Policy for the prevention and management of conflict of interest

The European Scientific Advisory Board on Climate Change

Draft 23.05.2023

Contents

1 Introduction 2
1.1 Aim, scope and definition 2
1.2 EEA rules in the Advisory Board context 2
1.3 Guiding principles 3
2 External transparency 4
3 Whistleblowing 4
4 Preventing conflict of interest 4
5 Declaring interests 5
5.1 What to declare 5
5.2 When to declare 5
5.3 How to declare 5
6 Assessing and handling a risk of conflict of interest 5
6.1 Procedure for handling conflict of interest 6
6.2 Mitigation measures 6
6.3 Periodic review and further implementation 6
Annex 1 Whistleblowing procedures 7
1. Introduction 7
2. Reporting procedures 7
3. Protection for whistleblowers 8
4. Feedback to the whistleblower 10
5. Communication and awareness-raising 10
6. Data protection 10
7. Link to EEA guidelines 10

1 Introduction

1.1 Aim, scope, and definition

The prevention and management of situations of potential conflict of interest are key elements of the governance and management of the European Scientific Advisory Board on Climate Change as well as every other EU institution, body, or agency. As the Advisory Board is established under the European Environment Agency (EEA) Regulation ([1]) to fulfil its mandate under the European Climate Law ([2]), this specific context has been duly considered in preparation of this document.

Circumstances that can lead to a conflict of interest shall be handled correctly and timely as they can negatively affect the decision-making process and lead to a loss of faith in the ability of the Advisory Board and EU public bodies to operate impartially and in the best interests of the EU citizens. Effective prevention and management of conflict of interest is thus a crucial requirement for the Advisory Board to provide credible advice in line with its mission.

For effective management of a conflict of interest, the Advisory Board relies on an internal policy framework to implement a set of measures for detecting potential risks at an early stage, recording them and handling them appropriately. The policy also involves awareness raising and procedures, including the whistleblower annex.

This policy document applies to the entire Advisory Board and all its activities. Where appropriate, it also involves the EEA staff, including the secretariat to the Advisory Board and the EEA Management Board. The scope thus includes all Advisory Board members, the members of the secretariat and any third parties working for the Advisory Board, including consultants and interim staff.

A conflict of interest is said to exist when the impartiality and objectivity of a decision, opinion or recommendation of the Advisory Board, is or might, in the public perception, be compromised by an interest held by, or entrusted to, a member of the Advisory Board.

This means that a conflict of interest can arise if personal interests of those involved in the activities of the Advisory Board:

- **interfere** with the work of the Advisory Board and its duty to issue impartial and objective advice in the public interest, or;
- **are perceived by others as interfering** with the work of the Advisory Board, and thus undermine the public's trust in the integrity of the Advisory Board and its work.

Relevant personal interest may be of financial or non-financial nature and it may concern a personal or family relationship or professional affiliations (including additional employment or former employments or appointments) and other relevant outside activities.

1.2 EEA rules in the Advisory Board context

The Staff Regulations of Officials ('the Staff Regulations') and the Conditions of employment of other servants of the European Union ('the CEOS') establish the general framework of rights and

[1] Consolidated text: Regulation (EC) No 401/2009 of the European Parliament and of the Council of 23 April 2009 on the European Environment Agency and the European Environment Information and Observation Network (Codified version) http://data.europa.eu/eli/reg/2009/401/2021-07-29

[2] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') EUR-Lex - 32021R1119 - EN - EUR-Lex (europa.eu)

obligations applicable to EEA staff members including the Advisory Board secretariat. Through this internal policy framework, they are extended to the members of the Advisory Board.

The applicable rules are supplemented by the European Code of good administrative behaviour, which determines the type of service the public can expect from European public servants. The EEA's internal control standard No 1 requires that all staff members are fully aware of the relevant ethical and organisational values, in particular ethical conduct, avoidance of conflict of interest, fraud prevention and reporting of irregularities. The EEA's financial regulation adopted by the Management Board also contains provisions on the prevention and management of conflict-of-interest situations in relation to persons involved in budget implementation and management, audit or control (Article 41). The expenditure related to the Advisory Board is included in the budget of the EEA (Article 11).

1.3 Guiding principles

To support the achievement of its strategic goals and the day-to-day prioritization of the work of the Advisory Board and its Secretariat, a number of guiding principles have been derived from the European Climate Law and are described in the Advisory Board's strategy.

Advisory Board's guiding principles (as adopted in the Advisory Board Strategy)

EU focus

- Contribution to the achievement of EU's climate targets by 2050
- Effective and efficient, and ability to demonstrate EU-level added value
- Coherence with the rest of the European Climate Law and with EU climate policy
- Primary focus on EU-level policies and measures (national policies where relevant to the EU)

Relevance

- Timely and trustworthy knowledge in line with the evolving needs of the EU
- Actionable advice to help policy makers pursue EU climate objectives
- Advice framed in a long-term perspective

Scientific excellence

- Robust scientific advice underpinned by rigorous assessments
- Expertise in the field of climate and environment sciences or other scientific fields relevant for the achievement of the European Union's climate objectives
- Inter-disciplinarity

Independence

- Advisory Board members appointed in a personal capacity, with beyond-doubt independence.
- Positions given completely independently of the Member States and the Union institutions.
- Annual work programme established independently (with consultation of the Management Board).
- Full independence in implementing the work programme

Transparency

- Publicly available reports
- Fully transparent process
- Members recruited following an open, fair and transparent selection procedure

Outreach

- Regular interactions and dialogue with relevant stakeholders for scoping and dissemination
- Dialogue and cooperation between scientific bodies in the EU to support fact finding
- Raising awareness on climate change and its impacts
- Contributing to the public debate and communicating on the work of the Advisory Board

As the Advisory Board and its secretariat should operate under the above-mentioned principles, the prevention and handling of conflict of interest must balance different considerations between those principles. In the context of the conflict of interest policy, the principles of independence and transparency are particularly relevant.

2 External transparency

The best way to foster integrity and accountability is to ensure transparency in all instances, bearing in mind the legal rights of individuals in relation to personal data protection whilst avoiding a disproportionate administrative burden. To that end, up-to-date declarations of interest of the Advisory Board members are made available to the general public.

Furthermore, effective application of the rules requires that the rules are clear, unambiguous and easily accessible. For that purpose, information on ethics and integrity rules and tools is available on SharePoint accessible to the Advisory Board members.

3 Whistleblowing

By extension of the EEA rules on internal whistleblowing, the Advisory Board members are encouraged to raise concerns about a conflict of interest, fraud, corruption or other serious wrongdoings relevant to the Advisory Board functioning. This offers the Advisory Board an important opportunity to detect and investigate the concern, take any appropriate action and to protect its assets, integrity and reputation. The most effective way to encourage Advisory Board members to report concerns is to provide assurance of protection of their position and confidentiality. Clearly defined channels for internal reporting as well as safe and accepted routes to raise concerns outside the Secretariat as an option of last resort should be in place. Viewed in this way, having whistleblowing procedures and whistleblower protection in place is simply a question of good management and a means of putting into practice the principle of integrity. They are set out in detail in Annex 1 to this policy document.

4 Preventing conflict of interest

The first responsibility in preventing and managing any potential conflict of interest situation shall lie with the Advisory Board member. To this effect, any member the Advisory Board shall declare their interests and inform without delay whenever their situation changes in respect of the interests declared. **Declaring an interest does not by definition mean having an actual or potential conflict of interest, nor does it automatically disqualify a person from participating in the activities of the Advisory Board.** The information provided would allow the Head of Secretariat to the Advisory Board to respond adequately to the potential conflict of interest in each specific situation and with the interest of the Advisory Board and the EEA as an appointing authority in mind.

5 Declaring interests

5.1 What to declare

Interests to be declared include private interests in the field of activity of the Advisory Board, such as:

- employment, consultancy, legal representation or advice to a company or organization in the past five years;
- membership of a governing body or scientific advisory body;
- research funding;
- investments above certain threshold;
- intellectual property rights;
- public statements and positions and any other interests that may interfere, or may be seen as interfering, with the work of the Advisory Board.

The declared interests should cover situations where the objective exercise of their tasks could be compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other interest with an applicant. The exact thresholds and scope of the relevant activities are set out in the guidelines for filling out the declaration of interest.

5.2 When to declare

The declaration of interest is requested from each selected candidate before their appointment as an Advisory Board member, and then every year from each Advisory Board Member. Ad hoc updates to the declaration of interest is required in case of relevant changes to the personal and professional situation of a member to the Advisory Board.

The rules for the selection and appointment of the Advisory Board members foresee an open and transparent process on the basis of clear and objective eligibility and selection criteria. As stated in Article 10(a) of the EEA regulation, the members of the Advisory Board shall be appointed in a personal capacity and shall give their positions completely independently of the Member States and the EU institutions. To avoid conflicts of interest, members of the Advisory Board shall, prior to appointment and annually thereafter, fill out and sign a declaration of interest. If, at any time in the course of their duties, an individual working for the Advisory Board becomes aware of any potential or likely conflict of interest, they must immediately inform the relevant process owner who will determine appropriate action.

5.3 How to declare

The Head of Secretariat provides all candidates shortlisted to become a member of the Advisory Board and, every year, all Advisory Board members with the declaration of interest template together with a request for filling out the declaration of interest.

The declaration of interest should be duly filled-in and signed, and sent to the Secretariat of the Advisory Board within 10 calendar days from the day it was requested.

6 Assessing and handling a risk of conflict of interest

The Head of Secretariat assesses the declared interests, taking into account among others: the opinion of the individual reporting, the importance of the interest declared, the role of the individual holding the interest, specific mitigating measures and controls imposed, the importance and impact of the decision or opinion to be drafted, the availability of alternates, and the Advisory Board work programmes.

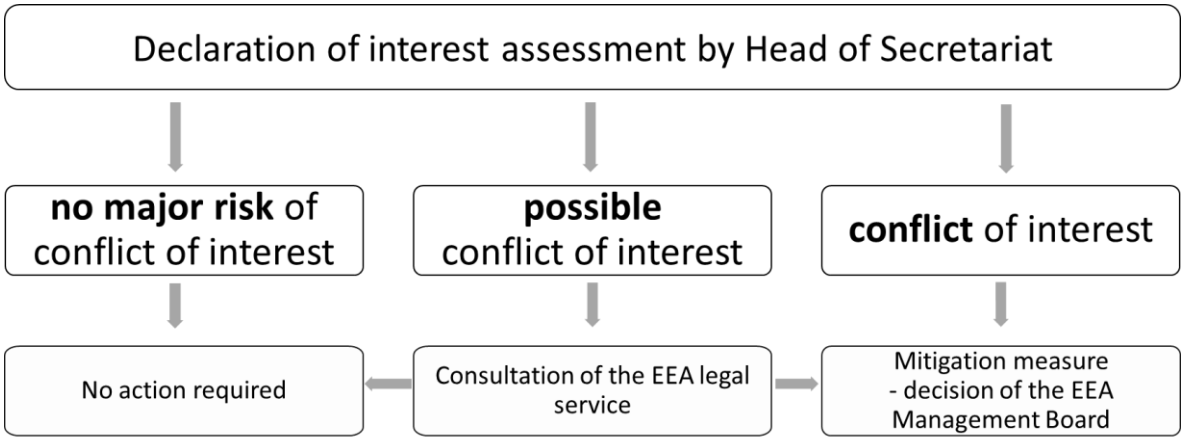
6.1 Procedure for handling conflict of interest

After careful assessment, the Head of Secretariat may decide that there is no major risk of conflict of interest. If in doubt, the Head of Secretariat will direct the case to the legal service of the EEA. In case a conflict of interest is detected, the Head of Secretariat will direct the case to the EEA Management Board as set out in figure 1 below.

The EEA Management Board will take the decision regarding the conflict of interest mitigating measure based on the declaration of interest and other supporting documents presented to it by the Head of the Secretariat.

In cases of the detected and/or suspected conflict of interest, the Head of Secretariat will immediately inform the Chair of the Advisory Board and the Vice-Chairs about the identified conflict of interest risks and the procedure.

Figure 1 Procedure for handling conflict of interest



6.2 Mitigation measures

The mitigation measures include the person concerned be asked to (one or more measures can apply):

1. give up the conflicting personal interest,
2. abstain from contribution to Advisory Board specific activities,
3. abstain from participation in the Advisory Board decision-making,
4. give up their mandate as an Advisory Board member.

In case of a minor risk of conflict of interest, the Head of Secretariat may impose mitigation measures 2 and/or 3 without involving the EEA legal service and/or the EEA Management Board.

6.3 Periodic review and further implementation

A periodic review of the present policy on the prevention and management of conflict of interest will be undertaken by the secretariat of the Advisory Board every two years. During the periodic reviews, the Advisory Board will re-assess its degree of exposure to conflict of interest and the adequacy and effectiveness of the policy in order to adapt it to possible new risks.

Annex 1 Whistleblowing procedures

1. Introduction

Whistleblowing arrangements are widely recognised as an important tool to detect fraud, corruption and serious irregularities. While the risk of such irregularities affecting EU's financial interests may be relatively limited due to the Advisory Board nature it is important that Advisory Board members fully understand the types of situations where the obligation to "blow the whistle" applies, and to whom they should address their concerns.

Basic principles

- Members of the Advisory Board have a duty to report serious irregularities, including fraud or corruption, detrimental to the interests of the Advisory Board, the EEA, and/or the European Union.
- For this purpose, members of the Advisory Board must have a choice between a number of reporting channels for whistleblowing.
- Members of Advisory Board who report serious irregularities in good faith must not under any circumstances be subject to retaliation for whistleblowing. They must be protected and their identity must remain confidential if they so desire.
- The reported facts must be verified in the appropriate manner and, if they are confirmed, the Head of Secretariat and/or the EEA will take all necessary steps to ensure appropriate follow-up.
- The right of defence of any person implicated by the reported incidents must be respected.
- Whistleblowing reports may contain sensitive personal information which shall be managed and protected in accordance with the relevant data protection rules, especially those on data quality. Therefore only personal information which are adequate, relevant and necessary for the particular case shall be processed; in particular sensitive information such as racial or ethnic origin, political opinions, religious or philosophical beliefs, trade-union membership and data concerning health or sex-life not relevant for the case shall be avoided.
- Malicious or frivolous denunciations will not be tolerated.
- Good faith is presumed unless and until proven otherwise.

Retaliation is defined as any direct or indirect action or threat of action which is unjustly detrimental to the whistle-blower and resulting from the whistleblowing, including, but not limited to, harassment, discrimination, negative appraisals and acts of vindictiveness.

Confidentiality of identity means that the identity of the whistle-blower is known to the recipient of the information, but is kept confidential vis-à-vis the person(s) potentially implicated in the serious irregularity reported and used on a strict need-to-know basis.

Anonymity refers to the situation whereby the identity of the source of the information is not known to the recipient.

2. Reporting procedures

It is up to the Advisory Board member to choose the most appropriate channel for reporting the serious irregularities or wrongdoings that they must disclose.

Internal whistleblowing

a) first option: the Advisory Board member who in the course of or in connection with their duties discover that serious irregularities may have occurred or may be occurring, are obliged to report their concern to the Head of Secretariat. However, if a matter is reported to the Head of Secretariat who is not competent to deal with it, it is up to the Head of Secretariat to transmit, in the strict confidence, the relevant information and documents to the competent EEA service and to inform the Advisory Board member accordingly.
b) second option: if there is a concern that this disclosure may lead to retaliation or that the Head of Secretariat is personally implicated in the serious irregularities, then the Advisory Board member may bypass the Head of Secretariat and report directly to the chairperson of the EEA Management Board.

Depending on the case, the recipient of the information may in turn be obliged to transmit the information thus received without delay to the European Anti-Fraud Office (OLAF). OLAF can investigate matters relating to fraud, corruption and other offences affecting the EU financial interests.

External whistleblowing (option of last resort)

Within 60 calendar days of receipt of the information the Head of Secretariat or the EEA Management Board must give the whistleblower an indication of the period of time that it considers reasonable and necessary to take appropriate action. If no action is taken within that period of time, or if the whistle-blower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may make use of the possibility of external whistleblowing and bring his or her concerns to the attention of OLAF, the President of either the European Commission, the Council, the European Parliament, the European Court of Auditors or to the European Ombudsman. In this case, the whistle-blower protection shall continue to apply.

3. Protection for whistleblowers

Any of the Advisory Board member who reports a serious irregularity or wrongdoing, provided that this is done in good faith and in compliance with the provisions of these guidelines, shall be protected against any acts of retaliation. Regarding burden of proof, it shall be up to the person taking any adverse measure against the whistleblower to establish that the measure was motivated by reasons other than the reporting. It should be noted that the Advisory Board members will not be expected to prove that the irregularity or wrongdoing is occurring, nor will they lose protection simply because their honest concern turned out to be unfounded.

The protection continues to apply in cases of external disclosures, provided that the Advisory Board member honestly and reasonably believes that the information and any allegation in it are substantially true. In this context, account will be taken of any information the Advisory Board member has had from the Head of Secretariat or EEA following the initial internal reporting.

The following specific protective measures apply and further detailed below:

- Confidentiality of identity
- Anonymity
- Penalties for those taking retaliatory action
- Limits

Confidentiality of identity

The protection of a person reporting a serious irregularity or wrongdoing in good faith shall be guaranteed first of all by the fact that their identity will be treated in confidence. This means that their name will not be revealed to the person(s) potentially implicated in the alleged irregularity or wrongdoing or to any other person without a strict need to know, unless the whistle-blower personally authorises the disclosure of his/her identity or this is a requirement in any subsequent criminal law proceedings. In all other cases, the Head of Secretariat/EEA is committed to keeping the identity of the whistle-blower confidential. In this respect, the Court of Justice of the European Union has ruled that disciplinary procedures that are opened on the basis of information of which the source is not revealed are regular, as long as it does not affect the possibility of the person who is subject to a subsequent disciplinary procedure to comment on the facts or documents transmitted, or on the conclusions that the institution or body draws from them . Similarly, the person against whom an allegation has been made should be protected since there is a risk of stigmatisation and victimisation. The disciplinary rules allow it to keep the identity of the whistle-blower confidential, while ensuring that the rights of defence of the person concerned are fully respected.

Anonymity

In order for the Head of Secretariat/EEA to be able to apply protective measures, the Advisory Board member concerned should identify him- or herself as a whistle-blower to the Head of Secretariat/EEA and observe the procedures as outlined above. The protection which is offered reduces the need and justification for anonymity. Anonymity deprives the investigative services of the possibility of asking the source for clarification or more information and enhances the risk of frivolous, malicious or unreliable information. For these reasons, anonymous reporting is not encouraged. As potential whistle-blowers may hesitate to come forward with their identity for fear of retaliatory action, the OLAF Fraud Notification System offers the facility to enter into an initially anonymous dialogue with specialised staff before a person decides to come forward and make use of the whistle-blowing procedures.

Penalties for those taking retaliatory action

No Advisory Board members or the Head of Secretariat may use their position to prevent Advisory Board members from complying with their obligation to report serious irregularities or wrongdoings. Any form of retaliation undertaken by the Advisory Board member or Head of Secretariat against any person for reporting a serious irregularity or wrongdoing in good faith is prohibited. In such cases, disciplinary measures will normally be taken. Where the Advisory Board members consider that they have been the victim of retaliation as a result of the disclosure of a serious irregularity or wrongdoing, they shall be entitled to ask for assistance from the EEA and to request that protective measures be adopted. Such requests should be addressed to the Chair of the EEA Management Board.

Limits

As explained previously, the whistleblowing provisions are concerned with the disclosure of information pointing to fraud, corruption and other comparable serious irregularities or wrongdoings. They are not intended to be used as substitutes for grievance procedures where the Advisory Board members have some personal interest in – or seek to dictate – the outcome. They are also inappropriate for dealing with disagreements over legitimate policies. Their purpose is to allow the Advisory Board members to raise a concern about serious wrongdoings so that those in charge may look into it. It should be noted that the protection may be lost if the Advisory Board member makes unwarranted or damaging allegations that he or she cannot show to be honest or reasonable. The effect of this is that wherever the Advisory Board member is contemplating a disclosure in the

sense of these guidelines, it is advisable to let the facts speak for themselves. Similarly, if the Advisory Board member makes the disclosure for purposes of private gain – for instance by selling the information to external parties – he or she will forfeit the whistleblower protection as that would not be a legitimate disclosure in the sense of the whistle-blowing rules. Finally, if the Advisory Board member is him- or herself implicated in the serious irregularities or wrongdoings and decide to come forward and report these irregularities or wrongdoings, this fact may constitute a significant attenuating circumstance in any ensuing disciplinary proceedings, but it is not a qualifying disclosure in the sense of these guidelines and does not provide him or her with full protection against disciplinary consequences on the basis of the whistleblowing rules.

4. Feedback to the whistleblower

The Head of Secretariat/ EEA must give the whistleblower an indication of the time needed to take appropriate action. If no action is taken within that period of time, or if the whistleblower can demonstrate that the period of time set is unreasonable in light of all the circumstances of the case, he or she may address his or her concerns to one of the other institutions referred to above (see section 2). It should be noted that the whistleblower is entitled to be informed within 60 calendar days of the time needed to take appropriate action, but that it is up to Head of Secretariat/EEA to determine the appropriate course of action.

5. Communication and awareness-raising

In order to increase the awareness of the whistleblowing procedures amongst the Advisory Board members, these guidelines will be given adequate publicity through the Advisory Board plenary meetings.

6. Data protection

Any processing of personal data in application of these rules is subject to Regulation (EU) No 2018/1725 and shall be carried out in accordance with the EEA's notification on whistleblowing. The Advisory Board members shall be informed of their data protection rights in this area through the privacy statement prepared as part of that notification.

7. Link to EEA guidelines

The Advisory Board's whistleblowing procedures are adapted from the EEA whistleblowing guidelines. Any aspect not addressed in this document should be governed by the EEA guidelines.