

Helsinki

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MH/BB

Mr Koen Roovers
Case handler
European Ombudsman
Rue Wiertz
Montoyer 30 Building
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Subject: ECHA comments on the European Ombudsman draft practical guidelines for EU officials interacting with interest representatives

Your ref: E-mail of 16 December 2016

Dear Mr Koen Roovers,

Thank you for the invitation from the European Ombudsman to comment on draft practical guidelines for public officials' interacting with interest representatives received on 16 December 2016. ECHA appreciates this opportunity to comment on the so-called Do & Don't Practical Guidelines.

The legal basis for ECHA's interaction with interest representatives is provided in Article 108 of the REACH Regulation which states: "*The Management Board shall, in agreement with the Commission, develop appropriate contacts between the Agency and relevant stakeholder organisations.*" The Policy on cooperation with stakeholder organisations was agreed in the Management Board Decision MB/05/2008 in the form of proactive engagement. ECHA's engagement with stakeholder organisations serves to help deliver better environmental and health outcomes for Europe and its citizens. Moreover, it contributes to the safeguarding of ECHA's five core values: transparency, trustworthiness, efficiency, independence and commitment to well-being.

Organisations can apply to become an Accredited Stakeholder through an open call for expression of interest published on ECHA website and promoted widely. In order to ensure a transparent and consistent selection process, the ECHA Secretariat verifies the eligibility of the organisations:

- 1) They are legally established within EU/EEA and have activities at the EU level;
- 2) They have legitimate interest in ECHA's area of work;
- 3) They are representative in the field of their competence;
- 4) They are non-profit making and do not exclusively represent individual companies;
- 5) They are registered in the Register of Interest Representatives maintained by the European Commission. This criterion to register only applies if the organisations wish to participate as observers in the Committee or Forum meetings of ECHA. These observer organisations are requested to indicate their registration number in the application form.

In all the above-mentioned categories appropriate evidence is required by ECHA.

Currently, ECHA lists in total 102 accredited organisations (ASOs). ECHA encourages umbrella organisations representing sectors relevant to ECHA to apply to become accredited stakeholder organisations. Multitude of information is available for stakeholders on ECHA website including information on how to register in the Transparency Register maintained by EU.

All Accredited Stakeholder observers are required to sign a code of conduct for observers at ECHA meetings, before they can participate in the work of the Committees or the Forum. Each year the Executive Office of ECHA is responsible for coordinating an annual stakeholder survey the results of which are analysed and taken into account by the responsible services.

ECHA has further set out its Approach to Transparency in a policy document, available on its website (<https://echa.europa.eu/about-us/the-way-we-work/procedures-and-policies/transparency>). This Approach also includes the Agency's proactive initiative to make public all meetings of the Executive Director with stakeholder organisations (<https://echa.europa.eu/about-us/who-we-are/executive-director>), in analogy to the duty applying in the European Commission to Commissioners and Directors General. Currently, ECHA is exploring whether it could expand this reporting requirement to all senior managers.

As mentioned in the invitation for comments, the guidelines seek to identify, in a succinct and easily understandable form, the key elements that should guide public officials in their contacts with interest representatives. Based on ECHA's experience in interaction with interest representatives, it would seem that ECHA's existing practices reflect the "Do" and "Don't," points 2-10 and they are as well based on public service principles for the EU civil service highlighting ethical values in particular integrity, objectivity and transparency – reflecting the core values of ECHA. They form a most welcome guidance to all public officials interacting with interest representatives.

However, we have a comment on the first point. During the past 10 years of fruitful cooperation with stakeholders, ECHA has not required from all its interest representatives to register in the EU Transparency Register. Registering to the EU Transparency Register is a prerequisite for only those organisations wishing to participate as observers in the Committee or Forum meetings of ECHA. At ECHA, the accredited stakeholders can support ECHA's work through various bodies and networks.

The role of the stakeholder observers at ECHA is two-fold:

- 1) to contribute to an efficient flow of information both from the field to ECHA and vice versa and;
- 2) to provide technical and scientific input based on their specific scientific expertise and knowledge of the interest representative. Accredited stakeholders also participate in the technical implementation of the EU chemicals legislation e.g., accredited stakeholders are requested by ECHA to test its IT-tools.

According to the principles governing participation in the Committees and Forum in order to protect the scientific integrity and independence of ECHA's bodies, the input of stakeholder observers has to remain scientific or technical. The meetings are not to be used to promote political objectives or for lobbying.

Hence, the main difference of this role compared to e.g. the role of the stakeholders other institutions such as the European Commission and the European Parliament is that the core input of ECHA's stakeholders is not centralised on policy matters, but on knowledgeable scientific and technical contributions.

We understand that in accordance with the Interinstitutional Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation (19.9.2014/L 277/11) the scientific and technical contributions of the stakeholders do not necessarily belong to activities covered by the EU Transparency Register, since based on point 12 activities such as ad hoc or regular requests for factual information, data or expertise, are not covered by the register.

We note that the first point in "Don't" section provides: "*Don't meet interest representatives not registered in the EU (or equivalent national) Transparency Register without asking them to register. Make clear, if appropriate, that this is a prerequisite.*" In ECHA's view, this formulation is not clear enough. As explained above, requiring interest representatives to register in the EU Transparency Register is not always a prerequisite. Therefore, we believe that it should be left to the agencies to decide on the prerequisite eligibility criteria of the interest representatives. At ECHA, the Code of Conduct is based on ED/62/2008 Decision of the Executive Director and the five eligibility criteria are established by the Directors and endorsed by the ECHA Management Board. In our view, the formulation of the first point in both "Do" and "Don't" part should take into account that registering in the EU Transparency Register is not always a prerequisite, but required only when appropriate. Therefore, we suggest the following reformulations of the first point:

DO 1 Verify that interest representatives have registered in accordance with the interest representative policy of the institution or body and, where appropriate, in the EU (or equivalent national) Transparency Register before meeting them or accepting an invitation to an event.

DON'T 1 Meet interest representatives not registered in accordance with the interest representative policy of the institution or body and, where appropriate, in the EU (or equivalent national) Transparency Register without asking them to register. ~~Make clear, if appropriate, that this is a prerequisite.~~

Hoping that you will find ECHA's comments and suggestions useful. ECHA wishes every success to the Ombudsman in her proactive work to provide these valuable practical guidelines to public officials.

Kind regards,

Head of Legal Affairs Unit
European Chemicals Agency

Cc: Head of Unit, Executive Office