



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT**  
CITIZENS' RIGHTS AND CONSTITUTIONAL AFFAIRS



***PETITIONS***

# **Conflicts of interests and EU agencies**

# Overview

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- Introduction
- Concept of independence and EU agencies
- Definition of conflict of interest(s)
- Conflicts of Interests and EU agencies
- Col policies in EMA, EFSA, ECHA, EEA and EUIPO
- Questionnaire
- Preliminary findings

# Introduction

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- Aim of the study
- Methodology
  - Staff Regulations and Financial Regulation
  - Founding acts of all EU agencies
  - Internal rules of selected Agencies
  - Assessment of recommendations by EP, Ombudsman, CoA, OECD, NGOs, academics
  - Empirical material through cooperation with the EP PETI and CONT Committee and EU agencies network
- Roadmap
  - Questionnaire to EU agencies network
  - Final findings by 01.07.2019

# Concept of independence and EU agencies

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- **Art. 17 TEU on Commission's independence from**
  - Member States
  - Other institutions
  - Private interests
- **EU agencies**
  - **Executive agencies:** "Commission's long arm"
    - No independence from Com; equally independent as Com
  - **Decentralised agencies**
    - Common approach: 'independent legal entities'; 'autonomous'; impartiality
    - Founding regulations: specific provisions

# Concept of independence and EU agencies

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- **Art. 41 EU Charter** ‘impartiality’ as a facet of the right to good administration
- **Art. 298 TFEU** ‘open, efficient and independent EU administration’

**‘Independence’ as a relative concept**  
→ from whom?

## Relationship with EU institutions and Member States

- Involved in institutional design and operation of agencies → hybrid character
- Difficult and sensitive issue: Independence of national influence

## Relationship with stakeholders

- Requirement to establish contact with stakeholders
- Various forms of stakeholder involvement
- Difficult: Independence of commercially driven interests > conflicts of interests

# Definition of conflict of interest(s)

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- **OECD:** a conflict between the public duty and private interests of a public official
- **Staff Regulations:** any (direct or indirect) personal interest such as to impair his independence or any other conflict of interest
- **Financial Regulation:** any action which may bring their own interests into conflict with those of the Union (conflict of interests)

# Definition of conflict of interest(s)

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- **Commissioner's Code of conduct:** a personal interest influencing the independent performance of their duties
- **Ombudsman's Code of Good Administrative behaviour:** never be guided by personal or national interest or political pressure
- **EP proposal for a Regulation** for an open, efficient and independent EU administration: a personal interest, including, in particular, any family or financial interest, such as to impair his/her impartiality
- **Types of conflicts:** Actual - Potential – Perceived



## Current Practice

**COI POLICIES IN EMA,  
EFSA, ECHA, EEA AND  
EUIPO**

# Declarations of interest: What?

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- Declarations have different forms
- Scope of interests?
  - EMA: 'pharmaceutical industry' and 'non-pharmaceutical industry'
  - ECHA: 'regulatory field of activity of ECHA'
  - EFSA: all relevant interests falling in areas within remit EFSA
- Time frames for previous activities:
  - ECHA, EEA, EFSA: 5 years
  - EMA: 3 years
  - EUIPO: 2 years

# Declaration of interests: When?

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- Generally uniform approach
  - ADol - to be declared upon taking up activities
  - Updated annually and when situation changes
  - ODols at beginning of meetings
- Differences in dealing with external experts
  - ECHA: ODol in meetings, chair decides
  - EFSA: \* working groups/candidates Eol/participants in peer review meetings> ADol, normal screening
    - \* (hearing experts) submit Dol but no assessment
  - EMA: ADol, normal screening procedure

## Advisory bodies on Cols

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- Present e.g. in ECHA, EFSA, EUIPO
- Involvement of legal affairs unit and...
  - ECHA: outside expert and chair of MB
  - EUIPO: head of HR department and line manager/ chairperson
- Advisory function for Appointing Authority

# Screening of Dols

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## Centralised

- Secretariats monitor Dols (for boards and experts)
- Where necessary they inform chairs or responsible officers
- **EMA**

## Semi-centralised

- Local units check Dols
- Validation by:
  - Legal and Assurance group (EFSA)
  - Resources department (EUIPO)
- **EFSA, EUIPO**

## Decentralised

- Chairperson/line manager assesses declarations and decides on follow-up
- Partly assistance by secretariats
- **ECHA, EEA**

# What to do if a Col arises?

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- Broad range from discretionary approach to a detailed matrix of consequences
  - **EEA**: discretion for chairs/ line managers
  - **EFSA**: 'black list' of non-allowable interests for experts, discretion for chairs
  - **ECHA**: categorisation of (non-)allowable risks; chair decides on involvement
  - **EUIPO**: risk levels assigned to staff members; if real/perceived Col, no involvement in activity
  - **EMA**: detailed matrix by type of interest and consequences

# Consequences of non-declaration: Breach of Trust procedures

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- General approach:
  - Hearings
  - Inform Appointing Authority
  - If necessary: disciplinary measures
- Ultimate decision is mostly in hands of appointing authority
- No BoT procedure in EEA

	EEA	EFSA	ECHA	EUIPO	EMA
screening of Dols	decentralised	semi-centralised	decentralised (assistance secretariat)	semi-centralised	centralised (dec. f. staff)
interest levels	n/a	blacklist for experts only	(non-) allowable interests	risk levels	detailed system
consequences (general approach)	discretionary	chair decides for experts (options)	chair/line manager decides (options)	no involvement of concerned individual	automatic (matrices)
advisory bodies	No	Yes	Yes	Yes	No
Overall approach	decentralised ad hoc	systematic for boards	systematic for boards and staff	mostly automatic	automatic

### Procedures

decentralised & ad hoc  centralised & automatic

+ ODols are made at the beginning of meetings. Chairs decide on consequences



## Consequences

	EEA	EFSA	ECHA	EUIPO	EMA
MB	Person will be asked to give up interest, abstain from contribution, giving advice or participating in decision-making	MB can recommend follow-up and/ or ask for replacement	Chair brings potential Col to attention of MB	No involvement in that particular activity; Appointing Authority may decide on consequences	Set out in matrix
Scientific boards		Black list, otherwise discretion of chair	Chair determines appropriate level of involvement (at least withdrawal of voting rights)		Set out in matrix
Experts					Set out in matrix
Staff (staff regulation)			LA and local unit decide		Line manager decides
Board of Appeal	n/a	n/a	Chairman may replace person	President takes approp. measures	n/a

## Procedures

decentralised & ad hoc



centralised & automatic

# Questionnaire

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- CONT: questionnaire to agencies for discharge
  - Could each Agency confirm whether the declarations of conflicts of interest are in place (and public) for their:
    - management board members
    - senior management?  
(In-house experts)
- This study: send questionnaire via EUAN
  - More information about the interests; actors, esp. experts; procedure and consequences (what, who, when and how and what consequences)
    - Aim:     \* need for kind of harmonisation for (clusters of) agencies?  
              \* Improve scrutiny

## Preliminary findings

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- Varying level of relevance of Col policies
- Different forms of Dols: creates problems for transparency and comparability
- Screening procedures:  
decentralised analysis v centralisation  
→ towards externalisation?
- Mitigating measures:  
from discretionary approach to automatic decisions

# Preliminary findings

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- ‘Positive’ declarations instead of self-assessed negative declarations
- Advisory bodies: source of ‘independent’ recommendations?
- More advisory bodies?
- Different Col rules and guidelines> general provisions applying to clusters of agencies?
- More coherence of internal rules/guidelines ?

# Presentation by

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