

## Remuneration of alternate and additional members of the Board of Appeal

33rd Meeting of the Management Board 19-20 March 2014

<b>Item</b>	13
<b>Action</b>	For adoption
<b>Status</b>	Final - public

### Action requested

The Management Board is requested to amend the Decision on remuneration of the alternate and additional members of the Board of Appeal (hereinafter the 'Decision on remuneration')<sup>1</sup> increasing the maximum number of days that can be remunerated from 10 to 15.

### Background

In accordance with the REACH Regulation<sup>2</sup>, the Management Board has appointed alternate and additional members of the Board of Appeal (hereinafter 'AAMs'). Alternate members represent the regular (full-time) members in their absence whilst additional members are designated to enable the Board of Appeal to reach final decisions within a reasonable time.

The Decision on remuneration sets out inter alia the daily rates of remuneration and the maximum remuneration per case for AAMs designated to act in appeal cases. Currently, according to the Decision on remuneration, AAMs are entitled to remuneration for up to 10 days of work per case<sup>3</sup>.

### Matters for consideration

By 15 February 2014, AAMs have been designated to 19 appeal cases. So far, 9 of those cases have been closed by a final decision of the Board of Appeal. From those cases, it has become apparent that, in some instances, AAMs are required to dedicate more than the maximum 10 days for each case to which they have been designated. This is the case even where AAMs are designated to proceedings that are already well advanced. This is due to several factors. For example, cases are invariably more complicated and last longer than was initially anticipated, with the parties each lodging a number of lengthy submissions. In addition, in a number of cases, AAMs are required to attend oral hearings which constitutes at least 2 days of work for them.

In view of the above, the Management Board is requested to amend the Decision on remuneration to increase the maximum number of days that can be remunerated from 10 to 15. However, an increase in the rate of remuneration per actual day of work is not proposed.

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<sup>1</sup> This decision was adopted by the Management Board on 21 June 2012, see document MB/29/2012 D final.

<sup>2</sup> Article 89(2) and (3).

<sup>3</sup> Article 1(1) of the Decision on remuneration.

The proposed changes would result in a potential increase in the maximum remuneration per case from € 5000 to € 7500, € 4000 to € 6000 and € 3000 to € 4500, depending on whether the AAM is acting as a chairperson, rapporteur or other member. However, it should be noted that the maximum level of remuneration will not be reached in every case as the AAMs are paid for the actual work they deliver in each case. For example, if the AAM is designated to a case which is relatively straightforward or is later withdrawn, the remuneration paid to the AAM will stay below the maximum amounts.

In addition, any efficiency gains will be directly reflected in the amount of days required to decide on the cases. However, as the cases so far have been invariably different from earlier cases, the efficiency gains are difficult to attain due to the novel nature of the legal and technical questions in each case. "Learning by doing" or the re-occurrence of similar issues is not a reality for AAMs in the same way as for full-time staff, in particular since AAMs are called to deal with the cases only in situations of high workload or unavailability of regular members.

To illustrate the impact of the proposed amendment, the use of AAMs to date can be used as a suitable reference. As of 15 February 2014, AAMs have been designated in 19 cases of which 9 have been concluded. In four of the concluded cases, the number of work days used by the AAM exceeded the current maximum of ten days (actual days worked were 13, 13, 12 and 10.5).<sup>4</sup> **Consequently, if the higher ceilings proposed in this note would have been applied to all closed cases so far, the total additional costs for ECHA for these 9 cases would have been € 2550.**

It is difficult to predict the need to use AAMs in the future since it depends not only on the number of appeal cases but also on the actual availability of the full-time members. Currently, the relatively high number of cases in which an AAM is designated as an additional member is mainly due to the end of mandate of one of the Board of Appeal members. Overall, the use of AAMs is an efficient manner of controlling the resources used for appeals. As AAMs are called to act in cases only if a full-time member is absent or precluded from acting or if the number of appeals increases significantly, there is no need to tie as many full-time resources as would be the case if the AAM system did not function properly.

In order to avoid that AAMs are deterred from accepting designations due to a perceived lack of remuneration, the increase in the maximum amount to be paid is proposed. As explained above, its financial impact on the Agency's budget is estimated to be very limited and so far the AAM system has proved to be extremely cost-efficient compared to the salary cost of full time members whose number of working days spent for concluded similar types of cases are higher.

In addition, the Decision on remuneration provides that '[o]ne day of work amounts to 7,5 hours of work'.<sup>5</sup> However, in view of the recent reforms of the Staff Regulations which came into force on 1 January 2014, it is proposed that this provision should be amended to read 'one day of work amounts to 8 hours of work'. This would put the situation of the AAMs more in line with that of the full time members of the Board of Appeal and the other staff of the Agency.

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<sup>4</sup> In other cases, the number of days worked by the AAMs varied between 0.5 and 7.5 days.

<sup>5</sup> Article 1(2) of the Decision on remuneration

**Attachments:**

- Management Board Decision of 21 June 2012 on the Remuneration of the Alternate and Additional Members of the Board of Appeal (MB/29/2012 D final).
- Proposal for amendment of the Decision on remuneration.

**DECISION OF THE MANAGEMENT BOARD  
ON THE REMUNERATION OF THE ALTERNATE AND ADDITIONAL MEMBERS OF  
THE BOARD OF APPEAL**

THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY,

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC, and in particular paragraph 3 of Article 78, Article 87(3) and the second subparagraph of Article 89(3) thereof,

Having regard to Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), and in particular Article 15 thereof,

Whereas:

(1) Alternate and additional members of the Board of Appeal, who are not employed as members of the temporary staff of the European Chemicals Agency (ECHA), should receive an appropriate level of remuneration for the services they provide when designated by the Board of Appeal or the Chairman of the Board of Appeal to act in appeal cases.

(2) In order to ensure that alternate and additional members remain up-to-date and well prepared on issues related to the Board of Appeal, the Chairman of the Board of Appeal may consider it necessary to convene meetings which are unrelated to pending appeal cases. Alternate and additional members should receive appropriate compensation for their active participation in those meetings.

HAS ADOPTED THIS DECISION,

**Article 1**

*Remuneration for work related to appeal cases*

1. When designated to act in appeal proceedings, the remuneration of the alternate and additional members of the Board of Appeal shall vary according to the role in which the member has participated in the treatment of the case and shall be as follows:

	Remuneration per actual day of work (€)	Maximum remuneration per one appeal (€)
Chairperson	500	7500
Rapporteur	400	6000
Other members	300	4500

However, in the event of several comparable appeals the level of maximum remuneration mentioned in the table above applies only to the treatment of the first case. The maximum remuneration for the following appeals will be half of the maxima mentioned in the table above.

2. Remuneration will be made upon production of a signed detailed specification of actual days of work spent. One day of work amounts to 8 hours of work.

Article 2

*Remuneration for participation in meetings unrelated to appeal cases*

1. Once a year the Chairperson of the Board of Appeal may convene a capacity building meeting of all the alternate and additional members of the Board of Appeal which is unrelated to any pending appeal proceedings. Such meetings shall last for a maximum of two days.

Alternate and additional members of the Board of Appeal shall receive € 300 per full day of participation at the meetings referred to in the first subparagraph of this Article which shall be convened by the Chairperson of the Board of Appeal and confirmed by an invitation of the Registrar of the Board of Appeal.

In the case of a half-day meeting, the daily rate of remuneration shall be reduced by 50%.

2. In order to qualify for payment, alternate and additional members shall submit a request for payment to ECHA. The request shall include an individual report setting out the main individual input and conclusions of the member.

Article 3

*Contractual and administrative arrangements*

The Executive Director shall, if necessary, put in place the necessary contractual and administrative arrangements concerning the payment of alternate and additional members in conformity with the financial rules applicable to the Agency.

Article 4

*Reimbursement of costs*

The rules adopted by the Management Board for the reimbursement of travel, hotel and subsistence expenses shall apply for the reimbursement of costs incurred by alternate and additional members as a result of attending all meetings of the Board of Appeal.

Article 5

*Entry into force*

1. This Decision shall enter into force on the day of its adoption.

2. Article 1 of this Decision shall apply to the remuneration of alternate and additional members designated to appeal proceedings after the date of adoption thereof.

Article 1 of Decision MB/29/2012 D final adopted by the Management Board on 21 June 2012 shall continue to apply to the remuneration of alternate and additional members designated to appeal proceedings prior to the adoption of this Decision.

Done at Helsinki, 20 March 2014.

*signed*

Nina CROMNIER

Chair of the Management Board