

DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **D**  
BUDGETARY AFFAIRS

Budgets

Budgetary Control

## WORKSHOP

# Better avoidance of Conflict of Interest: EU Agencies and other bodies moving forward

BRIEFING PAPERS





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

## **WORKSHOP**

### **BETTER AVOIDANCE OF CONFLICT OF INTEREST EU AGENCIES AND OTHER BODIES MOVING FORWARD**

*Organised by Policy Department D*

**Thursday, 21 February 2013,  
09.00 - 12.00**

**European Parliament, Brussels  
Altiero Spinelli Building (ASP) 3G2**

This document was requested by the European Parliament's Committee on Budgetary Control for a Workshop on the "Better Avoidance of Conflict of Interest: EU Agencies and other Bodies Moving Forward".

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Mr Geert Dancet, Executive Director of the European Chemicals Agency (ECHA), European Commission

Prof. Christoph Demmke, European Institute of Public Administration (EIPA), Maastricht

Mr Ian Harden, Secretary General of the European Ombudsman

Ms Thinam Jakob, Acting Director, Career, HR Directorate General, European Commission

Dr Igors Ludboržs, Member of the European Court of Auditors, Luxembourg

Ms Jana Mittermaier, Director EU Office, Transparency International

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«**Fact Sheets**» - summarizing EU policies and legislation, regularly updated and published on the Europarl website (a book as well as a multilingual CD-ROM were published in spring 2009).

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- ensures technical support to all committees' secretariats and political groups in the framework of the annual budgetary procedure;
- participates, with other services of Parliament, in the management of the interinstitutional software for the budgetary amendments and is responsible for training and a help desk notably for committee secretariats and political groups;
- manages data on the implementation of the budget of the EU and its allocation to member states, on national budgets, and on the budgets and staffing of the agencies.

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Policy Department D delivers expertise to the committees on Budgets and Budgetary Control.  
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## WORKSHOP

POLICY DEPARTMENT **D**  
BUDGETARY AFFAIRS

# BETTER AVOIDANCE OF CONFLICT OF INTEREST EU Agencies and Other Bodies Moving Forward



**THURSDAY**

**21 FEBRUARY 2013**

**09.00 - 12.00**

**ALTIERO SPINELLI  
(ASP) 3G2**

**Committee on BUDGETARY CONTROL**

**Chair: MICHAEL THEURER**

**Rapporteur: INÉS AYALA SENDER**

# TABLE OF CONTENTS

<b>TABLE OF CONTENTS</b>	<b>5</b>
<b>WORKSHOP PROGRAMME</b>	<b>6</b>
<b>PANEL 1</b>	<b>8</b>
<b>BETTER AVOIDANCE OF CONFLICT OF INTEREST: DIVERSE OR SIMILAR VIEWS?</b>	
<b>BIOGRAPHIES</b>	
<i>Ms Ines Ayala Sender</i>	<b>9</b>
<i>Mr János Bertók</i>	<b>10</b>
<i>Mr Ian Harden</i>	<b>11</b>
<i>Ms Thinam Jakob</i>	<b>12</b>
<i>Ms Jana Mittermaier</i>	<b>13</b>
<i>Mr Wolfgang Rau</i>	<b>14</b>
<b>PANEL 2</b>	<b>15</b>
<b>CONFLICT OF INTEREST MANAGEMENT: EU AGENCIES AND PUBLIC BODIES MOVING FORWARD</b>	
<b>BIOGRAPHIES</b>	
<i>Mr Gerben-Jan Gerbrandy</i>	<b>16</b>
<i>Mr Paul de Clerck</i>	<b>17</b>
<i>Mr Geert Dancet</i>	<b>18</b>
<i>Prof. Christoph Demmke</i>	<b>19</b>
<i>Dr Igors Ludboržs</i>	<b>20</b>
<b>WRITTEN CONTRIBUTIONS</b>	
<i>Mr Paul de Clerck</i>	<b>22</b>
<i>Mr Geert Dancet</i>	<b>28</b>
<i>Prof. Christoph Demmke</i>	<b>38</b>



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Directorate-General for Internal Policies of the Union

Directorate for Budgetary Affairs

Policy Department for Budgetary Affairs

Committee on Budgetary Control

# **BETTER AVOIDANCE OF CONFLICT OF INTEREST EU AGENCIES AND OTHER BODIES MOVING FORWARD**

**Organised by Policy Department D**

**Thursday, 21 February 2013, 09.00 - 12.00**

**European Parliament, Brussels  
Altiero Spinelli Building ASP-3G2**

## **Workshop Programme**

### ***09:00 - 09:15 Welcome and Introduction***

09:00 - 09:05   **Welcome by MEP Bart Staes**  
*Vice-chair of Committee on Budgetary Control*

09:05 - 09:15   **Introduction by MEP Inés Ayala Sender**  
*Rapporteur*



## **09:15 - 10:35 Better Avoidance of Conflict of Interest: Diverse or similar views?**

Chair: MEP Inés Ayala-Sender

- Mr János Bertók, *Head of Division for Public Sector Integrity, Organisation for Economic Co-operation and Development (OECD), Paris*
- Mr Ian Harden, *Secretary General of the European Ombudsman*
- Ms Thinam Jakob, *Acting Director, Career, HR Directorate General, European Commission*
- Ms Jana Mittermaier, *Director EU Office, Transparency International*
- Mr Wolfgang Rau, *Executive Secretary to the Group of States against Corruption (GRECO), Council of Europe*

Open Discussion

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## **10:35 - 11:55 Conflict of interest management: EU Agencies and Public Bodies Moving Forward**

Chair: MEP Gerben-Jan Gerbrandy

- Mr Paul de Clerck, *Member of the Steering Committee of Alliance for Lobbying Transparency and Ethics Regulation (Alter EU)*
- Mr Geert Dancet, *Executive Director of the European Chemicals Agency (ECHA), European Commission*
- Prof. Christoph Demmke, *European Institute of Public Administration (EIPA), Maastricht*
- Dr Igors Ludboržs, *Member of the European Court of Auditors, Luxembourg*
- Mr Mario Tenreiro, *Head of Unit General Institutional Issues, Secretariat General, European Commission*

Open Discussion

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## **11:55 - 12:00 Closing remarks by Rapporteur**

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**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

## ***Panel 1***

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **BIOGRAPHIES**

**Chair: MEP Inés Ayala-Sender**

#### **Speakers:**

- Mr János Bertók, *Head of Division for Public Sector Integrity, Organisation for Economic Co-operation and Development (OECD), Paris*
- Mr Ian Harden, *Secretary General of the European Ombudsman*
- Ms Thinam Jakob, *Acting Director, Career, HR Directorate General, European Commission*
- Ms Jana Mittermaier, *Director EU Office, Transparency International*
- Mr Wolfgang Rau, *Executive Secretary to the Group of States against Corruption (GRECO), Council of Europe*

## **Panel 1**

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **Chair: MEP Inés Ayala-Sender**

***Group of the Progressive Alliance of Socialists and Democrats in the European Parliament.***

***Member of the Committee on Budgetary Control, Committee on Transport and Tourism,  
Delegation for relations with the countries of Central America and Delegation to the  
Parliamentary Assembly of the Union for the Mediterranean***



Graduate in Spanish and English (Saragossa, 1975-1982). She studied Law (Saragossa, 1994-1995); and postgraduate studies in sustainable development (ULB, 1995-1997). Spanish as a foreign language teacher training (University of Alcalá de Henares, 2002-2004). She was lecturer in the Department of Spanish Literature (University of Saragossa, 1980-1990).

Regional Secretary of the Women's Section of the PSOE in Aragon (1984-1985); Coordinator, Provincial Executive Committee of the UGT in Saragossa (1989-1990). Social Action Officer, UGT Confederal Executive Committee (1990-1994).

Member of consultative committees on equality, migration, the environment within the ETUC, ICFTU and TUAC.

Expert before the European Economic and Social Committee on combating exclusion (1990-1994).

National expert in the Directorate-General for the Environment, European Commission (1995-1997). PES Policy Adviser on various EP committees and delegations (1997-2004).

Deputy Director-General responsible for European programmes, Fundescoop (Foundation for the Development of Cooperativism and Social Economy, 1994-1995). Adviser to the INSS (National Institute of Social Security) IMSERSO (Institute for Older Persons and Social Services) (1990-1994); Chairwoman of the Spanish Economic and Social Committee Working Party on the White Paper on Industry (1990-1995).

## ***Panel 1***

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **Speaker: Mr János Bertók**

***Head of Division for Public Sector Integrity, Organisation for Economic Co-operation and Development (OECD), Paris***

**János Bertók** is Head of the Public Sector Integrity Division in the OECD Public Governance and Territorial Development Directorate. He has over 25 years of governance experience in central government, international organization and academia. He has been leading OECD activities for promoting integrity and preventing corruption in the public sector for over 15 years. He led the development of four OECD instruments, namely the 2003 Recommendation on Guidelines for Managing Conflict of Interest in the Public Service; the 2010 Recommendation on Principles for Transparency and Integrity in Lobbying; the 2008 Recommendation on Enhancing Integrity in Public Procurement; and the 1998 Recommendation on Improving Ethical Conduct in the Public Service.

The OECD helps policy makers and practitioners review and reform governance measures in particular in areas vulnerable to corruption, such as conflict of interest, lobbying and revolving doors, public procurement. The OECD is in the forefront of providing comparative data, mapping out good practices and developing policy guidelines, principles, as well as practical tools to support policy makers and managers build effective integrity framework in the public sector organizations.

Before joining the OECD in 1997, Mr. Bertók was Director in the Prime Minister's Office in Hungary in charge of the modernization of public administration. His previous career focused on developing new legal and institutional frameworks for the civil service and public administration in the transition period.

## ***Panel 1***

# **Better Avoidance of Conflict of Interest: Diverse or similar views?**

## **Speaker: Mr Ian Harden**

***Secretary General of the European Ombudsman***



**Ian Harden** was born in Norwich, England, on 22 March 1954. After graduating in law at Churchill College, Cambridge, he joined the Law Faculty at the University of Sheffield, where he was a lecturer from 1976 to 1990, a senior lecturer from 1990 to 1993, a reader from 1993 to 1995, and became professor of public law in 1995.

He joined the European Ombudsman's Office as a Principal Legal Adviser in 1996, becoming Head of Secretariat from 1997 to 1999, then Head of the Legal Department from 2000.

He was appointed Secretary-General of the Ombudsman's Office on 1 August 2006. He is the author or co-author of numerous publications, including *The Contracting State* (Buckingham: Open University Press, 1992); *Flexible Integration: Towards a more effective and democratic Europe* (London CEPR, 1995), and *European Economic and Monetary Union: The Institutional Framework* (Kluwer Law International, 1997).

He is a member of the *Association française de droit constitutionnel* and of the Study of Parliament Group in the United Kingdom and honorary professor at the University of Sheffield.

## ***Panel 1***

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **Speaker: Ms Thinam Jakob**

***Acting Director, Career, HR Directorate General, European Commission***

**Thinam Jakob** is Head of Unit in the Directorate General for Human Resources and Security of the Commission, responsible for professional ethics, rights and obligations. She is currently Acting Director for the Directorate B –HR Core Processes 1: Career.

She joined the Commission in 1989. Before moving to her current post in 2010, she worked in the Directorates General for competition, and for external trade.

She has qualified as a lawyer in Germany (Munich and Cologne), obtained the Diploma for advanced European studies in the College of Europe in Bruges/Belgium and was awarded her Dr. iur. by the University of Bonn, with a thesis on public international and European law.

## ***Panel 1***

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **Speaker: Ms Jana Mittermaier**

***Director EU Office, Transparency International***



**Jana Mittermaier** is representing Transparency International, a global anti-corruption civil society organization, at the EU level.

Before that Jana was in charge of coordinating Transparency International's anti-corruption programme in South Eastern Europe and Turkey as Transparency International Senior Programme Coordinator.

Prior to joining Transparency International, Jana worked in the European Correspondent Office of the German Foreign Office on EU's Foreign and Security Policy issues.

Before that, she worked as Senior Public Administration Reform Advisor with the Organization for Security and Cooperation in Europe (OSCE) in Bosnia and Herzegovina where she designed and managed a country-wide public administration reform project at municipal and regional level of government.

Jana started her professional career as Democratization Officer heading an OSCE field office in Zenica in Bosnia and Herzegovina.

## ***Panel 1***

### **Better Avoidance of Conflict of Interest: Diverse or similar views?**

#### **Speaker: Mr Wolfgang Rau**

***Executive Secretary to the Group of States against Corruption (GRECO), Council of Europe***



**Wolfgang Rau** earned his Ph.D from Saarland University (Germany), where he was involved in teaching and research for 9 years.

In 1989 he joined the Directorate of Legal Affairs of the Council of Europe (Strasbourg, France) and participated in the criminological and penological work programme of the European Committee on Crime Problems (CDPC).

From 1996 to 2000 he was Head of the Criminology and Penology Section.

In January 2000 he moved to the Directorate General of Human Rights of the Council of Europe as a Head of Unit in the Secretariat of the Anti-Torture Committee (CPT). In 1999 he was awarded the German Criminological Society's Beccaria Medal. In March 2004 he was appointed Executive Secretary of GRECO (Group of States against Corruption).





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**

**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

## ***Panel 2***

### **Conflict of Interest management: EU Agencies and public bodies moving forward**

#### **BIOGRAPHIES**

**Chair: MEP Gerben-Jan Gerbrandy**

#### **Speakers:**

- Mr Paul de Clerck, *Member of the Steering Committee of Alliance for Lobbying Transparency and Ethics Regulation (Alter EU)*
- Mr Geert Dancet, *Executive Director of the European Chemicals Agency (ECHA), European Commission*
- Prof. Christoph Demmke, *European Institute of Public Administration (EIPA), Maastricht*
- Dr Igors Ludboržs, *Member of the European Court of Auditors, Luxembourg*
- Mr Mario Tenreiro, *Head of Unit General Institutional Issues, Secretariat General, European Commission (biography not available)*

## ***Panel 2***

### **Conflict of Interest management: EU Agencies and public bodies moving forward**

#### **Chair: MEP Gerben-Jan Gerbrandy**

***MEP for Democraten 66***

***Vice-chair of the Parliamentary Committee on Environment, Health and Food Safety, member of the Budgetary Control Committee and substitute member of the Budget Committee***



**Gerben-Jan Gerbrandy** was elected in 2009 as MEP for Democraten 66.

He is vice-chair of the Parliamentary Committee on Environment, Health and Food Safety, a member of the Budgetary Control Committee and substitute member of the Budget Committee.

In addition, Gerben-Jan Gerbrandy is vice chairman of Euronest, in which the European Parliament meets the EU neighbours on the eastern border, such as Ukraine and Azerbaijan.

Gerbrandy is also contact person for the European Environment Agency in the European Parliament and he is Rapporteur, or first spokesperson, on Sustainability (Resource Efficiency) and Biodiversity.

Gerbrandy studied public administration at Leiden University, and at the University of Scranton in Pennsylvania.

He began his career as a political assistant to Joris Voorhoeve, former director of the Clingendael Institute. From 1994 to 1998 he was the personal assistant of Doeke Eisma, MEP for D66. After his work as secretary of the Dutch parliamentary group of D66 he was senior political adviser at the Dutch Ministry of Agriculture, Nature and Food Quality.

## ***Panel 2***

### **Conflict of Interest management: EU Agencies and public bodies moving forward**

#### **Speaker: Mr Paul de Clerck**

***Member of the Steering Committee of Alliance for Lobbying Transparency and Ethics  
Regulation (Alter EU)***



**Paul de Clerck** is Head of the Economic Justice team at Friends of the Earth Europe, the largest grassroots environmental organisation in Europe.

He has been campaigning on the accountability of the corporate sector and lobby transparency for the last 10 years, and is board member of ALTER-EU, Finance Watch and the European Coalition for Corporate Justice.

## ***Panel 2***

# **Conflict of Interest management: EU Agencies and public bodies moving forward**

## **Speaker: Mr Geert Dancet**

***Executive Director of the European Chemicals Agency (ECHA), European Commission***



**Geert Dancet** became the first elected Executive Director of the European Chemicals Agency (ECHA) in January 2008.

Under his leadership, the Agency successfully managed all regulatory processes of the REACH and CLP regulations. ECHA has become one of the large size regulatory agencies of the EU with over 500 staff members in charge of the EU chemicals legislations, including the new Biocidal Products and PIC regulations. His mandate was renewed in 2012 and will end on 31 December 2017.

The Commission nominated him as interim Executive Director in January 2007 in order to set up the Agency in Helsinki as from 1 June 2007.

From 2004 to 2007 he was the Head of the REACH Unit in the European Commission's Directorate General for Enterprise and Industry. The unit was co-responsible for taking the REACH proposal through the regulatory process in the Council and the European Parliament as well as for developing and coordinating the REACH implementation strategy, which included the preparations for the new Chemicals Agency.

He first joined the European Commission in 1986 and worked for most of his Commission career in the competition policy field. Prior to working for the European Commission, Mr Dancet enjoyed a brief academic career in the University of Leuven (Belgium) and was a programme coordinator for the United Nations Industrial Development Organisation (UNIDO) in Colombia.

He studied economics, econometrics and philosophy at the University of Leuven, Belgium.

Mr Dancet is married with four children.

## ***Panel 2***

### **Conflict of Interest management: EU Agencies and public bodies moving forward**

#### **Speaker: Prof. Christoph Demmke**

***European Institute of Public Administration (EIPA), Maastricht***



**Christoph Demmke** is Professor of Comparative Public Administration at the European Institute of Public Administration in Maastricht and Visiting Professor at the College of Europe.

He holds a PhD in Administrative Sciences and has taught Comparative Public Administration at several European Universities, national civil service academies and European institutions. The author was an Emile Noel Fellow at Harvard Law School and Visiting Fellow at American University and the University of Georgia.

He also lectured at the University of Maastricht, University of Potsdam, Verwaltungsakademie in Vienna and Zeppelin University in Friedrichshafen.

The author has regularly advised the EU-Presidency and national Governments in the field of Ethics, public management and human resource management reforms. He is also member of the European Public Administration Network (EUPAN) and advises the Directors-General with responsibilities for the national public services.

His fields of specialisation are ethics and comparative studies of public service reform including human resource management reforms.

Mr Demmke published many books ("Civil Services in the EU of 27", "Effectiveness of Ethics and Good Governance", "Governmental transformation and the Future of Public Employment").

## ***Panel 2***

### **Conflict of Interest management: EU Agencies and public bodies moving forward**

#### **Speaker: Dr Igors Ludboržs**

***Member of the European Court of Auditors, Luxembourg***



**Igors LUDBORŽS**

Born in Jūrmala (Latvia) in 1964.

#### Academic background

PhD in accounting from the University of Vilnius. Postgraduate diploma in international tax law from Robert Kennedy University. Graduation diploma in accounting and operational analysis from the University of Latvia.

#### Professional qualifications

He is a member of the Association of Chartered Certified Accountants, the Latvian Association of Certified Auditors and the European Accounting Association.

#### Professional experience

From 1985 to 2004 Dr Ludboržs has variously worked in the University of Latvia's Institute of Accountancy, first as a lecturer and later as professor.

From 1990 to 1993 he was financial director of IP Riga, a Latvian-German joint venture.

From 1993 to 1997 Dr Ludboržs worked as an auditor and later as audit manager at Coopers & Lybrand Latvia.

From 1997 to 2001 he was deputy head, then head, of the internal audit department of Parex Bank.

From 2003 to 2004 he was managing director of his own certified audit practice.

#### European Court of Auditors

Dr Ludboržs became a Member of the European Court of Auditors on 7 May 2004 and has been entrusted with a number of positions. Since April 2012, he is Dean of the CEAD Chamber "Coordination, evaluation, assurance and development", primarily responsible for Audit Quality and Support as well as a Member of the Administrative Committee.



**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

***Panel 2***

**Conflict of Interest management:  
EU Agencies and public bodies moving forward**

**WRITTEN CONTRIBUTIONS**

**Chair: MEP Gerben-Jan Gerbrandy**

**Contributions by:**

- Mr Paul de Clerck, *Member of the Steering Committee of Alliance for Lobbying Transparency and Ethics Regulation (Alter EU)*
- Mr Geert Dancet, *Executive Director of the European Chemicals Agency (ECHA), European Commission*
- Prof. Christoph Demmke, *European Institute of Public Administration (EIPA), Maastricht*

## **Conflict of Interest management: EU Agencies and public bodies moving forward**

### **Mr Paul de Clerck written contribution**

***Member of the Steering Committee of Alliance for Lobbying Transparency and Ethics  
Regulation (Alter EU)***

ALTER-EU challenges the Commission's general approach when it comes to managing conflicts of interest: the soft approach of ethics trainings and a system of contact points that staff can consult with; we make the case for clear rules and strong enforcement, including an independent ethics committee.

ALTER-EU has argued consistently for independent monitoring and for cooling-off periods to avoid post-employment conflicts of interest. The Commission's self-regulatory approach is inadequate and credible monitoring and control mechanisms are needed (e.g. independent monitoring officers), and there is an urgent need to better regulate the risk of post-employment conflicts of interest. The Commission seems to exclusively choose the 'integrity approach' (of encouraging and assisting staff to avoid conflicts of interest), whereas ALTER-EU believes the 'compliance approach' cannot be disregarded. The advantage of clear rules combined with independent monitoring is that it brings visibility and it is verifiable, thereby enabling greater trust in the Commission and its decision-making processes.

Furthermore, in light of recent scandals – notably Dalligate and the poor handling of the case by the Commission - comprehensive pro-active transparency from the side of the Commission, combined with a mandatory high-quality lobby register, will help detect and prevent possible conflicts of interest problems and lobby scandals in future.

### **EU Agencies**

EFSA

Regarding the question where the European Commission Roadmap on Agencies is taking us on conflicts of interest issues, we would like to make the following observations.

The roadmap seems to comprise the following phases:

- From now to the 1st quarter 2013: mapping of existing rules and identification of best practices in cooperation with agencies and partner DGs
- 2nd quarter 2013: draft guidelines issued by EC's Secretary General
- 3rd quarter 2013: discussion with Heads of agencies
- end 2013: adoption.



The European Food Safety Authority (EFSA) has been much criticised for its failure to deal with, and continuing to allow, an unacceptable level of conflicts of interest with industry on its management board and within its scientific panels. This has led to flawed scientific opinions and, even worse, scientific guidances for testing. EFSA's role however is to assess industry products' toxicity in order to protect public health and the environment. The EU institutions are EFSA's main clients, and (by EFSA's founding regulation) are responsible that EFSA fulfills that role effectively.

In December 2012, the European Commission adopted a Roadmap to increase accountability and efficiency for the EU's decentralised agencies. It was announced that preventing and managing conflicts of interest in the management boards and expert panels of those agencies would be a priority dealt with in 2013. Finally, it was added that for some issues, changes in the agencies' basic acts (the 'founding regulation') would be necessary.

EFSA's founding regulation states that transparency, scientific excellence and independence are key values. So far, however, EFSA has been left to develop its own conflict of interest policy, and according to its many critics, has failed to do so effectively. The COI policy up to 2011 was largely dependent on experts filling in declarations of interest, but many interests were not qualified as constituting a 'conflict of interest'. Experts were tolerated to have many different types of links with industry, including companies that would have an interest in the approval of a given substance.

Under pressure from MEPs, NGOs and media, EFSA was forced to revise its 'independence policy' which brought some improvement and at least more clarity. However, the new rules do not effectively ban conflicts of interest.

In order to ban conflicts of interest from the management board, a different interpretation of EFSA's founding regulation would be needed. That is to say, the current founding regulation says that at least four members of the MB should have a 'background in the food chain' including one consumer organisation. This is currently interpreted in a way that has brought up to 4 industry-linked people on the management board including prominent food industry lobbyists. Critics have always maintained that it's not credible to expect these people to just be there on personal capacity and working for the public interest, as they are supposed to.

It is not clear what the process to revise the EFSA founding regulation will look like, nor what role the EP will get to play in it. However the EP committed itself in 2011 to see upon a list of conditions to be met by EFSA, before it would approve the next budget. These discussions have now started.

Further action against conflicts of interest in EFSA is needed, in particular:

- EFSA's independence policy should effectively exclude people with conflicts of interest with industry from its scientific panels, working groups, scientific committee and staff;
- EFSA should pro-actively seek out independent experts and push the EU institutions to grant the agency the means to pay them for their work. Any collaboration with industry and industry-affiliated bodies such as the International Life Sciences Institute (ILSI) should be ended;
- Declarations of interest should be better scrutinised and those of senior staff members should be available online. The EFSA founding regulation should be revised so as to exclude industry-affiliated people from the Management Board;
- Independent scientists should be invited to peer review EFSA's guidance documents and opinions and their comments should be made public. This is especially important in cases where conflicts of interest have been exposed about EFSA panel members who have

generated guidance documents and opinions in the past. In these cases, even when the conflicted individual has gone, their work remains behind them, and may put public and environmental health at risk;

- The 'revolving door' should be effectively closed. EFSA staff moving from their position in EFSA to a position in industry or an industry lobby group, or vice versa, should have a minimum cooling off period of 2 years. Even if formally ended, affiliations with industry related bodies have to be taken into account by assessing conflicts of interest. EFSA has promised to inform us about a 'register of activities by former EFSA staff' by the beginning of September 2012, however we still have no easy way to find out whether more cases of revolving doors are happening, and how EFSA is dealing with them. Only management team has DOI online.

As a general principle: It is often said that many other types of conflicts of interest can occur besides that commercial/financial one, such as scientific or cultural conflicts of interest. While this is true, conflicts of interests with industry should be treated much more critically than other ones, given EFSA's remit to assess the safety of industry products: ties between EFSA and industry must be strictly limited to the applications' administrative process, any direct or indirect industry interference in the risk assessment process must be prohibited.

#### ECHA

A recent report by the European Court of Auditors has highlighted serious malfunctioning in the European Chemicals Agency. In particular, problems have been identified with the management of the 'revolving door' (when staff move directly from the private sector to the agency and vice-versa), which remains unaddressed despite the introduction of a new ethics policy in the agency.

Recognising the risks related to the revolving door phenomena and strictly implementing criteria to assess and manage potential conflicts of interest is absolutely needed to make the new policy useful.

#### Expert groups

The Commission relies on hundreds of 'expert groups' to provide advice on specific issues. As well as experts from member states, the Commission also calls on civil society expertise. However, ALTER-EU has shown that groups containing non-member state experts have traditionally been dominated by big business interests, rather than a balance of all stakeholders. This is particularly problematic as the advice of these expert groups is often used to shape new policies or even form the backbone of new legislation.

Over the past few years, ALTER-EU has worked closely with supportive MEPs to ensure this issue is taken seriously by the Commission, which resulted in a 15% budget reserve in November 2011. The Parliament set four clear conditions to lift the reserve, namely around stakeholder balance, stopping lobbyists sitting on groups as independent experts, obligatory public calls for group membership and complete transparency. A lack of progress by the Commission saw the Parliament reiterate its stance in both October 2011 and May 2012, with the reserve finally lifted in September 2012 after an agreement from the Commission to rebalance problematic expert groups across all DGs, as well as enter into an informal dialogue to draw up guidelines for all new groups.

MEPs acted in good faith by lifting the reserve, but if we want to see strong and cross-cutting rules around expert groups that can prevent industry capture, MEPs need to demand concrete progress

and a plausible timetable from the Commission. ALTER-EU will continue to provide MEPs and the public with the information they need to make these demands, as well as track progress.

### **Staff Regulations**

The Staff Regulations contain some limited provisions governing conflicts of interest, including from post-employment activities of EU institution staff (Articles 11, 12 and 16). These do not however go far enough in preventing the risk of actual or apparent conflicts of interest that arise through the revolving door – when public officials leave office and go to work in private sector lobby jobs, often in the same areas they were responsible for when in office, or vice-versa. There have been many high-profile revolving door cases, where these rules, or their implementation, have proved to be too weak<sup>1</sup>. Several ALTER-EU groups have taken the Commission to the European Ombudsman over its failure to properly implement its own revolving door rules<sup>2</sup>.

The Staff Regulations are currently under review, with the Parliament's JURI Committee agreeing last year on some compromise amendments which go some way to strengthening the revolving door rules<sup>3</sup>. It is vital that when the Staff Regulations are picked again (expected after the Council has agreed on the next 7 year budget (MFF)), that MEPs fight to keep these provisions in the text, and vote for them in plenary.

ALTER-EU further believes that blocking the revolving door, and preventing the detrimental impacts it has on public-interest decision making through the blurring of the interests of the regulated with the regulator, requires:

- A mandatory cooling-off period (or ban) of at least two years for all EU institution staff members entering new posts which involve lobbying or advising on lobbying, or any other role which provoke a conflict of interest with their work as an EU official;
- Tackling the loopholes in the current rules including the exclusion of staff on (temporary) contracts;
- Proper scrutiny of all staff joining EU institutions for potential conflicts of interest. Where there is a potential conflict of interest between their old job and their new EU role, those persons must recuse themselves from such matters;
- Ensure sufficient resourcing to be able to investigate and monitor revolving door cases  
Publish a full and updated list of all revolving door cases on EU institutions' websites
- Ethics committees and monitoring bodies.

The Commission's approach to conflicts of interest management is far too reactive and there appears to be no ambition in streamlining improvements, that have made in specific areas, across the Commission. One example is the Commission's Special Advisers.

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<sup>1</sup> [www.alter-eu.org/sites/default/files/altereu\\_revolving\\_doors\\_report.pdf](http://www.alter-eu.org/sites/default/files/altereu_revolving_doors_report.pdf) and <http://corporateeurope.org/projects/revolvingdoorwatch>

<sup>2</sup> <http://www.alter-eu.org/documents/2012/10/16/commissions-refusal-to-address-revolving-door-problem-triggersombudsman>

<sup>3</sup> Amendment 24 - introducing a specific duty on EU institutions to scrutinise all incoming officials and returning sabbaticals for conflicts of interest - and Amendment 25, introducing a 12-month cooling-off period on officials leaving the EU institutions and wishing to take up lobby jobs in areas where they previously had responsibility. It would ban officials on sabbatical from engaging in any lobbying activity, and would demand the institutions are more transparent about revolving door cases and how they handle them. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bREPORT%2ba7-2012-0156%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

In July 2011 European Ombudsman, P. Nikiforos Diamandouros, criticised the European Commission's rules for the handling of possible conflicts of interest involving the tasks of Special Advisers and their outside activities<sup>4</sup>.

The Ombudsman also advised the Commission on how to improve the rules. The Commission has not gone very far in implementing these suggestions, but it is now at least publishing the names and tasks of its Special Advisers online, together with CVs and Declarations on the Honour (absence of conflicts of interest)<sup>5</sup>

It would seem logical to then also introduce this approach to the Commission's ad hoc ethical committee and other bodies with a similar role, but this has not happened. CVs and Declarations of Interest of the members of the ad hoc ethical committee are not published online. There is a serious lack of transparency around the work of the ad hoc ethical committee, its members and its decisions.

The Commission is also out of touch with the need for ethical bodies to both be, and appear to be, independent and credible, as illustrated in a recent controversial decision to reappoint Michel Petite to the Commission's ad hoc ethical committee<sup>6</sup>. The ad hoc ethical committee is tasked primarily with advising on the revolving door for Commissioners, and not only was Mr. Petite was a high profile revolving door case from 2008, but in it was revealed in the wake of the Dalli scandal that Mr Petite has met former colleagues in the Commission's Legal Service to present views on the Tobacco Products Directive, as a lawyer for a firm who's clients include tobacco giant Philip Morris International.

### **Other institutions: European Parliament**

At the level of the European Parliament, a major step has been taken in terms of ethics policy with the introduction of the code of conduct for MEPs in January 2012. However, implementation and monitoring remain of serious concern. ALTER-EU has already highlighted the need to clarify the implementing rules in order to close the loopholes and avoid new ethics scandals. Declarations of interest remain unchecked and sometimes incomplete. MEPs employment in the private sector while being elected representatives still is common practice, which is likely to give rise to conflicts of interest.

ALTER-EU recommends that clarifications are introduced about what constitutes a conflict of interest by establishing a list of clear criteria for which activities would constitute a conflict of interest. Activities that constitute a conflict of interest should include the following:

- Any paid or unpaid activity of interest representation, as defined in the joint Transparency Register, for lobby consultancies or industry groups or any other lobby actor;
- Any paid or unpaid position in the advisory or supervisory board of companies operating in fields that MEPs are likely to regulate or with an interest in influencing the European Parliament;
- Any type of holding (including shares and stock options) or other financial interest in companies operating in fields that MEPs are likely to regulate or with an interest in influencing the European Parliament.

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<sup>4</sup> [http://europa.eu/rapid/press-release\\_EO-11-15\\_en.htm](http://europa.eu/rapid/press-release_EO-11-15_en.htm)

<sup>5</sup> [http://ec.europa.eu/civil\\_service/about/who/sa\\_en.htm](http://ec.europa.eu/civil_service/about/who/sa_en.htm)

<sup>6</sup> <http://corporateeurope.org/ceo-complains-about-eu-ethics-adviser-tobacco-industry-links>

The mandate of the advisory committee on the code of conduct should be extended to a proactive monitoring and investigative role, so that it can undertake random checks of the declarations and investigate any potential conflict of interest.

Improvements to the system for the submission of declarations are needed: the introduction of a central searchable online database for all declarations and a fixed deadline for updates, and the translation of declarations into at least one 'procedural language' of the European Commission, (English, French or German) for better access and scrutiny by citizens, journalists and other stakeholders. The European Parliament President Schulz should initiate a review to assess potential conflicts of interest for MEPs that have outside financial interests.

## **Conflict of Interest management: EU Agencies and public bodies moving forward**

### **Mr Geert Dancet written contribution**

*Executive Director of the European Chemicals Agency (ECHA), European Commission*

#### **Background**

EU Agencies have been set up in nearly all Member States to carry out specific legal, technical or scientific tasks within the European Union which would otherwise have to be done by the Member States or the Commission. Regulatory Agencies work independently; they collect and share information and add value by regulating specific markets and/or providing advice to support policy makers in their decision making.

The Directors of EU agencies have established a network ("the EU Agencies Network") to provide a forum for exchanging views and experiences on issues of common interest and new developments.

Also in the field of prevention of conflicts of interest, the EU Agencies Network has proved to be an excellent forum for exchanging best practices. This was of particular importance, as also the European Court of Auditors (ECA) found in its special report 15/2012 that there is no comprehensive EU legal framework for the prevention of conflicts of interest. In the absence of specific rules, each Agency has thus developed over the years the rules and procedures it found necessary to guarantee its independence. This has led to a situation, where different Agencies have set up different implementing provisions and procedures with regard to their independence. In order to come to a more consistent approach and to better share best practices in this field, the EU Agencies Network has recently dedicated a lot of its effort and time on this subject, which already resulted in some concrete proposals.

In this respect the Agencies also welcomed the recommendation of ECA to the EU legislator, possibly in consultation with other EU Institutions, to further develop the EU regulatory framework in this regard. The EU Agencies are thus looking forward to the actions planned by the Commission under the Roadmap on the follow-up to the Common Approach on Agencies and are willing to share the extensive experience built up over the years. However, at the same time the Agencies feel it is important in this respect not to focus on the Agencies only, but to place them into a common EU framework with a goal of coming to a common approach shared between all the EU institutions.

#### **Activities of the EU Agencies Network in the field of Conflicts of Interest**

During 2011-2012 the Network discussed at many occasions the ways to share best practices in the field of prevention and management of conflicts of interest. It also closely followed the developments linked to the audit of the European Court of Auditors of four selected agencies. Also several sub-networks, such as the Heads of Administration, the sub-network of Legal Advisors (IALN) and the sub-network of Heads of Communication and Information (HCIN), dedicated

specific attention to the topic in recent meetings.

More in particular the IALN discussed the topic of conflicts of interest during its 2012 annual meeting (presentations made by those agencies that have already developed robust policies on prevention of conflicts of interest). Also the 2012 annual training was dedicated to this topic. Moreover, both meetings of the IALN Civil Service Tribunal Working Group (CST WG) in 2012 reserved time for discussions and exchange of best practices in this field. In particular, most discussions focused on the obligations under Article 16 of the Staff Regulations (post-employment) and their difficult applicability and enforceability in the Agency context, where temporary agents are the norm.

Following the publication of the special report of ECA in October 2012, ECHA developed as mandated by the EU Agencies Network a paper on the management of conflicts of interest, including a checklist of the basic elements needed for the prevention of conflicts of interest (see annex I) and describing how best practices can be shared. Additionally, the Heads of Agencies agreed to mandate the sub-network of Legal Advisors (IALN) to develop recommendations for common standards in the area of (post)employment, considering in particular the nature of contracts normally offered by agencies. Heads of Agencies also considered the possibility of the sub-network of Heads of Communication and Information (HCIN) to develop a toolbox with elements of best practice for the websites of agencies, or other communication tools in the area of independence / conflict of interest management.

### **Checklist for the prevention of conflicts of interest**

#### **A. Risk assessment**

The EU Agencies Network proposed that all Agencies perform a risk assessment before developing their procedures with regard to conflict of interest prevention. A basic framework (i.e. compliance with the duties stemming from the Agency's founding regulation, the EU Financial Regulation and the Staff Regulations) may be sufficient for Agencies which have only low risk levels to possible conflicts of interest, whereas Agencies with a higher risk level will probably need to develop additional implementing procedures to complement that basic set of rules. Hereby, it is important also to take into account the resource implications that may be linked to implementing the conflict of interest procedures developed, as well as the capacity to attract the required high level experts and staff members to work with the Agency.

#### **B. Governance**

It is important also to embed the procedures for preventing conflicts of interest in the broader context of policies and mechanisms deployed in EU Agencies to deliver a reasonable guarantee of the independence of regulatory decisions and scientific/technical opinions. To this end, Agencies should also incorporate in their governance other important mitigation actions which could include, but not to be limited to: implementing the general transparency rules (e.g. rules on access to documents); a collegial decision-making process; reaching scientific/technical opinions through majority adoption; systematic acknowledgement of minority opinions; publication of meeting minutes and outcomes for public scrutiny; and allowing regular observers from accredited stakeholder organisations to attend committee or panel meetings.



### C. Checklist

The requirements foreseen in each Agency's founding regulation, combined with the requirements stemming from the EU Financial Regulation and the Staff Regulations can be seen as the minimum requirements that need to be implemented by all Agencies. Based on the risk assessment mentioned above, each Agency should subsequently decide whether it needs to develop more scaled-up policies and procedures or not.

The checklist in Annex I, adopted by the EU Agencies Network in October 2012, contains possible elements that an Agency might have to develop for the various populations working for it or with it. Based on an Agency's risk profile, its structure and its statutory requirements, each Agency can select from the list the relevant procedures and develop a "conflicts of interest prevention package", customised to its specific needs.

#### **Cooperation with other EU institutions and bodies**

The special report of ECA recommends:

- *"to the EU legislator, possibly in consultation with other EU Institutions, giving consideration to further development of the EU regulatory framework dedicated to management of conflict of interest situations, using the OECD Guidelines and existing best practice as references."*
- *"to all EU Institutions and decentralised bodies, examination of whether the recommendations of the Court's report are relevant and applicable to them."*

In this context, the Commission has included a number of element on conflicts of interest management into its Roadmap on the follow-up to the Common Approach on Agencies, of which the most important will be the development of "Guidelines for Agencies for a coherent policy on the prevention and management of conflicts of interest for members of the Management Board and Directors, experts in scientific committees, and members of Boards of Appeal." While the Agencies regret the unilateral focus on the Agencies, without embedding them into a common EU regulatory framework shared by all EU institutions, they are willing to share their best practices with the other EU institutions and to provide their full support in the development and implementation of such guidelines.

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### **Case study – the ECHA approach to prevention and management of conflicts of interest**

The independence and transparency of decision making is extremely important for the European Chemicals Agency (ECHA) and is therefore reflected in the Agency's values. ECHA's work and decisions are crucial for the protection of human health and the environment and they can also have a significant impact on individual companies. It is essential that, in taking those decisions, ECHA acts transparently, independently and takes impartial and science-based decisions.



## Cornerstones of the ECHA approach

- Transparency

ECHA fosters a culture of transparent decision-making. Besides its initiatives in actively disseminating information on registered chemical substances and the publication of scientific decisions, ECHA conducts a public consultation in many regulatory processes before adopting final decisions or opinions, while it allows its stakeholders to take part in the regular meetings of its scientific committees. All minutes of its decision-making bodies are publicly available via the website. Such minutes also contain the interests declared by any of the members, as well as the nature of the interests, the agenda point concerned and the mitigating actions taken. Importantly, ECHA also publishes the annual declarations of interest of all the members of its Management Board, scientific committees, Board of Appeal and the management of the Agency (Executive Director, Directors and Heads of Unit) on its website (overall more than 200 declarations), where a dedicated section also gives a full picture of the policies and procedures in place to guarantee independent decision-making.

- Awareness

Continuous awareness raising on the importance of the independent functioning of the Agency is a crucial element in any conflict of interest prevention policy. A deeply embedded culture of independent, science-based decision-making is often more effective than complex procedural safeguards.

Therefore, ECHA pays specific attention to awareness and training of its staff. All newcomers are introduced to the subject already at their first day at the Agency as they receive guidance to fill in their first annual declaration of interest. Subsequently training on prevention of conflicts of interest is provided at regular intervals and attendance is even made compulsory for all staff and the management. Also the ECHA bodies are not forgotten and conflict of interest has recently been high on the agenda of several meetings of the ECHA Management Board and of the scientific committees.

- Independence - robust policies and procedures

Anyone taking up a position in ECHA needs to complete a detailed declaration of interests before he or she can start to work for the Agency. The declarations received are then reviewed by the supervisor of the staff member or by the Chair of the relevant scientific committee to detect any potential issues. A similar check is done every time a task is assigned for all activities requiring interest management. The declarations are updated annually, or whenever the interests have changed.

As a general principle, staff members are not assigned tasks related to organisations in which they have past or current interests. For example, staff members will not be assigned tasks related to a company for which they have worked for in recent years, or in which they otherwise have an interest.

The same holds for the members of ECHA's scientific committees or other bodies: they will not be able to participate in the decision or opinion making related to substances or organisations in which they have an interest. Hereby, the Agency can ensure that unbiased and science based decisions are taken at all times.

The Agency also has a Conflicts of Interest Advisory Committee to support the Agency's Executive Director and the Management Board in ensuring independence of decision making.

The main elements of ECHA's policy on prevention of conflicts of interest are the following:

### **Overall**

- ECHA Policy for Managing potential Conflicts of Interest;
- New, more detailed template for declarations of interest, covering all possible private interests of the individuals working for the Agency (or their families):
  - Employment, consultancy, legal representation or advice;
  - Membership of Managing Body, Scientific Advisory Body or equivalent structure;
  - Other membership or affiliation;
  - Research funding;
  - Investments;
  - Intellectual Property;
  - Public statements and positions;
  - Other relevant information;
- New guidance for filling in declarations of interests;
- Publication on the website of the declarations of interest of the members of the ECHA bodies and of the ECHA managers;
- Conflicts of Interest Advisory Committee established June 2012, constituent meeting August 2012;

### **ECHA bodies**

- Rules of Procedure and Codes of Conduct for the Management Board, the scientific committees and the Board of Appeal, including essential elements on independence;
- Eligibility criteria established for the Executive Director and the members of the ECHA bodies (Management Board, scientific committees and the Board of Appeal);
- Annual declarations of interest, screened for potential conflicting situations;
- Ad hoc declarations of interest, related to a specific agenda point at a meeting;
- Implementing rules (work instruction) of the Board of Appeal, including a written mechanism to check the absence of conflicts of interest, prior to the allocation of an appeal case to a member of the Board. Such checks are documented and stored in each case-file;

### **ECHA staff**

- Code of Good Administrative Behaviour;
- Annual declarations of interest, screened for potential conflicting situations;
- Implementing rules (work instruction) on prevention of conflicts of interest, describing in which circumstances a conflict of interest check needs to be undertaken when assigning specific tasks to ECHA staff members. Such checks are documented and stored in each case-file;
- Guidance for managers on the prevention of conflicts of interest, including concrete assessment criteria;

- Implementing rules (work instruction) on processing information on potential conflicts of interest of ECHA staff, describing how to deal with potential conflicts of interest (breach of trust procedure);
- Revised guidelines on gifts and hospitality for staff;
- Procedure for application for approval of the appointing authority for outside activities and assignments;
- Procedure for application for approval of the appointing authority of occupational activities after leaving the service (post-employment);
- Specific procedures for procurement and selection procedures.

## **Annex I. Checklist for the prevention of conflicts of interest**

The requirements foreseen in each Agency's founding regulation, combined with the requirements stemming from the EU Financial Regulation and the Staff Regulations can be seen as the minimum requirements that need to be implemented by all Agencies. Based on a risk assessment, each Agency should subsequently decide for itself whether it needs to develop more scaled-up policies and procedures in this respect or not.

The checklist contains possible elements that an Agency might have to develop for the various populations working for it or with it. Based on an Agency's risk profile, its structure and its statutory requirements, each Agency can select from the list the relevant procedures and develop a "conflicts of interest prevention package", customised to its specific needs.

### **1. Overall Agency policy**

A high-level policy document outlining among other things:

- Scope
- Definition of Col
  - See e.g. OECD Guidelines
- General rules / procedures

### **2. Implementing rules / procedures**

#### **2.1 Staff (incl. SNEs and possibly trainees)**

##### **a) Basic framework**

- Staff Regulations and implementing rules thereto (e.g. with regard to disciplinary proceedings, whistleblowing procedures, outside activities and assignments, etc., see below)
- Code of Good Administrative Behaviour for staff / Code of Conduct
  - see e.g. COM Code of Good Behaviour (relations with the public)

##### **b) Recruitment / screening of candidates**

- Procedure for avoiding Col during selection (e.g. statement of absence of interests by panel members)
- Check potential Col before assigning newly recruited staff to a post

##### **c) During employment**

- Declarations of interest
  - annual declarations
  - specific declarations
  - see e.g. template used at EMA, EFSA, ECHA or EASA
- Assessment criteria
  - which interests allowed/not allowed?
  - what are the consequences?

- Procedure for prevention/detection/checking Col
  - introduce Col checks before assigning tasks
- Breach of trust procedure
  - procedure for handling Col incidents
  - administrative inquiries and disciplinary proceedings
  - whistleblowing procedures
- Compulsory training
  - training for newcomers
  - regular training for staff
  - regular training for managers
- Outside activities and assignments
  - procedure for requesting approval appointing authority
  - dedicated form
  - see e.g. COM decision C(2004)1597
- Gifts and invitations
  - see e.g. COM guidelines

**d) Post employment** (in accordance with Art. 16 Staff Regulations)

- Procedure for requesting approval appointing authority for new employment
- Dedicated form
  - see e.g. COM template
- Solemn statement to comply with duties of Staff Regulations also after end of service
  - see e.g. COM template

**2.2. External Experts / Committees / Panels (appointed by Agency) (if applicable)**

**a) Basic framework**

- Rules of procedure for Committees / Panels
- Code of Conduct for members

**b) Screening of candidates before appointment**

- Eligibility criteria
- Screening before appointment

**c) During engagement**

- Declarations of interest
  - annual declarations
  - specific declarations
  - see e.g. template used at EMA, EFSA, ECHA or EASA

- Assessment criteria
  - which interests allowed/not allowed?
  - what are the consequences?
- Procedure for prevention/detection/checking Col
- Breach of trust procedure
  - procedure for handling Col incidents
- Compulsory training
- Gifts and invitations
  - e.g. via Code of Conduct

**d) Measures for the time after the engagement with the Agency**

- E.g. via Code of Conduct

**e) Criteria for stakeholder participation**

- Stakeholder involvement in Committees / Panels as observers
- Code of Conduct for stakeholder observers

**2.3. Management Board / appointments by EU institutions or MS**

**a) Basic framework**

- Rules of procedure for Management Board / Committees appointed by EU institutions or MS
- Code of Conduct for members

**b) Appointment**

- Guidelines for eligibility

**c) During engagement**

- Declarations of interest
  - annual declarations
  - specific declarations
  - see e.g. template used at EMA, EFSA, ECHA or EASA
- Assessment criteria
  - which interests allowed/not allowed?
  - what are the consequences?
- Procedure for prevention/detection/checking Col
- Breach of trust procedure
  - procedure for handling Col incidents
- Compulsory training
- Gifts and invitations

- e.g. via Code of Conduct

**d) Measures for the time after the engagement with the Agency**

- E.g. via Code of Conduct

**2.4. Board of Appeal (if applicable)**

- If Agency staff: see implementing rules for staff
- If external experts: see implementing rules for external experts

**3. Outsourcing / procurement**

- Procedure for prevention/detection/checking Col for outsourced tasks (e.g. to MS)
- Procedure for prevention/detection/checking Col during procurement
  - e.g. statement of absence of interests by panel members
- Rules for interims
  - e.g. application by analogy of rules for staff
- Rules for consultants
  - e.g. declaration of interest

**4. Confidentiality**

- Declaration of confidentiality for all external experts, Committee / Panel / Management Board members and observers – possibly also for staff
- Codes of Conduct for staff, external experts, Committee / Panel / Management Board members and observers

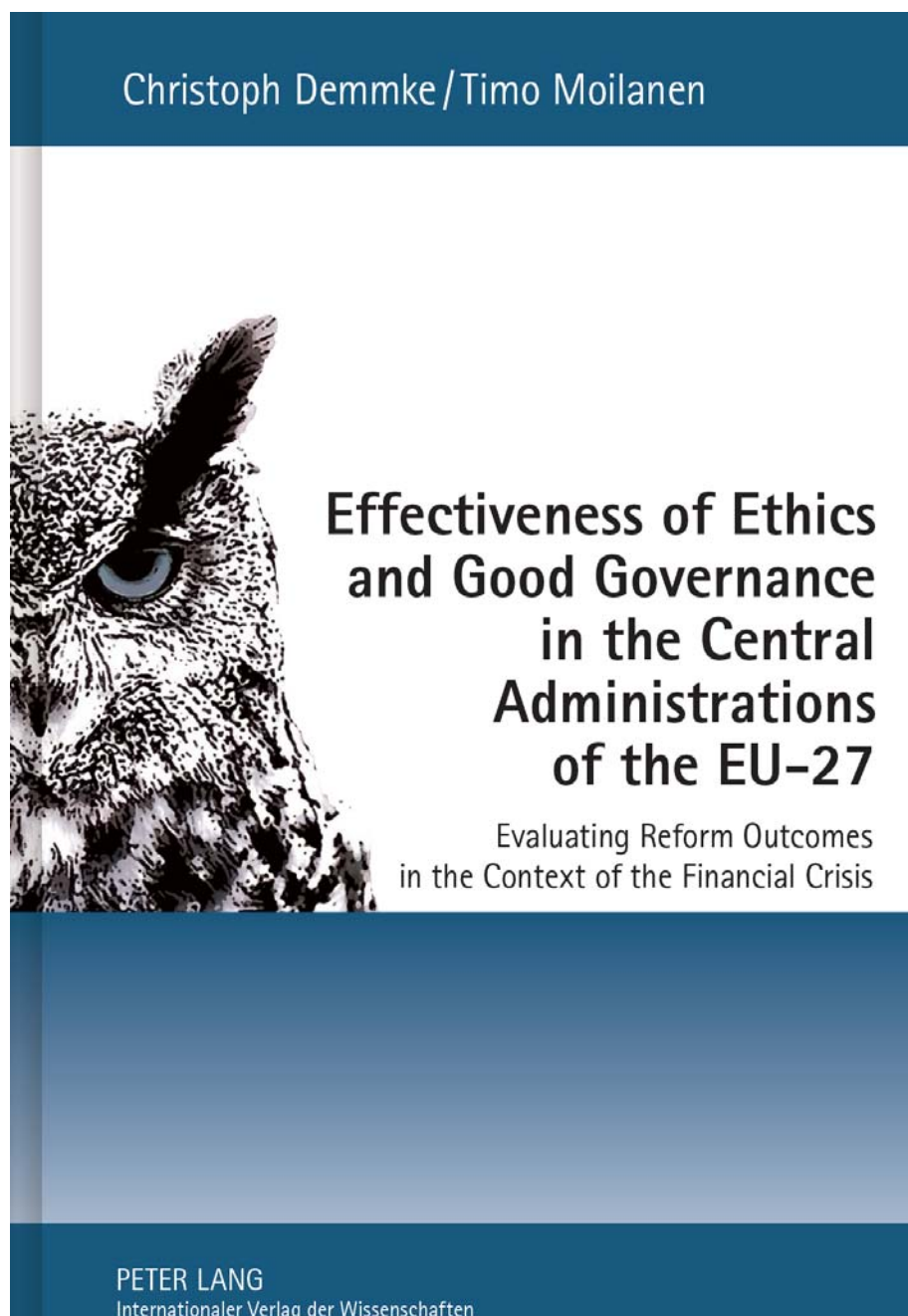
**5. Transparency**

- Open communication on independence
- Publication of policies, implementing rules, etc. on website
- Publication of declarations of interest on website
- Publication of minutes of meetings (incl. interests declared and measures taken) on website
- Involvement of stakeholders
  - public consultations, possibility to attend committee / panel meetings as observers, etc.

## **Conflict of Interest management: EU Agencies and public bodies moving forward**

**Prof. Christoph Demmke written contribution**

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## 9. CONCLUSIONS

If in the past there were seen to be regulatory gaps and a lack of enforcement in the field of public-sector ethics, the more recent concern is that some governments may have gone overboard in building an elaborate ethics apparatus that reflects the prevailing negative assumptions about the motivations and capabilities of both politicians and public servants. Our findings confirm that these concerns are valid. On the one hand, ethics policies have become more complex. On the other hand, institutional and enforcement structures are still weak.

Today, trying to be ethical in every sense of the word could mean that public organizations and their leaders end up pleasing no one. The issue at the heart of this new ethics debate is whether there is too little, too much or just the right amount of ethics, with little consideration whether some policies and instruments effective, and whether more or less rules, sanctions and/or incentives are really needed.

Ethics policies often follow a fairly simple logic: the more public and media scrutiny, the more discovered political scandals and conflicts of interests, the more failure is attributed to too little control, not enough monitoring and not enough law<sup>1</sup>. Calling for new rules and standards is in most cases an easy response to a complex challenge. Consequently, there are more rules, procedures and monitoring procedures in place than ever before. This trend towards new ethics laws, rules, standards and monitoring systems runs counter to one of the most important reform trends, the reduction of administrative burdens and bureaucracy. So far no country has removed, reduced or abolished ethics standards as deregulating ethics policies would be highly unpopular.

During the current decade, in the media and on the political level, public-service ethics has received more attention than ever before. There has been enormous activity to create new ethics policies, instruments, structures and codes. Whereas in the past, only a restricted number of issues were seen as unethical and sanctioned, today the definition of unethical behaviour concerns an ever growing number of issues.

Conduct which previously was tolerated becomes unacceptable. The concepts of corruption and conflict of interest have expanded to embrace more types of conduct. Also, the concepts of discrimination and mobbing have become broader than before. Finally, investigative technology, financial reporting, auditing and accountability mechanisms have become more intensive, complex and comprehensive.

The fight against unethical behaviour can only be understood against a cultural - social, legal, political and psychological - background. This background is somewhat ambivalent and controversial. Conceptions about unethical conduct are constantly developing. "In the last decade, the public standards of morality has become more strict"<sup>2</sup>, and the gap between the political system and the implementing system much wider. This study cannot give objective answers as to whether we have too many or too few ethics rules, or, what the precise impact of the ethics rules is on trust, democracy, performance and behaviour. Today, work in the public sector is more individual, value-laden, emotional, pluralistic, unpredictable and therefore contentious than is allowed for in a dichotomous 'too much'/'too little'<sup>3</sup>.

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<sup>1</sup> Anechiarico/Jacobs, The pursuit of absolute integrity, op. cit., p.12.

<sup>2</sup> Anechiarico/Jacobs, The pursuit of absolute integrity, op. cit., p. 16.

<sup>3</sup> Mark D. Jarvis/Paul G. Thomas, The limits of accountability: What can and cannot be accomplished in the dialectics of accountability? Paper presented at Dalhousie University, Halifax, November 11-13, 2009.

Ethics policies have indeed become more professional but also more complex and, in some cases, ineffective. However, deregulating ethics may render counterproductive results. There may be even good reasons to introduce new rules and policies, for example in the field of post-employment in some countries and/or institutions. As Demmke et al.<sup>4</sup> showed, the national parliaments are the least regulated systems. It is difficult to say whether unethical behaviour is increasing. Whereas some experts claim that unethical behaviour is increasing because of the effects of new management trends, the introduction of austerity measures, value changes, etc., others believe that the opposite is the case: especially from a historical point of view unethical behaviour and corruption have rather decreased.

In fact, the situation is even more complex. The rise of ethics is also a direct answer to new challenges, threats and complexities in the field. However, it is also a reaction to the increased power of the media, scandal-driven discourses and enhanced expectations of the citizenry. Moreover, the differentiation of ethics policies is also an answer to the individualization of new managerial and HR approaches.

Overall, the Member States dispose over a variety of ethics instruments:

- Rules, Standards, Codes;
- Value Management;
- Ethical Leadership;
- Whistle-blowing;
- Disciplinary rules;
- Job Rotation;
- Risk Analysis of vulnerable positions;
- Training and Dilemma Training;
- Integrity Plans;
- Scandal Management;
- Audits;
- Integrity Officers;
- Registers of Interest;
- Transparency requirements;
- Internet based self-assessments;
- Ethics climate survey;
- Awareness raising instruments.

Each instrument and policy must be seen in different political, economical, cultural and institutional contexts. For example, the role and effects of whistle-blowing differ from country to country and from institution to institution. The same applies to gift policies. Whereas in some countries strict gift-policies may be highly effective and also easy to implement, this is not the case in other countries where zero-gift policies would be in conflict with local values.

Many other issues cannot be easily evaluated as to their effectiveness. For example, the effective institutionalization of ethics, the effects of educational instruments, the right choice of incentives, the need for severe sanctions but also the nature of HR policies (e.g., the level of salaries) and the internal communication on ethics policies simply depend on too many cultural and organizational factors. Despite these limitations, it is possible to identify a number of policies and instruments

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<sup>4</sup> Demmke et al., Regulating conflicts of interest for holders of public office in the European Union, op. cit.

and their effects. We follow the typology developed by Hesse et al.<sup>5</sup> and identify nine possible effects of ethics policies and instruments.

**Table 1. Assessment of effects of ethics policies and instruments**

	<b>Impact on other goals</b>		
<b>Impact</b>	<b>None</b> (no side-effects)	<b>Positive side-effects</b>	<b>Negative side-effects</b>
<b>Positively effective</b> main goal achieved	Continuous awareness raising; ethical leadership; ethical culture; distributional, procedural and interactional justice; existence of clear targets, objectives, plans in the field of ethics policies; coherent instruments; commitment to high standards; knowledge on rules and standards	Media attention	Transparency requirements and intrusion in privacy; reporting of financial interests and intrusion in privacy; monitoring of registers of interest and red tape; post-employment rules and obstacles to mobility; costs for monitoring; training and institutionalization of ethics increase in rules, standards and awareness more violation of rules; ethics abused for political interests
<b>Ineffective</b> no effect	Ethics principles and codes (if not taken seriously); oath; poor implementation and enforcement of ethics policies	Self-assessments and awareness; ethics climate surveys	
<b>Negatively effective</b> reverse effects	Ethics abused as political instrument	Media attention	Ethics misused for religious purposes and moral politics; torture as ethical instrument; distributional, procedural and interactional injustice; unethical leadership

For example, some instruments are relatively ineffective (so far post-employment policies as many Member States have suggested in our study), others are evaluated more positively (for example, ethics training). In fact, most ethics instruments and policies seem to have positive effects but also some negative side-effects. Ethics instruments and policies with clear positive or negative effects are always of a more general nature (for example, continuous awareness raising, torture used as means to maximise utility)<sup>6</sup>. Although we believe that the role of the media and transparency have positive effects, both can also have negative side-effects if ethics policies are becoming entirely scandal-driven policies and being abused for political and media purposes. Notwithstanding the differences between countries, they share a central characteristic: ethics have become ever more scandal-driven which means that decision-makers largely react to the media attention.

One should also distinguish between ethics instruments that have the potential to be much more effective and others that have proven over longer periods of time that they have a rather limited impact. In our study, leadership is considered to be the most effective instrument in the fight against corruption and unethical behaviour. However, in practice, leadership is also considered one of the most important obstacles for an effective policy. The case of leadership shows that

<sup>5</sup> Joachim Hesse/Christopher Hood/Guy Peters (Eds.), *Paradoxes in public sector reform: An international comparison*, op. cit.

<sup>6</sup> Lying is used frequently in politics as well as in administrative practices, but, as such, it has many different effects. Therefore, we refrain from inserting lying as an instrument in our assessment of potential effects of ethics instruments.

ethics policies can have various effects. These effects may even change over time and are related to individuals and personality.

As van den Heuvel et al. show, often instruments are perceived as more effective when they are existing, known and applied in the administration. For example, newer soft instruments are often considered to be less effective simply because they are also less known. The authors also argue that the perception as regards the effectiveness of an instrument increases if the instrument is applied in practice. For example, if ethics training is offered it is also considered to be more effective. If a risk analysis is carried out its effectiveness is considered to be much higher as if the effectiveness of this instrument is only considered in theory<sup>7</sup>.

One should also mention that judgments whether instruments are considered to be more or less effective depend very much on the group of respondents and organizational culture. For example, politicians judge the effectiveness of instruments differently than administrators, and a police administration may have a different perspective than the Ministry of Social Affairs.

Studying the effectiveness of ethics policies cannot be done without a deep understanding of reform policies, management reforms and their effects on ethics. Our study shows that modern public management reforms have contradictory effects in the field of ethics and on the behaviour of public officials. Today, administrative reform dynamics produce less and more ethical challenges at the same time, but in different policies and HR areas and as regards different instruments. The field of mobility policies is just one example. Whereas more Member States promote and support more mobility between the public and the private sector (and remove legal, political and technical obstacles to switch sides), they are becoming increasingly aware about the ethical consequences: potentially more conflicts of interest, new value dilemmas, threats to the classical public service ethos and the need to regulate new post-employment issues.

In the future, it will be an important task to further define the effects of different instruments and policies in different contexts. Only then will it be possible to further progress as regards the question whether or not ethics policies and instruments are effective, or not. Therefore, we recommend to continue work on the above mentioned theoretical framework as it allows for a fine-tuned analysis as regards the effectiveness of different instruments in different contexts. Applying this concept to the field of ethics may also help to bring in a more rational, non-ideological discourse.

Still, as already stated above, this study is no plea for removing ethics policies. Although more rules and standards are no guarantee of more effectiveness, abolishing rules could easily raise public and media suspicion and contribute to lower levels of public trust. Despite the fact that some Member States are sceptical as to the effectiveness of post-employment rules, we believe that more should be done in this area. However, taking into consideration the issue of effectiveness remains a priority. For example, how can we design effective and deterrent post-employment rules in times of increasing fixed-terms contracts? Will talented people, experts, advisors or politicians be deterred from entering public or private sector jobs if tough and strict revolving door rules will be implemented? On the other hand, blurring boundaries between the public and private sector require innovative solutions to public/private sector switchers.

Answers as to the effects of austerity measures and the financial crisis on workplace ethics are still premature. However, there are enough reasons to be concerned: those Member States which are struggling with economic and financial difficulties agree that the effects of austerity measures affect negatively the workplace behaviour. Or as Anechiarico and Jacobs put it: "In short, if public employees are treated like second- or third-class citizens, they will act accordingly, and no amount

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<sup>7</sup> Van den Heuvel et al., *Integriteit van het lokaal bestuur*, op. cit., pp. 75, 96-97.

of laws or controls will remedy the situation. In some cases, they will make things worse. Poorly paid, poorly treated public employees will be alienated and demoralized”<sup>8</sup>. Under such circumstances unethical behaviour is easily rationalized.

So far, developments within the political and administrative systems have not expanded the meaning and the practical expression of the concept of ethics. Today, governments invest more resources in ethics policies than ever before. In many cases governments have institutionalized weak and fragmented ethics infrastructures as a reaction to political scandals in a rather ad-hoc, hasty and fragmented way. A new ethics bureaucracy is most likely emerging in the field of conflicts of interest (especially financial disclosure policies).

Overall, the institutionalization of ethics policies seems to be the weakest point of all. Therefore, concerns about rising costs and the emergence of an ethics bureaucracy are rather limited. Most ethics structures (audit policies, monitoring programmes and ethics committees) are not independent. Instead, they strongly depend on the influence of the political class. Most questions remain as to the effects of management and the monitoring of registers and disclosure policies. So far, many Member States shy away from strengthening independent institutional structures. Also important advisory and awareness raising bodies, like BIOS in the Netherlands, remain an exception. However, we are cautious to recommend best practices as administrative traditions, structures, cultures and challenges are too different.

Nevertheless, the weak institutionalization of ethics policies confirms another hypothesis: ethics policies focus presently on the input rather than on the output. Therefore, governments should move their focus from decision-making to implementation and enforcement of ethics policies. The latter should be further strengthened. Whereas ethical values and principles receive more and more attention in the media and on the political level, our findings also show that the implementation of ethics policies is not taken seriously. This discrepancy between input and output can also be seen as regards individual instruments: whereas some issues which are seen as important, popular and fashionable receive an ongoing attention, for example the whole field of conflicts of interests, other issues do not receive much attention.

As it seems, ethical requirements imposed onto public officials will continue to increase, and the meaning of ethics will further widen over the years to come. Despite the complex link between public management reforms and ethics, public officials will not only be required to avoid ethical misconduct. Instead, they shall avoid even the appearance of unethical conduct as this is feared to undermine public trust. At least for public officials and Holders of Public Offices, ethics will not always be a win-win policy in the future.

Similarly to Pollitt and Bouckaert in the field of public management reforms in Europe<sup>9</sup>, we remain cautious about what can be achieved and how it can be done in the field of ethics and good governance. Understanding what is and what is not possible should be valuable knowledge. Despite this caution, we hope that this study provides plenty of evidence of successful and less change. We strongly believe that good governance and public-service ethics make a big difference to the effects and the legitimacy of the national public services.

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<sup>8</sup> Anechiarico/Jacobs, *The pursuit of absolute integrity*, op. cit., p. 202.

<sup>9</sup> Christopher Pollitt/Geert Bouckaert, *Public management reform: A comparative analysis*, third edition, Oxford, 2011, p. 182.



## DIRECTORATE-GENERAL FOR INTERNAL POLICIES

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