

**MINUTES OF THE 25th MEETING OF
THE MANAGEMENT BOARD**

22-23 March 2012

I. Documents submitted to the Management Board

Draft agenda	<i>(MB/A/01/2012)</i>
Draft minutes of the 24 th Management Board meeting	<i>(MB/M/04/2011)</i>
Prolongation of the Executive Director's mandate	<i>(MB/01/2012)</i>
Preliminary Draft Budget, including an outline of the work programme and Establishment Plan for 2013	<i>(MB/02/2012)</i>
Presentation of the ECHA "Staff Model" for REACH & CLP	<i>(MB/03/2012)</i>
Multi-annual Work Programme 2013-15	<i>(MB/04/2012)</i>
Multi-annual Staff Policy Plan 2013-15	<i>(MB/05/2012)</i>
General Report 2011	<i>(MB/06/2012)</i>
Analysis and Assessment of the Authorising Officer's Annual activity Report	<i>(MB/07/2012)</i>
Report on the experience with the application of the Decision on the classification of services for which charges are levied	<i>(MB/08/2012)</i>
Report from the Executive Director	<i>(MB/09/2012)</i>
Report on participation of stakeholder observers and case-owners in the dossier evaluation process of the Member State Committee	<i>(MB/10/2012)</i>
Implementation of the ECHA policy on managing potential conflicts of interest: Code of Conduct of the Management Board and administrative decisions	<i>(MB/11/2012)</i>
Implementing Rules for the Staff Regulations	<i>(MB/12/2012)</i>
Conditions for remuneration of alternate members of the Board of Appeal	<i>(MB/13/2012)</i>
(Re)appointment of members of Working Groups	<i>(MB/14/2012)</i>
Update on the requirements for RIPE	<i>(MB/15/2012)</i>
Update of the MB Rolling Plan	<i>(MB/16/2012)</i>
Report from written procedures	<i>(MB/WP/01/2012)</i>
Evaluation progress report 2011 (summary)	<i>(ECHA-FS-12-05)</i>

II. Summary Record of the Proceedings

Introductory remarks

The Chair opened the meeting by welcoming the participants, in particular new members.

He informed the Management Board of the following appointments:

1. Ms Anne LAPERROUZE had been appointed by the European Parliament in place of Guido SACCONI. Her mandate would run until 1 December 2013.
2. Mr Antti PELTOMÄKI, Deputy Director General in DG ENTR, had been appointed by the Commission to replace Heinz ZOUREK. His mandate would end on 27 June 2013.
3. Paulo Guilherme DA SILVA LEMOS had been appointed by the Council of the EU to replace Mario GRACIO. His mandate would run until 31 May 2015.
4. Iceland had nominated a new observer in the Board, Ms Sigurbjörg SÆMDUNSDÓTTIR.
5. Following the written procedure MB/WP/01/2012 of January 2012 on the invitation of Croatia as an observer to Management Board and other Agency meetings, Croatia had nominated Mr Nenad LAMER as an observer to the Board.

The Chair also recalled that Helmut DE VOS and Eskil THUESEN had announced their respective resignations from the Management Board, which would take effect upon the appointment of replacement representatives by their respective Member States. In the interim, Mr DE VOS had designated Jean-Roger DREZE, and Mr THUESEN had designated Mr Peter ØSTERGAARD HAVE, as their respective *personnes de confiance*.

Mr Hartmut NASSAUER had also resigned from the Management Board. The European Parliament was yet to appoint a replacement.

The Chair introduced the observers attending the meeting and provided information on the proxy votes of which he had been notified (details are listed in section IV of these minutes).

1. Agenda (MB/A/01/2012)

The Chair introduced the room documents that had been made available and announced that the following, additional agenda items would be dealt with under "Any Other Business".

- Announcement of a written procedure for a RAC appointment
- Update from the Working Group on the transfer of fees
- Update from the advisory group on dissemination
- Status of recruitments of seconded national experts (SNEs)
- Forthcoming letter on access to IUCLID for Member State Competent Authorities (MSCAs)

On this basis, the agenda was adopted.

2. Declaration of specific interests

Further to a request for declarations, no conflicts of interest were declared by the Board members present, with regard to the agenda items of the meeting.

The Chair informed the Board about a comment from a Board member regarding the fact that declarations of employment in a public authority in ECHA's field of activity had not been indicated in a harmonised manner (the relevant information had in some cases been annexed to the declaration, rather than being indicated in the declaration itself). The Chair had therefore asked the Secretariat to provide all members with declarations containing the same, previously submitted information, in a harmonised form. The Board members were

invited to review these declarations and return them to the Secretariat after signature, so that they could all be published shortly on ECHA's website.

3. Minutes (MB/M/04/2011)

Before concluding on the minutes of the last meeting, the Chair informed the Board about pending follow-up actions from previous meetings. He mentioned that follow-up actions would also be part of the review of the working methods of the Management Board, later in 2012.

The Director of Risk Management provided a brief update on the status of the analysis of the registration of classified and self-classified CMRs¹ that had been requested at previous Board meetings. An overview of classified CMRs would soon be submitted to the Board and to MSCAs; the registration status of self classified CMRs was still being analysed and had proved to be more complex and more work-intensive than anticipated.

The Director for Regulatory Affairs then reported on activities undertaken in follow-up of evaluation issues and emphasised that the Board would deal regularly with evaluation issues. Regarding sanctions and enforcement, responsibility lay with the Member States but ECHA would provide a coordination platform through the Forum. The possibility of withdrawing a registration number was an issue that concerned ECHA, as stated in the Article 117.2 report. Internal work continued in ECHA and in the Forum working group on interlinks. The Board would be kept informed of these issues.

The minutes of the meeting on 15-16 December 2011 were then approved with some modifications (see corrigendum in the annex).

4. Prolongation of the Executive Director's mandate (MB/01/2012)

The Chair introduced the agenda item by referring to the procedural steps taken in the course of the prolongation procedure for the Executive Director since September 2011.

After the general decision of September 2011 to enter into a prolongation procedure for the mandate of the existing Executive Director, rather than issuing a request to the Commission to launch a new selection process, the Board had concluded the evaluation of the Executive Director's first mandate in December 2011. At the same time, the Board had scheduled the final decision on the prolongation of the mandate for March 2012.

With regard to the next steps in the prolongation procedure, a first exchange of views on the future tasks and challenges of ECHA under the Executive Director next mandate period was held at the December Board meeting, on the basis of a document prepared under the authority of the Board's working group on planning and reporting.

In the light of the discussions held at the December meeting and the comments received from Board members during a subsequent written consultation, the working group had finalised the document which was duly presented in annex to the background note for the agenda item.

Following the Chair's introduction, the Chair of the working group, Martin LYNCH, reported from the meetings of the group on 7 February and 1 March 2012 at which the document on ECHA's future tasks and challenges had been finalised; his report was provided in order to assist the Board in taking an informed decision regarding the suitability of the current

¹ Carcinogenic, Mutagenic or Toxic to Reproduction

Executive Director to lead the Agency in addressing the future challenges identified. Mr LYNCH stressed that the document contained a vision for the next five years regarding the Agency's central strategic objectives, but that it did not attempt to capture all details. The regular planning instruments such as the annual and multi-annual work programmes provided the necessary background for details of the future obligations and activities.

The Board continued with an exchange of views on ECHA's tasks and challenges, welcoming the well-prepared and balanced nature of the document and thanking the working group for the preparations. Some minor improvements were proposed by a Commission representative and a Board member appointed by the Commission to represent interested parties².

The Board then validated the document on the Agency's tasks and challenges, including the aforementioned modifications, for the purposes of the prolongation procedure.

Further discussion on this item was then held *in camera*.

After brief clarification by the Chair and the Commission representatives regarding questions of a procedural nature, the Management decided unanimously that the current Executive Director was suitable to lead the Agency for another term in office of five years and that his mandate would be prolonged from 1 January 2013 in accordance with Article 84(2) of the REACH Regulation. The Chair was entrusted with the implementation of this decision and to cooperate to this effect with the Commission services in order to conclude the Commission's internal administrative procedure related to the prolongation process.

Several Board members as well as the Chair expressed their high satisfaction with the procedure and the collegiate spirit in which the prolongation process had been organised – as well as with the support received from the Secretariat. These factors had led to interesting and fruitful discussions that allowed an informed decision on this important matter.

The meeting was then re-opened for other participants and the Executive Director was informed of the decision taken. The Executive Director thanked the Board for their confidence in his work. Referring to ECHA's future challenges, he expressed his commitment to deliver the results expected for which he can rely on the Agency's dedicated management and staff as well as on the support of the Board.

5. Preliminary Draft Budget proposal, including an outline Work Programme and Establishment plan for 2013 (MB/02/2012)

The Executive Director presented his proposal for the Agency's budget for the financial year 2013, together with the establishment plan and outline of the work programme. He highlighted some of the main challenges ahead for this "peak year" for ECHA: the REACH registration deadline 2013 which, it was assumed, would lead to increased work regarding inquiries, data sharing disputes, helpdesk enquiries, confidentiality claims and appeals; as well as the challenging evaluation targets and the increasing number of authorisation applications foreseen. Furthermore, the Agency would have to start implementing its tasks under the new Biocides Regulation, and preparing for the assumption of tasks under the recast PIC Regulation. At the same time, the financial austerity measures in the European Union (EU) would have to be taken into account.

He explained that the 2013 draft budget foresaw an EU contribution for Agency tasks related to Biocides and PIC activities; REACH and CLP activities would still be fully financed from fee

² These modifications pertained to emphasis being made on the precautionary principle as a principle of the REACH Regulation; reference to the general public as being one of ECHA's stakeholders; and ECHA's proactive approach towards managing potential situations of conflict of interest.

income and the established fee reserve. The REACH/CLP 2013 budget was proposed to increase from €102.7 million (in 2012) to €107 million. For Biocides, expenditure was budgeted to increase to €9.6 million: comprising a subsidy of €6.4 million and fee income of €3.2 million. The number of temporary agents (TA) working on Biocides tasks would increase from 11 (in 2012) to 47. A €1.6 million subsidy was budgeted for PIC activities in 2013; the number of staff working on PIC activities would grow from three (in 2012) to five.

The budget proposal indicated an increase in REACH and CLP staff of five temporary agent posts to 461. This took into account the fact that ECHA had not been authorised to receive the ten new expert positions foreseen in the budgetary procedure for the year 2012, which it would barely need in 2013. However, ECHA would be prepared to reduce the number of assistant positions by five.

The floor was given to Martin LYNCH, Chair of the working group on Planning and Reporting. He informed the Board about the activities of the group, which had met in Helsinki on 1 March to discuss the budget proposal, *inter alia*. Mr LYNCH recalled the challenging financial situation in the EU and the Member States. He highlighted that for REACH and CLP, the 2013 budget foresaw an increase of four per cent from 2012 levels, but that this would be financed from fee income. The working group had discussed the proposed additional ten posts for REACH and CLP tasks but had not reached agreement on the issue.

An extensive exchange of views followed. A Commission representative reminded the Board about the strict austerity measures concerning all EU institutions and Agencies. In addition, some Member State representatives did not support the proposed increase in posts for 2013, referring to the savings being made in the Member States. ECHA was asked to consider how to plan its future activities without the proposed additional staff for REACH and CLP, which would also need to be taken into account in future work programmes.

Other Board members emphasised that ECHA would need the proposed posts to be able to cope with its increased tasks and to comply with the Agency's mandate. The role of the Management Board in the budgetary procedure was discussed, with regard also to defending ECHA's resources at the start of the budgetary procedure, knowing that the ultimate decision would be taken by the Budgetary Authority and not by the Management Board. A number of participants pointed out that the Board should, therefore, support the sound reasoning and good planning behind the proposed staff numbers. The budget proposal was reasonable and reflected the needs of the Agency for the "peak year", as explained in the outline of the work programme.

Further clarifications were made concerning the division of overhead costs and other cost allocation between REACH/CLP tasks and Biocides/PIC related tasks.

The Management Board approved the draft estimate of revenue and expenditure for 2013 together with the establishment plan and an outline of the work programme for 2013, by majority decision. Against the background of the overall climate of austerity, some Member State representatives and the Commission did not support the increase in posts, stressing that it would not be appropriate for ECHA, as an EU Agency, to disregard decisions valid for all EU institutions and agencies.

The Chair clarified that the Board did not intend to challenge the austerity measures decided at institutional level, but that it saw a necessity to present a reasonable proposal from ECHA at the beginning of the budgetary process which matched the Agency's tasks with adequate resources.

The Board instructed the Executive Director to forward the adopted documents to the European Commission and/or the Budgetary Authority as required by Article 96(5) of the REACH Regulation and Article 27 of ECHA's Financial Regulation.

6. Presentation of the ECHA "Staff Model" for REACH & CLP (MB/03/2012)

The Executive Director, Geert DANCET, introduced a staff model developed by the Agency, which anticipates the Agency's staff needs for REACH and CLP tasks for 2012-2021. The model updated the estimates made by the Commission in 2006, taking into account the experience gained by the Agency up to date and data from execution of REACH and CLP processes. Its main findings indicated that the Agency would need significantly higher staffing than previously estimated to execute its duties, i.e. around 600 full time equivalents except in the peak years 2013 and 2018 where it needed considerably more staff. These figures included not only agency's own staff (temporary agents and contract agents) but also where appropriate *intra-muros* consultants and interim staff.

He explained further that the Staff Model would be complemented by a financial model containing estimates for future fee revenue and subsidy needs for 2014-2020. Once sufficient experience had been gained from the execution of tasks under the Biocides and PIC Regulations, ECHA would also complement the staff model for these activities.

The Board welcomed the work done by the Agency and the approach taken. To understand the model better, several Board members asked for the background information used to reach the calculations made and for clarification of the main differences between the new model and the original, Commission model. Further requests were made with regard to the consequences for future budgeting, the replacement of the current 2006 model and the 75% conversion rate used to calculate the availability of staff. One Member State representative reiterated that the management should consider deprioritising some activities if the staffing awarded by the Budgetary Authority was not on the level needed to fulfil all foreseen activities.

A Commission representative stated that the approach was very valuable for the planning of the multi-annual work programmes. Such a model would also be needed for Biocides and PIC. However, he clarified that the ECHA staff model had to be differentiated from the legislative financial statements or budgetary procedure, which it could not replace at this point in time without a modification of the regulation.

The Executive Director replied to the comments made and clarified that, upon request, further background information about the calculations could be provided to the Board. He clarified that the differences between the 2006 model and the present model would be significant both in absolute numbers and between years, taking the peak years in 2013 and 2018 better into account. This would have consequences for budgeting in 2014-2020. The Commission's staff model from 2006 had not been based on the final version of REACH and therefore did not take all its elements into account. The new staff model also included contract agents, consultants and interim staff whilst the Commission model indicated only the statutory temporary agent employees.

The Executive Director continued by confirming that the ECHA model could not replace the legislative financial statement for REACH. However, every model or assumption would need to be revised regularly and adapted to changing circumstances. Biocides and PIC information would be integrated into the model at a later point in time, once experience had been gained regarding new regulatory processes.

The Board took note of the information provided.

7. Multi-annual Work Programme 2013-2015 (MB/04/2012)

The draft Multi-Annual Work Programme 2013-2015 was presented to the Board by the Executive Director. The Multi-Annual Work Programme (MAWP) is a rolling plan submitted each year to the Board for revision. The Board was asked at the present meeting for its endorsement of the document prior to public consultation. Final adoption of the Multi-Annual Work Programme was foreseen for the June meeting.

The MAWP presented for 2013-2015 included, for the first time, four strategic Agency aims; these had been derived from discussions held on the "Future tasks and challenges of ECHA" which began at Board level at the December 2011 meeting. The four aims are as follows:

- Maximise the availability of high quality data to enable the safe manufacture and use of chemicals;
- Mobilise authorities to use data intelligently to identify and address chemicals of concern;
- Address scientific challenges by serving as a hub for building the scientific and regulatory capacity of Member States, European institutions and other actors; and
- Embrace current and new legislative tasks efficiently and effectively, while adapting to upcoming resource constraints.

He stressed that the aims would help to identify priority actions for the coming years and to determine resource allocation.

Martin LYNCH, the Chair of the working group on planning and reporting, presented the views of the group, which had met on 7 February and 1 March to review the comments received on the MAWP from the Board members; based on this input, the Secretariat had revised the document. He thanked all members for their contributions and recommended that the MAWP be submitted for public consultation.

Board members thanked the working group for their comprehensive work and stated that promoting a high quality of data in registration dossiers would be a key challenge for ECHA. For this reason the implementation and the enforcement of evaluation decisions would be a crucial factor. If a company were to fail continuously to comply with its REACH registration obligations, transmission of a clear signal should be considered, including at Agency level, such as, in extreme cases, the withdrawal of the registration number.

One member representing interested parties recalled, in this context, earlier Board discussions on the possible withdrawal of registration numbers and proposed that reference be duly included in the MAWP.

One Member requested an update of all requests for support issued by the Commission to ECHA and raised concern about their impact on the Agency's workload.

Responding to the comments made, the Executive Director explained that authorisation applications were expected to be complex and that planning for compliance checks for 2013 dossiers would follow soon. With regard to the issue of evident and repeated non-compliance by a company with REACH, the withdrawal of a registration number could be one possible measure to ensure the correct implementation of the legislation. He also noted that the status of Commission requests for support would be reported later, under item 13.

The Board endorsed the submission of the draft Multi-Annual Work Programme 2013-2015 for public consultation with minor amendments³.

³ P. 22, fifth paragraph, addition: In case of continued non-compliance, ECHA and the Member States will consider appropriate measures, **including withdrawal of registration number**, to ensure the correct implementation of REACH. P. 13, 6th paragraph, replacement: "contemporary approach" by "**proactive approach**".

The draft document would be made available on ECHA's website with the possibility for the general public to provide comments. Final adoption of the MAWP by the Board was foreseen for June 2012.

8. Multi-annual Staff Policy Plan (MASPP) 2013-2015 (MB/05/2012 and MB/05/2012 rev.01)

The Director of Resources presented the multi-annual staff policy plan 2013-2015. He explained that in the context of tight budgetary ceilings, ECHA's temporary agent (TA) staff for REACH and CLP would be reduced by 1% per year, starting from 2013. The plan foresaw 461 Temporary Agents in 2013 and 451 in 2015. The number of contract agents would increase from 94 to 101. The planned cuts would not affect staff working for Biocides and PIC related activities as these were new activities which were considered separately by the Commission. For REACH and CLP tasks ECHA would, however, be considered at "cruising" speed by the Commission, even though some tasks under these Regulations were still to be started. For Biocides, 47 TA staff were foreseen for 2013 and 50 for 2014-2015; for PIC, five TAs were foreseen for 2013 and six for 2014-2015. Twelve to nine contract agents would work for Biocides in 2013-2015 and one for PIC.

It was clarified that the Agency had, as requested, consulted the Commission on the draft document by a set deadline in January. However, the Commission's opinion had only been submitted to ECHA in the afternoon of the day preceding the present meeting. The comments made by the Commission were presented to the Board together with proposals regarding how some of them could be accommodated in the Plan.

A Commission representative apologised for the late submission which had been due to the high number of parallel opinions to be delivered to Agencies by the same Commission department. He explained the Commission's opinion welcoming the low vacancy rate at ECHA and recommended more detailed explanations on how ECHA intended to manage its new tasks and how it would ensure synergies with existing tasks. Detailed comments referred to a requested nominal decrease in staff in 2013, and the grading and denomination of senior Agency management or ECHA's approach to reclassification. He highlighted that ECHA was already an Agency at cruising speed for REACH and CLP and that the same austerity measures should be applied to ECHA as to other EU Agencies.

In the subsequent discussion, Board members requested explanation regarding why ECHA was already considered as being at cruising speed and how staff resources would be divided between REACH/CLP and Biocides/PIC tasks.

Several Board members expressed concern with regard to unresolved divergences between the ECHA Secretariat's view on certain aspects and the Commission's opinion. Some of these aspects were not new but had already been discussed in previous years, such as the grading and titles of senior management. The Executive Director was invited to work with the Commission towards a solution and to report back at the next meeting of the Management Board.

Similar to the discussions on the ECHA budget proposal for 2013, some members requested a nominal decrease in staff from 2013 onwards.

The Executive Director responded to the comments made. He explained that there would be some flexibility concerning staff working for Biocides tasks, as both part-time and full-time employment in this activity would be possible. The allocation of costs between REACH/CLP and Biocides or PIC activities would be monitored carefully and a separate cost accounting system put in place.

He confirmed that ECHA could work with the Commission to resolve outstanding issues related to the staffing plan. He mentioned that the Chair of the Board should be closely involved with questions linked to the grading of senior management. This would concern the Agency in general and on a long term basis. ECHA should be benchmarked here against other EU Agencies with similar financial and operational responsibilities. However, managers

currently employed by ECHA, including himself, would have a direct interest and the Chair, therefore, was in a better position to lead the discussions on behalf of the Agency.

The Chair concluded that ECHA and the Commission would participate in a dialogue to discuss further the outstanding issues from the Commission's opinion on the draft staff policy plan. The Board would deal with the matter at a subsequent meeting.

The Management Board adopted the multi-annual staff policy plan 2013-2015. As not all changes proposed by the Commission were accommodated, the Commission representatives did not align themselves with the decision. As regards the Board's position on 2013 staffing, reference was to be made to the majority decision on the budget 2013 proposal (item 5).

The Executive Director was instructed to forward the document to the Commission and the Budgetary Authority by 31 March 2012.

9. General Report 2011 (MB/06/2012)

The Executive Director presented the General Report to the Board, including the Agency's main achievements and outputs in 2011. Among the main achievements mentioned were the significant progress made with the dissemination activity and under dossier and substance evaluation. As regards risk management activities, the high number of substances added to the candidate list, the preparations for handling authorisation applications and the opinions issued on four restrictions were listed. Other highlights included the launch of the RIPE⁴ tool and the new website.

Martin LYNCH, the Chair of the working group on planning and reporting, congratulated ECHA for the impressive achievements, especially in disseminating information to the public. He recommended the adoption of the General Report.

Board members thanked ECHA and the working group for the good quality of the report and the significant achievements of the Agency in 2011.

The Board adopted the ECHA General Report for 2011 and instructed the Executive Director to submit the document to the Member States, the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors, and to have it published.

10. Analysis and Assessment of the Authorising Officer's Annual Activity Report 2011 (MB/07/2012)

The Board heard from the Executive Director who presented his Annual Activity Report as authorising officer under the Financial Regulation for the year 2011, including information on budget, staffing and internal control systems.

Martin LYNCH, the Chair of the working group on planning and reporting, introduced the working group's proposed analysis and its positive assessment of the annual activity report. He highlighted that the group strongly appreciated the achievements of the Agency's management and the entire staff in implementing the ambitious goals set by the regulation. The measures taken to address the high levels of stress noted amongst staff were welcomed, as they were key to maintaining high staff morale and to retaining the Agency's highly qualified staff.

In an exchange of views, Board members agreed with the positive assessment made by the working group in relation to the results presented in the report, as well as to the high level

⁴ REACH Information Portal for Enforcement

of performance achieved with regard to the execution of tasks under the REACH and CLP Regulations.

A clarification was requested regarding the interest received from the cash reserve of registration fees. In response to this, ECHA's Accounting Officer, Carl WESTERBERG, explained the principles of the Agency's treasury management, highlighting that the approach taken by the Agency had been conservative and did not aim to maximise profit but rather to minimise risks.

The Board took note of the Annual Activity Report for 2011 of the Executive Director as ECHA's authorising officer and adopted its analysis and assessment thereof. The Executive Director was instructed to send the Annual Activity Report and the Analysis and Assessment thereof to the Budgetary Authority and the Court of Auditors before 15 June 2012.

11. Report on the experience with the application of the Decision on the classification of services for which charges are levied (MB/08/2012)

The Director of Resources reported on the findings of the Agency during 2011 with regard to the application of the Management Board decision under the REACH Fee Regulation which allows the Agency to levy administrative charges in cases where registrants incorrectly claim to be entitled to pay the reduced fees for SMEs⁵ (Decision MB/29/2010 final).

Following from the verification during 2011 of the company size of registrants that had declared themselves to be SMEs, 80% of the 245 enterprises examined had not declared their status correctly, which was a much higher rate than originally anticipated. This finding would justify the systematic verification of all registrations for which the fee reduction applicable to SMEs was claimed by the registrant. To this end, it was proposed that the Management Board decision (MB/29/2010 final) and the scale of administrative charges therein should be revised and a proposal to that effect could be submitted in the next Board meeting.

In the subsequent exchange of views, the Board strongly welcomed the proposed approach and the review of the present Management Board decision. Members discussed the planned withdrawal of registration numbers in cases of companies having wrongly declared their size and refusing to pay the applicable registration fee, and asked for clarification concerning the verification process. In view of the 2013 and 2018 REACH registration deadlines, it was stated that SMEs would need assistance in establishing their size and registering it correctly.

One member representing interested parties pointed out that a systematic check would be needed to find out the main reasons behind the incorrect declarations. One possibility for an automatic cross-check could be based on Eurostat's data base on SMEs. Another participant stated that it was not clear whether Eurostat systematically checked the SME status.

It was reiterated that the Member States were responsible for enforcement, not ECHA. Therefore, cooperation with national enforcement authorities was also highly important in this context. One member requested information as to whether a list of non-compliant companies could be made available to national enforcement authorities. It was also mentioned that special focus should be put on the impact upon SMEs' competitiveness and innovation. Another aspect discussed was the definition of Only Representatives (OR) and the correct declaration of their company size.

The Executive Director replied to the comments made. He clarified that ECHA would provide a period for companies during which they could review their declarations and make adjustments if needed before a comprehensive control would start. He stressed that the vast majority of incorrect SME declarations detected during the verification work thus far were

⁵ Small and medium sized enterprise

made by large companies, not by medium sized or small companies. Therefore, the Board's decision would not, in the first instance, concern small companies. ECHA also planned assistance measures, such as webinars, through which to assist companies in verifying their size and to explain the procedure. He explained that some Member States were already starting enforcement activities. Competent authorities will be informed about those companies which - due to the subsequent consequences and decisions by ECHA - are proved to be in non-compliance. Regarding Only Representatives, he clarified that the size of the third company would be decisive, not the size of the OR.

The Chair highlighted the importance of providing support to SMEs to help them to declare their status correctly but equally the importance of ensuring that the benefits foreseen for SMEs reach the right target group.

The Board endorsed the proposal put forward by ECHA management to start preparations for the systematic verification of the company size of all registrants claiming fee reductions applicable to small and medium-sized companies. To this end, the Management Board decision MB/29/2010 final and the scale of administrative charges therein would be revised at a future Management Board meeting.

12. Demonstration of the Classification and Labelling Inventory

ECHA's Classification and Labelling Inventory was presented to the Board by an expert from the Directorate for Risk Management. The Inventory had been published on the ECHA website on 13 February. It represents the largest database of self-classified substances globally, containing information on over three million submission records covering more than 90 000 chemical substances. Some information from registration dossiers is also included in the inventory.

The Board members thanked ECHA staff for this important achievement. They asked for explanation of how the data would be used for further harmonisation and how industry could speed up the process. It was stated that industry would need support to foster the proposals and that ECHA could facilitate such initiatives. Also the possibility to publish the registrant's name in the inventory was proposed as this would facilitate agreement on common classifications.

The Director for Risk Management clarified that among the inventory's three million notifications, some low-quality notifications would also appear. ECHA supported industry by developing an IT platform to facilitate contacts among notifiers of chemicals and also by gradually improving the information stored in the inventory. This would require a joint effort from all parties involved.

The Executive Director complemented the explanations by highlighting that publishing the company name in the C&L inventory would indeed support the harmonisation process and also improve the information available to consumers. Publication as such was not, however, foreseen in the legislation.

The Board took note of the information provided.

13. Report from the Executive Director (MB/09/2012)

The Management Board received a regular report from the Executive Director on the activities of ECHA since the last Board meeting. Many Board members thanked the Executive Director for the comprehensive report and the impressive achievements of the Agency.

During an extensive exchange of views, the quality of registration dossiers was addressed by several members, including the need to consider stronger decisions for dossiers that were clearly not compliant with the legislation in a manner similar to the approach envisaged in the context of the verification of the SME status of registrants. A member representing interested parties appointed by the Commission recalled that in this context, industry had been working towards high quality of registration dossiers though many companies are still in the learning process. A distinction should, therefore, be made between companies willing to learn and needing additional support and those not willing to comply.

Other issues addressed included the reasons for the low number of appeals so far - requested by a Commission representative. Furthermore, the Board discussed the quality of PPORD notifications and registrations for intermediate uses as well as the status of verifications of confidentiality claims. As regards Guidance development, there was a strong interest from members to receive more information on the schedule for publication of Guidance on registration obligations for nanomaterials with a view to the forthcoming 2013 registration deadline. Other topics mentioned by Board members were the progress towards the ambitious goal for testing proposals in 2012, the results of the ECHA staff survey, scientific issues related to testing methods and the use of chemicals in shale gas extraction.

The floor was given to the Executive Director who responded to the questions and comments of Board members. He stated, for example, that dossier quality was an element of one of ECHA's strategic aims in the Multi-Annual Work Programme 2013-2015 and that reference was already made therein to several activities planned on the issue. ECHA was also working on a policy to address the quality of registration dossiers. Besides these activities, short-term signals to the industry were also needed, to demonstrate that flagrant non-compliance was not acceptable. Regarding intermediates, he referred to the high number of intermediates registered. If dossiers were not satisfactory, they could be improved, otherwise the dossier would be rejected. ECHA had worked on letters under REACH Article 36 and analysed the situation. If companies did not update their dossiers, further action will be taken.

The reasons for the low number of appeals were not precisely known to the Agency, he continued. One important reason was assumed to be the automated completeness check tool, which functioned very well and allowed industry to avoid mistakes that could lead to the rejection of a dossier. Concerning dossier evaluation plans, work on testing proposals had been allocated to different teams and thorough planning had been done to ensure that the ambitious goals for 2012 were achieved. As regards the guidance on nanomaterials, he emphasised that it would be provided in April/May 2012, well before the moratorium for the 2013 deadline. The Executive Director also reported that several areas for improvement were identified in the staff survey and that measures would be taken, especially concerning efficiency, empowerment and the delegation of decisions to lower levels.

The information was complemented by ECHA Directors and the Chair of the Member State Committee on matters falling in their competence.

The Board took note of the information provided.

14. Report on participation of stakeholder observers and case owners in MSC (MB/10/2012)

The Director of Regulatory Affairs reported on the experience gained in the first year with respect to the presence of case-owners and stakeholder organisations in discussions on draft dossier evaluation decisions in the Member State Committee (MSC).

He highlighted that the presence of case-owners and stakeholder organisations had added transparency and facilitated MSC deliberations before concluding on such decisions. On the other hand, it was recognised that this resulted in a significant increase in the workload for the Secretariat and difficulties in organising the agenda with open and closed sessions. He recommended that the MSC Chair should have the authority to decide how the meetings should be organised in the most efficient way.

One Member State representative referred to similar situations regarding stakeholders in RAC and SEAC meetings and the national authorities' code of conduct with industry.

The Board took note of the report.

15. Implementation of the ECHA policy on managing potential conflicts of interest (MB/11/2012)

The Board received an update from the Executive Director on the implementation of the policy which was adopted in September 2011 (MB/45/2011 final).

The Management Board was also invited to adopt several measures related to implementing the ECHA policy on managing potential conflicts of interest: a code of conduct for the Management Board; eligibility criteria for Committee members; an aligned declaration of interest forms for the Forum. A further topic was the remuneration of an external expert to the advisory committee established under the new policy. A decision by the Board was needed on this issue in order to allow the launch of a consultation to ensure transparency in the process and broad input on suitable candidates.

The Board members supported the proposed measures and welcomed the proactive approach of the ECHA Secretariat in the important field of managing potential conflicts of interest situations.

Regarding the Management Board's Code of Conduct, the addition of a reference to the fact that the Board had to operate within the framework of EU legislation was proposed.

A discussion also took place regarding the level of remuneration of the external expert for the advisory committee. The Executive Director clarified that the selection process would be carried out in a transparent manner and that ECHA would proceed as soon as the Board had decided on the remuneration of the expert. He stressed that it was an honorary position for an expert and that the daily remuneration of €300, as foreseen for other experts working with the Agency, would be suitable.

The Board approved a package of measures related to the implementation of the ECHA policy on managing potential conflicts of interest. In detail the Board:

- adopted the Code of Conduct of the Management Board with the above mentioned modification and mandated the Executive Director to inform the Chairs of the ECHA Committees of the decision and to invite them to adopt their own Codes of Conduct along the same lines;
- approved the application of its Decision MB/77/2008 final for the remuneration of the external expert, designated by the Executive Director, of the "Ethical Committee";

- formalised the guiding principles for the appointment of Committee members as agreed in February 2008, by converting them into eligibility criteria, and invited the Executive Director to present a proposal for the revised eligibility criteria; and
- adopted a revised annex 2 of the Rules of Procedures of the Forum (MB/36/2011 final) in order to align the declaration with the form for annual declarations of interest, as adopted by the Management Board in September 2011.

16. Implementing rules for the Staff regulations (MB/12/2012)

The Director of Resources introduced implementing rules for the staff regulations related to the conduct of administrative enquiries and disciplinary proceedings of the Staff regulations, which are based on a template from the Commission. Subject to the agreement of the Commission, the Board adopted these implementing rules.

17. Conditions of remuneration of alternate members of the Board of Appeal (MB/13/2012)

The Registrar of the Board of Appeal informed the Board about a letter from one of the alternate Chairs of the Board of Appeal, claiming that the eleven alternate or additional members (AAMs) should be paid for attendance at annual meetings of the Board of Appeal. These annual meetings did not deal with specific appeal cases. According to the letter received, ECHA would nevertheless be obliged to pay for such activities.

The Registrar clarified that AAMs receive payment only for work carried out in the framework of specific appeal cases, as foreseen by the Management Board Decision on remuneration of AAMs, MB/10/2008 final⁶. With regard to other activities, including attendance at annual meetings, they received reimbursement of their travel expenses and a daily subsistence allowance.

The Management Board was further informed that the Secretariat had made an assessment of the legal claims made in the letter by the Alternate Chair, concluding that there would be no obligation for ECHA to remunerate attendance at the annual meetings. It was noted that also the vacancy notices published by the Commission as well as the Management Board decision only refer to remuneration for specific case-related work. Consequently, the above mentioned Management Board Decision on remuneration can only cover work related to appeal cases.

Board members agreed that a response should be sent to the Alternate Chair of the Board of Appeal in line with the assessment made by the Secretariat. However, some members raised the issue of whether remuneration for attendance of annual meetings should not be considered under other aspects not linked to legal aspects raised in the letter received by ECHA, noting, however, that this would indeed set a precedent as ECHA normally provides payment only for the delivery of clearly defined services. Remuneration could, however, be appropriate based on other considerations, for example, motivation of the alternate or additional members or the capacity-building element of the meetings. A number of other members objected to these considerations.

The Chair suggested that a possible option would be to change the nature of the annual meeting.

The Board concluded that ECHA should respond to the Alternate Chair, clarifying the aspects raised in his letter along the lines proposed. At the same time, ECHA should reflect on the question of whether remuneration for participation at annual meetings could be justified

⁶ Remuneration of the Additional Members and Alternates of the Board of Appeal

under other considerations, possibly by changing the concept of the annual meetings. The Board would return to the item at its next meeting.

18. (Re)appointment of members of Working Groups (MB/13/2012)

The Board appointed Mr Antti PELTOMÄKI as a member of the working groups on audit matters, planning and reporting, and the transfer of fees to Member States; it prolonged the mandates of Karel BLAHA, Kassandra DIMITRIOU and Thomas JAKL as members of the working group on audit matters for a second term, until the end of June 2014. The Board also appointed Ms Kassandra DIMITRIOU to the advisory group on dissemination.

19. Report from Working Groups

The Chair of the Working Group on the transfer of fees, Ms Nina CROMNIER, reported on the meeting of the group that had taken place on 22 March. The working group was preparing a review of the Decision MB/65/2010/D final and would present a proposal to the Board at its meeting in June. The group had agreed to base its proposal on a 50/50 split between salary costs and price levels in Member States. ECHA's man-day costs and the number of days needed for RAC and SEAC rapporteurs would be revised. In the meantime, ECHA would collect further information about the salary costs of scientists in Member States and in ECHA.

Mr Antonello LAPALORCIA, new Chair of the Advisory Group on Dissemination, presented the conclusions of the Advisory Group's meeting of 17 February. Taking into account a legal opinion from the Commission services, the group supported the publication by ECHA of summed tonnages per substance converted to the total tonnage band. Dissemination of the tonnage band also implied changes to the manual on confidentiality claims which would be implemented in 2012. At its next meeting, the group would consider the publication of information related to authorisation applications and discuss the stakeholder engagement study.

20. Additional items for information (MB/15/2012; MB/16/2012; MB/WP/01/2012; ECHA-FS-12-05)

Without discussion, the Board took note of an update of the Management Board Rolling Plan and the evaluation progress report 2011.

Furthermore, the Management Board received an update on the requirements for RIPE⁷. One technical clarification was made regarding RIPE and the use of EIES (Electronic Information Exchange System for Enforcement).

Board members also received the outcome of the written procedure MB/WP/01/2012 concerning the invitation of Croatia as an observer to the Management Board and aligning the form for annual declarations of interest by Committee members, as adopted by the Board in September 2011 (MB/45/2011/D final). The necessary two-thirds majority of Board members with voting rights approved the proposals made.

⁷ REACH Information Portal for Enforcement

21. Any other business

RAC Appointment

The Chair announced that the Board would enter into a written procedure to appoint a member for the Risk Assessment Committee.

Review of ECHA

A Commission representative explained that a study report on the review of ECHA, which had been prepared by an external contractor for the Commission, was under finalisation. The overall results of this report were positive. It was agreed that the final report would be submitted to the Board a few days before publication.

Update on future tasks under the recast PIC Regulation

A Commission representative informed the Board that according to the agreement recently reached by the legislative authority, the date of entry into force of the recast PIC Regulation would be 1 March 2014. The entry into operation would be 18 months later and thus sufficient time was foreseen for ECHA to prepare for its new tasks.

Furthermore, the new Regulation on Biocides would soon be formally adopted. A Member State representative recalled, in this context, that many Member States had long experience in dealing with Biocides issues, especially with databases. They would be willing to share this knowledge with ECHA.

IUCLID Access for MSCAs

The Executive Director explained that the pilot project with three Member States had been concluded and that ECHA would be ready to grant MSCAs with access to IUCLID by the end of May. He invited MSCAs to begin the process of signing the amended Declaration of Commitment and to submit it to ECHA.

Rules for the engagement of Seconded National Experts (SNEs)

The Executive Director informed the meeting of the feedback received from Member States in reply to his initiative of December 2011. He proposed the recruitment of SNEs for expert positions, with their entire salary reimbursed by ECHA to Member States in order to compensate for staff shortfalls resulting from the last budgetary procedure. Only one Member State had signalled potential availabilities thus far. ECHA would finalise a possible change to the SNE rules by the next Board meeting.

21. Next meeting and closure

The Chair concluded the meeting by thanking the participants for a highly productive meeting, and the ECHA Secretariat for the good preparations. The Board bid farewell to the Hungarian representative, Mr Zoltan ADAMIS, who was to resign from the Board in May due to retirement.

The Chair reminded members that the next meeting of the Management Board would be held in Helsinki on **20-21 June 2012**.

III. Decisions taken / Conclusions reached by the Management Board

The Management Board:

- adopted the agenda for its 25th meeting as contained in MB/A/01/2012.
- approved the minutes of its 24th meeting, subject to the amendments indicated in the corrigendum attached to the present minutes. (MB/M/04/2011).
- concluded the prolongation procedure of the Executive Director by deciding that the current Executive Director was suitable to lead the Agency for another term in office of five years and that his mandate will be prolonged for another term of office of five years from 1 January 2013 in accordance with Article 84(2) of the REACH Regulation. It authorised the Chair to implement the decision in cooperation with the Commission.
- approved the draft estimate of revenue and expenditure for 2013 together with the establishment plan and an outline of the work programme for 2013 and instructed the Executive Director to forward the documents to the European Commission and/or the Budgetary Authority as required by Article 96(5) of the REACH Regulation and Article 27 of the ECHA Financial Regulation.
- endorsed the submission of the draft Multi-Annual Work Programme 2013-2015 for public consultation.
- adopted the ECHA multi-annual staff policy plan 2013-2015 and instructed the Executive Director to forward the document to the Commission and the Budgetary Authority by 31 March 2012.
- adopted the ECHA General Report for 2011 and instructed the Executive Director to submit the document to the Member States, the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors, and to have it published.
- adopted its analysis and assessment of the Annual Activity Report of the Executive Director as Authorising Officer. The Executive Director was instructed to send the Annual Activity Report and the Analysis and Assessment thereof to the Budgetary Authority and the Court of Auditors, before 15 June 2012.
- endorsed a proposal to start preparations for the systematic verification of the company size of all registrants that claim fee reductions applicable to small and medium-sized companies and to revise the Management Board decision MB/29/2010 final accordingly.
- adopted a package of measures related to the implementation of the ECHA policy on managing potential conflicts of interest. In detail the Board:
 - adopted the Code of Conduct of the Management Board subject to an amendment indicated in these minutes and mandated the Executive Director to inform the Committee Chairs of the decision and to invite them to adopt their own Codes of Conduct along the same lines;
 - approved the application of its Decision MB/77/2008 final for the remuneration of the external expert of the "Ethical Committee";
 - formalised the guiding principles for the appointment of Committee members as agreed in February 2008, by converting them into eligibility criteria, and invited the Executive Director to present a proposal for revised eligibility criteria; and
 - adopted a revised annex 2 of the Rules of Procedures of the Forum (MB/36/2011 final) in order to align the declaration with the form for annual declarations of interest, as adopted by the Management Board in September 2011.

- adopted the implementing rules for the staff regulations related to the conduct of administrative enquiries and disciplinary proceedings of the Staff regulations, subject to agreement of the Commission.
- appointed Mr Antti PELTOMÄKI as member of the working groups on audit matters, planning and reporting and the transfer of fees to the Member States; and prolonged the mandates of Karel BLAHA, Kassandra DIMITRIOU and Thomas JAKL as members of the working group on audit matters for a second term until the end of June 2014. The Board also appointed Ms Kassandra DIMITRIOU to the advisory group on dissemination.

List of agreed follow-up actions

- The Secretariat will ensure the structured follow-up of evaluation issues for a subsequent Board meeting, focusing also on sanction and enforcement (ongoing, update received).
- The Secretariat will provide a short analysis on the number of phase-in and non phase-in self-classified CMR 1 & 2 registered by the first registration deadline (ongoing, update received).
- ECHA will forward the confidential version of the report prepared by the JRC under the administrative agreement on the assessment of nanomaterials in REACH registrations to MSCAs. (cf. Doc.: MB/71/2011, pg. 4, 2.4. Administrative Agreement on the assessment of nanomaterials in REACH registrations, 3rd paragraph).

IV. List of Attendees

Representatives of the Member States

Zoltan ADAMIS (HU)
Karel BLAHA (CZ) also acting as proxy of Ms NOVAKOVA
Nina CROMNIER (SE)
Paulo Guilherme DA SILVA LEMOS (PT)
Arwyn DAVIES (UK)
Kassandra DIMITRIOU (EL)
Simona FAJFAR (SL)
Francis FARRUGIA (MT)
Ana FRESNO (ES)
Claude GEIMER (LU)
Thomas JAKL (AT)
Pirkko KIVELÄ (FI)
Jan Karel KWISTHOUT (NL) also acting as proxy of Mr THUESEN and Mr DE VOS
Antonello LAPALORCIA (IT)
Martin LYNCH (IE)
Boyko MALINOV (BG)
Edyta MIEGOC (PL)
Leandros NICOLAIDES (CY)
Alexander NIES (DE) also acting as proxy of Ms MIR
Armands PLATE (LV)
Aive TELLING (EE)
Marija TERIOSINA (LT)

Representatives of the Commission

Gustaaf BORCHARDT also acting as proxy of Ms ANKLAM
Antti PELTOMÄKI

Independent persons appointed by the European Parliament

Anne LAPERROUZE

Representatives from interested parties appointed by the Commission

Martin FÜHR (EEB/University of Darmstadt)
Hubert MANDERY (CEFIC)
Gertraud LAUBER (EMCEF/ETUC)

Observers from EEA/EFTA countries

Brith Elisabeth SØRLIE (NO)

Other Observers

Jean-Roger DREZE on behalf of Helmut DE VOS(BE)
Peter OSTERGAARD HAVE On behalf of Eskil THUESEN(DK)
Björn HANSEN (European Commission)
Graham WILLMOTT (European Commission)

ECHA staff

Geert DANCET (Executive Director)
Jukka MALM (Director of Regulatory Affairs)
Leena YLÄ-MONONEN (Director of Evaluation)
Jack DE BRUIJN (Director of Risk Management)

Andreas HERDINA	(Director of Cooperation)
Christel MUSSET	(Director of Registration)
Luisa CONSOLINI	(Director of Information Systems)
Jef MAES	(Director of Resources)
Anna-Liisa SUNDQUIST	(Chair of the Member State Committee)
Tomas OBERG	(Chair of the Committee for Socio-Economic Analysis)
Alain LEFEBVRE	(Head of Unit, Executive Office)
Frank BÜCHLER	(Legal Officer, Executive Office)
Mervi MUSTAKALLIO	(Planning and Monitoring Officer, Executive Office)
Tiiu BRÄUTIGAM	(Member States Relations Officer, Executive Office)
Bo BALDUYCK	(Legal Advisor, Executive Office) for agenda item 15
Tuula HAKALA	(Head of Unit, Finance) for agenda items 5 and 11
Sari HAUKKA	(Registrar, Board of Appeal) for agenda items 5-12 and 15-17
Evita LUSCHÜTZKY	(Junior Scientific Officer, Classification) for agenda item 13
Shay O'MALLEY	(Head of Unit, Human Resources) for agenda item 8
Mercedes ORTUNO	(Chair of Board of Appeal) for agenda item 17
Kevin POLLARD	(Head of Unit, Dossier submission and dissemination) for agenda item 11
Gabby PRIKLOPILOVA	(Chair, ECHA Staff Committee) for agenda item 16
Carl WESTERBERG	(Accounting Officer, Finance) for agenda item 10

Corrigendum to the minutes of the 24th Management Board

12. Report from the Executive Director (MB/63/2011)

(...)

Information from over 24 000 registration dossiers had already been published and more than 1 000 confidentiality claims assessed, half **of which were evaluated as unsatisfactory**.

(...)

23. Any other business

(...)

– MSCA Directors Planning meeting

(...)

First feedback from the participants was positive and most of them wanted to continue with this informal meeting annually. **Participants suggested distributing the meeting documents earlier in order to facilitate their preparations for the meeting.**

List of agreed follow-up actions

- **ECHA will forward the confidential version of the report prepared by JRC under the administrative agreement on the assessment of nanomaterials in REACH registrations to MSCAs. (cf. Doc.: MB/71/2011, pg. 4, 2.4. Administrative Agreement on the assessment of nanomaterials in REACH registrations, 3rd paragraph).**