentions of the persons concerned and whether they were acting in good or bad faith.⁶⁹

Unlike the Staff Regulations, the Financial Regulation does not differentiate between personal and 'other interests' which might be of a public nature, but at the same time defines 'personal interests' in a very broad way, encompassing in reality any interest which might be contrary to the one of the Union, including national affinity. A further subtle difference with the Staff Regulations is that the Financial Regulation makes clear that any conflict of personal interests is assessed against the interest of the Union as a whole, whereas the Staff Regulations preclude any interest which might 'impair the independence of the official'. The different formulation of the SR could mean that the public interest which conflicts with a private one might be defined in a different way than the interest of the Union as a whole, namely as the interest of a particular institution or even a particular service. This difference can be explained taking into account that the Staff Regulations are addressed to employees of a particular institution, whereas the Financial Regulation applies to any person being in charge of the implementation of the EU budget and needs thus to act in the interest of the Union as a whole. A final difference between the Financial Regulation and the Staff Regulations is that the latter regulates only actual or potential conflicts of interest, whereas the former includes also the obligation of hierarchical superiors to take appropriate measures to address situations which may objectively be perceived as a conflict of interests.

Codes of conduct

Various codes of conduct develop and render more concrete the obligations of impartiality and independence of staff members of the EU institutions. The European Ombudsman has compiled a Code containing minimum standards of good administration relevant for all EU institutions when assuming administrative duties.⁷⁰ This Code was first endorsed by the European Parliament through a resolution in 2001.⁷¹ The European Commission follows its own code which is annexed to its rules of procedure⁷²

⁶⁹ Judgment of 15.6.1999, Case T-277/97, *Ismeri Europa Srl v Court of Auditors*, ECLI:EU:T:1999:124.

⁷⁰ European Ombudsman, *European Code of Good Administrative Behaviour*. On this, see Harlow & Rawlings (2014), p. 115 et seq.

⁷¹ European Parliament Resolution on the European Ombudsman's Special Report to the European Parliament following the own-initiative inquiry into the existence and the public accessibility, in the different Community institutions and bodies, of a Code of Good Administrative Behaviour.

⁷² European Commission, *Rules of Procedure* [C(2000) 3614], as last amended by Commission Decision of 9 November 2011 amending its Rules of Procedure [COM 2011/737/EU, Euratom].

and which is in line with the one compiled by the European Ombudsman but adjusted to its own needs and specificities. Both codes crystallise the obligation of impartiality of civil servants.

Ombudsman's Code of Good Administrative behaviour

Article 8

Impartiality and independence

1. The official shall be impartial and independent. The official shall abstain from any arbitrary action adversely affecting members of the public, as well as from any preferential treatment on any grounds whatsoever.

2. The conduct of the official shall never be guided by personal, family, or national interest or by political pressure. The official shall not take part in a decision in which he or she, or any close member of his or her family, has a financial interest.

Code of Good Administrative Behaviour for Staff of the European Commission in their Relations with the Public

Section 2. Guidelines for good administrative behaviour

Objectivity and impartiality

Staff shall always act objectively and impartially, in the Community interest and for the public good. They shall act independently within the framework of the policy fixed by the Commission and their conduct shall never be guided by personal or national interest or political pressure.

It is important to note that both codes differentiate personal interests from national interests or political pressure, which may also prevent the impartiality of the staff member. The Commission Code is more precise than the Ombudsman's Code, because it clarifies that the independence of a staff member is measured according to the policy determined by the Commission.

Code of Conduct for members of the European Commission

The latest development in the category of codes of conduct is the recent adoption of a reinforced Code of Conduct for members of the European Commission.⁷³ Contrary to the previous code applicable to

⁷³ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission, C/2018/0700, OJ C 65, 21.2.2018, p. 7–20.

Commission Members,⁷⁴ the new one contains an explicit definition of conflict of interests. According to its Article 2(6),

‘Commission Members shall avoid any situation which may give rise to a conflict of interest or which may reasonably be perceived as such. A conflict of interest arises where a personal interest may influence the independent performance of their duties. Personal interests include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners or direct family members. A conflict of interest does not exist where a Member is only concerned as a member of the general public or of a broad class of persons.’

Comparing this definition with the aforementioned codes of conduct concerning staff members, two main differences become apparent. Firstly, the elements of national interests or political pressure, as parameters which could cause a conflict of interests, are not mentioned in the Code of conduct relevant for Commissioners. This omission draws a clear line between the political appointment of Commission Members and the merits based appointment of staff members. However, it is to be recalled that the Commission according to Article 17(3) TEU shall neither seek nor take instructions from any government. Therefore, national interests seem to be incompatible with the duties of a Commissioner in any event. Nevertheless, it may be derived from the difference between the different codes that, when defining what constitutes conflict of interest in relation to a public servant or actor, his or her appointment procedure and to whom this person is accountable has to be taken into account. A second difference between the Code concerning Commissioners and those concerning civil servants is that Commissioners, given their visibility and representation role, have an obligation to avoid also perceived conflicts of interest, whereas the obligations of civil servants concern the avoidance of actual conflicts.

European Parliament codification proposal

Based on the experience of existing codes of conduct and the case law of the CJEU, the European Parliament has put forward in 2016 a proposal for a Regulation for an open, efficient and independent EU administration, which would serve as a code for administrative procedural law at the EU level.⁷⁵

This proposal contains an article on the definition of conflict of interest (Article 13). Pursuant to this provision,

⁷⁴ C(2011) 2904.

⁷⁵ European Parliament resolution of 9 June 2016 for an open, efficient and independent European Union administration (2016/2610(RSP)).

‘a member of staff shall not take part in an administrative procedure, in which he or she has, directly or indirectly, a personal interest, including, in particular, any family or financial interest, such as to impair his or her impartiality.’

It is noted that this definition seems to be narrower than the existing definition of the Staff Regulations, analysed above, since the latter includes not only ‘personal interests’, but also ‘any other interest’ which might impair the independence of a staff member. This broader wording may indeed be crucial in cases of double-hatted staff members, who assume at the same time or subsequently public duties/roles or tasks which might conflict with each other. It is thus advisable that the broader wording of the Staff Regulations is maintained in a future codification of administrative procedural law.

3.2. Conflicts of Interests and EU Agencies

3.2.1. Definition

The Common Approach on EU agencies recognised the need to develop a coherent policy on preventing and managing conflict of interests concerning agencies’ Executive Director as well as the members of MB and scientific committees.⁷⁶ As a follow-up to the Common Approach, the Commission issued general guidelines in 2013 with a view to implementing a harmonised policy on conflicts of interest in EU decentralized agencies.⁷⁷ These Guidelines take a holistic approach and concern members of Management Boards, Executive Directors, staff members, trainees, seconded national experts, experts in scientific committees and even beneficiaries of grants and contracts.⁷⁸

The definition of a conflict of interests adopted by these Commission Guidelines is the following:

‘A conflict of interest generally refers to a situation where the impartiality and objectivity of a decision, opinion or recommendation of an Agency is or might be perceived as being compromised by a personal interest held or entrusted to a given individual. Relevant personal interest may be of financial or non-financial nature and it may concern a personal or family relationship or professional affiliations (including additional employment or ‘outside’ appointments or former employments or appointments) and other relevant outside activities.’

It is apparent from this definition that the Commission aims to cover not only actual conflicts of interest but also perceived ones. This choice is explained in the guidelines in that the perceived conflict of

⁷⁶ Common Approach, para 18.

⁷⁷ Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, available on https://europa.eu/european-union/sites/europaeu/files/docs/body/2013-12-10_guidelines_on_conflict_of_interests_en.pdf, last visited 18.06.2018.

⁷⁸ Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, p. 4.

interest can constitute a reputational risk to the agency, even if it turns out to be unsubstantiated. Therefore, the Commission recommends that, while giving due consideration to proportionality, a risk of perceived conflict of interest should be treated as if it were an actual conflict.

This definition does not make any reference to potential conflicts of interest, although the Staff Regulations oblige the recruiting authorities to take potential risks into account upon recruitment. As already discussed above, potential conflicts may only trigger preventive measures in order to avoid any actual conflicts being materialised in the future. It is therefore important that agencies take potential conflicts into account for their preventive policy. This is indeed acknowledged by the Commission guidelines in the relevant section on preventive actions to be taken by agencies, in order to address risks of conflicts either upon a new recruitment/appointment or upon a change in the situation of a person already involved in an agency's work. From this it can be inferred that although a potential Col (risk of a Col) is not included in the definition of a Col in the Commission's Guidelines, risks of Col should also be addressed by the policies of EU agencies.

The problematic point of the Commission Guidelines' definition is that it contrasts the public interest of an agency only with the personal or professional interests of a person. It thus does not take into account that a conflict might also arise from other public interests which might be represented by double-hatted persons, in particular from national interests which under certain circumstances might not coincide with the Union interest. At the same time, the Guidelines explicitly mention that 'it is important that [Management Board Members] act in the full interest of the specific mission entrusted to the agency'.⁷⁹ This objective is often explicitly codified in the founding Regulations of agencies.⁸⁰

A wider definition, which is to be found in the Commission's rules on expert groups, describes a conflict of interest as

'any situation where an individual has an interest that may compromise or be reasonably perceived to compromise the individual's capacity to act independently and in the public interest when providing advice to the Commission in relation to the subject of the work performed by the expert group or sub-group in question'.⁸¹

This broader wording seems more suitable for members of Management Boards and expert committees, who might have also other public capacities, but when participating in work of an agency they have to act only in the interest of the mission of the agency.

⁷⁹ See Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, p. 4.

⁸⁰ See Annexes I and II to this study.

⁸¹ Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, 30 May 2016, C(2016) 3301 final.

As will be discussed below, the definition recommended by the Commission in its Guidelines is in its core followed by the agencies, however with various adjustments and differentiations, which cannot always be justified on the basis of the particular mission of an agency.

3.2.2. Core principles

The Commission Guidelines recall that each EU decentralised agency is a legally independent entity and thus responsible to develop its own prevention and management policy on Col.⁸² This policy should take into account the specific context in which each agency operates and its degree of exposure to the risk of conflict of interest.⁸³ Against this backdrop, the Commission Guidelines set the core principles for the development of such a policy, both with regard to *preventing* that risks of conflicts (potential conflicts) or *actual* conflicts arise as well as with regard to *managing* risks or actual conflicts when they occur. These principles entail requirements for all the different phases of a Col management cycle and more specifically for the declaration phase, the screening/assessment phase and the enforcement phase in case of breach of the rules.

The Guidelines indicate that the first stage of prevention and management of Col are selection and appointment procedures, which have to be transparent and based on pre-determined selection criteria.⁸⁴ They stipulate that agencies should have in place clear rules on which interests have to be declared by candidates and against which criteria these declarations of interest (Dol) are to be screened and assessed.⁸⁵ Depending on the actor and on the level of risk exposure by the agency, these Dol should be up-dated throughout the mandate or employment of the person concerned and, potentially, be supplemented by oral declarations before meetings.⁸⁶ The Guidelines contain a minimum list of interests that have to be declared, or their absence has to be declared, in relation to the domain of activity of the agency.⁸⁷

During the screening phase of the Dol, the Agency should dispose of clear rules on the interest levels against which a Dol has to be assessed.⁸⁸ These rules should also provide for preventive measures so that an identified risk of a Col does not materialise.⁸⁹ Preventive and remedial measures should be provided also when a risk or an actual conflict arises during the mandate or employment of a person.⁹⁰ The European Court of Auditors, in its Special Report nr. 15/2012 on management of Col in EU selected agencies, had noted in 2012, shortly before the issuance of the Commission Guidelines in 2013, that

⁸² Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, p. 4.

⁸³ Ibid.

⁸⁴ Ibid., p. 7.

⁸⁵ Ibid., p. 8.

⁸⁶ Ibid.

⁸⁷ Ibid.

⁸⁸ Ibid., p. 9.

⁸⁹ Ibid.

⁹⁰ Ibid.

there was a lack of clear assessment criteria and that for this reason there was inconsistency as to how Dols are screened and assessed in agencies.⁹¹ In the aftermath of this report, the Commission Guidelines stress anew the need for the determination of clear interest levels as to which type of interests are allowed and which not.

For cases where there has been a failure to declare an interest, the Commission Guidelines recommend the existence of a breach of trust procedure, which will determine the consequences of such a failure for the person concerned and any remedial action to be taken, for example the revocation of a nomination.⁹² The Guidelines also necessitate a review procedure, to allow for the protection of the rights of the individual concerned.⁹³ The importance of the existence of clear rules on breach of trust procedures had been underlined also in the European Court of Auditors aforementioned Special Report nr. 15/2012.⁹⁴

The Commission Guidelines set also general principles, which have to underpin any stage of the Col management cycle. More specifically, they stipulate that agencies should ensure a high level of transparency by publishing their internal rules on prevention and management of Col as well as information and CVs on their key actors, such as members of Management Board and experts.⁹⁵ Furthermore, agencies should make sure that their internal rules and policies on Col are clear and precise and are effectively communicated to all persons concerned.⁹⁶ Awareness raising and cultivating a culture of proactively addressing risks are of a major importance.⁹⁷ In order to constantly improve and develop their policies, agencies should keep statistics, monitor and periodically review their policies.⁹⁸ Finally, the Commission also stresses the importance of sharing good practices through the Agencies' Network.⁹⁹

⁹¹ European Court of Auditors, Special Report nr. 15/2012 CoA, Management of conflict of interest in EU selected agencies, p. 38.

⁹² Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, p. 10.

⁹³ Ibid.

⁹⁴ European Court of Auditors, Special Report nr. 15/2012 CoA, Management of conflict of interest in EU selected agencies, p. 38.

⁹⁵ Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies, 10.12.2013, p. 7 and p. 9

⁹⁶ Ibid., p. 7.

⁹⁷ Ibid., p. 7.

⁹⁸ Ibid., p.11-12.

⁹⁹ Ibid., p. 12.

4. CONFLICTS OF INTERESTS AND EU AGENCIES IN PRACTICE: EVALUATION OF QUESTIONNAIRE RESULTS

4.1. Description of questionnaire and methodology

To obtain a better understanding of the internal rules and policies on conflicts of interest (Col) in decentralised agencies, we have drafted a questionnaire that was sent out to all EU decentralised agencies¹⁰⁰. This section gives an overview of the results of the questionnaire.

The questions formulated in this questionnaire have partially been inspired by the relevant questions posed by the CONT Committee of the European Parliament in the context of the discharge procedure.¹⁰¹ The questionnaire is however broader than the questions posed by CONT in order to give a complete picture of the rules and practice of conflicts of interests in agencies, taking into account the output of various (controlling) actors, most notably the European Ombudsman.¹⁰²

To this end, the questionnaire is divided into five sections (see Annex 4). To get an as complete and precise picture as possible, a distinction is made between the various actors within an agency, such as the members of the Management Board (MB), the Executive Director (ED), other staff members (including members of the Board of Appeal) where applicable, and experts. With regards to the last category, a distinction is made between experts members of agency committees or panels and external experts convened on an ad hoc basis.

Section 1 concerns the definition of Col and the scope of the interests that have to be declared. Particular attention is paid to the way of declaration, i.e. whether agencies require declarations of interests (positive) or the declaration of the absence of a Col (negative declarations).

Section 2 deals with the timing of the declarations. Agencies are asked to indicate whether specific actors have to submit a declaration of interest (DoI) upon appointment, annually, upon change of function/post or change of tasks/responsibilities within the same function, in meetings or on any other occasion.

¹⁰⁰ The distribution of the questionnaire was done with the help of the EU Agencies Network (EUAN). We would like to thank in particular Natalie Bergmann and Marta Arànega from the EUAN Shared Support Office.

¹⁰¹ The standard questionnaire to EU agencies for the discharge procedure of 2017 is available under http://www.europarl.europa.eu/cmsdata/148146/Standard%20written%20questions%20to%20the%20Agencies_30%2005%202018.pdf.

¹⁰² In order to see whether questions were clear, accurate and relevant, we sent a draft questionnaire to a few agencies. Based on their feedback, we revised the questionnaire which was subsequently sent to all agencies through EUAN.

Section 3 examines how the declared interests are screened and respective decisions on possible mitigating measures or any other consequences are taken.

Section 4 deals with the investigative and *ex post* control mechanisms in place, including any possibilities for whistle-blowers to bring forward any violations.

Section 5 aims to gather empirical data as regards identified Col and the measures taken in this respect in the past year so as to get some examples of the practice.

The questionnaire relies as far as possible on multiple-choice questions in order to make the results comparable and easily presentable. However, given the need for more detailed and differentiated answers for certain questions, the possibility to reply with free text is also given. Whilst this analysis strongly relies on the answers to the multiple-choice questions, these comments are also taken into account.

In May 2019, the questionnaire was distributed to all decentralised agencies which were at the time members of the EU Agencies Network (EUAN), namely 33 decentralised agencies, including self-financed Agencies (EUIPO, SRB and CPVO) (in total 36 agencies).¹⁰³ Joint undertakings fall outside the scope of our definition of EU decentralised agencies and fall therefore outside the scope of our study.

Responses were received from 29 decentralised agencies: ACER, BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, EMA, EMCDDA, EMSA, ENISA, ERA, ESMA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, Europol,¹⁰⁴ FRA, GSA. All agencies have been able to comment on the results of the questions in order to make sure that the rules and policies we use and refer to are factually correct; no other comments have been taken into account.

4.2. Evaluation of questionnaire results

In this section we will examine the answers that we received from the 29 agencies, also indicated as respondents.

¹⁰³ It is noted that these self-financed agencies do currently not fall under the discharge control of the European Parliament and that therefore no previous information has been available through the questionnaires sent by the CONT committee in the context of the discharge procedure.

¹⁰⁴ Because the questionnaire of Europol was received after all calculations were made, only the free text answers could be taken into account.

4.2.1. Section 1: Which interests have to be declared?

Definition of Col

All responding agencies have in place a policy framework on Col but they differ in how elaborate these frameworks are. Each of these frameworks starts with a definition of what Col is in the context of their specific agency.

Thirteen agencies¹⁰⁵ generally follow the definition contained in the Commission guidelines on the prevention and management of Col in EU decentralised agencies of 2013 (see above 3.2). Yet, from the responses to the questionnaire, it can be observed that these agencies use this definition either in an enriched or a simplified form and thus not always use the exact same wording and elements set forth in the Commission's Guidelines. More specifically, a number of agencies include in their definitions not only actual conflicts but also potential ones.¹⁰⁶ As already outlined in the previous section, the Commission guidelines on the prevention and management of Col in decentralised agencies do not include potential interests in their definition of a Col, they however acknowledge the need of an effective prevention policy to address such risks.¹⁰⁷ It is therefore to be welcomed that some agencies have adopted a broad definition including also potential conflicts. However, it is not always made clear what such 'potential' conflicts constitute. Only EASA, ESMA and GSA define the meaning of a potential conflict, by clarifying that this may occur if the responsibilities or tasks of a person within the agency may change in the future or if the personal interests of a person change. This definition can be further clarified by mentioning that most 'potential conflicts' may arise upon a new recruitment or appointment, because if a risk of a conflict at this stage exists it has to be addressed in order not to materialise.

Various agencies define the intensity of an actual conflict by distinguishing between direct or indirect interests.¹⁰⁸ EMA, for example, clarifies that the categorisation between direct or indirect interests depends on the likelihood of an interest to influence the person. Furthermore, the majority of participating agencies include in their definitions also perceived conflicts of interests, following the Commission guidelines.¹⁰⁹

An important difference among the definitions provided by the respondents is the classification of the interest which are/may be conflicting with the public duties of the person concerned. A number of

¹⁰⁵ The participating agencies which provided a definition very similar to the one contained in the Commission guidelines are ACER, CdT, CPVO, ECHA, EEA, EFCA, EMCDDA, ERA, EU-LISA, EU-OSHA, EUIPO, FRA and GSA.

¹⁰⁶ EASA, EIGE, EMA, EMCDDA, EMSA, ESMA, Europol and GSA.

¹⁰⁷ Commission guidelines, 2013, p. 9.

¹⁰⁸ EFCA, EIGE, EMA, EMSA, ENISA, Europol and FRA.

¹⁰⁹ ACER, CPVO, ECDC, ECHA, EEA, EFCA, ERA, EFSA, EIGE, EMCDDA, EMSA, ENISA, EUIPO, EU-LISA, EU-OSHA, FRA and GSA.

agencies view as conflicting interests only private interests, which the person concerned may have in his or her private capacity.¹¹⁰ Such definitions may however be suitable for staff members who are fully employed by the agency, but do not seem appropriate for persons having another professional capacity, such as members of the MB or experts.

It is also interesting to note that none of the received definitions makes explicit reference to 'national interests' or 'political pressure', as parameters which could compromise the impartiality of an actor, although these are elements mentioned in the European Ombudsman Code of Conduct.¹¹¹

(Positive) Declaration of interests or (negative) declaration of absence of Col? Another aim of the questionnaire is to identify whether agencies use positive declarations of interests or negative declarations of absence of interest. This is highly relevant as the European Parliament clearly recommended in the 2017 Discharge to use positive declarations instead of asking staff or management actors to declare themselves out of Col through self-assessment.¹¹² On this point, it is to be noted that the Commission Guidelines on the prevention and management of Col in decentralised agencies seem to allow for both positive or negative declarations, since they mention that the persons concerned may be asked to declare the existence or absence of certain interests related to the domain of activity of the agency.¹¹³

Our analysis reveals that most agencies follow a kind of 'intermediary' approach; they divide the Dol in different areas, such as economic interests, family interests, previous professional experience, affiliations etc., and they require the relevant actor to declare if they have any relevant interest in each area. This is, however, still based on a self-assessment by each actor as to which interests are relevant and need to be declared. A positive declaration, as requested by the EP, would require that all occupational activities, memberships, financial interests of the person and of its close family members within a specified time-frame are declared irrespective of their relevance with the mission of the agency the person works for. It would then be up to the agency to assess the relevance of the declared interests with its mission and whether they could comprise the independence of the person concerned.

The Dol that Commissioners have to fill out according to the latest code of conduct of 2018 constitutes an *exemplum par excellence* of a positive Dol.¹¹⁴ More specifically, Commissioners have to declare all

¹¹⁰ CEPOL, EASA, EBA, EIGE, EIOPA, ESMA, ETF, EU-OSHA and EUIPO.

¹¹¹ European Ombudsman, European Code of Good Administrative Behaviour, Article 8. On this, see previous chapter.

¹¹² European Parliament resolution of 26 March 2019 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)), paragraph 38.

¹¹³ Commission guidelines, 2013, p. 8.

¹¹⁴ Commission Decision of 31.1.2018 on a Code of Conduct for the Members of the European Commission, C(2018) 700 final, Annex 1.

posts held over the last 10 years, all financial interests, including financial interests of spouses/partners and minor children, all memberships of associations, political parties, trade unions, NGOs, and spouse's/partner's professional activity. However, it is true that if such a DoI would be applied to every staff member without consideration of his or her duties, this would be disproportionate, taking into account also the increased workload this would create for the assessing authorities. Nevertheless, it could be envisaged for key actors, such as Executive Directors.

The current lack of such positive declarations is in most agencies partly compensated for by the requirement to submit a CV for any person assuming a function within an agency. Out of the 29 respondents, 15 agencies indicated that they currently ask to fill out a pre-defined CV.¹¹⁵ This may indeed constitute good practice, in particular for non-staff members (members of MB, experts), as it would facilitate horizontal comparison among agencies. Moreover, the publication of such pre-defined CVs for key actors, such as the Executive Director and members of the MB, would facilitate control by citizens or NGOs.

Interests in the regulatory field of the agency, or also in linked fields?

Most agencies require from the different actors within an agency to declare posts in foundations, educational institutions, companies or organisations (current and past), memberships and affiliations, professional activities (current and past), direct financial interests above a certain threshold and interests held by a spouse, partner or dependent family members.¹¹⁶ However, these interests have to be declared only if there is a link with the work of the agency. This link is defined differently among agencies. Some agencies require such a declaration only if such interests fall within the regulatory field of the agency, whereas others apply a broader link by requiring a declaration of interests also in linked fields with the one of the agency (e.g. chemicals and pharmaceuticals).¹¹⁷ This broader link seems to enable a more comprehensive interest assessment and should therefore be considered as best practice; its application would necessitate guidance as to which are considered as linked fields. On this point, it is recalled that the Commission Guidelines on the prevention and management of Col in decentralised agencies recommend that 'DoI should include information on all interests that are or could be perceived as related to the domain of activity of the agency'.¹¹⁸ From this recommendation it

¹¹⁵ These agencies are: ACER, BEREC Office, EASA, EBA, ECDC, ECHA, EFCA, EFSA, EIGE, EMA, EMCDDA, ERA, EU-OSHA, Europol, GSA.

¹¹⁶ The agencies requiring declaration of all these categories of interests both for staff members and for members of the MB are ACER, EASA, ECHA, EFCA, EIGE, EIOPA, ESMA, ETF, EU-LISA, Eurofound and GSA. Only a minority of 3 agencies (EUIPO, Cedefop, EU-OSHA) applies a more abstract declaration of absence of interests for MB members without requiring declaration of specific interests.

¹¹⁷ Agencies assess Col in relation to the industry concerned (ESMA), the regulatory field (BEREC Office, Cedefop, EBA, ECHA, EFSA, EIOPA, ETF, EU-OSHA, EUIPO), the regulatory field and other linked fields (ACER, CPVO, ECDC, EEA, EFCA, EIGE, EMCDDA, ENISA, ESMA, eu-LISA, GSA) or other criteria (CEPOL, EASA, EMA, ERA, Eurofound, FRA).

¹¹⁸ Commission guidelines, 2013, p. 8.

can be inferred that when determining the scope of the agencies' field of activities, public perception has to be taken into account, i.e. what EU citizens would perceive as interfering with the activities of an agency.

Definition of public interest

It is important to establish how the public interest that is protected by the rules on Cols should be defined. On this point, it is recalled that the Commission guidelines on the prevention and management of Col in decentralised agencies recommend that a Col should be assessed against the 'interest of the specific mission entrusted to the agency' but also against 'the specific activity that the person in question is requested to carry out in the agency'.¹¹⁹ Against this backdrop, it was asked whether the declared interests are assessed against the interest of the Union as a whole, the interest of the relevant agency or the interest (duties) of a specific position within an agency. 24 out of 29 respondents declared that the conflicting interests are assessed against the duties of a specific position within an agency, while taking into account also the interest of the agency or the Union as a whole.¹²⁰ This seems indeed suitable, since the public interest of each function might differ; for example, when assessing the potential Cols of a candidate member of a Board of Appeal, it is not sufficient to examine merely whether the candidate has any private interest, such as ties with industry, which could conflict with the interest of the Union as a whole, but also whether the candidate contributed to the decision making process of a specific decision and thus would not be independent to judge upon the same decision at appeal level. Nevertheless, upon recruitment, it is always expedient to assess the DoI of a person against the tasks/mission of the agency as a whole and not merely against the tasks/responsibilities of a specific position, since a staff member might change post/position within an agency and this way a potential risk, if a person changes post/tasks in the future, may be flagged from the outset.

4.2.2. Section 2: When do interests have to be declared?

The replies to the questionnaire reveal that there are various differences amongst agencies as to when interests have to be declared or up-dated, in particular for actors other than staff members. On this point, it is recalled that the Commission Guidelines on the prevention and management of Col in decentralised agencies recommend that 'depending on the degree of exposure to the risk of conflicts of interest, agencies may request that Dols are submitted at least annually in writing and up-dated'.¹²¹

¹¹⁹ Commission guidelines, 2013, p. 4 and 9.

¹²⁰ Only EU-OSHA, Cedefop and CPVO did not mention that they take into account the specific duties of a position when assessing the DoI of a person.

¹²¹ Commission guidelines, 2013, p. 8.

The Guidelines also mention that targeted declarations either in writing or orally might be required before meetings.¹²²

The majority of agencies require a Dol upon appointment both for staff members and for members of the MB.¹²³ EUIPO follows the practice of requesting members of MB to declare any Col only before meetings.

The main difference among the policies of agencies is whether there is an obligation to up-date the relevant Dols, either annually or upon change of post. 21 agencies require an annual up-date of Dols for the members of the MB¹²⁴ and 10 provide the same obligation for staff members both annually and upon change of post.¹²⁵ ECHA requires an up-date of the relevant Dol even upon change of tasks. The latter can be observed as good practice, since the existence or absence of a Col upon appointment is assessed against the tasks of the specific position; therefore new tasks might indeed require a new declaration and subsequent assessment. Particular importance should be attached to the up-date of a Dol and its reassessment in case an existing staff member becomes member of the Board of Appeal of the same agency.¹²⁶

Important is also to ensure good management of Col for experts participating in agencies committees or external experts, who are called on an *ad hoc* basis. Out of 18 respondents that use experts as members of their scientific committees, 14 require a Dol upon appointment¹²⁷ and only 9 update such Dols annually.¹²⁸ Out of 26 respondents that use external experts on an *ad hoc* basis, 18 of them request a Dol upon invitation/appointment.¹²⁹

From the findings in this section, it can be concluded that more coherence is needed, in particular for experts and members of the MB. It would be expedient to apply a common policy as to when Dols have to be submitted and when they have to be up-dated and re-assessed.

¹²² Commission guidelines, 2013, p. 8.

¹²³ ACER, BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, EMA, EMCDDA, EMSA, ERA, ETF, eu-LISA, EU-OSHA, Eurofound, FRA, ESMA.

¹²⁴ The following agencies indicated in the questionnaire that they do not require an annual update of Dols of MB members: CdT, EMCDDA, EMSA, Eurofound, Cedefop, EU-OSHA and EUIPO.

¹²⁵ These are EASA, ECHA, EEA, EFCA, EFSA, EIOPA, EMA, eu-LISA, EUIPO. EFCA requires annual declarations from managers among staff members.

¹²⁶ This is relevant only for agencies with a BoA, namely ACER, CPVO, EASA, EBA, ECHA, EIOPA, ERA, ESMA, and EUIPO.

¹²⁷ ECHA, EEA, EFSA, EMA, eu-LISA, EBA, GSA, ACER, CdT ; Eurofound, BEREC Office, EIGE, FRA, EMCDDA:

¹²⁸ ECHA, EFSA, EMA, EBA, ACER, EIGE, FRAU, CEPOL, CPVO.

¹²⁹ ECHA, EEA, EFSA, EMA, eu-LISA, EBA, GSA, CdT, Eurofound, BEREC Office, EIGE, EMCDDA, EFCA, ERA, CEPOL, CPVO, ETF, ENISA.

4.2.3. Section 3: How are the declared interests screened and decisions on consequences taken?

Assessing actors and their powers

The ways in which Dols are screened and decisions on the relevant consequences are made differ profoundly among agencies. Some agencies have developed very detailed policies as to which measure should be taken in each situation, thus providing specific guidance to those applying the rules and making the assessments (assessing actors) of a DoI.¹³⁰ Such guidance is given in the form of blacklists or interest levels. Such a 'blacklist' includes interests which, if present, do not allow for appointment. Interest levels are used in cases where appointment to and involvement in the agency are, in principle, possible, but subject to mitigating measures. Whilst in some agencies, interest levels only serve as a point of reference, in other agencies, each interest level is linked to a specific mitigating measure. ECHA, for example, distinguishes for members of the MB as well as for Committees among three levels. Level A means that no conflicts have been identified and hence no mitigation is necessary. Level B concerns cases where competing interests are not generally problematic, but problems may arise depending on the specific situation. For this interest level, ad hoc assessments are required. Finally, interests at level C lead to specific restrictions and general cooling off periods. Thus, a person will not be allowed to vote in a case linked to his or her competing interest for a period of five years. This is explained in further detail in the following chapter.

From our analysis, it can be concluded that ECHA, EFSA, EMA and ACER have the most detailed policies as they use both blacklists and interest levels connected with specific mitigating measures. Such policies leave little discretion to the assessing actors and thus enable a decision to be taken or at least prepared at a lower level within the agencies' management structure, such as a legal unit or a secretariat.¹³¹

Thirteen agencies seem to follow less detailed policies in the sense that they neither use blacklists nor provide for a system of interest classification.¹³² This does, however, not mean that assessing actors are left with no guidance at all in these agencies. These agencies work for example with lists of options for mitigating measures.¹³³

¹³⁰ Notably ECHA, EFSA, EMA and ACER.

¹³¹ See the following chapter of this study.

¹³² BEREC Office, CDT, Cedefop, CEPOL, EASA, EEA, EIGE, EIOPA, EMCDDA, ETF, EU-OSHA, FRA, GSA.

¹³³ CdT, CEPOI, EEA, EIGE, EMCDDA, ETF, EU-OSHA, FRA, GSA.

Interest assessment for experts

Since many agencies closely involve experts in their work, the question arises whether these persons are also subject to a so-called blacklist of interests, as described above. Nine agencies do indeed not allow the appointment of an expert on a scientific committee if this person has worked for the industry for a certain number of years before being called to such a committee.¹³⁴ The required length of time between working in the industry and being called to a committee varies between two (EFSA), three (BEREC Office, ECDC, EEA, EMA) and five years (ACER, ECHA, EMCDDA).

This reveals a discrepancy among agencies with a similar function, i.e. risk assessment (EMA, ECHA, EFSA, ECDC), the existence of which seems difficult to understand. A possible explanation for these differences concerning the relation of experts with industry could be the difficulty of finding suitable experts: the longer the required abstention from an occupation in or funding by the industry, the smaller the risk of Col, but the more difficult it is to find experts with the necessary specialisation. Nevertheless, it should be considered whether a coherent policy could be applied, at least for agencies with similar functions, in the future.

Col can, however, not only arise from full employment in the industry, but also from being involved in projects funded by the industry, even when employed by a public institution. For this reason, out of 18 respondents which use experts as members of their scientific committees, twelve take into account whether experts have received funding from the industry while working for a public institution.¹³⁵

4.2.4. Section 4: What investigative, advisory and control mechanisms are in place?

Section 4 of the questionnaire aims to examine what mechanisms are in place with a view to investigating, advising on, or reporting Col.

Investigating mechanisms

In cases of suspicions or preliminary evidence that a Col has indeed arisen, there is often a need to investigate the facts. Within the European Commission such investigations are carried out by the Investigation and Disciplinary Office of the Commission (IDOC), without prejudice to the powers of Commission's Anti-fraud Office (OLAF). IDOC has concluded service level agreements with EU executive agencies and conducts investigations also on their behalf. For EU decentralised agencies, investigations concerning fraud are assumed by OLAF, however, there is no equivalent office to IDOC to assume internal investigations across all agencies. According to our analysis, in most decentralised

¹³⁴ EFSA, BEREC Office, ECDC, EEA, EMA, ACER, CPVO, ECHA, EMCDDA.

¹³⁵ ACER, CPVO, EASA, ECDC, ECHA, EEA, EFSA, EMA, EMCDDA, ENISA, FRA, GSA.

agencies, whenever there is a need for an internal investigation, the Executive Director designates staff members on a case-by-case basis. In five agencies this task is often assumed by the legal unit of the agency.¹³⁶ Some agencies also provide for the possibility of external experts or staff members from other agencies to be called on an ad hoc basis.¹³⁷ Only EMSA has indicated that it has a permanent internal investigation service in place.

In 2015 the EU agencies network, EUAN, established an inter-agency pool of investigators, composed of twelve staff members from twelve different agencies and joint undertakings (JUs).¹³⁸ The members of this pool were offered the possibility to be trained and gain experience by 'shadowing' IDOC investigators. According to information received by the EUAN, the pool of investigators has been used a few times by agencies and joint undertakings, which wished to have an investigator outside their agency. There are no formal rules of procedure to make use of the list of this inter-agency pool of investigators. Based on the experience gained since 2015, the EUAN could reflect whether to formalise this investigative instrument through the development of rules of procedure. Such rules could also identify the instances that agencies should make use of the pool in order to allow for somebody outside the agency to be involved in an investigation.

Advisory mechanisms

In the discharge procedure for the financial year 2017, the European Parliament recommended to agencies to set up a 'Conflicts of Interest Advisory Committee', without however giving any more specific directions or without clarifying which exact need such a committee would cover.¹³⁹ It is therefore interesting to identify which agencies have already in place such an advisory body and what its composition and mandate is. Eleven of the 29 respondents declared that they have indeed established an advisory committee with the task to provide advice to the Executive Director or to the MB on complex situations of Col.¹⁴⁰ The mandate and composition of each of these committees varies. The most narrow mandate of such a committee is given to the advisory committee of EMA, which delivers opinions only on Col that are related to experts, whereas the rest of the committees have a wider mandate concerning all actors within the agency. However, in most cases, either implicitly or explicitly, such committees are not competent to deliver opinions on Col concerning members of the

¹³⁶ EEA, EFSA, ETF, ECDC, ECHA.

¹³⁷ ECHA, EIGE, EIOPA, EMCDDA, Eurofound, EU-LISA.

¹³⁸ ECHA, EIGE, EIOPA, EMCDDA, Eurofound, EU-LISA.

¹³⁹ European Parliament resolution of 26 March 2019 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)), paragraph 40.

¹⁴⁰ EASA (Ethical Committee), EBA (Advisory Committee on Conflict of Interest), ECDC (Declarations of Interests Review Committee), ECHA (Conflict of Interest Advisory Committee), EFSA (Advisory Committee), EIOPA (Advisory Committee on Conflict of Interest), EMA (Declarations of Interests evaluation Advisory Group/DIAG), ENISA (Ethical committee) and GSA (Conflicts of Interest Advisory Committee), EUIPO (Ethics Committee).

MB.¹⁴¹ As regards the composition of these committees, in most cases they are composed of the heads of relevant units within the agency, such as the legal unit, the unit on procurement and the unit on human resources, or of persons among the staff selected by the ED.¹⁴² The relevant committees of EBA, ECHA, EIOPA and ENISA include also a member appointed by the MB, which allows such committees to have a wider mandate, possibly assessing a Col also concerning the MB. The only committee that has as its member also an external expert appointed by the MB for his or her expertise on managing Col is the one of ECHA, while GSA allows for the involvement of external experts on an ad hoc basis.

Given the wide differences among the advisory committees of each agency, it appears expedient to reflect on the possibility to develop a common practice following an exchange of the so far acquired experience. Any discussion in this respect should start from unravelling what the exact rationale for the creation of advisory committees is and how this rationale should be reflected on their composition and mandate. It could also be explored whether it would be useful to establish a cross-agency advisory committee.

Whistle-blower protection

A critical reporting mechanism for wrongdoings is the possibility of whistle-blowing by staff members. The Staff Regulations guarantee the protection of whistle-blowers¹⁴³ and the European Parliament has urged all agencies to adopt internal rules in order to render the statutory guarantees more concrete.¹⁴⁴ All 29 respondents have relevant internal rules or guidelines on whistle-blowing. 22¹⁴⁵ of them follow the Commission's Guidelines on whistleblowing.¹⁴⁶ Seven respondents indicate that they either follow their own rules or made adjustments to the Commission Guidelines.¹⁴⁷ The need to make adjustments is indeed comprehensible, since the Commission's model Guidelines on whistleblowing stem from the Commission's own policy on whistleblowing and are not necessarily fully transposable to a much smaller organisation such as an agency. For instance, 21 respondents declare that the guarantee of 'transfer to another unit/department' for a whistle-blower to be protected from retaliation, as included

¹⁴¹ This was explicitly mentioned by ECDC. It implicitly derives also from the composition of the committees of EASA, EFSA and GSA, since their composition does not include any member appointed by the MB.

¹⁴² This conclusion is based on the responses by EASA, EBA, ECDC, ECHA, EFSA, EMA, ENISA and GSA.

¹⁴³ See the minutes of the EUAN meeting of 21 October 2015 in Dublin.

¹⁴⁴ European Parliament resolution of 26 March 2019 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)), paragraph 36.

¹⁴⁵ BEREC Office, CdT, Cedefop, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EIGE, EIOPA, EMSA, ENISA, ERA, ESMA, ETF, EUIPO, EU-OSHA, Eurofound, FRA, GSA.

¹⁴⁶ Commission Decision of 27.2.2018 on giving the Commission's ex ante agreement to the adoption by agencies of implementing rules laying down guidelines on whistleblowing C(2018) 1362.

¹⁴⁷ ACER, CEPOL, EFSA, EU-LISA, EMCDDA, EMA, Europol.

in the model guidelines, is not easy to be implemented in a small organisation.¹⁴⁸ In such instances, the possibility of cross-agency mobility should be explored.

Transparency

Diffused control of conflicts of interest management by the public is enabled when an agency acts transparently and publishes sufficient information on its website. One of the measures contained in the Staff Regulations which aim at guaranteeing transparency is the obligation of EU institutions and agencies to annually publish information on the occupational activities of former senior officials after they leave the service.¹⁴⁹ These officials are under the obligation not to engage in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service. The European Ombudsman has already urged all institutions and agencies to implement this statutory obligation. Only seven decentralised agencies have replied that they have already published such information on the current occupational activities of former Executive Director and deputy Executive Director.¹⁵⁰

Transparency on contacts with interest representatives

An important step towards enhanced transparency in the EU governance has been the introduction of the so-called 'Transparency Register'¹⁵¹. Since 2011, the Commission and the European Parliament have been operating a joint, public and voluntary Register of all interest groups and self-employed consultants engaging in activities carried out with the objective of influencing the law-making and policy implementation processes of the EU institutions.¹⁵² The aim of the register is to offer citizens a profile of actors interested in influencing the decision-making process of the EU. These organisations register voluntarily and agree to respect a code of conduct established by the European Parliament and Commission jointly. Both the European Parliament and the Commission offer incentives to interest representatives for being registered, which render registration de facto mandatory.¹⁵³ The European Commission enforces the so-called rule of 'no registration, no meeting' with Commissioners, Members of Cabinet or Directors-General. These persons are required to publish information on their meetings with interest representatives and more specifically, the date of the meeting, the location, the names of

¹⁴⁸ See C(2018) 1362, Annex I, section 3.

¹⁴⁹ See art 16 of the Staff Regulations.

¹⁵⁰ ACER, EBA, ECHA, EFSA, EIOPA, ESMA and Europol.

¹⁵¹ See under <https://ec.europa.eu/transparencyregister/public/homePage.do?locale=en#en>.

¹⁵² Agreement between the European Parliament and the European Commission of 23 June 2011 on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation OJ L 191, 22.7.2011, as amended in 2014, OJ L 277/11, 19.9.2014.

¹⁵³ See A. Bunea, 'Legitimacy through targeted transparency? Regulatory effectiveness and sustainability of lobbying regulation in the European Union', 57 *European Journal of Political Research* (2018) p. 378 at p. 399.

the participants, as well as the subject of discussion.¹⁵⁴ The European Ombudsman has issued recommendations relevant for all public officials' interaction with interest representatives.¹⁵⁵

The section of the questionnaire concerning interest representatives aims to find out whether EU decentralized agencies have enacted any rules in this respect, in particular as regards the meetings of members of the MB and the ED, who are more likely to meet interest representatives. Our analysis of the replies to the questionnaire reveals that no common policy exists. Thirteen agencies require from their Executive Director or also other staff to publicly register meetings with interest representatives.¹⁵⁶ Five agencies allow their Executive Director and their staff to meet only with interest representatives registered in the Transparency Register.¹⁵⁷ EIOPA enforces the obligation to meet only with registered interest representatives and to publish such meetings also for MB members. However, 11 respondents indicate that they do not have any such obligations in place.¹⁵⁸ These results reveal a clear need for agencies to enact common rules as regards meetings of their MB members and senior staff with interest representatives.

Tackling the 'revolving doors' phenomenon

Rules for EU staff members, including EU agencies staff members

The phenomenon of staff members leaving the EU civil service to take up positions in the private sector or individuals joining the EU civil service from the private sector is often described as 'revolving doors'. This phenomenon may cause actual or potential conflicts of interest and may be damaging for the public trust and confidence in the EU institutions. More specifically, revolving door moves may give rise to a compromise of the public interest in case, for example, a public servant prepares his or her move to the private sector while in service. Agencies risk that confidential information may be disclosed or that former staff members may misuse their close personal contacts and friendships with ex-colleagues.¹⁵⁹

Obligations of the officials and other servants of the EU after leaving the service are laid down in article 16 of the Staff Regulations. Pursuant to this provision, an official, after leaving the service, continues to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Officials intending to engage in an occupational activity, whether gainful or

¹⁵⁴ See Art. 1(2) Commission Decision (EU) 2014/838 and Commission Decision (EU) 2014/839.

¹⁵⁵ European Ombudsman, Practical recommendations for public officials' interaction with interest representatives, 24 May 2017, <https://www.ombudsman.europa.eu/en/correspondence/en/79435>.

¹⁵⁶ ACER, CEPOL, EBA, ECDC, ECHA, EFCA, EIGE, EIOPA, EMCDDA, ENISA, ERA, ESMA, ETF.

¹⁵⁷ ACER, CEPOL, ECDC, EIOPA, EMA.

¹⁵⁸ BEREC Office, CPVO, EASA, EEA, EFSA, EMSA, EU-lisa, EUIPO, Eurofound, FRA, GSA.

¹⁵⁹ See Decision of the European Ombudsman in her strategic inquiry OI/3/2017/NF on how the European Commission manages 'revolving doors' situations of its staff members, 28 February 2019.

not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the EU institution may either forbid him/her from undertaking it or give its approval subject to any conditions it thinks fit. In the case of former 'senior officials' as defined in internal rules of the institutions, it is prohibited, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

These rules apply also to EU agencies as regards their staff members. The term 'senior official' covers Directors-General or equivalent and Directors or equivalent.¹⁶⁰ Within EU agencies, the Executive Director is a senior official and is thus bound by the obligation not to engage in lobbying or advocacy vis-à-vis staff of their former institution during the 12 months after leaving the service.

Rules for experts and MB members

Members of the MB and experts (both experts in internal committees and external experts) are not employed by EU agencies and thus not bound by the Staff Regulations and the post-employment provisions enshrined therein. For this reason, there are legal limitations for the enforcement of post-mandate obligations upon them. While acknowledging this legal difficulty, it is also noted that revolving doors in relation to experts and MB members may undermine the reputation of an agency. For this reason, the questionnaire aims to examine whether agencies have any policies in place in order to tackle such a risk.

Some respondents stated that they indeed have obligations for MB members or expert committees in place after their mandate in the agency expires. CdT asks for a DoI until two years after the expiry of the mandate for MB members. Similarly, MB and Board of Supervisors members in EIOPA have to inform the chair of the Agency for two years after departure about their employment. In FRA, this obligation is limited to one year. EBA in its response makes reference to Article 70 of its founding Regulation which states that Article 16 of the Staff Regulations also applies to its MB and Board of Supervisors.¹⁶¹ EIGE imposes similar obligations both to members of the MB and expert committees. Such reporting obligations are welcome and should be considered as good practice. Even if it is legally difficult to enforce post-mandate prohibitions for members of MB and expert committees, adequate reporting

¹⁶⁰ See art. 29(2) of the Staff Regulations.

¹⁶¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC

enhances transparency and may induce compliance with ethical and integrity obligations.

4.2.5. Section 5: Col in the past year

The final section of the questionnaire deals with Col in the past year so as to get some insights in problems that occur in practice. Our analysis reveals that agencies do not have a coherent approach with regard to keeping track of (prevented) Cols. Whilst some respondents gave a detailed account of the number of Cols prevented and the specific mitigating measures imposed in the past year, others did not have this information available or only made reference to the fact that such information is published in the respective minutes of meetings of their Management Board or of scientific committees. The numbers indicated range from only one conflict (EEA, EIGE, EIOPA, EMCDDA, EMSA, EUIPO, Eurofound) to a total of 20 conflicts prevented in EBA. However, in the latter case the conflicts seem to relate mainly to the relationship between the seconded national expert concerned and the Member State from which he or she was seconded.¹⁶² Detailed numbers and descriptions of individual cases can be found in the Annex 5 of this study.

The data received in the responses to the questionnaire provide for some interesting insights. The question as to what needs to be declared seems to pose a problem in some agencies. For instance, the team in charge of ethics of ESMA had to decide whether Bitcoins have to be regarded as a financial interest that has to be declared. This observation reinforces the importance of clear instructions as to how to fill out DoI forms.

With regards to the mitigating measures taken where a Col was identified, generally two possible solutions were used. First, in most cases, the person's involvement in the agency was adapted, for example, by limiting the individual's voting rights or assigning the task in question to a different staff member. Second, in cases where the Col was of a more general nature, the conflicting interest itself had to be remedied, for instance by selling shares that went beyond the allowed maximum.¹⁶³

With regards to breach of trust (BoT) procedures, i.e. when a Col was not declared/addressed on time, only EMA stated that two such procedures have been initiated in 2018 both of which were closed after it had become apparent that the failure to declare the interest in question derived from mere negligence on part of the employee concerned. It should be noted that not all agencies have a BoT procedure in place.

¹⁶² Seconded national experts fall outside the scope of the Staff Regulations. Special rules adopted by each institution or agency apply to them.

¹⁶³ This was used in one case at EUIPO.

In order to provide for transparency and enable control regarding the policies and their effectiveness, a system of publication of statistics on Cols could be considered. This recommendation is included also in the Commission Guidelines of 2013.¹⁶⁴ EFSA already provides a detailed annual report on independence, which could be regarded as best practice in this respect. It should, however, be noted that this approach might not be suitable for all agencies. The difficulty lies in the potential violation of the protection of personal data. The smaller the overall number of people in an agency and the more diversified the positions are, the easier it might be to identify individuals based on such descriptions. Small agencies might therefore have to balance considerations of effectiveness and data protection.

¹⁶⁴ Commission guidelines, 2013, p. 11.

5. COI AND EU AGENCIES IN PRACTICE: EFSA, ECHA, EMA, EEA, EMCDDA, EUIPO AND EUROPOL COMPARED

In the previous chapter we have analysed the rules of 29 decentralised agencies on Col on the basis of the questionnaire. In order to grasp the particular issues that play a role in practice, it is important to obtain a deeper understanding of agencies' policies and identify different approaches and models. Of course, such policies cannot be seen in a vacuum. They strongly depend on the structure, functioning and powers of the agency. The Commission in its Guidelines of 2013 states that agencies should pay particular attention to conflicts of interest when they are entrusted with particular powers, such as regulatory or inspection powers, or when their work forms part of the Commission's decision-making.¹⁶⁵ Furthermore, on an individual level, the responsibilities and tasks of each actor are important factors in order to determine whose Dols are particularly important.¹⁶⁶ Previous sections have, in addition, highlighted that agencies are at a particular risk to conflicting interests when they involve experts. Both what we defined as 'experts in internal committees' and 'external experts' in the previous chapters are of relevance here. Experts of both categories participate in the work of the agency but also have a parallel professional occupation, which might be difficult to assess for the agency with regards to Cols. Moreover, these persons will be likely to have a history of employment in the industry that might give rise to Cols. For external experts, the additional difficulty is that involvement in the agency occurs on an *ad hoc* basis and established periodical procedures for Col review might be difficult to enforce.

From these observations, it can be concluded that conflicts of interests are particularly salient for agencies depending on:

- (a) whether agencies can take binding decisions in their policy area;
- (b) which functions agencies fulfil (e.g. providing expertise, networking);
- (c) whether and to which extent agencies involve (external) experts.

It is consequently in response to these three, what we can call, 'risk' factors that an agency's Col policy should be designed.

These factors also need to be taken into account in the analysis and assessment of agencies' Col policies. As an in-depth study of all decentralised agencies is not possible for the purpose of this study, we have selected seven agencies of which we will analyse their internal policy documents into more detail. The aim is to provide for further in-depth analysis based on the analysis made in Chapter 4.

¹⁶⁵ European Commission, Guidelines on the prevention and management of conflicts of interest in EU decentralised agencies ('Commission guidelines'), 2013, p. 6.

¹⁶⁶ Commission guidelines, 2013, p. 6.

5.1. Analytical framework and methodology of the case studies

5.1.1. Case selection

The seven agencies have been selected so as to reflect a broad variety of factors that could increase the likelihood of conflicts of interest, or absence thereof. In order to provide for meaningful findings, the selection of agencies has been based on the above mentioned three risk factors. Therefore, the selection should include both agencies that can and cannot take binding decisions. Moreover, it is important to take account of the different functions that can be fulfilled by agencies. Agencies can have the functions of (1) providing expertise to the decision-maker, some of which can strongly influence the final decisions, (2) collecting information and creating information networks, (3) providing registration or certification services, (4) providing support to national agencies, (5) supervision and inspection, or (6) the execution of EU programmes. In practice, several agencies are multifunctional fulfilling some of these tasks at once.¹⁶⁷ Lastly, the involvement of experts (or lack thereof) is another crucial factor.

In order to cover the agencies most exposed to (discussions about) conflicts of interest as well as a sufficiently representative selection of other agencies, this study will focus on the internal policies of ECHA, EEA, EFSA, EMA, EMCDDA, EUIPO¹⁶⁸ and Europol.

In the light of the three risk factors identified above, notably EMA, EFSA and ECHA have been subject to several other studies that were concerned with their independence policy.¹⁶⁹ ECHA is a particularly interesting case as all three factors are present. EFSA and EMA¹⁷⁰ cannot take binding decisions themselves but their opinions form the basis for Commission decisions and are therefore also considerably influential. Whilst EEA and EMCDDA also make use of external expertise, they have not received the same attention as the former three agencies. EUIPO provides for a case where external scientific expertise is not involved. Nonetheless, this agency is highly interesting as it can take binding

¹⁶⁷ Established by E. Vos, 'Independence, Accountability and Transparency of European Regulatory Agencies', in *Regulation through Agencies: A New Paradigm of European Governance*, eds. D. Geradin, R. Munoz & N. Petit (Cheltenham UK/Northampton MA, USA: Edward Elgar, 2005).

¹⁶⁸ NB: The guidelines of this agency still refer to its previous name 'Office for Harmonisation in the Internal Market' ('OHIM')."

¹⁶⁹ See for example: C. Demmke, M. Bovens, T. Henökl, K. van Lierop, T. Moilanen, G. Pikker and A. Salminen, *Regulating Conflicts of Interest for Holders of Public Office in the European Union*, October 2007. Milieu, *Comparison between the tools ensuring EFSA's independent scientific advice and the instruments in use by organisations similar to EFSA*, Revised Final Report, 2011. Deloitte, *Ex post Evaluation of the Policy on Independence and Scientific Decision-Making Processes of the European Food Safety Authority (EFSA) and of its Implementing Rules on Declaration of Interest*, Final Comprehensive Report, March 2017. Blomeyer & Sanz, *Codes of Conduct and Conflicts of Interest at any governance level of the management of EU Funds*, Study for the CONT Committee of the European Parliament, March 2017.

¹⁷⁰ In the cases falling under the paediatric regulation, EMA can exceptionally make binding decisions. See Regulation (EC) No 1901/2006 of the European Parliament and of the Council of 12 December 2006 on medicinal products for paediatric use OJ L 378/1

And Regulation (EC) No 1902/2006 of the European Parliament and of the Council of 20 December 2006 amending Regulation 1901/2006 on medicinal products for paediatric use, OJ L 378/20.

decisions and is not subject to control by the EP's CONT committee because it is fully self-financed. Finally, Europol has been included as a case of an operational agency which cannot take binding decisions and does not involve experts. As none of the three risk factors identified above are present, this agency serves as a control case. The factors of case selection are summarised in Table 1.

Table 1: Selection of agencies¹⁷¹

Agency	Functions	Binding decisions	Involvement of experts ¹⁷²
ECHA	Scientific/technical expertise + services (registration)	Yes	Yes
EEA	Information/networking + scientific/technical expertise	No	Yes
EFSA	Scientific/technical expertise	No	Yes
EMA	Scientific/technical expertise	No	Yes
EMCDDA	Information/networking + scientific/technical expertise	No	Yes
EUIPO	Registration	Yes	No
Europol	Cooperation + operational activities	No	No

5.1.2. Analysis of Col policies

All elements of the Col systems, which were reflected upon in the previous chapter, are all important individually, but they ultimately function as a system. The analysis of Col policies must therefore take a holistic approach. To take this into account and, at the same time, ensure sufficient comparability between agencies, the remainder of this chapter is divided in five sections, adding on the issues already discussed in Chapter 4. First, the content, timing and actors of Dols are analysed (5.2), after which the screening procedures and possible consequences are compared (5.3). Subsequently, we analyse how

¹⁷¹ For a more detailed overview of the functions and power of these and other agencies, see: European Parliamentary Research Service (EPRS), *EU Agencies, Common Approach and Parliamentary Scrutiny*, European Implementation Assessment, 2018.

¹⁷² For the purposes of this chapter, unless specified otherwise, this refers both to experts in the agencies' committees and panels and external experts.

agencies proceed in situations where scientific expertise is needed but a conflict occurs (5.4) or where actors have failed to declare an existing conflict ('breach of trust procedures', 5.5). Finally, some additional policies in the selected agencies are highlighted (5.6). The underlying information was gathered from the agencies' documents detailing their conflicts of interest policies as well as from the questionnaires distributed for the purpose of this study.

5.2. Declarations of Interest: Content, Actors and Timing

5.2.1. Content

The declaration of interests entails the comparison of two factors. On the one hand, the interests held by the person must be identified. These interests must subsequently be compared with the interest of the position, agency or the Union as such on the other hand. In the former category, it is important to define what types of interests are considered to be relevant. Not each and every employment, membership or other activity in a person's life overlaps or conflicts with the agency's interests. In this respect, agencies apply different approaches. According to the *results of the questionnaire* elaborated in the previous chapter, EMA analyses interests in the industry concerned, EFSA, ECHA and EUIPO broaden this to the regulatory field of activity of the agency.

EMCDDA, EEA and Europol state that they aim to analyse both the regulatory field and other linked fields.

However, as outlined in the previous chapter, particularly the latter category of 'interests in linked fields' might be difficult to assess as agencies depend on the Dols filled in by the persons concerned. Thus, it would depend on the person who fills out the questionnaire to assess what 'other linked fields' are and whether any of his or her current or previous activities overlap with these.

Some guidance in this regard could be provided by the *instructions given in the Dol form* itself. EMA's form indeed mentions the 'interest in the pharmaceutical industry', but broadens this by 'personal interests, other than interest in the pharmaceutical industry', although this of course remains vague. Moreover, EMA's policy states at the same time that the agency cannot legally require such extensive information from members of the MB.¹⁷³ Agencies looking only at the field of their work use formulations like the agency's 'remit' (EFSA¹⁷⁴) or its 'regulatory field' (ECHA¹⁷⁵). EUIPO's form uses the

¹⁷³ EMA: *EMA policy on the handling of competing interests of Management Board members*, p. 4, and Dol form for members of the MB: <https://www.ema.europa.eu/en/about-us/who-we-are/management-board/members>.

¹⁷⁴ EFSA, *EFSA's policy on independence*, p. 5 and *Decision of Executive Director of EFSA on Competing Interest Management*, p. 10.

¹⁷⁵ See ECHA's Dol form for management board members: <https://echa.europa.eu/nl/about-us/who-we-are/management-board/management-board-members>.

definition of 'interests in or related to fields of activity of the department'.¹⁷⁶

Finally, EEA, EMCDDA and Europol aim to take into account other linked fields as well. However, their Dols do not make this explicit. The information they require is all interests 'which are or could be perceived as related to the EMCDDA's activities'¹⁷⁷ and interests that 'are (or could be perceived as) related to the domain of EEA's activity', respectively.¹⁷⁸ If the persons filling out the Dols indeed limit themselves to this information, an assessment of interests in other linked fields will not be possible. Europol's form for Dols by MB members remains more abstract than that of the other agencies. Reference is made to the definition of Cols, according to which relevant interests are those 'which could impair, directly or indirectly, professional independence in the performance of the duties for the Management Board'.¹⁷⁹ Whilst this indeed implies a broad scope it relies on the assessment by MB members as to what those interests could be. These points are summarised in Table 2.

Table 2: Interests to be declared

Agency	Answer in questionnaire	Formulation in Dol for MB members ¹⁸⁰
EFSA	Regulatory field	interests ' <i>falling within EFSA's remit</i> '
ECHA	Regulatory field	interests ' <i>in the regulatory field of activity of ECHA</i> '
EUIPO	Regulatory field	interests ' <i>in or related to fields of activity of the department</i> '
EEA	Regulatory field and other linked fields	interests that ' <i>are (or could be perceived as) related to the domain of EEA's activity</i> '
EMCDDA	Regulatory field and other linked fields	interests ' <i>which are or could be perceived as related to the EMCDDA's activities</i> '

¹⁷⁶ As EUIPO's MB does not have to submit written Dols, the ED's Dol was used for the comparison: <https://euiipo.europa.eu/ohimportal/en/the-office>

¹⁷⁷ See Declarations of Interest for MB members as published on EMCDDA's website: <http://www.emcdda.europa.eu/about/mb>.

¹⁷⁸ EEA: Policy for the prevention and management of conflict of interest, p. 8 and Dol form for members of EEA's MB: <https://www.eea.europa.eu/about-us/governance/management-board/list-of-management-board-members>.

¹⁷⁹ Declaration by the representatives of the Management Board of Europol, retrieved from <https://www.europol.europa.eu/management-board-members>. This observation is based on the forms completed by Management Board Members in 2018. More recent forms completed in 2019 merely take the form of a negative declaration of interest.

¹⁸⁰ As in EUIPO, members of the MB only have to declare interests in meeting, the ED's Dol was used for the comparison.

Europol	Regulatory field and other linked fields	interests <i>'which could impair, directly or indirectly, professional independence in the performance of the duties for the Management Board'</i>
EMA	'other' than the above options	<i>'interest in the pharmaceutical industry' and 'personal interests, other than interest in the pharmaceutical industry'</i>

Thus, whilst the ideal solution would be to assess and exclude conflicts in any field linked to the agencies' work, practical constraints must be taken into account. Given that it is the employee/ MB member/ expert him- or herself who assesses which elements are relevant to be mentioned, the instructions in the Dol form must be very clear. As suggested by the European Parliament in the context of the discharge procedure of 2017,¹⁸¹ a positive declaration of interest or a clearer instruction as to what the precise fields are in which relevant interests could arise, might help to solve this problem. It would, however, also require a more detailed assessment by the agency upon receipt of the different Dols. This would be disproportionate, particularly in smaller agencies, as set out in the previous chapter.

Another crucial element in the definition of possibly conflicting interests is the timing. As stated in the previous chapter, a balance must be struck between an adequate cooling-off period on the one hand and availability of a sufficient number of experts on the other. For this reason, agencies do not only ask for declaration of current interests but also interests in the previous years. The number of years, however, varies per agency. Whilst ECHA, EEA, EFSA and EMCDDA ask for declaration of interests in the previous five years, EMA only requires information for three years in the past. In EUIPO, this time frame is even limited to two years. The Europol documents do not give any indication of such a period.¹⁸²

5.2.2. Actors and Timing

Besides the content of the declaration of interests, it is important to consider *at which stage* each actor has to submit such a declaration. Generally, persons who are more intensively involved in the agency, for instance because they have managerial functions or play a key role in the agency's decision-making, are subject to more extensive obligations with regards to declaring interests. By contrast, staff members without a managerial role or experts in an *ad hoc* advisory function might have fewer obligations.

¹⁸¹ European Parliament resolution of 26 March 2019 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)), paragraph 38.

¹⁸² Europol explains that any interest, regardless of the period of time, is of relevance.

ECHA, EFSA and EMA apply the most far-reaching policies in this regard. Members of the MB, Experts of internal committees, External Experts and, in the case of ECHA, members of the Board of Appeal must declare their interests upon appointment, annually, at the beginning of each meeting and when taking up a new position. In addition, ECHA provides for a system of classification of interests (further elaborated in the following sub-chapters). If members of its organs have declared interests which could potentially conflict with those of the agency, a check of Col is undertaken before the commencement of each meeting against the particular agenda of that meeting.¹⁸³

ECHA also applies these four instances of interest declaration to staff members; EFSA and EMA do not require staff members to declare interests in meetings, although it is true that according to Art. 11a of the Staff Regulations, staff members, who in the performance of their duties, deal with a matter in which, directly or indirectly, they have any personal interest such as to impair their independence, are obliged to immediately inform their hierarchical superiors.

As regards experts, EFSA's guidelines explicitly state that Dols of what they call 'external experts' (i.e. hearing experts and members of the Advisory Forum, Focal Points and Scientific Networks) have to be submitted but are not screened.¹⁸⁴ Only for the Advisory Forum and Network members, the agency follows up on 'well-documented' cases of conflicts of interest.¹⁸⁵ By contrast, experts in EFSA's panels are subject to the screening procedure set out below. ECHA generally also applies its Col management policy to external experts, but excludes networks and discussion fora from its scope.¹⁸⁶

Generally, the criteria to prevent conflicts of interest are also employed as selection criteria for members of the relevant agency organs. However, for some organs, the agency itself is not the appointing authority.¹⁸⁷ Instead, members of these organs can be appointed by Member States or EU institutions. In these cases, agencies' influence on the appointment and screening is generally limited. EMA is an exception and offers a pre-selection screening for potential members of the Management Board and expert committees. The appointing authority will subsequently be provided with the result of this assessment and is asked to take it into account.¹⁸⁸ Also ECHA usually sets out a list of assessment criteria to which it 'invites' the appointing authority to adhere.¹⁸⁹

¹⁸³ ECHA, *Prevention and Management of potential Conflicts of Interest*, p.12.

¹⁸⁴ By contrast, the Dols of experts in the agency's boards and panels are screened and mitigating measures are taken where necessary.

¹⁸⁵ See Articles 12 (for Network Members) and 14 (for the Advisory Forum) of the *Decision of the Executive Director of EFSA on Competing Interest Management*.

¹⁸⁶ ECHA, *Prevention and Management of potential Conflicts of Interest*, p. 2.

¹⁸⁷ These bodies are the Management Boards and other internal committees such as expert committees.

¹⁸⁸ *EMA policy on the handling of competing interests of Management Board members*, p. 9 and *EMA policy on the handling of competing interest of scientific committees' members and experts*, p. 9.

¹⁸⁹ E.g. ECHA, *Prevention and Management of Potential conflicts of interest*, p. 9.

EMCDDA also has far-reaching obligations for declaring interests of members of the MB and experts in its (extended) scientific committee. Members of the MB have to declare interests upon appointment and whenever their situation changes. For the expert committees, the same rules apply. Finally, staff members of this agency are required to declare their interests only upon appointment.

EEA requires Dols of members of the management board and scientific committee as well as staff members upon appointment and annually. For staff, a declaration is also required when changing positions.

In deviation from these agencies, EUIPO does not require standardised written Dol forms from its MB members. Interests only have to be declared in meetings. Yet, similar as in the other agencies, the staff and members of the Board of Appeal of EUIPO have to declare interests upon appointment, annually and when changing positions.

Finally, Europol uses an even less detailed system. Its MB members declare interests only once; no indication of periodicity is given in the documents. Instead, Europol only relies on the standard provision used in several agencies which obliges members to indicate any change of situation. For staff members, only the basic provisions set out in the Staff Regulations are applicable, according to which staff members do not have to declare interests on a regular basis, but have to declare immediately a Col when it arises.¹⁹⁰

5.3. Screening and consequences

According to the Commission's Guidelines, agencies are required to establish internal rules for the screening of Dols.¹⁹¹ With regards to the consequences of a Col, the guidelines specify that the person concerned should give up the conflicting interest or his involvement in the agency should be adjusted accordingly. The Guidelines provide the following options; the agency can decide:

- not to select the person to form part of the group;
- not to appoint the person as Chair/rapporteur;
- not to let the person participate in the decision/vote;
- not to let the person participate in the deliberations leading to the decision.

In this regard, each agency has defined a different system of decision-making and a different set of criteria and possible consequences. They can be distinguished on a scale from rigid and almost

¹⁹⁰ Staff Regulations, Art. 11a. These are operationalised in a document entitled 'Guidance to Europol staff – Conflict of interest' (4th October 2017), which as, as Europol explained in the context of this study, is applicable to all general situations other than the exceptions provided for therein. The document can be retrieved from: <https://www.europol.europa.eu/publications-documents/guidance-to-europol-staff-conflict-of-interest>.

¹⁹¹ Commission Guidelines, 2013, p. 9.

automatic decision-making to highly discretionary.

5.3.1. European Medicines Agency (EMA)

System

At the one end of this scale, is **EMA** with a rigid, almost automatic, system of decision-making. Their policy for the members of the MB as well as scientific committee members and experts foresees not only a clear blacklist of interests which are incompatible with involvement in the agency, but also a detailed classification of interests which are not *per se* incompatible but might require specific restrictions. The EMA guidelines emphasise a need to take into account several factors such as: the nature of the declared interest, the timeframe in which these interests were relevant and the type of activity performed in this function. Based on this, a classification into three different **interest levels** is made ('direct interests declared (level 3)', 'indirect interests declared (level 2)', 'no interest declared or interests are older than three years (level 1)'). These interests are compared to the person's (envisaged) involvement in the agency. A committee chair or rapporteur will, for instance, face higher independence requirements than a 'mere' member of a scientific committee. Tables in the annex of EMA's policies specify the allowed level of involvement depending on the respective conflict.

For some cases, EMA clearly specifies that an involvement in the work of the agency is not possible. This '**blacklist**' involves current employment or current financial interests in a pharmaceutical company for MB members and experts. For staff, the following positions are not allowed:

- current employment in a pharmaceutical company;
- consultancy, or strategic advisory role for a pharmaceutical company,
- financial interests in a pharmaceutical company,
- (principal) investigator or grants/funding in a pharmaceutical company.

For other possibly conflicting interests, involvement in the agency is in principle allowed, but mitigating measures are taken. The specific Col policies for MB members, experts and staff members contain detailed tables in which particular situations of Col are directly linked with specific mitigating measures. The measures broadly range from the impossibility to be appointed as Chair to replacement in, or exclusion from, a particular decision in the MB, scientific committees or for staff members. For staff members and scientific committee members, exclusion from decision-making on a particular product (from a specific company) is also possible.

Procedure

The procedure by which these interest levels are determined and decisions on adequate consequences made are generally similar per organ. For (external) experts and scientists, it consists of two steps. After the Dols are submitted, the secretariat to the respective committee makes a preliminary assessment of the interests and determines, where applicable, the necessary mitigating measures in accordance with the tables in the annex of the guidelines.¹⁹² In addition, the agency has an experts and declaration of interests management (EDM) team which assesses the Dols before the experts are selected as well as any updated Dols. For staff members, it is the line manager who assesses Dols and decides on possible mitigating measures.

For MB members, the secretariat to the MB also makes a preliminary assessment of the interests. Prior to each meeting, the chair of the MB is informed of this assessment and the proposed necessary mitigating measures in accordance with the detailed guidelines.¹⁹³

This system relies on a high degree of automaticity. The guidelines for scientific committee members and experts even explicitly state that interest levels are ‘automatically assigned’ and possible mitigating measures are ‘determined’ by the secretariat.¹⁹⁴ Thus, decisions about interest-levels and consequences are not discretionary but involve a mere application of the schemes. For this reason, they can be delegated to the secretariats of the bodies concerned instead of being decided at a higher level within the agency.

5.3.2. European Chemicals Agency (ECHA)

System

ECHA’s system also relies on a detailed interest classification but uses a different system and structure of decision-making. Like EMA, ECHA uses a **blacklist** of prohibited interests, called ‘exclusion criteria’ in ECHA’s guidelines, which is applicable to what the guidelines call ‘key positions’,¹⁹⁵ and comprises

- current employment in a commercial entity or an association or interest group in the field of ECHA,
- positions in governing or scientific bodies of such companies or associations; or
- contractual obligations to perform work for these bodies.

¹⁹² EMA policy on the handling of competing interests of scientific committees’ members and experts, p.9.

¹⁹³ EMA policy on the handling of competing interests of Management Board members, p. 9.

¹⁹⁴ EMA policy on the handling of competing interests of scientific committees’ members and experts, p.9.

¹⁹⁵ ECHA, Prevention and Management of potential Conflicts of Interest, p. 9.

These are applicable to members of ECHA's bodies and key positions in ECHA's secretariat. In addition, candidates for the MB, the Member State Committee, the Biocidal Products Committee, the Enforcement Forum, the Committees for Risk Assessment and Socio-Economic Analysis and alternate members of the Board of Appeal cannot hold investments above 10.000 Euro in a commercial entity within the agency's field. Candidates who, within the past two years, were employed or held a position in a governing board of a company in ECHA's regulatory field can only be appointed if this does not lead to a general conflict of interest.¹⁹⁶ It should be noted that this policy can only be implemented if ECHA is in charge of taking the decision of appointment. As set out before, where the agency does not function as appointing authority, the latter is 'invited' to adhere to the same criteria as those used by the agency.

In cases where these eligibility criteria are not breached and appointment is thus possible, the system of **interest levels** becomes applicable. These levels differ slightly depending on the group concerned. For staff, there are only two levels. One possibility is that the staff member has not declared any conflicting interest. In this case, no restrictions apply. By contrast, if the staff member has declared an interest, a new and more specific Col check has to be carried out, each time this staff member is assigned to a new task. Staff members are, for example, not allowed to participate in the decision-making with regards to entities in which they hold an interest. The Board of Appeal is not provided with a list of options in the guidelines. They do, however, set out that, where necessary, a Board member may be replaced for a certain decision.

Finally, for the MB, Committees and Forum, a system of three interest levels applies. Where no interest has been declared, no mitigating measures must be taken (level A). The guidelines do, however, raise awareness to conflicts of opinion where 'experts... have earlier contributed to the same case at Member State level'. These members are asked not to vote. Level B covers interests such as research funding (<25%), interest groups, other memberships or affiliations, or interests by close family members. These interests require an *ad hoc* assessment. In these cases a check is performed before each meeting and the chairperson decides on mitigating measures. These include at least a prohibition to vote and be appointed as (co-)rapporteur. In addition, a prohibition to participate in the final deliberations or an obligation to leave the room are among the possible options from which the chair can choose on a case-by-case basis.¹⁹⁷ Finally, Level C covers interests which require 'specific restrictions', such as past employment with a company, membership of a governance board or advisory board of such a company or research funding (>25%) from a relevant entity. In these cases, a cooling-off period of 5 years is imposed, starting from the termination of this position, during which an expert

¹⁹⁶ ECHA, Prevention and Management of potential Conflicts of Interest, Annex 2: Eligibility criteria.

¹⁹⁷ ECHA, Prevention and Management of potential Conflicts of Interest, p. 13.

cannot participate in votes on the particular substance or company concerned. Non-participation in votes is also applicable where current intellectual property in a relevant company or substance is held. For comparable interests declared in meetings, the chair shall decide on an *ad hoc* basis and has the same options as in risk level B.

A very limited number of external experts is excluded from the Col assessment. This is the case for networks and discussion fora.¹⁹⁸ ECHA's guidelines hold that the risk for Col in these fora is 'minimal' and that they are merely 'platforms for communication and the exchange of ideas'.¹⁹⁹

Procedure

In terms of the procedure for evaluating the Dols and determining mitigating measures, it must again be distinguished between different bodies concerned. For staff members, the general assessment of Dols is made by the line manager. For the Executive Director, the Chair of the MB takes over the screening. Decisions on potential mitigating measures are then made by the respective leader of each process ('process owner') who has to check which stages of the process might lead to a possible conflict of interest. For members of the Board of Appeal, the monitoring is performed by the Chair of this Board, the chair's declaration is assessed by the longest serving Board member. Decisions on actions to be taken are made by the Board. For the MB as well as ECHA's committees and forum, the respective chairpersons take the decisions.

ECHA's system can therefore be classified as semi-automatic. It entails very detailed descriptions of (non-)allowable interests, but spells out the consequences only in specific situations. In other situations, discretion is given to the respective committee chairs or process owners to take decisions on the appropriate involvement in the agency's work.

5.3.3. European Food Safety Authority (EFSA)

System

EFSA applies a system which relies on some automaticity on the one and some degree of discretion on the other hand. EFSA has an elaborate policy of blacklists for scientific experts, but a more discretionary approach to conflicts of MB members.

For persons who wish to participate in EFSA's Scientific Group, Scientific Panels, Working Groups or peer review meetings, a blacklist is in place. The following interests are incompatible with the mandate

¹⁹⁸ ECHA, Prevention and Management of potential Conflicts of Interest, pp. 1-2.

¹⁹⁹ ECHA, Prevention and Management of potential Conflicts of Interest pp. 1-2.

of the agency:²⁰⁰

- financial investments with 'business actors' affected by EFSA's operations;
- current employment engagements in this field.

For the scientific panels, the scientific committee and working groups, EFSA does not have a detailed categorisation in interest levels. There are, however, some nuances between complete non-eligibility to participate in the agency's scientific bodies and full involvement. First, there are specific criteria relating to the mandate of each scientific body. More specifically, 'managerial roles, employment, occasional consultancy and membership of scientific advisory bodies' lead to non-eligibility if they overlap with the mandate of the specific scientific body. The same holds for research funding exceeding 25%.²⁰¹

Second, there is a two-year cooling off period with regards to the mandate of a particular body. If a person has held a managerial role, employment, consultancy role, or membership in a scientific body of an institution that cannot be classified as public institution, or if the person received research funding, he or she is not eligible to work in this body if this overlaps with the relevant scientific group of EFSA.

Third, there is the possibility to become a member but not to be appointed to the role of chair or vice-chair. However, this solution is only used in three cases: for employment in the food or feed industry or an industry which overlaps with the mandate of the specific group in the past two to five years, or in the case of IP rights linked to the group's mandate where the review is part of a broader scientific mandate.

It is important to note that this policy only applies to experts in EFSA's Scientific Committee, Scientific Panels and Working Groups as well as participants of peer reviews.²⁰² External Experts (like hearing experts or members of the advisory forum, focal points or scientific networks) are not subject to a Col screening. Any (potential) conflict of interest in this area might go unnoticed. The fact that these actors do have to submit a Dol shows EFSA's awareness of such potential problems, but if no screening is applied, this is almost without practical relevance.²⁰³

The MB is largely responsible for its own Col management. Financial interests by the person or the spouse are incompatible with the position. Where decisions on an entity of former employment or professional engagement of a MB member are made, this member is asked to abstain from the

²⁰⁰ EFSA's policy on independence, pp. 6-7.

²⁰¹ EFSA, Decision of the Executive Director of EFSA on Competing Interest Management, Art. 7.

²⁰² See EFSA, *Decision of the Executive Director of EFSA on Competing Interest Management*, Arts. 2(1)(f), 6 and 7.

²⁰³ EFSA justifies this by reference to the fact that these individuals do not have formal decision-making or drafting powers.

decision.²⁰⁴ If a conflict cannot be resolved, the MB can ask for the replacement of a MB member with a two-thirds majority.²⁰⁵

Finally, EFSA notes that in case of employment of the spouse or other professional engagement in the relevant sector, as well as in a situation in which a staff member would be asked to review his or her own work, reassignment to a different file is possible.²⁰⁶ This reflects the approach foreseen in the Staff Regulations.²⁰⁷

Procedure

In EFSA's procedures, the legal and assurance unit, in cooperation with the local units, plays a central role. For experts in scientific groups and committees, an assessment of the Dols is made by the respective secretariats. This assessment is validated by the Legal and Assurance Unit, which is also responsible for taking mitigating measures if needed. For staff members, annual Dols are evaluated by the respective heads of unit, where necessary together with the legal and assurance unit. Decisions on mitigating measures are taken by the Executive Director.

Declarations of Interest of MB members are first assessed by the Executive Director. On this basis, the MB discusses each case, reaches a conclusion and recommends consequences, such as the possible replacement of the member.²⁰⁸

Notably, in comparison to EMA, EFSA's system can be classified as a mixed system combining automatism and discretion.

5.3.4. The European Union Intellectual Property Office (EUIPO)

System

EUIPO's policy differs from that of the previous agencies in that EUIPO does not use scientific expert bodies. As EUIPO indicated in the questionnaire, this agency does not have a blacklist of interests. All decisions are made on a case-by-case basis.

To this end, a division into three **interest levels** of decision-making is made. Level A applies to a situation, where no Col exists and no restrictions have to be taken. In cases under Level B, a potential conflict of interest is possible. In this case involvement is, in principle, possible, but depends on the

²⁰⁴ Answers to the questionnaire submitted by EFSA for the purposes of this study.

²⁰⁵ EFSA, Rules of Procedure of the Management Board, Art. 15.

²⁰⁶ Answers to the questionnaire submitted by EFSA for the purposes of this study. The principle according to which no one shall review his or her own work is primarily applicable to scientific expert members of EFSA's scientific groups.

²⁰⁷ Staff Regulations, Art. 13.

²⁰⁸ EFSA, Revised Management Board Rules of Procedure (mb 27 06 13), Art. 13.

nature of the required input and the individual's role in the activity. According to the information provided by EUIPO in the questionnaire, a variety of mitigating measures can be taken for staff members under level B. When a conflict of interest exists (level C), an individual is entirely excluded from the specific activity and will be replaced.

As Members of the MB do not have to declare their interests annually and only do an update in meetings, decisions on mitigating measures are also taken on an *ad hoc* basis. In case there is a conflict, non-participation in the vote will be the consequence. A similar mitigating measure is taken for Members of the Boards of Appeal if a Col is identified.²⁰⁹

Procedure

For staff members, it is the line manager that assesses Dols and proposes suitable mitigating measures, where necessary. Such measures are subsequently adopted by the ED, whilst coordination of the procedure is ensured by the HR department. The MB decides as a body on the assessment and mitigating measures. Members of the Boards of Appeal are subject to Col screening by their president.

Thus, EUIPO relies on a low degree of formalisation, but leaves the decisions to the highest level in each case: the MB decides on its own internal cases, the Executive Director takes decisions on staff members and the President of the Board of Appeal for its members. The agency does rely on interest levels and proposes mitigating measures, but a significant degree of discretion is still left to decision-makers.²¹⁰

5.3.5. European Monitoring Centre for Drugs and Drug Addiction (EMCDDA)

System

EMCDDA deviates significantly from the previous examples. There is neither a pre-defined blacklist nor a system to categorise interest levels. Nonetheless, the MB is provided with a list of options of possible mitigating measures to be applied in case of an existing or perceived Col. These range from the request to give up the competing interest, pull out from the decision and possibly the preparatory work or the total or partial exclusion from participation in decision-making. It is also possible for the MB to exclude one of its members from the MB or from the role of chairperson, vice-chairperson or rapporteur. Also an exclusion from participation in the discussions is possible.

The policy applied to the scientific committee is similar. In case of an existing or perceived Col, the Committee can ask the person concerned to give up the interest, pull out from decisions and

²⁰⁹ Answers to the questionnaire submitted by EUIPO for the purposes of this study.

²¹⁰ EUIPO indicates that it made an internal manual and an overview of Frequently Asked Questions available to such decision-makers as additional guidance. These documents however were not made available for the purpose of this study.

preparatory works, or they can exclude the person totally or partially. Again, non-membership to the Board, non-appointment as chairperson, vice-chair, or rapporteur or non-participation in decision-making are among the listed options for measures to be taken.

With regards to staff members and the ED, the guidelines refer to the Staff Regulations. Appointment in this case is, as always, conditional on the absence of any fundamental Cols. The example given by the agency in the questionnaire is active membership to an NGO holding an extreme position in the area of work of the agency.²¹¹

Procedure

As seen in the previous example, where the system for screening and decision-making leaves more discretion, the decisions are taken at higher levels of the agency. For the MB, the assessment of Dols is prepared by the Executive Director and then assessed by the body itself. It is also the MB that takes decisions on its own members.

In the case of the scientific committee, a similar system applies. The Executive Director prepares the assessment which is subsequently concluded by the scientific committee itself and it is also the latter that can decide on consequences. For staff members, it is the appointing authority that assesses Dols and makes decisions.

Thus, EMCDDA's position is significantly more flexible than those of the agencies previously presented. This could be explained by the size of the agency. In the case of a small agency, there is generally less delegation of decision-making and decisions are taken at higher levels. Therefore, the need to enforce strict guidelines and ensure consistency is less urgent than in larger agencies. Yet, given the fact that the agency uses experts and particularly that the scientific committee takes decisions by itself, there is a potential threat for Cols.

5.3.6. The European Environmental Agency (EEA)

System

Like EMCDDA, EEA neither has a blacklist, nor a system of interest levels. Yet, a list of options for mitigating measures is provided, which is slightly less nuanced than the one used by EMCDDA. It offers the possibilities to 'give up the conflicting personal interest, withdraw from the selection or evaluation

²¹¹ Answer by EMCDDA in the questionnaire (Question 16).

procedure, or abstain from contribution, giving advice or participating in the decision-making process.²¹² No differentiation is made by type of conflict or body concerned.

Procedure

As seen in previous cases, the high level of discretion in this agency is linked to decision-making at higher internal levels. Thus, the MB's DOIs are assessed by the MB's chair and decisions are taken by the MB and the Executive Director together. For expert panels, the chair of the responsible committee screens DOIs and again the MB and Executive Director take the decision. The same decision-making applies in the case of the scientific committee. The screening in this case is completed by the MB.

The only deviation from this trend is in the category of staff members. The responsibility for both the screening and the decision-making lies with the responsible line manager rather than the Executive Director.

The reason as to why this policy is significantly less detailed than that of other agencies, such as EMA, ECHA and EFSA, might also lie in the degree of exposure to the risk of Col. The Commission specifies in its Col Guidelines for EU agencies, that the level of risk differs per agency depending, for example, on its organisation and mandate to take binding decisions.²¹³ EEA's Col policies contain a detailed assessment of this agency's exposure and conclude that the exposure is low. Indeed, the agency cannot take any binding decisions, which at least reduces the impact any occurring Col might have.

5.3.7. Europol

System

Europol's guidance documents are the least detailed compared to those of the other agencies. This is notably due to the fact that Europol does not have any scientific committees or panels. However, also for members of staff and the MB, the agency neither uses a system of interest levels nor a blacklist.

For the MB, it is expected that if a member identifies his or her situation as a Col, he or she shall 'recuse him- or herself and be replaced by another member'.²¹⁴ In their reply to our questionnaire, Europol indicated that decision-makers are provided with a list of options to remedy a Col. Unlike in the other agencies, this is, however, not included in the public documents. Furthermore, Europol indicated in the questionnaire that situations are assessed 'on a case-by-case basis.'

²¹² EEA, Policy for the prevention and management of conflict of interest, p. 9.

²¹³ Commission guidelines, 2013, p. 6.

²¹⁴ Decision of the MB of Europol. Adopting rules for the prevention and management of Cols in respect of its members, including in relation to their declaration of interest, Art. 4(4).

Procedure

In accordance with the Staff Regulations, staff members of Europol have to complete a declaration of interest upon appointment. However, afterwards there is no regular preventive check of Cols.²¹⁵ The agency only relies on the obligation for staff members to indicate any change of situation. It is left to individual staff members to point out Cols as they arise and only then the line manager and the Deputy Executive Director who is in charge of the Governance Directorate decide on the necessary mitigating measures. For the Deputy ED, the Executive Director is responsible, and the Executive Director should refer to the Chairperson of the MB in case of a Col.²¹⁶

Similarly, members of the MB are responsible for assessing their own situation against the agendas of upcoming meetings and identify possible Cols. In case this is not done, the MB Chair shall 'propose remedial action to the MB as necessary'.²¹⁷

5.3.8. Patterns

In section 5.1 of this Chapter, we identified three risk factors. One of these factors is the *involvement of experts*. Comparing the different approaches to Col management, the pattern identified in the previous Chapter seems to be confirmed. Agencies which make use of numerous experts in scientific boards, and in which the potential for Cols is therefore higher, generally have a more developed system of Col management.

Another important factor in the design of Col policies seems to be the *mandate of the agency to make, or to prepare binding decisions in the policy area of the agency*. This is the case for ECHA, EMA and EFSA as well as EUIPO, but not for EMCDDA and EEA. This difference is reflected in the guidelines. The former four agencies have (albeit to a varying extent) the most far developed Col management systems, whilst the latter two agencies rely on less detailed systems. The results are summarised in Table 3.

In addition, *the size of the agency* seems to play an important role. On the one hand, it seems logical to conduct the screening and decision-making at lower levels. A line or project manager might know better than the Executive Director what a specific task or decision entails and whether a particular person's interests are in conflict with this. This is notably the case in larger agencies in which the highest levels of decision-making are far removed from individuals. Moreover, these larger agencies are also

²¹⁵ In addition, in the area of financial management, respective staff members also sign a declaration for the management of potential conflicts of interests.

²¹⁶ Europol, Guidance to staff. Conflict of interest, 2019.

²¹⁷ Decision of the MB of Europol. Adopting rules for the prevention and management of Cols in respect of its members, including in relation to their declaration of interest, Art. 5(1).

better suited to implement a comprehensive system for Col assessments. On the other hand, the distance between high managerial levels and the facts of a Col case is less problematic in smaller agencies. In these cases, detailed guidelines for the application of the rules on Cols seem to be less necessary than in bigger agencies, where delegation of powers as regards the application of the rules takes place.

5.4. Expertise v. Independence: Alternative solutions to obtain expertise

The balance between the need for scientific expertise on the one hand and the need for independence on the other can be difficult to achieve for agencies, above all where there is a shortage of experts in the field. This is reflected in the Commission's guidelines which encourage agencies to find ways of benefitting 'from the expert knowledge via other means where the expert is not involved in any participation to decision-making and discussions (e.g. expert hearing/ invitation on ad-hoc basis by a committee/panel).'²¹⁸

The three largest agencies therefore explicitly provide for such alternative solutions in their Col policies. ECHA and EMA make it possible for such persons to be heard as expert witnesses.²¹⁹ They can be heard or participate in the deliberations but are not allowed to take part in the vote.²²⁰ EFSA also enables the use of hearing experts²²¹ and even foresee a waiver if no suitable alternative can be found to an expert who faces a Col. In this case, the Executive Director, upon request by the responsible officer, may grant a waiver. This is, however, not possible for current industry employment or current financial interests and it is only possible in the case of working group members. Moreover, any such participation may not take the form of a role as rapporteur, chair or vice chair and must be recorded in the minutes of the respective meeting and the scientific output resulting therefrom.²²²

5.5. Breach of trust procedures

A breach of trust is generally defined as a persistent Col which is not remedied by the individual upon request by the agency, or a failure to declare a Col. The Commission guidelines require that in such cases appropriate action must be taken, such as a letter of reprimand, revocation of nomination or the duty to resign or request resignation. The agency should moreover consider a review of the decisions taken with a potential Col.²²³

²¹⁸ Commission guidelines, 2013, p. 10.

²¹⁹ ECHA: guidelines p. 10.

²²⁰ Similar approaches could also be envisaged for the other agencies analysed in this chapter where the guidelines propose only a restriction on the right to vote. This is, however, not made as explicit.

²²¹ Article 9 of EFSA's rules on competing interest management.

²²² EFSA, Decision of the Executive Director of EFSA on Competing Interest Management, Art. 21.

²²³ Commission guidelines, 2013, p. 10.

MBs usually remedy such situations internally. For instance, in ECHA, the chair can take remedial action (after informing the ED) and in EMA a hearing is conducted by a group of MB members that make a recommendation. The EMA MB subsequently takes a decision in plenary. Also in EMCDDA, EFSA²²⁴ and Europol²²⁵ it is the responsibility of the MB to take a decision. If the situation cannot be solved by the MB itself, for instance because the only adequate consequence would be a permanent replacement of the MB member, the appointing authority is informed in each case and asked for a replacement.

EUIPO's policy document does not cover breach of trust situations for MB members. Moreover, EEA's policy does not foresee a breach of trust procedure for any actor. This is deemed unnecessary, according to this agency's Col policy. If such a case arises, it will be dealt with on an ad hoc basis.²²⁶

For scientific experts, procedures vary slightly. In the case of ECHA, committee-chairs, and in EMCDDA committees as a whole, take the decisions in first instance. Only if this proves insufficient, the appointing authority is informed.

For EMA's scientific experts and committee members, the nominating authority is notified immediately, a hearing is conducted based on which the Executive Director will take a decision. In case of scientific committee members, the MB needs to be consulted additionally. If necessary, the nominating authority is then asked to replace the member. Similarly, EFSA's policy foresees that it is the MB (for members of the scientific committee and the scientific panel) or the Executive Director (for members of working groups or experts participating in peer review) who can apply measures. These range from a letter of reprimand to a suspension of participation or dismissal from the body/group.

5.6. Additional policies

In addition to these systems that are common, in some variations, to all agencies, some agencies make use additional policies. These concern notably the compliance and veracity checks (5.6.1) as well as advisory committees (5.6.2).

5.6.1. Compliance and veracity checks

All Col policies set out above rely on the submitted Dols (either orally or in writing) of the actors concerned. The underlying problem is that what has not been declared, cannot be identified as potential problem. This creates room for errors in the system, deriving either from intentional abuse,

²²⁴ NB: The RoP of EFSA's MB do not include a dedicated breach of trust procedure but indicate that a MB member may be replaced by a two-thirds majority if (s)he 'is not fulfilling his or her obligations in relation to independence' (Art. 15).

²²⁵ NB: Europol's guidelines do not use the expression 'breach of trust'. It is however, specified in the MB guidelines that the chair of the MB is responsible to assess any reported 'instance of incompliance with the rules on Col and propose remedial action as necessary' See: Decision of the MB of Europol. Adopting rules for the prevention and management of Cols in respect of its members, including in relation to their declaration of interest, Art. 5(1).

²²⁶ EEA policy, p.9

neglect or a lack of awareness. The Commission Guidelines therefore advise to 'determine which checks are needed on the information provided in the Dols'.²²⁷

EFSA therefore uses compliance and veracity checks, albeit only for experts, tenderers and grant beneficiaries. Twice per year it checks a random sample of Dols. It may, in this context, ask the individual to provide it with additional documents such as a declaration of income for tax purposes.²²⁸ This is in line with the Commission's Guidelines which recommend that agencies should determine whether checks on the information provided in Dols are needed.

ECHA has a similar policy whereby the secretariats of *all* ECHA bodies make sample checks to guarantee the completeness of the declarations. In addition, they perform an ex-post review of conflict of interest checks performed.²²⁹

5.6.2. Advisory committees

As mentioned in the previous Chapter, in its recommendations in the context of the discharge procedure of 2017, the European Parliament advised agencies to set up a 'Conflicts of Interest Advisory Committee', without however specifying its mandate and composition.²³⁰ The results of the questionnaire have shown that some agencies have already set up such a committee (albeit under different names), to which decision-makers can refer in case of doubt. The in-depth analysis of this chapter zooms in on the current practice of the selected agencies as regards the existence and composition of advisory committees.

In ECHA, the advisory committee is composed of the head of the legal affairs unit, the chair of the MB and an outside expert designated by the MB on proposal by the MB. It can be consulted by the Executive Director (also upon request by the chair of any of the bodies). For the Board of Appeal, a separate working group has been established in the MB.

A similar composition is to be found in the ethics committee of EUIPO. This is available to the appointing authority for consultation. In cases regarding staff members it is composed of the head of legal affairs, the head of human resources and the responsible line manager. For cases relating to staff appointed by the Council or the MB, it consists of the head of legal affairs, the head of human resources and the Chairperson of the MB.

²²⁷ Commission guidelines, 2013, p. 9.

²²⁸ The outcome of these checks is published online as part of EFSA's annual report on independence. See: Decision of the Executive Director of the European Food Safety Authority on Competing Interest Management, 2018, Article 19.

²²⁹ ECHA, Prevention and Management of potential Conflicts of Interest, 2019, p.15.

²³⁰ European Parliament resolution of 26 March 2019 on discharge in respect of the implementation of the budget of the European Union agencies for the financial year 2017: performance, financial management and control (2018/2210(DEC)), paragraph 40.

EFSA also has an Advisory Committee composed along similar lines. It is chaired by the Head of the Legal and Assurance Services Unit and includes the Heads of the Communications, the Risk Assessment and Scientific Assistance (RASA) as well as the Scientific Evaluation of Regulated Products (REPRO) Departments.

EMA takes a more horizontal approach and involves representatives from the Divisions involved in handling Dols of members and experts in addition to representatives from the policy and crisis management office and from the legal department. This so-called declaration of interests evaluation advisory group (DIAG) is used to provide advice in the evaluation of Dols of experts.

By contrast, EMCDDA, EEA and Europol have no such committees in place. This reflects the patterns identified above. These three agencies are considered to be less exposed to Cols given that they have no decision-making powers and decisions are already taken at higher levels. The need to consult a body like an advisory committee is therefore less present.

5.7. Conclusion on case studies

Our analysis reveals that the three risk factors that have an influence on agencies' exposure to Cols are reflected in the relevant policies of the agencies analysed for the purposes of this chapter. First, the three agencies in which experts are most closely involved, ECHA, EFSA and EMA, have the most detailed Col policies. Moreover, EEA and EMCDDA also demonstrate awareness for the increased risk of potential Cols through the involvement of experts. Second, agencies which 'only' have a networking function, have less detailed policies, such as EEA and EMCDDA. Finally, the mandate to take binding decisions has, as expected, an influence on an agency's rules. This can explain why EUIPO has relatively detailed Col policies despite the absence of the two other risk factors.

Furthermore, these findings suggest that other factors are also relevant in shaping Col policies. First, some agencies have been subject to *considerable pressure* to improve their Col assessments, for example by the European Parliament.²³¹ An insufficiently detailed Col policy might result in a loss of credibility of an agency. The level of external pressure should therefore be taken into account in the assessment of Col policies. Second, *the size* of an agency seems to be decisive. Small agencies, such as EEA or EMCDDA have a more centralised approach whereas large agencies such as EMA and ECHA implement their Cols in a more decentralised manner. As a consequence, it is the latter group of agencies that have an advisory committee in place. If Col procedures are decentralised, it is important to have a common body in order to streamline the understanding and implementation of the policy.

²³¹ See in detail and with further references E. Vos, 'EU Agencies and Independence', in D. Ritleng (ed.) *Independence and legitimacy in the institutional system of the European Union* (Oxford 2016), p. 207.

By contrast, where procedures are centralised, an advisory committee is not strictly necessary and, in addition, instructions can be less detailed. These factors and their implementation in the agencies are summarised in Table 3. The starting point for these procedures surely is the submission of regular and sufficiently detailed Dols. If the information requirement in Dols is unspecific or too limited, no proper assessment is possible. As suggested by the European Parliament in the context of the discharge procedure of 2017, moving towards positive declarations of interests instead of declarations of absence of interests would allow a more comprehensive control, at least for the managerial or other key positions within an agency.²³²

In conclusion, it can be stated that it is not possible to easily identify one single 'best practice'. The standard for assessment of Col policies should be the extent to which the policy is adequate in light of the circumstances. These can be the three risk factors identified (use of experts, function of the agency, mandate to take binding decisions) as well as the agency's size and its exposure to external pressure. Importantly, the policy should follow a holistic approach in that each choice made for one aspect necessitates certain considerations for other parts. For instance, if an agency opts for a decentralised approach in which line managers take decisions, they should be provided with detailed instructions in order to ensure that decisions are taken consistently.

²³² On the meaning of a positive declaration see chapter 4.

Table 3: Summary of Col policies

	risk factors			Staff members°	obligations for declaring interests	screening of Dols	Breach of trust procedure	Advisory Committee
	function: provision of expertise	Binding decisions	Use of experts					
EMA	Yes	No	Yes	901	extensive	high level of automaticity	Yes	Yes
ECHA	Yes	Yes	Yes	566	extensive	semi-automatic system	Yes	Yes
EFSA	Yes	No	Yes	447	extensive	mixed system combining automatism + discretion	Yes	Yes
EUIPO	No	Yes	No	1002	moderate*	limited formalisation, decisions left to highest level	not for MB	Yes
EMCDDA	(Yes)	No	Yes	103	extensive	discretionary approach	Yes	No
EEA	(Yes)	No	Yes	220	moderate	strongly discretionary approach	No	No
Europol	No	No	No	756	limited	strongly discretionary and high reliance on self-assessment	Yes	No

*EUIPO: no standardised written Dol form required for MB members

°Staff numbers were taken from each agency's annual activity report.

6. CONCLUSIONS AND RECOMMENDATIONS

The very existence of most of EU decentralised agencies depends on the fact that they can deliver technical and scientific expertise to the EU institutions and Member States in the decision-making process. Therefore, it is key that the expertise which these agencies deliver is independent of commercial, national or political influence.

Each decentralised agency is an autonomous legal entity and thus responsible for its own policy on the prevention and management of conflicts of interests. This policy is, to a certain extent, predetermined by the rules on independence and ethical obligations included in the founding regulation of each agency, the Staff Regulations and Conditions of Employment of Other Servants of the Union, which are relevant for the staff of the Agencies, as well as the Framework Financial Regulation for EU bodies. However, these rules set only the main principles, whose implementation depends on the internal rules of each agency.

The Commission issued in 2013 Guidelines on the prevention and management of conflicts of interest in decentralised agencies with a view to setting core principles for the agencies' individual policies. These guidelines recommend that agencies have clear rules on declarations of interests, on how such declaration should be screened and assessed and on the actions that are needed when a risk of a conflict or an actual conflict arises. Procedures and remedial action should also be provided in case of breach of rules. Transparency is the main principle that should underpin the agencies' policies so as to enable effective public scrutiny.

This study's examination of the internal policies of EU decentralised agencies, both through the use of a questionnaire and through the in depth analysis of the internal rules of selected agencies, reveals that big differences exist among the policies of different agencies. It is clear that in view of the differences in agencies as regards the three identified risk factors, the size and the external pressure, differences in Col policies should be acknowledged; one should not strive at achieving a one-size-fits all Col policy for all agencies. In particular Col policies should remain flexible and agency specific as regards the Col system of assessment, the modalities of the internal investigative system and of the protection for whistle-blowers as well as the expediency or not of creating an internal advisory body. In order to improve the Col rules and policies of agencies and to achieve more coherence and consistency, the following recommendations can be made:

Governance v. control

- The founding regulations should make clear who is taking part of the governance of agencies and which actors function as controlling authorities. Their degree of dependence from the European Commission and Member States should be clarified.

Terminology of Cols

- The term 'conflict of interest(s)' is defined in various legal acts and codes of conduct both at international and EU level. From a terminological point of view, the word 'interest(s)' is used in singular or in plural without coherence. The use of the term in plural is more accurate, since the notion of conflict requires at least two different interests which are incompatible with each other and thus conflict. From a comparative perspective, most official languages of the EU use the term in plural.

Definition of Cols

- Agencies rules should clarify whether Col also cover potential or perceived ones, and what exactly these terms mean. Specific examples should be included in agencies' rules.
- Definitions of Cols should explicitly cover the conflict between the Union interest with national or other professional interests. For Management Board members such type of conflicts should be addressed in the founding regulations of an agency.
- A future codification proposal of administrative procedural law, as initiated by the European Parliament, should follow the broad definition of Col as enshrined in the Staff Regulations, which includes not only 'personal interests', but also 'any other interest' which might impair the independence of a staff member.

Declarations of Interests

- Agencies should require positive Dols, i.e. declaration of all interests for a given period, from key actors, such as Executive Directors.
- All actors involved in the governance of an EU agency should submit a predefined CV. Such CVs should be made public for all key managerial actors.
- Dols should be in principle annually updated. The annual up-date is crucial in particular for MB members and members of scientific committees. In addition, Dols should be updated upon change of post.
- Dols should cover not only interests within the regulatory field of the agency, but also in linked fields with the one in which the agency operates (e.g. chemicals and pharmaceuticals), with due regard to public perception. This will necessitate guidance as to which are considered as linked fields.

System of screening and assessing of declarations of interests

- It is not possible to design a one-size-fits-all policy for screening and assessment of Dols. The adequacy of a system depends on five main factors: the mission of the agency, its size and structure, its power to take binding decisions in its policy field of activity, the extent of the use of (external) experts and the agency's exposure to external pressure. What is crucial is that agencies follow a holistic approach for their Col management system. If an agency opts for a decentralised approach in which line managers take decisions, they should be provided with detailed instructions in order to ensure that decisions are taken consistently.

Experts

- A coherent policy should be developed for the required length of time between working in the industry and being called to a committee among agencies with a similar function, i.e. risk assessment (EMA, ECHA, EFSA, ECDC).

Cooling off periods

- It is difficult to enforce post-mandate obligations for members of the MB and experts, who are not employed by EU agencies and thus not bound by the Staff Regulations. However, adequate reporting and publication of relevant information enhances transparency and may induce compliance with ethical and integrity obligations.

Internal investigative mechanisms

- Based on the experience gained since 2015, the EUAN could reflect whether to formalise the inter-agency pool of investigators through the development of rules of procedure. Such rules could also identify the instances that agencies should make use of the pool in order to allow for somebody outside the agency to be involved in an investigation.

Whistle-blowing

- For small agencies, it is essential to explore the possibility of cross-agency mobility. The European Parliament through the discharge procedure should monitor the implementation of the Commission's guidelines on whistle-blowers.

Advisory body

- If Col procedures within an agency are decentralised, it is important for an agency to have an advisory body in order to streamline the understanding and implementation of the policy. By contrast, where procedures are centralised, an advisory committee is not strictly necessary.

- It appears expedient to reflect on the possibility to develop a common practice following an exchange of the so far acquired experience. Any discussion in this respect should start from determining what the exact rationale for the creation of advisory committees is and how this rationale should be reflected on their composition and mandate. It could also be explored whether it would be useful to establish a cross-agency advisory committee.

Transparency

- Agencies should publish information on the activities of former senior officials after they leave the service even if they do not assume a new profession, but they receive a pension or do voluntary work etc.
- Transparency will further be strengthened through publication of statistics and information on Col management in the agencies' annual reports.
- Agencies should enact common rules as regards meetings of their MB members and senior staff with interest representatives and be part in a future inter-institutional agreement on the Transparency Register.

Parliamentary control

- The present policy recommendations aim at providing insights for possible questions to be included in the questionnaire submitted to EU agencies by the relevant parliamentary committee during the annual discharge procedure.
- Our study demonstrates that all agencies have in place internal rules on the prevention and management of Col, which might considerably differ in terms of detail, are however meant to reflect the particularities of each agency. An up-dated questionnaire of the relevant parliamentary committee should thus not focus exclusively on the existence of relevant rules, but more importantly on whether these rules are fit for purpose, reflecting the particularities of each agency (or cluster of agencies), are consistently applied and adequately enforced.

7. ANNEXES

ANNEX 1: Provisions concerning independence and conflicts of interests for members of boards and (executive) director in agencies' founding regulations

Agency's Founding Regulation	The Agency's Independence	Administrative/Management/Governing/Executive Board – Management Committee	Board of Regulators- Board of Supervisors (including Chair/Chairpersons)	(Executive)/(Administrative) Director	Advisory Forum – Advisory Board
ACER Regulation 713/2009	/	<u>Article 12(7):</u> The members of the Administrative Board shall undertake to act independently and objectively in the public interest, without seeking or following any political instructions. For that purpose, each member shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to his independence or any direct or indirect interest which might be considered prejudicial to his independence. Those declarations shall be made public annually.	<u>Article 14(5):</u> When carrying out the tasks conferred upon it by this Regulation and without prejudice to its members acting on behalf of their respective regulatory authority, the Board of Regulators shall act independently and shall not seek or follow instructions from any government of a Member State, from the Commission, or from another public or private entity.	<u>Article 16(1):</u> The Agency shall be managed by its Director, who shall act in accordance with the guidance referred to in the second sentence of Article 15(1) and, where provided for in this Regulation, the opinions of the Board of Regulators. Without prejudice to the respective roles of the Administrative Board and the Board of Regulators in relation to the tasks of the Director, the Director shall neither seek nor follow any instruction from any government, from the Commission, or from any other public or private entity.	/

APPF Regulation 1141/2014	/	/	/	<p><u>Article 6(3):</u> The Director of the Authority shall be selected on the basis of his or her personal and professional qualities. He or she shall not be a member of the European Parliament, hold any electoral mandate or be a current or former employee of a European political party or a European political foundation. The Director selected shall not have a conflict of interests between his or her /duty as Director of the Authority and any other official duties, in particular in relation to the application of the provisions of this Regulation.</p> <p>The Director of the Authority shall be independent in the performance of his or her duties. When acting on behalf of the Authority, the Director shall neither seek nor take instructions from any institution or government or from any other body, office or agency. The Director of the Authority shall refrain from any act which is incompatible with the nature of his or her duties.</p>	/
BEREC Office Regulation 1211/2009	<p><u>Article 4(2):</u> When carrying out the tasks conferred upon it by this Regulation, BEREC Office shall act independently</p>	/	<p><u>Article 4(2):</u> The members of the Board of Regulators shall neither seek nor accept any instruction from any government, from the Commission, or from any other public or private entity.</p>	<p><u>Article 8(1):</u> The Administrative Manager shall be accountable to the Management Committee. In the performance of his or her functions, the Administrative</p>	/

			<p><u>Article 4(5) :</u> Without prejudice to the role of the Board of Regulators in relation to the tasks of the Chair, the Chair shall neither seek nor accept any instruction from any government or NRA, from the Commission, or from any other public or private entity.</p> <p><u>Article 21 :</u> Members of the Board of Regulators and of the Management Committee, the Administrative Manager and the staff of the Office shall make an annual declaration of commitments and a declaration of interests indicating any direct or indirect interests, which might be considered prejudicial to their independence. Such declarations shall be made in writing. The declaration of interests made by the members of the Board of Regulators and of the Management Committee, and by the Administrative Manager shall be made public.</p>	<p>Manager shall neither seek nor accept any instruction from any Member State, any NRA, the Commission or any third party.</p> <p><u>See Article 21:</u></p>	
CdT Council Regulation 2965/94	/	/	/	/	/
Cedefop Council Reg 337/75	/	/	/	/	/

CEPOL Regulation 2015/2219	/	<u>Article 9(1):</u> (f) The Management Board shall adopt internal rules for the prevention and management of conflicts of interest in respect of its members and the members of the selection committee, as well as the members of a Scientific Committee for Training;	/	<u>Article 14(2):</u> Without prejudice to the powers of the Commission and of the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or any other body.	<u>Article 16:</u> 1. When established by the Management Board, the Scientific Committee for Training shall be an independent advisory body ensuring the scientific quality of CEPOL's training-related work. 2. The Scientific Committee for Training shall be composed of high-level academics and law enforcement practitioners in the subjects covered by Article 4. The Management Board shall appoint the members of the Scientific Committee for Training following a transparent call for applications and selection procedure to be published in the Official Journal of the European Union. The members of the Management Board shall not be members of the Scientific Committee for Training. The members of the Scientific Committee for Training shall be independent and shall neither seek nor take instructions from any government or any other body.
CPVO Council Regulation 2100/94	/	/	/	/	/
EASA Regulation 2018/1139	/	/	/	<u>Article 38(1):</u> The Agency shall be managed by its Executive Director , who shall be completely independent in the performance of his/her duties. Without prejudice to the competencies of the Commission and the Management Board, the Executive Director shall neither seek nor take	/

				instructions from any government or from any other body.	
EASO Regulation 439/2010	/	/	/	<p><u>Article 31:</u> 1. The Support Office shall be managed by its Executive Director, who shall be independent in the performance of his duties. The Executive Director shall be accountable to the Management Board for his activities.</p> <p>2. Without prejudice to the powers of the Commission, the Management Board, or the Executive Committee, if established, the Executive Director shall neither seek nor take instructions from any government or from any other body.</p>	/
EBA Regulation 1093/2010	/	<p><u>Article 46:</u> The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private</p>	<p><u>Article 42:</u> When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence</p>	<p><u>Article 52:</u> Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive</p>	/

		body shall seek to influence the members of the Management Board in the performance of their tasks.	<p>the members of the Board of Supervisors in the performance of their tasks</p> <p><u>Article 48:</u> 1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional. In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p> <p><u>Article 49:</u> Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.</p>	<p>Director in the performance of his tasks.</p> <p>In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>	
ECDC Regulation 851/2004	/	<u>Article 19:</u> 2. The members of the Management Board, the director, the members of the Advisory Forum, as well as external	<u>See Article 19</u>	<u>Article 16:</u> 1. The Centre shall be managed by its director, who shall be completely independent in the performance in his/her duties, without prejudice to	<u>See Article 19</u>

		<p>experts participating in scientific panels shall make a declaration of commitment and a declaration of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing.</p> <p>3. The director, the members of the Advisory Forum, as well as external experts participating in scientific panels, shall declare at each meeting any interests which might be considered prejudicial to their independence in relation to the items on the agenda. In such cases these persons have to disqualify themselves from relevant discussions and decisions.</p>		<p>the respective competencies of the Commission and the Management Board.</p> <p>2. The director shall be the legal representative of the Centre and shall be responsible for:</p> <p>(f) ensuring that the Centre carries out its tasks in accordance with the requirements of its users, in particular with regard to the scientific excellence and independence of activities and opinions, the adequacy of the services provided, and the time taken;</p>	
ECHA Regulation 851/2004	/	<p><u>Article 88:</u> Members of the Management Board, the Executive Director and</p>	<u>See Article 88</u>	<p><u>Article 83(1):</u> The Agency shall be managed by its Executive Director, who shall perform his duties in the interests of</p>	<u>See Article 88</u>

		<p>members of the Committees and of the Forum shall make a declaration of commitment to fulfil their duties and a declaration of interests which could be considered to be prejudicial to their independence. These declarations shall be made annually in writing and, without prejudice to paragraph 1, be entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices.</p> <p>At each of their meetings, members of the Management Board, the Executive Director, members of the Committees and of the Forum and any experts participating in the meeting shall declare any interests which could be considered to be prejudicial to their independence with respect to any points on the agenda. Anyone declaring such interests shall not participate in any voting on the relevant agenda point.</p>		<p>the Community, and independently of any specific interests.</p> <p>See Article 88</p>	
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EDPB Regulation 2016/679	<u>Article 69:</u> The European Data Protection Supervisory Board shall act independently when performing its tasks or exercising its powers pursuant to Articles 70 and 71.	<u>Article 69:</u> 2. Without prejudice to requests by the Commission referred to in point (b) of Article 70(1) and in Article 70(2), the Board shall, in the performance of its tasks or the exercise of its powers, neither seek nor take instructions from anybody.	/	/	/
EEA Regulation 401/2009	/	/	/	/	/
EFCA Council Regulation 768/2005	/	<u>Article 28:</u> The members of the Administrative Board shall make a declaration of interests indicating either the absence of any interests which might be prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing or whenever a conflict of interests may arise in relation to	/	<u>Article 29:</u> The Agency shall be managed by its Executive Director . Without prejudice to the respective competencies of the Commission and the Administrative Board, the Executive Director shall neither seek nor take instructions from any government or any other body.	<u>See Article 31(2)</u>

		<p>the items on the agenda. In the latter case the member concerned shall not be entitled to vote on any such items.</p> <p><u>Article 31(2) : Members of the Advisory Board</u> may not be members of the Administrative Board.</p> <p><u>Article 26(4) :</u> When there is a matter of confidentiality or conflict of interest, the Administrative Board may decide to examine specific items of its agenda without the presence of the representative appointed by the Advisory Board. Detailed rules for the application of this provision may be laid down in the rules of procedure.</p>			
EFSA Regulation 178/2002	/	<p><u>Article 37:</u> 1. The members of the Management Board, the members of the Advisory Forum and the Executive Director shall undertake to act independently in the public interest.</p> <p>For this purpose, they shall make a declaration of</p>	/	<u>See Article 37</u>	<u>See Article 37(1)</u>

		<p>commitment and a declaration of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing.</p> <p>3. The members of the Management Board, the Executive Director, the members of the Advisory Forum, the members of the Scientific Committee and the Scientific Panels, as well as external experts participating in their working groups shall declare at each meeting any interests which might be considered prejudicial to their independence in relation to the items on the agenda.</p>			
EIGE Regulation 1922/2006	<u>Article 6:</u> The Institute shall carry out its activities independently in the public interest.	/	/	/	/

<p>EIOPA Regulation 1094/2010</p>	<p><u>Article 1:</u> When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.</p>	<p><u>Article 46:</u> The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.</p>	<p><u>Article 42 :</u> When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.</p> <p><u>Article 48:</u> 1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.</p> <p><u>Article 49:</u> Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies</p>	<p><u>Article 51:</u> 1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.</p> <p><u>Article 52:</u> Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State, or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.</p> <p>In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>	/
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			<p>nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.</p> <p>In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>		
ELA	/	<p><u>Article 19:</u> The Management board shall, in particular: (f): adopt rules for the prevention and management of conflicts of interest in respect of its members, as well as the members of the Stakeholder Group and the working groups and panels of the Authority set up in accordance with Article 17(2), and shall publish annually on its website the declaration of interests of the Management Board members</p>	/	/	/
EMA Regulation 726/2004	/	<p><u>Article 63:</u> 1. The membership of the committees referred to in Article 56(1) shall be made public. When each</p>	/	/	/

		<p>appointment is published, the professional qualifications of each member shall be specified.</p> <p>2. Members of the Management Board, members of the committees, rapporteurs and experts shall not have financial or other interests in the pharmaceutical industry which could affect their impartiality. They shall undertake to act in the public interest and in an independent manner and shall make an annual declaration of their financial interests. All indirect interests which could relate to this industry shall be entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices.</p> <p>The Agency's code of conduct shall provide for the implementation of this Article with particular reference to the acceptance of gifts.</p> <p>Members of the Management Board, members of the committees,</p>			
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		rapporteurs and experts who participate in meetings or working groups of the Agency shall declare, at each meeting, any specific interests which could be considered to be prejudicial to their independence with respect to the items on the agenda. These declarations shall be made available to the public.			
EMCDDA Regulation 1920/2006	/	/	/	/	/
EMSA Regulation 1406/2002	/	<u>Article 13(4):</u> When there is a matter of confidentiality or conflict of interest , the Administrative Board may decide to examine specific items of its agenda without the presence of the members nominated in their capacity as professionals from the sectors most concerned. Detailed rules for the application of this provision may be laid down in the rules of procedure.	/	<u>Article 15:</u> The agency shall be managed by its Executive Director , who shall be completely independent in the performance of his/her duties, without prejudice to the respective competencies of the Commission and the Administrative Board.	/
ENISA Regulation 526/2013	<u>Article 3(4):</u> The Agency shall express independently its	<u>Article 15:</u> 1. Members of the Management Board, the Executive	<u>See Article 15</u>	<u>Article 11:</u> The Agency shall be managed by its Executive Director , who shall be	/

	<p>own conclusions, guidance and advice on matters within the scope and objectives of this Regulation.</p>	<p>Director and officials seconded by Member States on a temporary basis shall each make a declaration of commitments and a declaration indicating the absence or presence of any direct or indirect interest which might be considered prejudicial to their independence. The declarations shall be accurate and complete, made annually in writing and updated whenever necessary.</p> <p>2. Members of the Management Board, the Executive Director, and external experts participating in ad hoc Working Groups shall each accurately and completely declare, at the latest at the start of each meeting, any interest which might be considered prejudicial to their independence in relation to the items on the agenda, and shall abstain from participating in the discussion of and voting upon such points.</p>		<p>independent in the performance of his/her duties.</p>	
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		3. The Agency shall lay down, in its internal rules of operation, the practical arrangements for the rules on declarations of interest referred to in paragraphs 1 and 2.			
EPPO Regulation 2017/1939	<u>Article 6:</u> 1. The EPPO shall be independent . The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors, the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European	<u>Article 114:</u> c. The College , on the proposal of the European Chief Prosecutor, shall adopt in particular rules on the conditions of employment, performance criteria, professional insufficiency, rights and obligations of the European Delegated Prosecutors , including rules on the prevention and management of conflicts of interest <u>Article 14:</u> 2(b): 2. The European Chief Prosecutor shall be selected from among candidates whose independence is beyond doubt <u>Article 12:</u> 2. A European Prosecutor may request, on an exceptional basis, on grounds related to the workload resulting from the number of investigations and prosecutions in the	/	<u>Article 19:</u> 2. Without prejudice to the powers of the College or the European Chief Prosecutor, the Administrative Director shall be independent in the performance of his/her duties and shall neither seek nor take instructions from any government or any other body.	/

	<p>Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks.</p>	<p>European Prosecutor's Member State of origin, or a personal conflict of interest, that the supervision of investigations and prosecutions of individual cases handled by European Delegated Prosecutors in his/her Member State of origin be assigned to other European Prosecutors, subject to the agreement of the latter. The European Chief Prosecutor shall decide on the request based on the workload of a European Prosecutor. In the case of a conflict of interests concerning a European Prosecutor, the European Chief Prosecutor shall grant that request. The internal rules of procedure of the EPPO shall lay down the principles governing that decision and the procedure for the subsequent allocation of the cases concerned. Article 28(4) shall not apply to investigations and prosecutions supervised in accordance with this paragraph.</p>			
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<p>ERA Regulation 2016/796</p>		<p><u>Article 49:</u> 1. Meetings of the Management Board shall be conducted in accordance with its rules of procedure and convened by its chairperson. The Executive Director of the Agency shall participate in the meetings, except when his or her participation may lead to a conflict of interests, as decided by the chairperson, or when the Management Board is to take a decision relating to Article 70, in accordance with point (i) of Article 51(1).</p> <p>3. When a matter of confidentiality or a conflict of interest arises, the Management Board may decide to examine specific items on its agenda without the members concerned being present. This does not affect the right of the Member States and of the Commission to be represented by an alternate or by any other person. Detailed rules for the application of this provision shall be laid down in the</p>	<p><u>See Article 49</u></p>	<p><u>Article 54:</u> 1. The Agency shall be managed by its Executive Director, who shall be completely independent in the performance of his or her duties. The Executive Director shall be accountable to the Management Board for his or her activities.</p> <p>2. Without prejudice to the powers of the Commission, the Management Board or the Executive Board, the Executive Director shall neither seek nor take instructions from any government or from any other body.</p>	<p>/</p>
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		<p>Management Board's rules of procedure.</p> <p><u>Article 51:</u> (1)(s) : adopt rules for the prevention and management of conflicts of interest in respect of members of the Management Board and of the Boards of Appeal, and of participants in working parties and groups referred to in Article 5(2) and other staff not covered by the Staff Regulations. Such rules shall include provisions on declarations of interest and, where appropriate, post-employment;</p>			
<p>ESMA Regulation 1095/2010</p>	<p><u>Article 1:</u> 5. When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.</p>	<p><u>Article 46:</u> The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any</p>	<p><u>Article 42:</u> When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence</p>	<p><u>Article 51:</u> 1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.</p> <p><u>Article 52:</u> Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a</p>	/

		<p>other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.</p>	<p>the members of the Board of Supervisors in the performance of their tasks.</p> <p><u>Article 48(1):</u> 1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.</p> <p><u>Article 49:</u> Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.</p> <p>In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>	<p>Member State or from any other public or private body.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.</p> <p>In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>	
ETF Regulation 1339/2008	/	<p><u>Article 11:</u> The members of the Governing Board and the Director shall act in the public interest and independently of any external influence. To</p>	/	<p><u>See Article 11</u></p>	/

		this end they shall make a written declaration of commitment and a written declaration of interests every year.			
eu-LISA Regulation 1077/2011	/	/	/	<u>Article 17(2):</u> The Executive Director shall be independent in the performance of his duties. Without prejudice to the respective competences of the Commission and the Management Board, the Executive Director shall neither seek nor take instructions from any government or other body.	/
EU-OSHA Council Regulation 2062/94	/	/	/	/	/
EUIPO Regulation 2017/1001	/	<u>Article 153:</u> Tasks of the Management Board: (1)(g): adopting rules on the prevention and management of conflicts of interest in the Office	/	<u>Article 157(2):</u> Without prejudice to the powers of the Commission, the Management Board, and the Budget Committee, the Executive Director shall be independent in the performance of his duties and shall neither seek nor take instructions from a government or from any other body. <u>Article 166:</u> 1. The President of the Boards of Appeal and the chairpersons of the Boards shall be appointed, in accordance with the procedure laid down in	/

				Article 158 for the appointment of the Executive Director, for a term of five years. They shall not be removed from office during this term, unless there are serious grounds for such removal and the Court of Justice, on application by the institution which appointed them, takes a decision to this effect.	
Eurofound Council Regulation 1365/75	/	/	/	<u>Article 8(2):</u> The director and the deputy director shall be chosen on the grounds of their competence and their independence shall be beyond doubt.	/
Eurojust Council Decision 2002/187	/		<u>Article 23:</u> 1. An independent joint supervisory body shall be established to monitor collectively the Eurojust activities referred to in Articles 14 to 22, 26, 26a and 27 in order to ensure that the processing of personal data is carried out in accordance with this Decision. In order to fulfil these tasks, the Joint Supervisory Body shall be entitled to have full access to all files where such personal data are processed. Eurojust shall provide the Joint Supervisory Body with all information from such files that it requests and shall assist that body in its tasks by every other means.	/	/

<p>Europol Regulation 2016/794</p>	/	<p><u>Article 11:</u> Tasks of the Management Board</p> <p>1.(f) adopt rules for the prevention and management of conflicts of interest in respect of its members, including in relation to their declaration of interests;</p>	/	<p><u>Article 16:</u> 2. Without prejudice to the powers of the Commission or the Management Board, the Executive Director shall be independent in the performance of his or her duties and shall neither seek nor take instructions from any government or any other body.</p> <p>5.(k): preparing draft internal rules for the prevention and management of conflicts of interest in respect of the members of the Management Board and presenting those draft rules to the Management Board for adoption</p>	<p><u>Article 45:</u> 1. A Cooperation Board with an advisory function is hereby established. It shall be composed of a representative of a national supervisory authority of each Member State and of the EDPS.</p> <p>2. The Cooperation Board shall act independently when performing its tasks pursuant to paragraph 3 and shall neither seek nor take instructions from anybody.</p>
<p>FRA Council Regulation 168/2007</p>	<p><u>Article 16:</u> 1. The Agency shall fulfill its tasks in complete independence</p>	<p><u>Article 16</u> 2. The members and alternate members of the Management Board, the members of the Scientific Committee and the Director shall undertake to act in the public interest. For this purpose, they shall make a statement of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their</p>	/	<p><u>Article 15(5):</u> The Director shall perform his/her tasks independently. He or she shall be accountable for the management of his/her activities to the Management Board and shall participate in its meetings without voting rights.</p>	/

		<p>independence. The statement shall be made in writing when taking office and shall be revised if changes occur with regard to the interests. It shall be published by the Agency on its website.</p> <p><u>Article 12:</u> 1. The Management Board shall be composed of persons with appropriate experience in the management of public or private sector organisations and, in addition, knowledge in the field of fundamental rights, as follows:</p> <p>(a) one independent person appointed by each Member State, having high level responsibilities in an independent national human rights institution or other public or private sector organisation;</p> <p>b) one independent person appointed by the Council of Europe; and</p> <p>4. Apart from normal replacement or death, the term of office of the member or the alternate member shall end only when he or</p>			
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		<p>she resigns. However, where a member or an alternate member no longer meets the criteria of independence, he or she shall forthwith inform the Commission and the Director of the Agency. The party concerned shall appoint a new member or a new alternate member for the remaining term of office. The party concerned shall also appoint a new member or a new alternate member for the remaining term of office, if the Management Board has established, based on a proposal of one third of its members or of the Commission, that the respective member or alternate member no longer meets the criteria of independence. Where the remaining term of office is less than two years, the mandate of the new member or alternate member may be extended for a full term of five years.</p>			
FRONTEX Regulation 2016/1624	<p><u>Article 56(3):</u> The Agency shall be independent in implementing its technical and</p>	<p><u>Article 62:</u> Tasks of the Management Board: (q) :adopt internal rules for the prevention and</p>	/	<p><u>Article 68(1):</u> 1. The Agency shall be managed by its executive director, who shall be completely independent in</p>	/

	operational mandate.	management of conflicts of interest in respect of its members		the performance of his or her duties. Without prejudice to the respective competencies of the Union institutions and the management board, the executive director shall neither seek nor take instructions from any government or from any other body.	
GSA Regulation 912/2010	/	<p><u>Article 10:</u> (g): security accreditation decisions shall be taken independently of the Commission, without prejudice to Article 3, and of the entities responsible for implementing the programmes. As a result, a security accreditation authority for European GNSS systems shall be, within the Agency, an autonomous body that takes its decisions independently</p> <p>(h): security accreditation activities shall be carried out while reconciling the requirement for independence with the need for adequate coordination, between the Commission and the authorities responsible for implementing security provisions.</p>	/	/	/

<p>SRB Regulation 806/2014</p>	<p><u>See Article 47(1)</u></p>	<p><u>Article 47:</u> 1. When performing the tasks conferred on them by this Regulation, the Board and the national resolution authorities shall act independently and in the general interest.</p> <p>2. The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall perform their tasks in conformity with the decisions of the Board, the Council and the Commission. They shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the Union's institutions or bodies, from any government of a Member State or from any other public or private body.</p> <p>In the deliberations and decision-making processes within the Board, they shall express their own views and vote independently.</p> <p>3. Neither the Member States, the Union's institutions or bodies,</p>	<p><u>See Article 47</u></p> <p><u>Article 56:</u> 5. The Chair, the Vice-Chair and the members referred to in Article 43(1)(b) shall not hold office at national, Union, or international level.</p>	/	/
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		<p>nor any other public or private body shall seek to influence the Chair, the Vice-Chair or the members of the Board.</p> <p>4. In accordance with the Staff Regulations of Officials as laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾ (the 'Staff Regulations') referred to in Article 87(6) of this Regulation, the Chair, the Vice-Chair and the members referred to in Article 43(1)(b) of this Regulation shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p>			
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ANNEX 2: Provisions concerning independence and conflicts of interests for experts and staff in agencies' founding regulations

Agency's Founding Regulation	Members of Scientific Committees of Scientific Panels, of Expert Forums	External experts participating in working groups	Staff and Seconded National Experts
ACER Regulation 713/2009	/	/	<u>Article 28:</u> Staff Regulations apply
APPF Regulation 1141/2014	<u>Article 11:</u> 1. A committee of independent eminent persons is hereby established. It shall consist of six members, with the European Parliament, the Council and the Commission each appointing two members. The members of the committee shall be selected on the basis of their personal and professional qualities. They shall neither be members of the European Parliament, the Council or the Commission, nor hold any electoral mandate, be officials or other servants of the European Union or be current or former employees of a European political party or a European political foundation. Members of the committee shall be independent in the performance of their duties. They shall neither seek nor take instructions from any institution or government or from any other body, office or agency, and shall refrain from any act which is incompatible with the nature of their duties.	/	<u>Article 6(5) :</u> The selection of the staff shall not be liable to result in a conflict of interests between their duties at the Authority and any other official duties, and they shall refrain from any act which is incompatible with the nature of their duties.
BEREC Office Regulation 1211/2009	/	/	See Article 21
CdT Council Regulation 2965/94	/	/	<u>Article 17:</u> Staff Regulations apply
Cedefop Council Reg 337/75	/	/	/
CEPOL Regulation 2015/2219	<u>Article 16:</u> 1. When established by the Management Board, the Scientific Committee for Training shall be an independent advisory body ensuring the scientific quality of CEPOL's training-related work. 2. The Scientific Committee for Training shall be composed of high-level academics and law enforcement practitioners in the subjects covered by Article 4. The Management Board shall appoint the members of the Scientific Committee for Training	/	<u>Article 22:</u> Staff Regulations apply

	following a transparent call for applications and selection procedure to be published in the Official Journal of the European Union. The members of the Management Board shall not be members of the Scientific Committee for Training. The members of the Scientific Committee for Training shall be independent and shall neither seek nor take instructions from any government or any other body.		
CPVO Council Regulation 2100/94	/	/	<u>Article 31:</u> Staff Regulations apply
EASA Regulation 2018/1139	/	/	<u>Article 29:</u> Staff Regulations apply
EASO Regulation 439/2010	/	/	<u>Article 38:</u> Staff Regulations apply
EBA Regulation 1093/2010	<u>Article 41:</u> 2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.	/	<u>Article 47(4):</u> The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities (hereinafter 'the Staff Regulations').
ECDC Regulation 851/2004	<u>Article 6(2):</u> The Centre shall seek to maintain scientific excellence at all times through the best expertise available. Where independent scientific expertise is not available from existing dedicated surveillance networks, the Centre may set up independent ad hoc scientific panels. <u>Article 18 :</u> 3. The Advisory Forum shall support the director in ensuring the scientific excellence and independence of activities and opinions of the Centre. <u>See Article 19</u>	/	<u>Article 29:</u> Staff Regulations apply
ECHA Regulation 851/2004	<u>Article 85(7):</u> The Member States shall refrain from giving the members of the Committee for Risk Assessment or of the Committee for Socio-Economic Analysis, 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.	<u>See Article 85(7):</u> <u>Article 88 :</u> The membership of the Committees and of the Forum shall be made public. Individual members may request that their names not be made public if they believe that such publication could place them at risk. The Executive Director shall decide whether to agree to such requests. When each	<u>Article 103:</u> Staff Regulations apply

		<p>appointment is published, the professional qualifications of each member shall be specified.</p> <p>Members of the Management Board, the Executive Director and members of the Committees and of the Forum shall make a declaration of commitment to fulfil their duties and a declaration of interests which could be considered to be prejudicial to their independence. These declarations shall be made annually in writing and, without prejudice to paragraph 1, be entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices.</p> <p>At each of their meetings, members of the Management Board, the Executive Director, members of the Committees and of the Forum and any experts participating in the meeting shall declare any interests which could be considered to be prejudicial to their independence with respect to any points on the agenda. Anyone declaring such interests shall not participate in any voting on the relevant agenda point.</p>	
EDPB Regulation 2016/679	/	/	/
EEA Regulation 401/2009	/	/	<u>Article 17:</u> Staff Regulations apply
EFCA Council Regulation 768/2005	/	/	<u>Article 19:</u> Staff Regulations apply
EFSA Regulation 178/2002	<p><u>Article 28:</u></p> <p>3. The Scientific Committee shall be composed of the Chairs of the Scientific Panels and six independent scientific experts who do not belong to any of the Scientific Panels.</p> <p>4. The Scientific Panels shall be composed of independent scientific experts.</p> <p><u>Article 37:</u></p> <p>2. The members of the Scientific Committee and the Scientific Panels shall undertake to act independently of any external influence.</p> <p>For this purpose, they shall make a declaration of commitment and a declaration of interests indicating either the absence of any interests which might be considered prejudicial to their independence or any direct or indirect interests which might be considered prejudicial to their independence. Those declarations shall be made annually in writing.</p>	<u>See Article 37(3)</u>	<u>Article 48:</u> Staff Regulations apply

	3. The members of the Management Board, the Executive Director, the members of the Advisory Forum, the members of the Scientific Committee and the Scientific Panels, as well as external experts participating in their working groups shall declare at each meeting any interests which might be considered prejudicial to their independence in relation to the items on the agenda.		
EIGE Regulation 1922/2006	<u>Article 11:</u> 2. Members of the Experts' Forum shall not be members of the Management Board. 3: The Experts' Forum shall support the Director in ensuring the excellence and independence of activities of the Institute.	/	<u>Article 13:</u> Staff Regulations apply
EIOPA Regulation 1094/2010	/	/	<u>Article 68:</u> Staff Regulations apply
ELA	<u>See Article 63</u>	/	<u>Article 75:</u> Staff Regulations apply
EMA Regulation 726/2004	<u>Article 13(2):</u> The Scientific Committee shall consist of at most fifteen well-known scientists appointed in view of their scientific excellence and their independence by the Management Board, following the publication of a call for expressions of interest in the Official Journal of the European Union. The selection procedure shall ensure that the specialist fields of the members of the Scientific Committee cover the most relevant scientific fields linked to the problems of drugs and drug addiction. The members of the Scientific Committee shall be appointed in a personal capacity and shall give their opinions completely independently of the Member States and the Community Institutions.	/	<u>Article 18:</u> Staff Regulations apply
EMCDDA Regulation 1920/2006		/	<u>Article 6:</u> Staff Regulations apply
EMSA Regulation 1406/2002	<u>See Article 15(2)</u>	/	<u>Article 22:</u> Staff Regulations apply
ENISA Regulation 526/2013	/	/	<u>Article 96:</u> Staff Regulations apply See Article 6 For European Delegated Prosecutors rules on special advisers
EPPO Regulation 2017/1939	<u>See Article 69/</u>	/	<u>Article 6:</u> 1. The EPPO shall be independent. The European Chief Prosecutor, the Deputy European Chief Prosecutors, the European Prosecutors, the European Delegated Prosecutors,

			<p>the Administrative Director, as well as the staff of the EPPO shall act in the interest of the Union as a whole, as defined by law, and neither seek nor take instructions from any person external to the EPPO, any Member State of the European Union or any institution, body, office or agency of the Union in the performance of their duties under this Regulation. The Member States of the European Union and the institutions, bodies, offices and agencies of the Union shall respect the independence of the EPPO and shall not seek to influence it in the exercise of its tasks.</p> <p><u>Article 67:</u> 3. The Agency shall take appropriate administrative measures, inter alia, through training and prevention strategies, to organise its services in such a way as to avoid any conflict of interest.</p> <p><u>Article 69 :</u> The Agency may make use of seconded national experts or other staff who are not employed by the Agency under the Staff Regulations and the Conditions of Employment of Other Servants.</p> <p>Without prejudice to the rules laid down in the relevant Commission Decision on the secondment of national experts, which apply to the Agency, the Management Board shall adopt a decision laying down rules on the secondment to the Agency of national experts, including rules on the prevention and management of conflicts of interest and on relevant restrictions for cases in which national experts' independence and impartiality could be undermined.</p> <p><u>Article 96(7):</u> The European Prosecutors and the European Delegated Prosecutors shall not receive in the exercise of their investigation and prosecution powers, any orders, guidelines or instructions other than those expressly provided for in Article 6.</p>
ERA Regulation 2016/796	/	/	<p><u>Article 70:</u> In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.</p> <p>Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.</p>

ESMA Regulation 1095/2010	/	/	<u>Article 21:</u> Staff Regulations apply <u>Article 70:</u> Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.
ETF Regulation 1339/2008	/	/	<u>Article 20:</u> Staff Regulations apply
eu-LISA Regulation 1077/2011	/	/	<u>Article 20:</u> Staff Regulations apply
EU-OSHA Council Regulation 2062/94	<u>Article 170:</u> 12. The Office shall establish a list of mediators who shall support parties in resolving disputes. The mediators shall be independent and possess relevant skills and experience. The list may include mediators who are employed by the Office, and mediators who are not so employed. 13. Mediators shall be impartial in the exercise of their duties and shall declare any real or perceived conflict of interest upon their designation. Members of the decision-making instances of the Office listed in Article 159 shall not take part in mediation concerning a case in which they have : (a) had any prior involvement in the proceedings referred to mediation; (b) any personal interest in those proceedings; or (c) been previously involved as a representative of one of the parties.	/	<u>Article 143:</u> Staff Regulations apply
EUIPO Regulation 2017/1001		/	
Eurofound Council Regulation 1365/75	/	/	<u>Article 30:</u> Staff Regulations apply
Eurojust Council Decision 2002/187	<u>Article 45(2):</u> The Cooperation Board shall act independently when performing its tasks pursuant to paragraph 3 and shall neither seek nor take instructions from anybody.	/	<u>Article 53:</u> Staff Regulations apply
Europol Regulation 2016/794	<u>Article 14:</u> 1. The Scientific Committee shall be composed of eleven independent persons, highly qualified in the field of fundamental rights. The Management Board shall appoint the members following a transparent call for applications and selection procedure after having consulted the competent committee of the European Parliament. The Management	/	<u>Article 24:</u> Staff Regulations apply

	<p>Board shall ensure even geographical representation. The members of the Management Board shall not be members of the Scientific Committee. The rules of procedure referred to in Article 12(6)(g) shall lay down the detailed conditions governing the appointment of the Scientific Committee.</p> <p>3. The members of the Scientific Committee shall be independent. They may be replaced only at their own request, or in the event of their being permanently prevented from fulfilling their duties. However, where a member no longer meets the criteria of independence, he or she shall forthwith inform the Commission and the Director of the Agency. Alternatively, the Management Board may declare, on a proposal of one third of its members or of the Commission, a lack of independence and revoke the person concerned. The Management Board shall appoint a new member for the remaining term of office in accordance with the procedure for ordinary members. Where the remaining term of office is less than two years, the mandate of the new member may be extended for a full term of five years. The list of members of the Scientific Committee shall be made public and shall be updated by the Agency on its web site.</p>		
FRA Council Regulation 168/2007	<p><u>Article 71(2):</u></p> <p>The fundamental rights officer shall be independent in the performance of his or her duties. He or she shall report directly to the management board and cooperate with the consultative forum. The fundamental rights officer shall so report on a regular basis and as such contribute to the mechanism for monitoring fundamental rights.</p>	/	<u>Article 58:</u> Staff Regulations apply
FRONTEX Regulation 2016/1624	/	/	<u>Article 18:</u> Staff Regulations apply
GSA Regulation 912/2010	/	/	See Article 47(4)
SRB Regulation 806/2014	/	/	

ANNEX 3: Provisions concerning independence and conflicts of interests for members of boards of appeal

Name	Founding Regulation	Board of Appeal
ACER	Reg 713/2009	<u>Article 18(7):</u> The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they shall make a written declaration of commitments and a written declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence. Those declarations shall be made public annually.
CPVO	Council Reg 2100/94	<u>Article 47(3):</u> The members of the Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions. <u>Article 48(1):</u> Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to proceedings, or if they participated in the decision under appeal.
EASA	Reg 2018/1139	<u>Article 42 :</u> 2. The members of a Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions. 3. The members of a Board of Appeal may not perform any other duties within the Agency. The members of a Board of Appeal may work on a part-time basis. <u>Article 43 :</u> 1. The members of a Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
EBA	Reg 1093/2010	<u>Article 59:</u> 1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors.
ECHA	Reg 1907/2006	<u>Article 90:</u> 2. The members of the Board of Appeal shall be independent. In making their decisions they shall not be bound by any instructions. 3. The members of the Board of Appeal may not perform any other duties in the Agency. 5. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.
EIOPA	Reg 1094/2010	<u>Article 59 :</u> 1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors. 2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest if they have previously been involved as representatives of

		<p>one of the parties to the proceedings, or if they have participated in the decision under appeal.</p> <p>3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.</p> <p>4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.</p> <p>No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.</p> <p>5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.</p> <p>For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.</p> <p>6. The members of the Board of Appeal shall undertake to act independently and in the public interest.</p> <p>For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.</p> <p>Those declarations shall be made public, annually and in writing.</p>
ERA	Reg 2016/796	<p><u>Article 55 :</u></p> <p>2. Each Board of Appeal shall be composed of a chairperson and two other members. They shall have alternates to represent them in their absence, or where any conflicts of interest arise.</p> <p>3. The establishment and composition of Boards of Appeal shall be decided on a case-by-case basis. Alternatively, a Board of Appeal may be established as a permanent body for a maximum period of 4 years. In both cases, the following procedure applies:</p> <p>b. the Management Board shall appoint the chairperson, the other members and their alternates from the list referred to in point (a). Where the Board of Appeal is not established as a permanent body, the Management Board shall take into account the nature and content of the appeal or arbitration, and avoid any conflict of interest in accordance with Article 57.</p> <p><u>Article 56(2):</u></p> <p>Members of Boards of Appeal shall be independent from all parties involved in the appeal or arbitration and may not perform any other duties within the Agency. In their deliberations and decisions they shall not be bound by any instructions and shall be free from any conflict of interest.</p> <p><u>Article 57(1):</u></p> <p>Members of Boards of Appeal may not take part in any appeal or arbitration proceedings if they have any personal interest in the proceedings, if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the taking of the decision appealed against.</p>
ESMA	Reg 1095/2010	<p><u>Article 59 :</u></p> <p>1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in</p>

		<p>relation to the Authority, its Management Board or its Board of Supervisors.</p> <p>2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.</p> <p>3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.</p> <p>4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.</p> <p>No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.</p> <p>5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.</p> <p>For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.</p> <p>6. The members of the Board of Appeal shall undertake to act independently and in the public interest.</p> <p>For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.</p> <p>Those declarations shall be made public, annually and in writing.</p>
EUIPO	Reg 2017/1001	<p><u>Article 166:</u></p> <p>7. The President of the Boards of Appeal and the chairpersons and members of the Boards of Appeal shall be independent. In their decisions, they shall not be bound by any instructions.</p>

ANNEX 4: QUESTIONNAIRE

This questionnaire was sent to all EU decentralised Agencies in May 2019 on behalf of the authors of this study and kindly distributed by the EU Agencies Network.

General information

Name Agency: [Click here to enter text.](#)

Name person who filled out the questionnaire (contact person): [Click here to enter text.](#)

Contact details (email address or tel): [Click here to enter text.](#)

Section 1: Which interests have to be declared?

1. **Do you have in place a policy, guidelines or a code of good administrative behaviour defining conflicts of interest and giving guidance on their avoidance?**

☐ yes (Please attach any relevant code or equivalent guidelines) ☐ no

2. **How do you define conflicts of interest?**

[Click here to enter text.](#)

Please attach any relevant document of your agency containing a definition further to your response to question 1.

3. **Do you apply the same definition of conflict of interest for staff members, Management Board members and experts?**

☐ yes ☐ no

4. **Please indicate for the following actors whether and what type of Dols must be submitted:**

	Declaration specifying the declared interests	Declaration of absence of interest
Management Board members	<input type="checkbox"/>	<input type="checkbox"/>
Staff members	<input type="checkbox"/>	<input type="checkbox"/>
Expert members of agency committees/panels	<input type="checkbox"/>	<input type="checkbox"/>
External experts	<input type="checkbox"/>	<input type="checkbox"/>
Members of the Board of Appeal	<input type="checkbox"/>	<input type="checkbox"/>
Where relevant, other organs of your agency	<input type="checkbox"/>	<input type="checkbox"/>
Please specify		
Click here to enter text.		

5. Do Declarations of Interests (Dols) for the following groups of actors contain the following elements?²³³

Please tick the relevant box if you have this in place, for each organ of your agency.

	Management Board	Staff	Experts in committees ²³⁴	External experts ²³⁵	Board of Appeal members
Posts in foundations, educational institutions, companies or organisations (<i>current and past</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Memberships and affiliations, professional activities including consulting and public statements (<i>current and past</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Memberships of and affiliations with political parties or specific national bodies (<i>current and past</i>)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Direct financial interests above a certain threshold	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Interests held by a spouse, partner or dependent family member	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Any other relevant interests	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Please specify which interests.					
Click here to enter text.					
For how many years in the past do interests have to be declared? Please indicate in years	...yrs	...yrs	...yrs	...yrs	...yrs

6. When screening the Declarations of Interests (Dols) do you assess whether there is any conflicting interest with:

- ☐ the interest of the Union as a whole,
- ☐ the interest of a particular agency or
- ☐ the duties of a particular position within an agency

²³³ These elements are taken from the Commission's Guidelines on Conflicts of Interest Policies in Agencies (2013).

²³⁴ This category refers to experts who have a mandate.

²³⁵ This category refers to experts who are convened on an ad hoc basis.

7. **Do you assess any conflict of interest in relation to:**

- ☐ only the industry concerned or
- ☐ the regulatory field of the agency in general (i.e. NGOs or other) or
- ☐ both the regulatory field of the agency and to other linked fields (e.g. chemicals and pharmaceuticals)

☐ **Other, please specify**[Click here to enter text.](#)8. **When you ask for the CV of a person in order to assess any actual or potential conflict of interest, do you ask the persons to fill out a predefined CV (defining what exactly it has to include)?**

- ☐ yes (Please attach the relevant form.) ☐ no

9. **Do you use special advisers as defined in the Staff Regulations?**☐ no

- ☐ yes → **If yes, are there any rules in place on their declarations of interest? Do you follow similar or comparable rules to the Commission Decision C(2007) 6655, as amended by C(2014) 541?**

[Click here to enter text.](#)

Section 2: When do interests have to be declared?

10. **When do the following actors have to declare their interests?**

	upon appointment	annually	upon change of function/post or change of tasks/responsibilities within the same function	in meetings	other (please specify)
Management Board members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
Staff members	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
Experts members of agency committees/panels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
External experts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
Members of the Board of Appeal	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.
Where relevant, other organs of your agency					
Please specify	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Click here to enter text.

[Click here to enter text.](#)

Section 3: How are the declared interests screened and decisions on consequences taken?

11. Is there a system to categorise interest levels (e.g. “interests cleared”; “interests require ad hoc assessment”; “interests lead to specific restrictions”)?

☐ yes → Please specify the applicable interest levels and to which actors they apply:

[Click here to enter text.](#)

☐ no

12. Is there a “blacklist” of interests which are incompatible with employment in or appointment to your agency?

☐ yes → Please specify these incompatible interests and to which actors they apply:

[Click here to enter text.](#)

☐ no

13. In particular as regards experts: for how many years before being appointed to a committee/panel/working group at your agency are experts not allowed to have worked for the industry?

[Click here to enter text.](#)

Do you also take into account whether experts are employed by a public institution but working on projects funded by industry, other economic actors or any other actor who might have a conflicting interest?

☐ yes → Please specify.

[Click here to enter text.](#)

☐ no

14. Who assesses the Dols submitted by the following actors and decides on mitigating measures/consequences?

Dol submitted by	Dol assessed by	Mitigating measure taken by
Management board members	Click here to enter text.	Click here to enter text.
Staff members	Click here to enter text.	Click here to enter text.
Experts members of agency committees/panels	Click here to enter text.	Click here to enter text.
External experts	Click here to enter text.	Click here to enter text.
Members of the Board of Appeal	Click here to enter text.	Click here to enter text.
Where relevant, other organs of your agency. Please specify	Click here to enter text.	Click here to enter text.

[Click here to enter text.](#)

15. How are decisions on consequences made? Please select the option that is best suited to describe your existing approach.

- ☐ Decision-makers have to apply a predefined scheme linking certain interests to specific consequences.
- ☐ Decision-makers have discretion but are provided with a list of possible options based on the respective interest-levels.
- ☐ Decision-makers have discretion but are provided with a list of possible options; no interest-levels are assigned.
- ☐ Decision-makers are not provided with a list of options and have full discretion.

Where necessary, please clarify.

[Click here to enter text.](#)

16. Can you please briefly describe what consequences are attached to which kind of conflicts of interest?

Actor concerned	Situation of conflict	Possible consequences
Management board members	Click here to enter text.	Click here to enter text.
Staff members	Click here to enter text.	Click here to enter text.
Experts members of agency committees/panels	Click here to enter text.	Click here to enter text.
External experts	Click here to enter text.	Click here to enter text.
Members of the Board of Appeal	Click here to enter text.	Click here to enter text.
Where relevant, other organs of your agency. Please specify	Click here to enter text.	Click here to enter text.

[Click here to enter text.](#)

17. Is there any procedure in place for checking the factual correctness of declarations preventively?

Do you cooperate for this purpose with national authorities? If yes, please specify for which actors.

[Click here to enter text.](#)

Section 4: What investigative and control mechanisms are in place?

18. Have you set up or do you intend setting up a Conflicts of Interest Advisory Committee as recommended by the EP in the framework of the 2017 discharge procedure?

- ☐ yes → **If yes, what is/will be its composition and mandate?**

[Click here to enter text.](#)

- ☐ no

19. Who conducts investigations within your agency (function equivalent to IDOC within the European Commission)?

[Click here to enter text.](#)

If applicable, what is the mandate of internal investigators? Who are they accountable to and how is their independence secured?

[Click here to enter text.](#)

20. Are you aware of any disciplinary measures taken at national level for a national public servant because he/she violated the rules on conflicts of interest when being also member of an organ of your agency?

[Click here to enter text.](#)

21. On whistleblower protection:

- **Have you adopted the guidelines contained in the Commission Decision C(2018)1362 on giving the Commission's ex ante agreement to the adoption by agencies of implementing rules laying down guidelines on whistleblowing?**

☐ yes ☐ no

- **Have you made any adjustments to these guidelines?**

☐ yes ☐ no

If yes, please specify

[Click here to enter text.](#)

- **Do you believe that within a small organisation such as an EU agency it is easy to implement the guarantee of "transfer to another unit/department" for a whistleblower?**

☐ yes ☐ no

- **Do you have in place any channel for anonymous internal reporting?**

☐ yes ☐ no

22. Do you publish information on the occupational activities of senior officials after their end of service at your agency?

☐ yes If yes, please specify for whom.

[Click here to enter text.](#)

☐ no

23. Are there any post-mandate obligations for Members of the Management Board or experts members of committees/panels? ('cooling off period')

☐ yes → If yes, please specify.

[Click here to enter text.](#)

If yes, do you have compensation measures in place?

[Click here to enter text.](#)

☐ no

24. What are the obligations regarding meetings with interest representatives:

Actor	Obligation to meet only with interest representatives registered in the Transparency Register	Obligation to publicly register meetings with interest representatives
Management Board Members	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
Executive Director	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
Other staff members	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
Where relevant, other organs of your agency. Please specify	Click here to enter text.	Click here to enter text.
Click here to enter text.		

Section 5: Cols in the past year

Please do not disclose any personal data when answering questions in this section.

25. How many Cols have been identified in your Agency, in which mitigating measures have been taken, in the past year?[Click here to enter text.](#)**If applicable, which mitigating measures have been taken in each of these cases or in certain categories of cases?**[Click here to enter text.](#)**26. In how many cases was found that actors had failed to declare interests which they should have declared and thus no mitigating measures taken?**[Click here to enter text.](#)**27. Have you received any complaints in the past year about conflicts of interest?**☐ yes **If yes, please briefly outline the case and the outcome.**[Click here to enter text.](#)☐ no**Comments**[Click here to enter text.](#)

ANNEX 5: RESULTS OF THE QUESTIONNAIRE

Total number of responses obtained: 28

Section 1: Which interests have to be declared?

1. Do you have in place a policy, guidelines or a code of good administrative behaviour defining conflicts of interest and giving guidance on their avoidance?

All agencies surveyed have in place such policies/ guidelines/ codes of conduct.

2. How do you define conflicts of interest?

[open answers]

3. Do you apply the same definition of conflict of interest for staff members, Management Board members and experts?

25 agencies apply the same definition of Col for staff members, MB members and experts.

This amounts to 89% of all agencies. Only CdT, EMSA and ESMA apply varying definitions.

4. Please indicate for the following actors whether and what type of Dols must be submitted:

		Declaration specifying the declared interest		Declaration of absence of interest		both		not applicable/ none
Management Board	21	ACER, BEREC Office, CdT, CEPOL, CPVO, EASA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EIOPA, EMA, EMCDDA, EMSA, ENISA, ERA, Eurofound, FRA, GSA	4	Cedefop, ETF, EU-OSHA, EUIPO	2	EBA, ESMA	1	eu-LISA
Staff members	16	ACER, BEREC Office, CdT, CEPOL, EASA, ECHA, EEA, EFCA, EFSA, EIOPA, EMA, ERA, eu-LISA, EUIPO, FRA, GSA	6	CPVO, ECDC, EIGE, EMCDDA, EMSA, EU-OSHA,	4	Cedefop, EBA, ESMA, ETF	2	ENISA, Eurofound
Expert members of agency committees*	11	ACER, CPVO, EASA, ECHA, EFSA, EIGE, EMA, ENISA, eu-LISA, Eurofound, GSA	6	BEREC Office, CdT, EEA, EMCDDA, ETF, FRA	1	EBA	10	Cedefop, CEPOL, ECDC, EFCA, EIOPA, EMSA, ERA, ESMA, eu-OSHA, EUIPO
External Experts*	20	CdT, CEPOL, CPVO, ECHA, EFCA, EFSA, EIOPA, EMA, ENISA, ERA, eu-LISA, EUIPO, Eurofound, FRA	4	EEA, EIGE, EU-OSHA, GSA	2	BEREC Office, EBA	8	ACER, Cedefop, EASA, ECDC, EMCDDA, EMSA, ESMA, ETF

Members of BoA*	7	ACER, EASA, EBA, ECHA, EIOPA, ERA, EUIPO,	2	ESMA, FRA	0	19	BEREC Office, CDT, Cedefop, CEPOL, CPVO, ECDC, EEA, EFCA, EFSA, EIGE, EMA, EMCDDA, EMSA, ENISA, ETF, eu- LISA, EU-OSHA, Eurofound, GSA,
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*This organ does not necessarily exist in all agencies surveyed.

5. Do Declarations of Interests for the following groups of actors contain the following elements?

	Number of agencies covering this criterion per group of actors				
	MB	S	E	EE	BoA
Posts in foundations, educational institutions, companies or organisations (<i>current and past</i>)	23	21	12	13	6
Memberships and affiliations, professional activities including consulting and public statements (<i>current and past</i>)	24	21	13	14	6
Memberships of and affiliations with political parties or specific national bodies (<i>current and past</i>)	15	13	7	7	4
Direct financial interests above a certain threshold	22	20	10	10	5
Interests held by a spouse, partner or dependent family member	22	18	11	11	5
all elements included	12	10	5	5	4
	ACER BEREC Office EASA ECHA EIGE EIOPA ENISA ESMA ETF eu- LISA Eurofound GSA	ACER EASA ECHA EIOPA ESMA ETF EUIPO eu-LISA Eurofound GSA	ACER ECHA EIGE Eurofound GSA	ACER ECHA EIGE EIOPA Eurofound	ACER EASA ECHA EUIPO
Average number of years covered in DoI?	4,1	4,2	4,6	4,2	3,4

6. When screening the Dols, do you assess whether there is a conflicting interest with...

0	0%	the interest of the <i>Union</i> as a whole
2	7%	the interest of a particular <i>agency</i>
4	14%	the duties of a particular <i>position</i> within an agency
2	7%	the interests of the <i>Union</i> and the particular <i>agency</i>

1	4%	the interests of the <i>Union</i> and the particular <i>position</i>
9	32%	The interests of the particular <i>agency</i> and the particular <i>position</i>
10	36%	all three types of interests

7. Do you assess any conflict of interest in relation to...

1	4%	only the industry concerned
9	33%	the regulatory field of the agency in general (i.e. NGOs or other)
11	41%	both the regulatory field of the agency or other linked fields
5	19%	other factors
1	4%	The regulatory field, other linked fields and other factors

(no response by CdT)

8. When you ask for the CV of a person in order to assess any actual or potential conflict of interest, do you ask the persons to fill out a predefined CV (defining what exactly it has to include)?

Yes	14	No	14
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9. Do you use special advisers as defined in the staff regulations?

Yes	2	No	26
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Section 2: When do interests have to be declared?

	Management Board				Staff				Experts				External Experts				Board of Appeal			
	AP	AN	CP	ME	AP	AN	CP	ME	AP	AN	CP	ME	AP	AN	CP	ME	AP	AN	CP	ME
ACER	x	x	x	0	x	0	x	0	x	x	x	0	0	0	0	0	x	x	x	0
BEREC Office	x	x	0	x	x	0	0	0	x	0	0	x	x	0	0	x	0	0	0	0
CdT	x	0	x	0	x	0	x	0	x	0	0	0	x	0	0	0	0	0	0	0
Cedefop	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
CEPOL	x	x	0	0	x	0	0	0	0	x	0	0	x	0	x	0	0	0	0	0
CPVO	x	x	0	0	x	0	0	0	0	x	0	0	x	0	0	0	0	0	0	0
EASA	x	x	0	x	x	x	x	x	0	0	0	x	0	0	0	0	x	x	0	x
EBA	x	x	0	0	x	x	0	0	x	x	0	0	x	x	0	0	x	x	0	0
ECDC	x	x	0	0	x	0	0	0	0	0	0	0	0	x	0	x	0	0	0	0
ECHA	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
EEA	x	x	0	0	x	x	x	0	x	0	0	0	x	0	0	0	0	0	0	0
EFCA	x	x	x	x	x	x	x	x	0	0	0	0	x	0	x	0	0	0	0	0
EFSA	x	x	x	x	x	x	x	0	x	x	x	x	x	x	x	x	0	0	0	0
EIGE	x	x	x	x	x	0	0	x	x	x	x	x	x	0	x	0	0	0	0	0
EIOPA	x	x	x	x	x	x	x	x	0	0	0	0	0	0	0	0	x	x	0	0
EMA	x	x	x	x	x	x	x	0	x	x	x	x	x	x	x	x	0	0	0	0
EMCDDA	x	0	0	0	x	0	0	0	x	0	0	0	x	0	0	0	0	0	0	0
EMSA	x	0	0	x	x	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0
ENISA	0	x	x	x	x	0	0	0	0	0	0	0	x	0	0	0	0	0	0	0
ERA	x	x	x	x	x	x	x	x	0	0	0	0	x	x	x	x	x	x	x	x
ETF	x	x	x	0	0	0	0	0	0	0	0	0	x	0	0	0	0	0	0	0
eu-LISA	x	x	x	x	0	x	x	0	x	0	0	0	x	x	x	x	0	0	0	0
EU-OSHA	0	0	0	0	x	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
EUIPO	0	0	0	x	x	x	x	0	0	0	0	0	0	0	0	0	x	x	x	0
Eurofound	x	0	x	0	x	0	x	0	x	0	x	0	x	0	x	0	0	0	0	0
ESMA	x	x	0	x	x	x	0	0	0	0	0	0	0	0	0	0	0	x	0	0
FRA	x	x	x	x	x	0	0	0	x	x	x	x	0	0	0	0	0	0	0	0
GSA	0	x	0	x	0	x	0	0	x	0	0	0	x	0	0	0	0	0	0	0

AP=upon
appointment
AN=annually
CP=upon
change of post
ME=in
meetings

Section 3: How are the declared interest screened and decisions on consequences taken?

11. Is there a system to categorise interest levels (e.g. “interests cleared”; “interests require ad hoc assessment”; “interests lead to specific restrictions”)?

Yes	No
11	17
ACER, CPVO, ECDC, ECHA, EFCA, EFSA, EMA, EMSA, ENISA, eu-LISA, EUIPO	BEREC Office, CdT, Cedefop, CEPOL, EASA, EBA, EEA, EIGE, EIOPA, EMCDDA, ERA, ESMA, ETF, EU-OSHA, Eurofound, FRA, GSA

12. Is there a “blacklist” of interests which are incompatible with employment in or appointment to your agency?

Yes	No
8	20
ACER, EBA, ECHA, EFSA, EMA, ERA, ESMA, Eurofound	BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, ECDC, EEA, EFCA, EIGE, EIOPA, EMCDDA, EMSA, ENISA, ETF, eu-LISA, EU-OSHA, EUIPO, FRA, GSA

Combination of Question 11 and 12

		Is there a blacklist of interest incompatible with employment/appointment in your agency?	
		yes	no
Is there a system to categorise interest levels?	yes	4 ACER, ECHA, EFSA, EMA	7 CPVO, ECDC, EFCA, EMSA, ENISA, eu-LISA, EUIPO
	no	4 EBA, ERA, ESMA, Eurofound	13 BEREC Office, CdT, Cedefop, CEPOL, EASA, EEA, EIGE, EIOPA, EMCDDA, ETF, EU-OSHA, FRA, GSA

13. In particular as regards experts: for how many years before being appointed to a committee/panel/working group at your agency are experts not allowed to have worked for the industry?

2 years	EFSA
3 years	BEREC Office, ECDC, EEA, EMA
5 years	ACER, CPVO, ECHA, EMCDDA

Do you also take into account whether experts are employed by a public institution but working on projects funded by industry, other economic actors or any other actor who might have a conflicting interest?

yes (12)	no (8)	no response (8)
ACER, CPVO, EASA, ECDC, BEREC ECHA, EEA, EFSA, EMA, CEPOL, EMCDDA, ENISA, ERA, GSA	Office, CdT, Cedefop, EBA, EMSA, EFCA, EIGE, ESMA, EU-OSHA, EUIPO, EIOPA, ETF, eu-LISA,	Eurofound, FRA

14. Who assesses the Dols submitted by the following actors and decides on mitigating measures/consequences?

[open answers]

15. How are decisions on consequences made? Please select the option that is best suited to describe your existing approach.

2	7%	Decision-makers have to apply a predefined scheme linking certain interests to specific consequences. EFSA, EMA
4	15%	Decision-makers have discretion but are provided with a list of possible options based on the respective interest-levels. ACER, ECDC, ECHA, EUIPO
12	44%	Decision-makers have discretion but are provided with a list of possible options; no interest-levels are assigned. CdT, CEPOL, EBA, EEA, EIGE, EMCDDA, EMSA, ESMA, ETF, EU-OSHA, FRA, GSA
9	33%	Decision-makers are not provided with a list of options and have full discretion. BEREC Office, CPVO, EASA, EFCA, EIOPA, ENISA, ERA, eu-LISA, Eurofound

(No response by Cedefop)

16. Can you please briefly describe what consequences are attached to which kind of conflicts of interest?

[open answers]

17. Is there any procedure in place for checking the factual correctness of declarations preventively?

Do you cooperate for this purpose with national authorities? If yes, please specify for which actors.

Yes 4	No 24
EFSA, EMA, EMCDDA, ETF	ACER, BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EIGE, EIOPA, EMSA, ENISA, ERA, ESMA, EUIPO, EU-LISA, EU-OSHA, Eurofound, FRA, GSA

Section 4: What investigative and control mechanisms are in place?

18. Have you set up or do you intend setting up a Conflicts of Interest Advisory Committee as recommended by the EP in the framework of the 2017 discharge procedure?

Yes 9	No 19
ACER, EASA, EBA, ECDC, ECHA, EFSA, EMA, ENISA, GSA	ERA, ESMA, Eurofound, BEREC Office, CdT, Cedefop, CEPOL, CPVO, EEA, EFCA, EIGE, EIOPA, EMCDDA, EMSA, ETF, eu-LISA, EU-OSHA, EUIPO, FRA

19. Who conducts investigations within your agency (function equivalent to IDOC within the European Commission)?

If applicable, what is the mandate of internal investigators? Who are they accountable to and how is their independence secured?

[open answers]

20. Are you aware of any disciplinary measures taken at national level for a national public servant because he/she violated the rules on conflicts of interest when being also member of an organ of your agency?

Yes 0	No 28
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21. On whistle-blower protection

- Have you adopted the guidelines contained in the Commission Decision C(2018)1362 on giving the Commission's ex ante agreement to the adoption by agencies of implementing rules laying down guidelines on whistle-blowing?
- Have you made any adjustments to these guidelines?
- Do you believe that within a small organisation such as an EU agency it is easy to implement the guarantee of "transfer to another unit/department" for a whistle-blower?

		b. Adjustments made?		c. Easy to implement guarantee?	
		yes	no	yes	no
a. COM guidelines adopted?	yes	5	21	4	20
		ACER, CEPOL, EFSA, EMA, eu-LISA, EMCDDA	BEREC Office, CdT, Cedefop, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EIGE, EIOPA, EMSA, ENISA, ERA, ESMA, ETF, EU-OSHA, Eurofound, FRA, GSA	EASA, EFSA, ESMA, FRA	ACER, BEREC Office, CdT, Cedefop CEPOL, CPVO, EBA, ECDC, ECHA, EEA, EFCA, EIGE, EIOPA, EMA, EMSA, ERA, ETF, eu-LISA, Eurofound, GSA
	no	0	1	1	1
			EUIPO	EUIPO	EMCDDA

Do you have in place any channel for anonymous internal reporting?

Yes	No	No response
12	13	4
ACER, Cedefop, EASA, EBA, ECDC, EFSA, EIGE, EIOPA, EMA, EMCDDA, ENISA, ESMA	BEREC Office, CdT, CEPOL, CPVO, ECHA, EEA, EFCA, EMSA, ETF, eu-LISA, Eurofound, FRA, GSA	ERA, EU-OSHA, EUIPO

22. Do you publish information on the occupational activities of senior officials after their end of service at your agency?

Yes	No
6	22
ACER, EBA, ECHA, EFSA, EIOPA, ESMA,	BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, ECDC, EEA, EFCA, EIGE, EMA, EMCDDA, EMSA, ENISA, ERA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, FRA, GSA

23. Are there any post-mandate obligations for Members of the Management Board or experts members of committees/panels? ('cooling off period')

Yes	No
7	21
CdT, EASA, EBA, EFCA, EIGE, EIOPA, FRA,	ACER, BEREC Office, Cedefop, CEPOL, CPVO, ECDC, ECHA, EEA, EFSA, EMA, EMCDDA, EMSA, ENISA, ERA, ESMA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, GSA,

24. What are the obligations regarding meetings with interest representatives:

	meet only registered reps	register meetings	neither	both	No response
	0	0	25	1	2
MB			ACER, BEREC Office, CEPOL, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EFSA, EIGE, EMA, EMCDDA, EMSA, ENISA, ERA, ESMA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, FRA, GSA	EIOPA	CdT, Cedefop
	1	10	11	3	3
ED	EMA	EBA, ECHA, EFCA, EIGE, EIOPA, EMCDDA, ENISA, ERA, ESMA, ETF	BEREC Office, CPVO, EASA, EEA, EFSA, EMSA, eu-LISA, EUIPO, Eurofound, FRA, GSA	ACER, CEPOL, ECDC	CdT, Cedefop, EU-OSHA,
	2	7	14	1	4
other staff	ACER, EMA	EBA, EFCA, EIGE, EIOPA, EMCDDA, ENISA, ESMA	BEREC Office, CEPOL, CPVO, EASA, ECHA, EEA, EFSA, EMSA, ERA, eu-LISA, EUIPO, Eurofound, FRA, GSA	ECDC	CdT, Cedefop, ETF, EU-OSHA

Section 5: Cols in the past year

25. How many Cols have been identified in your Agency, in which mitigating measures have been taken, in the past year?

0	CdT, Cedefop, CEPOL, CPVO, EFCA, EMA, ENISA, ERA, eu-OSHA
1	EEA, EIGE, EIOPA, EMCDDA, EMSA, EUIPO, Eurofound,
2	ESMA, eu-LISA
3	ACER, BEREC Office, EASA, FRA,
12	GSA
20	EBA,
No response	ECHA, EFSA ²³⁶ , ETF,

NB: The extent to which this information was available in agencies differs significantly. Several agencies stated that they do not keep track of such cases.

If applicable, which mitigating measures have been taken in each of these cases or in certain categories of cases?

The following examples were given:

ACER	<p>In 3 cases members of the Board of Appeal were in a situation of conflict of interest or perceived conflict of interest in relation to specific cases upon which the Board of Appeal was called to decide.</p> <p>With regard to selection procedures, in two occasions a selection committee member was requested to abstain from the evaluation of candidates, where a <u>perceived</u> conflict of interest was identified</p> <p>The BoA members with a perceived or existing conflict of interest did not take part in the deliberations and the decision related to the specific cases in question</p>
BEREC Office	The persons concerned were removed from the decision-making process.
EASA	<p>For EASA staff: 32 cases of potential and 1 case of actual Col (2018) For EASA MB: 6 cases of potential Col (2018) For EASA BoA: 2 cases of potential Col (2018) In all cases, the risk of a potential or actual Col could be addressed through specific mitigating measures. Examples: exclusion from involvement in certain activities, no lobbying or advocacy towards EASA, no sharing of privileged information, etc.</p>
EBA	<p>In 2018, there were 20 conflicts of interests reported and identified for which mitigating measures were adopted</p> <p>Preventing the concerned staff member from dealing with legal proceedings from the Member State/competent authorities from where they are seconded</p>
ECDC	Two examples of mitigation measures: 1) Participants with declared Col did not take part in the voting concerning efficacy, safety and cost-effectiveness of HPV vaccines, but contributed to the discussion (2018); 2) Screening of the input of experts by ECDC independent staff member for potential bias and restricting participant from being chair or vice chair for the group. (2019)
EEA	Not to deal with a particular external service provider.
EIGE	<p>MB – none.</p> <p>EF – one. The person who was nominated as the EF member had also contractual relationship with EIGE. The EF member decided then to end contractual obligations with EIGE</p>

²³⁶ EFSA referred to its annual report on independence.

EIOPA EMA	<p>During Evaluation of the tenders, one conflict of interest was discovered. The member's rights to act as a full member of the evaluation committee were restricted.</p> <p>The staff member concerned was reassigned to another department.</p> <p>In 2018, 2 breach-of-trust procedures were initiated as a committee member provided training to a pharmaceutical company which is considered as a consultancy, and another committee member accepted a lecture fee from a pharmaceutical company for a presentation at a scientific conference, which is considered as a financial interest.</p>
	<p>For other interests declared by management board members, staff and experts, the outcome of the declaration of interests' evaluation was implemented in line with the relevant policy and the person was excluded from the activity or the required restrictions were applied to the activity. The number of such exclusions and restrictions is not monitored at the Agency.</p> <p>As a transparency measure, the minutes of the management board and scientific committees' meetings, including – where relevant – restricted involvement of the chairs, members and experts are published on the Agency's website.</p>
EMCDDA ERA ESMA	<p>After assessment of additional information provided by the committee members, they were invited to a hearing at the Agency in order to gather their views on the facts and to provide replies to remaining questions. The outcome of these breach-of-trust procedures was that the acceptance of the interest was negligence on the part of the member to comply with the EMA policy, but was not done intentionally and not through gross negligence. The procedure was closed with a request to the committee members to study the policy and to attend training on the policy.</p> <p>The selection board member for a recruitment panel was requested to step down.</p> <p>Removing the persons from the undertaken the specific activity.</p> <p>One declaration related to the question of whether bitcoins needed to be included in the annual declaration of interests. After further analysis the Ethics Team concluded that bitcoins are to be declared in the annual declarations as they constitute financial interests.</p>
ETF	<p>In another case the assessment of the declarations revealed that a Staff member dealt in financial instruments without prior authorisation. However, given the very limited number of shares bought (1) as well as the type of financial instrument acquired (non-listed share in a cooperation company providing micro finance for projects in developing countries), the Ethics Team, after having reminded the Staff member of the need to request for prior clearance before dealing in financial instruments, decided to close the file.</p> <p>Unable to quantify. Cols were for the most declared by relevant staff in the area of recruitments and procurement If applicable, which mitigating measures have been taken in each of these cases or in certain categories of cases? Considering the above mentioned areas were Cols verify, the mitigating measure was the replacement of the staff member in the relevant panel.</p>
EU-LISA	<ul style="list-style-type: none"> - Avoid involvement of respective staff member into decision making related to eu-LISA events, that involve specific company. - Abstention from taking part in open/restricted procurement procedures for the award of certain services
Eurofound	Exercise of Appointing authority powers by Deputy Director rather than Executive Director
EUIPO FRA	<p>Selling shares up to the allowed ceiling.</p> <p>Resignation from one of the parties.</p>

GSA In most cases, no Col was found. In specific case we requested clarifications, reinforced declarations DOI, additional managerial oversight, removing conflicting tasks from the scope of work, etc. We set those up on a case by case basis.

26. In how many cases was found that actors had failed to declare interests which they should have declared and thus no mitigating measures taken?

0	ACER, BEREC Office, CdT, Cedefop, CEPOL, CPVO, EASA, EBA, ECDC, ECHA, EEA, EFCA, EIGE, EMCDDA, EMSA, ERA, EFSA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, FRA
1	EIOPA
2	EMA
No response	EFSA, ENISA, GSA

NB: Agencies' data on this question again varied.

27. Have you received any complaints in the past year about conflicts of interest?

Yes	Cedefop, EBA, EFSA ²³⁷ , EMA, ERA, ESMA, FRA
No	ACER, BEREC Office, CdT, CEPOL, CPVO, EASA, ECDC, ECHA, EEA, EFCA, EIGE, EIOPA, EMCDDA, EMSA, ENISA, ETF, eu-LISA, EU-OSHA, EUIPO, Eurofound, GSA

EMA	There have been a few court cases where claims were made that experts with competing interests were involved in EMA activities. So far, there has been no ruling that the Agency did not apply its policies on competing interests incorrectly.
ERA	Regarding the proportionality of requesting a DoI vs the potential benefits; potential interference in the private life of the individual.
ESMA	One complaint made in relation to a recruitment (alleging a member of the recruitment panel would be conflicted)
FRA	The information is considered confidential as part of legal proceedings. ²³⁸

²³⁷ EFSA made reference to its annual report.

²³⁸ Agencies were explicitly requested not to provide confidential information in the questionnaire.

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This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the Committee on Petitions, takes stock and assesses the existing rules and policies on conflicts of interests in EU agencies and examines whether, and/or how, scrutiny can be improved and whether there is a need to streamline and enhance the coherence of the various rules in place.
