

# Operating framework of the Management Board of the European Chemicals Agency (ECHA)

(Adopted by the Management Board<sup>1</sup>)

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<sup>1</sup> Adopted by the Management Board in 2012 (MB/62/2012), technically updated by the Secretariat in 2017 (MB/42/2017), further revised in 2019 (MB/52/2019) and technically updated by the Secretariat (Management Board Decision 67/2019 and Management Board Decision 28/2020).

## The Management Board's operating framework

### **ECHA as an EU agency**

ECHA is a European Union (EU) agency, established by Regulation (EC) No 1907/2006 ("the REACH Regulation"). Within the institutional system of the EU, agencies are created as independent "bodies" pursuant to Article 70 of the General Financial Regulation applicable to the budget of the EU<sup>2</sup>. The currently 37 decentralised EU agencies all have a governing board with a broadly similar role and responsibilities.

In June 2012, the European Institutions adopted a *Joint Statement and Common Approach* on EU decentralised agencies.<sup>3</sup> Shortly after, the Commission further designed a *Roadmap* for the implementation of the Common Approach that ECHA has implemented.<sup>4</sup>

## **1. Role and composition of the Management Board**

### **1.1 The Management Board as integral part of ECHA**

The Management Board is an integral part of ECHA and one of the constituent components that sets out the structure of the Agency<sup>5</sup>.

### **1.2 Composition of the Management Board**

The Management Board has currently 36 members:

- 1 representative of each of the 27 EU Member States (with voting rights)
- 3 representatives of the European Commission (with voting rights)
- 2 independent persons appointed by the European Parliament (with voting rights)
- 3 individuals from interested parties appointed by the Commission (no voting rights)

In addition to the members, the Board decided to invite one observer from each of the three EEA-EFTA states (Iceland, Liechtenstein and Norway)<sup>6</sup>.

There are no alternate Board members foreseen in REACH. Board members may, however, send a person of trust ("*personne de confiance*") to attend on their behalf<sup>7</sup>. This person sits in the seat of the member at the meeting, or participates through a remote connection in case the meeting is held virtually, and may make interventions during debates, but is not entitled to vote. With respect to the appointment in a personal capacity, replacements at plenary meetings should, however, remain an exception. For subgroup meetings, persons of trust may attend on a regular basis.

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<sup>2</sup> Regulation (EU, Euratom) 2018/1046.

<sup>3</sup> See Joint Statement and Common Approach (Parliament, Council & Commission), June 2012, retrieved from [http://europa.eu/european-union/sites/europaeu/files/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](http://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf).

<sup>4</sup> See Roadmap on the follow-up to the Common Approach on EU decentralised agencies, December 2012, retrieved from [http://europa.eu/european-union/sites/europaeu/files/docs/body/joint\\_statement\\_and\\_common\\_approach\\_2012\\_en.pdf](http://europa.eu/european-union/sites/europaeu/files/docs/body/joint_statement_and_common_approach_2012_en.pdf).

<sup>5</sup> See Article 76 of the REACH Regulation.

<sup>6</sup> The EEA-EFTA states take part in the REACH implementation based on EEA Joint Committee Decision 25/2008 of May 2008 on REACH and the establishment of a European Chemicals Agency; EEA-EFTA states also take part in the BPR implementation.

<sup>7</sup> See meeting minutes of the Management Board meeting of 27-29 June 2007, page 6, and of the meeting of 4-5 March 2010, page 1.

### **1.3 Members of the Management Board and their role**

Member State representatives are appointed by a decision of the Council of the European Union. The European Commission nominates its representatives and the non-voting members from interested parties per Commission decision. The independent persons appointed by the European Parliament are designated by the President of the European Parliament. The observers are designated by the respective national mission to the EU or by the responsible national ministry.

The duration of the term of office of members is four years. It may be renewed once.

With regards the appointment procedure of the Member State representatives, the Secretariat keeps a list of mandates and the Management Board Chair formally requests the permanent representation of the Member State to nominate a new member or prolong the nomination of its existing member when his or her mandate is nearing its end. The Chair is available for an interview with the nominating authority, in order to clarify the expertise needed and provide any information on the Management Board's work. The nomination is afterwards submitted by the Member State to the Council.

Upon joining the Management Board, new Members are provided with the Code of Governance, as well as with a set of induction material. In addition, a mentoring system is in place, where experienced Board member are available to support the integration of new members.

The requirement of a Council decision for the appointment of Member State representatives prevents a too frequent turnover which might otherwise hinder the functioning of the Board and the continuity of its work. Replacements of Board members are, nevertheless, a reoccurring issue. The time required for adopting the appointment decisions can result in a considerable gap between the identified need for a replacement and the actual appointment. For this reason a practical arrangement has been put in place with the aim of ensuring, in particular, the continued involvement of Member States in the Board's proceeding. To this end, a Board member who has to resign from his or her function usually remains on the Board until a replacement is appointed. During the interim period the Board member can nominate a person of trust and/or delegate a proxy vote to another Board member with voting rights. The arrangement is agreed with the individual member on a case-by-case basis, notified to the Chair and communicated to the Board at the beginning of each meeting.

#### **Role of Management Board members**

As regards the structure of the Management Board and the expertise of its members, the REACH Regulation provides as follows:

*"To ensure that the Agency fulfils its role, the composition of the Management Board is designed to represent each Member State, the Commission and other interested parties appointed by the Commission in order to ensure the involvement of stakeholders, and the European Parliament and to secure the highest standard of competence and a broad range of relevant expertise in chemicals safety or the regulation of chemicals, whilst ensuring that there is relevant expertise in the field of general financial and legal matters"<sup>8</sup>.*

Hence, it appears that the intention of the legislative authority is that while individually members represent their Member State, institution or interested parties, they are appointed (either) in a personal capacity and/or because of their expertise. The primary duty of the Management Board and of its members – being part of ECHA – is to provide strong governance and strategic steer to enable the Agency to deliver its mission and vision and fulfil the role and tasks assigned to it. These considerations should guide the Management Board members in cases where a distinction is to be made between the interests of the Agency and the interest of individual Member States or organisations they represent.

### **1.4 Independence and commitment**

Before being appointed, all members of the Management Board with voting rights are assessed based

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<sup>8</sup> See Recital 98 and Article 86 of the REACH Regulation.

on **five** eligibility guidelines to guarantee their independence when exercising their mandate<sup>9</sup>.

This is without prejudice to the three members of the Management Board without voting rights appointed by the Commission from interested parties pursuant to Article 79(1) of the REACH Regulation.

Once appointed, members of the Board make a declaration of interest and commitment.<sup>10</sup> These declarations are made annually in writing and published on ECHA's website. Members of the Management Board follow usually the invitation of the secretariat to provide a curriculum vitae or biographic abstract which is then also published on the website.

The members' declarations of interest are to be reviewed by the Chair. The declaration of the Chair is reviewed by the Deputy Chair.

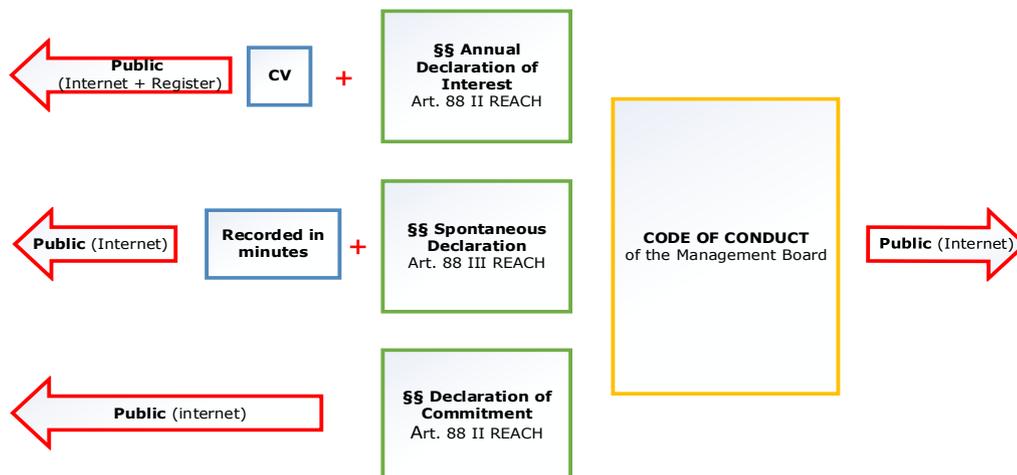
No member, observer, person of trust or invited expert shall participate at any Management Board meeting without a valid declaration in place. Moreover, at each meeting, members are required by the REACH Regulation to spontaneously declare any interest which could be prejudicial to their independence with respect to any of the points on the agenda. Anyone declaring such interests does not participate in any voting on the respective point.

The duty to declare any relevant interest extends to the non-voting Board members appointed by the Commission to represent interested parties. This applies, however, without prejudice to their legally foreseen role as representatives of a specific interest<sup>11</sup>.

In case a Member concerned by an established breach of trust was involved in an opinion- or decision-making procedure, the Agency is empowered to conduct an *ex post review* of the Member's activities and contributions to the Agency's output.

If further advice on matters related to conflicts of interest is needed, the Management Board may also consult the Conflict of Interest Advisory Committee (CoIAC).

The Management Board also adopted a Code of Conduct which is signed by all members and contains for example provisions on independence, invitations and gifts<sup>12</sup>.



<sup>9</sup> See Annex 2 of ECHA's policy for the Prevention and Management of potential Conflicts of Interest (PRO 0067, as adopted by the Management Board on 25 February 2019).

<sup>10</sup> See Article 88 (2) of the REACH Regulation.

<sup>11</sup> The Commission appointed Members from interested parties to represent the perspectives of different stakeholders, i.e. from industry, consumers, environmental and health NGOs and trade unions.

<sup>12</sup> Decision of 27 September 2019, MB/52/2019 final.

## 1.5 Confidentiality

The REACH Regulation requires members of the Management Board, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy<sup>13</sup>. Other persons present at meetings shall respect the confidential character of Board meetings and may be requested by the Secretariat to formally acknowledge this duty by signing a corresponding declaration.

The Code of Conduct of the Management Board addresses confidentiality aspects, including the requirements for persons advising Board members in the meeting preparations. Accordingly, confidentiality duties do not prevent Board members from sharing information with experts in the Member States or other persons assisting them in the preparations of the meetings. Similar to other work in the public service or private organisations, an informed judgment has to be made by each Board member as to whether a certain issue is to be treated confidential or not. The Secretariat is ready to assist in case of doubt.

## 2. Statutory responsibilities of the Management Board

The most important tasks of the Management Board are summarised in this chapter. Some of the tasks, in particular those related to budgetary matters, are to be accomplished each year by a specific deadline.

### 2.1 REACH Regulation

The Management Board's main tasks are described in ECHA's constituent legal act, the REACH Regulation. Article 78 of the Regulation specifies the powers of the Board in general terms. Specific provisions clarify some of these in more detail.

The main tasks of the Management Board are the following:

#### **Budgetary and financial matters**

- adopt the annual budget and amendments thereof
- estimate of revenue / expenditure for the following financial year
- deliver an opinion on the Agency's final accounts (by 1 July)
- notify to the Budgetary Authority projects with significant financial implications, in particular in relation to building / property

#### **Planning and reporting**

- adopt an annual (by 31 October) and a multiannual work programme (regularly)
- adopt an annual general report on the activities of ECHA (by 30 April)

#### **Appointing Authority**

- appoint/dismiss the Executive Director and act as disciplinary authority
- appoint the members for ECHA's scientific committees (RAC and SEAC)
- appoint the Chairman, the members and alternates/additional members of the Board of Appeal
- appoint the accounting officer of ECHA

#### **Setting of internal rules**

- adopt its own rules of procedure and rules of procedures of the Agency bodies (MSC, RAC, SEAC, Forum)
- adopt the Implementing Rules for the Staff Regulations, in agreement with the Commission
- adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 regarding public access to documents
- adopt financial rules applicable to ECHA, including rules for reimbursement
- adopt rules for remunerating alternates of the Board of Appeal and other experts working with ECHA

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<sup>13</sup> See Article 105 of the REACH Regulation.

- adopt in agreement with the Commission rules on transparency regarding the safety of substances
- adopt rules of procedures to coordinate work between ECHA and other EU bodies or scientific committees
- setting other rules and procedures within the remit of the Management Board

### Contacts with external parties

- decide on the participation of third countries / international organisations in ECHA's work
- develop contacts with stakeholder organisations (in agreement with the Commission)

### Example of a key task:

A key responsibility of the Management Board is the establishment of the budget and the Work Programme, the latter being the financing decision for the budget, justifying the use of resources. Both documents are contained in the Programming Document of ECHA, also covering the Establishment Plan, the Multiannual Staff Policy Plan and the Multiannual Programming.

In addition, the Board has the duty to monitor the budget and work programme implementation. The graphic below shows the timeline for the establishment of the ECHA Budget, the work programme and the general report.



The adoption of these documents is integrated into the Agency-wide planning cycle and determines further planning activities at directorate and unit level.

## 2.2 REACH Fee Regulation

The Agency is partly financed by fees paid by industry. A smaller amount of revenue is also generated from administrative charges. Part of the fee revenue is used to reimburse Member States for tasks performed under the REACH Regulation.

Certain specific Management Board tasks related to the fee management are set out in the REACH Fee Regulation (EC) No 340/2008, which is a Commission implementing act for the REACH Regulation. Management Board decisions under the Fee Regulation require a favourable opinion of the Commission before they can be applied.

Examples of tasks from the Fee Regulation include:

- setting the amount for the reimbursement of Member State tasks under substance evaluation, restriction or authorisation procedures and the maximum proportion of the fees and charges transferred to the Competent Authorities of the Member States as well as any arrangement necessary for the transfer

- classification of administrative and technical services provided by the Agency and the charges levied for these services

## 2.3 ECHA Financial Regulation

Important duties of the Board are contained in ECHA's Financial Regulation<sup>14</sup> which was adopted by the Management Board on the basis of a Commission framework financial regulation for the EU bodies, such as agencies.<sup>15</sup>

The provisions in the Financial Regulation repeat partly the Board's budgetary and financial obligations contained in the REACH Regulation and may specify these in more detail or with different timelines. There are also a number of additional responsibilities of the Board contained in the ECHA Financial Regulation.

Main additional tasks, duties and rights are the following<sup>16</sup>:

- adopt a draft and final programming document containing multi-annual and annual programming (Article 32(1)(a) and (b) FR; as regards non-substantial amendments to the annual work programme, the MB may delegate the power to the Authorising Officer of the Agency)
- decide on the carry-over of budget appropriations (Article 12(3) FR)
- be informed by the Executive Director of non-significant budget transfers and decide on significant transfers within the budget (Article 26 FR)
- adopt (limited) changes to the establishment plan (Article 38 FR)
- deliver the consolidated annual activity report of the Authorising Officer and its assessment to the Court of Auditors, the Commission, the European Parliament and the Council (Article 48(2) FR); (by 1 July)
- receive results of *ex ante* and *ex post* evaluations of programmes or activities which entail significant expenditure (Article 29(4) FR)
- scrutinise implementation of the action plan, prepared by the Executive Director, to follow-up on the results of the evaluations (Article 29(5) FR)
- receive information on achievement of objectives and sound financial management (Article 28(3) FR)
- receive information on the observations by the European Parliament accompanying the discharge decision (Article 105(1) FR)
- act as competent authority for conflicts of interest of the Executive Director in his or her role as financial actor under the Financial Regulation (Article 42(3) FR)
- decide on whether to accept any legacies, donations or grants from other EU sources or any voluntary contribution from the Member States or from their regulatory authorities (Article 22(2) FR)
- be informed before the Executive Director signs a Contribution Agreement (Article 7(6) FR).

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<sup>14</sup> See MB/29/2019.

<sup>15</sup> See Article 99 of the REACH Regulation. The Financial Regulation is contained in Regulation (EU, Euratom) 2018/1046 and states in article 70(1) that EU bodies, such as agencies, must adopt financial regulations based on a framework financial regulation adopted by the Commission. The framework financial regulation is contained in Commission Delegated Regulation (EU) 2019/715 of 18 December 2018. The Management Board has adopted the ECHA Financial Regulation (MB/29/2019 final) in agreement with the Commission. ECHA's Regulation follows very closely the Commission's framework, with the exception, for example, of a provision allowing joint procurements with the Finnish State procurement agency.

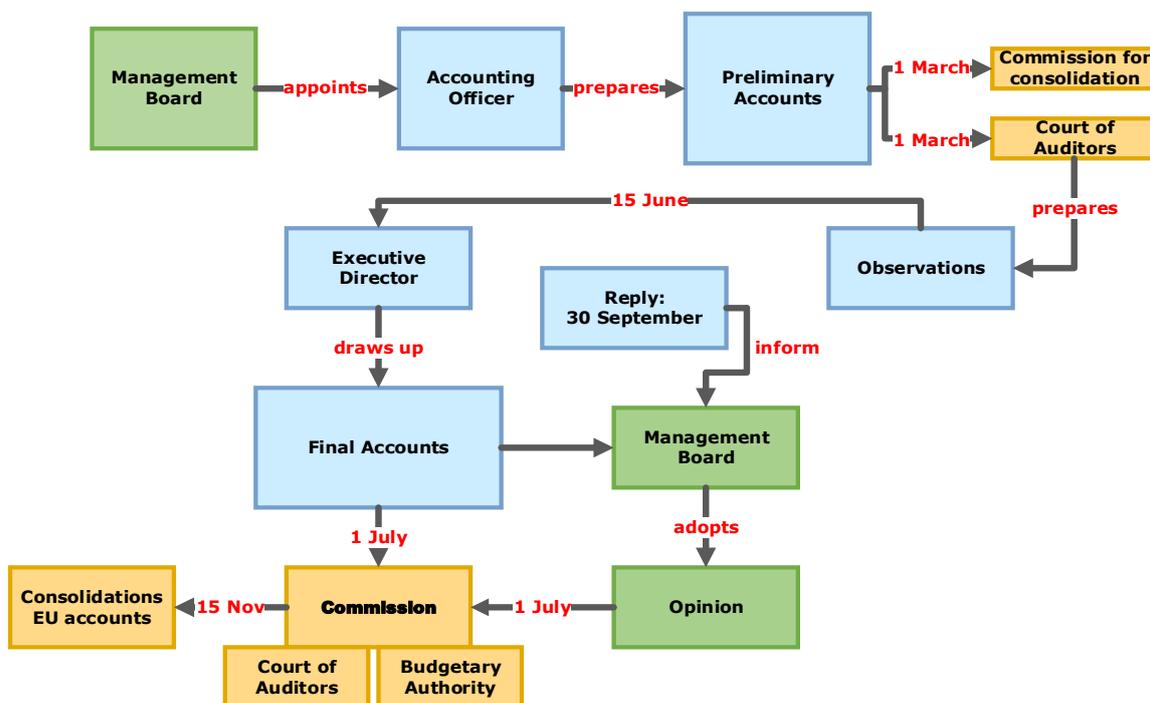
<sup>16</sup> Some provisions of the REACH Regulation are further detailed in the Financial Regulation.

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### **Example of a key task:**

The graphic below explains the procedure for establishing the accounts and the Management Board's role in this. ECHA's accounts as EU Agency are consolidated with the accounts of the Commission and other EU bodies. The objective of this is to present the European Union and their controlled entities as if they were one single entity. This consolidation takes place in two phases:

- (1) Consolidation of the provisional accounts including the accounts of EU agencies
- (2) Consolidation of the final accounts after the observations of the Court of Auditors.



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## **2.4 Rules of Procedure of the Board of Appeal**

The Rules of Procedures of the Board of Appeal<sup>17</sup> are laid down in another Commission implementing act for the REACH Regulation.

The following Management Board tasks are included in this Regulation:

- adopt rules for calculation of the amounts and advances to be paid to witnesses
- agree to detailed rules established by the Board of Appeal regarding these payments

In contrast to former provisions, the Executive Director is no longer empowered to appoint the Registrar on proposal of the Chairman. Instead, the Chairman directly appoints the Registrar.

In addition, the Chairman has the function of being reporting officer for the Registrar. The Chairman has managerial and organisational powers to give directions to the Registrar on matters relating to the exercise of the functions of the Board of Appeal.

Furthermore, the Chairman is responsible for supervising the entire Registry and is also countersigning officer and appeal assessor for the Registry staff.

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<sup>17</sup> See Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of May 2016.

The working arrangements between the BoA and the ECHA Secretariat are clarified and detailed in an administrative arrangement<sup>18</sup>, signed by the BoA Chair and the Executive Director. The Management Board is kept informed of this administrative arrangement and endorses the Executive Director decisions giving effect to it.

## **2.5 Other legislation**

After the adoption of the REACH Regulation, the mandate of the Agency was supplemented by the CLP,<sup>19</sup> the BPR<sup>20</sup>, the PIC Regulation<sup>21</sup>, as well as by the Waste Framework Directive<sup>22</sup> and the recast of the Persistent Organic Pollutants Regulation<sup>23</sup>. The tasks under these legal acts were included into the existing Agency structure and, consequently, there are only few specific provisions related to the Management Board. The Board assumes its statutory role in this field in the same way as under the REACH mandate (e.g. planning and reporting, financial matters).

Regarding the BPR Regulation, the Management Board is additionally empowered to decide - in agreement with the Commission - whether the Biocidal Products Committee shall be divided in two or more parallel committees.

Furthermore, the Management Board has specific responsibilities under the Biocides Fee Regulation, namely:

- setting out the criteria for the attribution of underpayments in case of an invoice relating to a group of transactions
- deciding on charges for administrative or technical services that are provided by the Agency
- including a specific provisional estimate of income from fees and charges resulting from activities under the Biocides Regulation, when producing an estimate of the overall expenditure and income for the upcoming financial year

As new tasks are allocated to the Agency, the operating framework will be updated.

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<sup>18</sup> See MB/51/2009 and for revised MB/21/2016.

<sup>19</sup> See Regulation (EC) No 1272/2008.

<sup>20</sup> See Regulation (EU) No 528/2012.

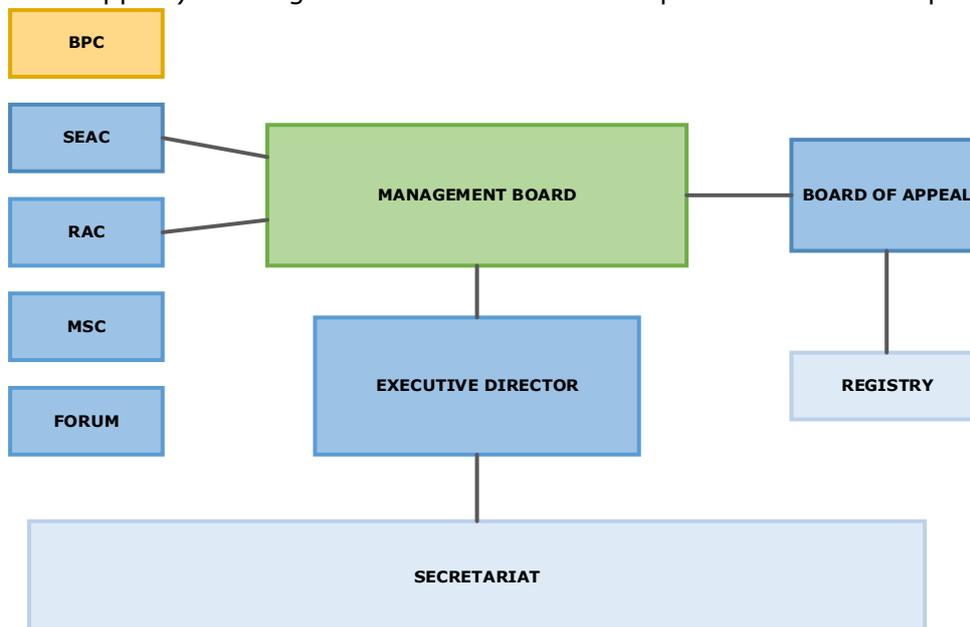
<sup>21</sup> See Regulation (EU) 649/2012.

<sup>22</sup> See Directive (EU) 2018/851.

<sup>23</sup> See Regulation (EC) No 850/2004.

### 3. The Management Board within the Agency structure

The Management Board has a dedicated role within the Agency structure and formal links with other actors and bodies of ECHA (i.e. the Executive Director, the Committees, the Forum, the Secretariat and the Board of Appeal). The legislation foresees a clear separation of their respective roles and functions.



#### 3.1 The Management Board and the Executive Director

The main duties and powers of the Executive Director are listed in Article 83 of the REACH Regulation. It is stipulated there, *inter alia*, that the Agency shall be “managed by its Executive Director” who shall perform his duties in the interest of the Union, and independently of any specific interest. The legislation determines that the Executive Director shall be the “legal representative” and responsible for the “day-to-day administration” as well as “managing all Agency resources necessary for carrying out its tasks”, including “all staff matters”<sup>24</sup>.

The Board’s supervisory role vis-à-vis the Executive Director is reflected in the fact that it has general responsibility for budgetary matters, the appointment and dismissal of the Executive Director and the monitoring of the implementation of the work programme and the Agency’s performance<sup>25</sup>. The separation of tasks shall avoid overlapping between the two actors, and allow the Management Board to focus on setting strategic priorities and on the adoption of annual and multi-annual management plans as well as verification of the implementation.

Whilst the responsibilities of the governing board and the executive of the Agency are thus clearly separated, the Management Board is provided on a regular basis with pertinent information from the day-to-day management of the Agency so that the Board is effectively in the position to perform its role and also to advise and counsel the ECHA management.

As appointing authority, the Management Board is responsible for the annual appraisal of the Executive Director. The procedure follows a model provided by the European Commission<sup>26</sup>. Accordingly, the Board has appointed three reporting officers for the Executive Director who perform the duties allocated to

<sup>24</sup> See Article 83 of the REACH Regulation.

<sup>25</sup> Another example of the Board’s supervisory role is the analysis and assessment it carries out each year on the Executive Director’s consolidated annual activity report as authorising officer under the Financial Regulation. This in turn is made part of the discharge given to the Executive Director by the European Parliament for the execution of the budget.

<sup>26</sup> Adopted as implementing act for the EU Staff Regulations by the Management Board and in agreement with the Commission (MB/36/2018).

reporting officers under the Staff Regulations. The objective is to assess the efficiency, the competencies/abilities and the conduct in the service of the jobholder.

### **3.2 The Management Board and the Committees and the Forum**

The Committees are responsible for preparing opinions of the Agency under its operational mandate and to resolve potential divergences of opinions on draft decisions proposed by the Agency. The Forum coordinates a network of Member State authorities responsible for the enforcement of the REACH, CLP, BPR and PIC provisions.

The Management Board has a limited supervisory role concerning the Committees and the Forum, as these bodies are responsible for preparing scientific opinions or coordinating enforcement activities respectively<sup>27</sup>. The Board only approves or adopts the Rules of Procedures of these Agency bodies. The Board also appoints the Members of the Risk Assessment Committee and the Committee for Socio-Economic Analysis. The Chairpersons of the Committees and the Forum may attend Management Board meetings without voting rights.<sup>28</sup>

Members of the Management Board may not be members or alternate members of ECHA's Committees or Forum.<sup>29</sup>

The Committee Chairs (RAC, SEAC, BPR, MSC) are not appointed by the Management Board. The REACH Regulation provides that the Chairs are staff of the Secretariat and, hence, under the leadership of the Executive Director. There are no specific links between the Management Board and the Chairpersons apart from the fact that they are entitled to attend Management Board meetings. In addition, it has become standard practice of the Management Board that an annual report is provided to it by the Chairs of the RAC, SEAC, BPC and MSC, followed by an exchange of views. Similarly, an annual exchange of views with the Forum Chair is scheduled.

### **3.3 The Management Board and the Secretariat**

The Agency's Secretariat works under the leadership of the Executive Director and the Executive Director provides a secretariat for the Management Board<sup>30</sup>.

Members of the ECHA Secretariat are subject to the rules and regulations applicable to officials and other servants of the European Union (Staff Regulations). As appointing authority, the Executive Director is in charge of all staff matters. The Management Board is responsible for setting the overall framework, i.e. by adopting the implementing rules for the Staff Regulations which determine the practical application of the rules in the Agency<sup>31</sup>. The Management Board also adopted a Code of Good Administrative Behaviour which applies to all staff<sup>32</sup>. On request, an observer of the ECHA Staff Committee is admitted to be present at Board meetings – as representative of the Executive Director – when decisions are discussed on which the Staff Committee has been consulted by the ECHA management.

The Management Board has a special relation to the Agency's accounting officer who is appointed in the specific function by the Board<sup>33</sup> but otherwise covered by the EU Staff Regulations and employed

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<sup>27</sup> The Management Board has no role in relation to the (scientific) outputs of the Committees and the Forum or the decision and opinion proceedings.

<sup>28</sup> See Article 81(3) of the REACH Regulation.

<sup>29</sup> See Articles 85 and 86 of the REACH Regulation. The Management Board concluded in September 2012 that this should, as a rule, apply by analogy to permanent observers in Committees, i.e. Board members should not sit as observers in Committees on a permanent basis in order to separate the operational discussion from the Board's governance function.

<sup>30</sup> See Article 76(1)(g) and 83(2)(h) of the REACH Regulation.

<sup>31</sup> See Article 103 of the REACH Regulation. The rules are to be adopted in agreement with the Commission.

<sup>32</sup> See MB/11/2008 of 14 February 2008 as amended by MB/21/2013 of 20 June 2013.

<sup>33</sup> See Article 83 of the REACH Regulation and corresponding provisions in the ECHA Financial Regulation.

as regular temporary agent of the Agency<sup>34</sup>. The accounting officer is invited to attend Board meetings for relevant matters, in particular the presentation of the annual accounts for the Board's opinion.

Furthermore, the Board approved the framework under which ECHA's Internal Audit Capability provides independent advice to the Executive Director<sup>35</sup>. ECHA has its own local Audit Capability (IAC) in addition to the regular internal auditor which is the Commission's Internal Audit Service for all agencies<sup>36</sup>. While the IAC operates solely under the Executive Director's authority, he or she prepares on an annual basis, in liaison with the Executive Director, a report for the attention of ECHA's Management Board summarising the IAC's activities and the main audit results.

The Management Board is regularly informed of important appointments and of open positions in the Secretariat. The ECHA Directors attend all Board meetings. There are also occasions provided for informal meetings with staff members and Management Board members.

### **3.4 The Management Board and the Board of Appeal (REACH/BPR)**

The Board of Appeal decides on appeals against certain decisions taken by the Agency. The Management Board defines the structure of the Board of Appeal and appoints the Chairman, the regular members and their alternates<sup>37</sup>. In line with the legislation, the Management Board also appointed additional members and their alternates.

The Members of the Board of Appeal are appointed in a similar procedure as the Executive Director.

The Chairman of the Board of Appeal and the two regular members are thus employed as temporary agents of the Agency. The members of the Board of Appeal are, however, independent and not bound to any instructions from the Executive Director. Alternate and additional members are not employed as Agency staff and are called for support on an *ad hoc* basis. Specific provisions on the contracts of BoA members are contained in ECHA Staff Regulation Implementing Rules, adopted in agreement with the Commission.

It is established practice that the Management Board receives annual reports from the Chairman of the Board of Appeal, and he or she, as the other members, are then also invited to attend the Management Board meetings for an exchange of views.

As for the Executive Director, the Management Board is responsible for the annual appraisal procedure of the members of the Board of Appeal<sup>38</sup>.

## **4. The Management Board and the European Commission**

The Commission assumes a supervisory role in relation to regulatory agencies, such as ECHA insofar as this is foreseen in the relevant Regulations and the Common Approach<sup>39</sup>.

The legislative framework for this is mainly

- The provisions of the REACH Regulation as ECHA's founding legal act;
- Article 70 of the EU General Financial Regulation
- The ECHA Financial Regulation which was adopted on the basis of a Commission framework Regulation for the decentralised regulatory agencies<sup>40</sup>

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<sup>34</sup> See Article 49 of the ECHA Financial Regulation (MB/29/2019).

<sup>35</sup> See Mission Charter of the Internal Audit Capability as approved by the Management Board (MB/49/2017) and Article 80 of the ECHA Financial Regulation (MB/29/2019).

<sup>36</sup> See Article 84(1) of ECHA Financial Regulation and Article 208 of the EU General Financial Regulation.

<sup>37</sup> See REACH article 89 and MB/17/2007.

<sup>38</sup> See MB/36/2018.

<sup>39</sup> The Commission is formally entrusted with the responsibility to warn the European Parliament and Council in case "it has serious reasons for concern that an agency's Management Board is about to take decisions which may not comply with the mandate of the agency, may violate EU law or be in manifest contradiction with EU policy objectives".

<sup>40</sup> MB/29/2019 final

As regards the Management Board, the Commission plays a role through its representation on the Board, the appointment of representatives of interested parties, proposing lists of candidates for the appointment of the Executive Director and the Board of Appeal, its implication in the budget procedure and in the audit via the Internal Audit Service<sup>41</sup>. The Commission has also a specific role through its agreement to ECHA's implementing rules under the Staff Regulations and the Fee Regulation.

## **5. The Management Board and the MSCA's**

The national Competent Authorities established under the ECHA Regulations (MSCAs) execute the functions concerning the practical implementation as defined in the legislation. There are no overlaps with the responsibilities and the supervisory role of the Management Board.

An important Management Board activity linked to the MSCAs is their remote access to ECHA databases. The Management Board defines the modalities for accessing the data, through a Unified Declaration of Commitment which addresses also liability aspects, and defines standard security requirements with the support of the Security Officers Network (SON).

There also should be no overlaps between the role of the Management Board, which is clearly defined in the legislation as set out above, and the role of the CARACAL meeting which is an advisory body set-up by the Commission to assist the Commission and ECHA on questions related to REACH and CLP<sup>42</sup>.

## **6. Working practices of the Management Board**

The working practices of the Management Board are outlined in its Code of Governance which consists of the Rules of Procedure, the Operating Framework, the Code of Conduct and Terms of Reference for each subgroup of the Management Board. The Code and all these documents provide a comprehensive overall framework for the role, principles, tasks, responsibilities and working methods of the Management Board.

The following sections give an outline of the work of the Management Board. For the complete details, the overall Code, comprising all elements, should be reviewed.

### **6.1 Management Board Chair and Deputy-Chair**

In accordance with Article 80 of the REACH Regulation, the Management Board selects a Chair and a Deputy Chair from its members with voting rights for a term of office of two years, renewable once.

The Chair leads the Management Board and works in close cooperation with the Executive Director. He or she is responsible for the good governance and management of the Management Board and observes that it conducts its work in line with all parts of this Code. He or she presides over the plenary meetings and makes sure that the Board arrives at timely and consistent decisions and/or workable conclusions. The Chair also facilitates convergence among Members' points of view, in order to arrive to common positions.

The Rules of Procedure of the Management Board describe how the Chair cooperates with the Executive Director in the setting of the agenda for Management Board meetings or the conduct of written procedures. The Chair also signs decisions and formal notifications on behalf of the Management Board as well as the employment contract between the Agency and the Executive Director and he or she has a mediating role in the annual appraisal procedure for the Executive Director and the members of the Board of Appeal.

The Chair is usually charged with the implementation of Board decisions, including the required communication with external parties. He or she also has a formal role in routine administrative

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<sup>41</sup> Article 70(5) of the EU Financial Regulation stipulates that the Commission is responsible for exercising the powers concerning internal audit towards the agencies.

<sup>42</sup> Formerly a certain link existed between CARACAL and Management Board proceedings in the context of the update of REACH and CLP Guidance documents. This was, however, abolished by the Board in March 2011. See minutes of the Management Board MB/01/2011 pages 12/13.

proceedings, such as authorising requests under the Staff Regulations for the Executive Director or the Chair of the Board of Appeal. For practical reasons, the handling of such requests can occur outside of Management Board meetings, in which case the Chair informs the Board. He or she also responds to direct correspondence related to the Management Board and its proceedings. Furthermore, the Chair authorises the draft minutes and Preliminary Conclusions of Board meetings before they are sent to the other members.

More than these formalities, the role of the Chair is to provide an element of leadership for the Management Board and of close cooperation with the Executive Director. Therefore, the Chair is informed by the Executive Director of important developments and asked for counsel as needed. The Chair is also the face of the Management Board towards the staff of the Secretariat and invited to important external and internal Agency events. Furthermore, the Chair is a contact point for the Agency's institutional partners, for example for the submission of audit reports from the Court of Auditors or the Commission's internal audit service or any other correspondence from the European institutions, Member States or third country authorities.

The Chair may ask the Deputy-Chair for support, in particular to represent the Board on his or her behalf in official meetings or events.

The Chair is supported in these tasks by the Secretariat of the Management Board which is provided by the Executive Director. The Secretariat provides briefings and advice to the Chair in between Board meetings and in the preparatory phase of the meetings. Before each plenary meeting, the Chair is equipped with background information on all items on the agenda and the requested decisions. The draft documentation for meetings is sent to the Chair for commenting shortly before submission to the full Board. Furthermore, a functional e-mail address is managed by the Secretariat in liaison with the Chair to facilitate the management of the Board's correspondence. Letters related to the Management Board are received and sent through this functional e-mailbox. The Secretariat is also entitled to open postal mail received for the Chair by the Agency. The Secretariat thereby keeps record of the Chair's correspondence and other Management Board related activities and provides support in drafting of replies etc.

## **6.2 Management Board meetings**

Meetings of the Management Board are generally convened four times per year and take place at the Agency's premises in Helsinki. One Management Board meeting per calendar year may take place outside Helsinki on invitation by a Member State representative. Meetings may be held virtually with members participating to the meeting through a remote connection.

Decisions taken at meetings of the Management Board are often prepared by subgroups (see below 6.5). The Management Board Rules of Procedure also foresee the possibility to convene extraordinary meetings to deal with urgent business.

Meetings of the Management Board are in principle not open to the public. The REACH Regulation defines the circle of persons entitled or requested to attend. The Executive Director always takes part in the meetings but without voting rights. The Chairs of the Committees and the Forum may participate, also without voting rights<sup>43</sup>. ECHA's Directors regularly attend the meetings. ECHA staff members participate on request by the Executive Director after prior consultation with the Chair. Board members are occasionally accompanied by advisors from their administration.

## **6.3 Agenda setting and meeting documentation**

### **a) Agenda setting**

The draft agenda for Management Board meetings is established by the Executive Director in liaison with the Chair. It is adopted at the beginning of each meeting. The structure is as follows:

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<sup>43</sup> See Article 81 of the REACH Regulation.

Management Board Agenda
<ul style="list-style-type: none"> <li>• Adoption of the Agenda</li> <li>• Declaration of Specific Interests</li> <li>• Approval of the minutes of the previous meeting</li> <li>• A Items for automatic adoption</li> <li>• B Items for discussion/decision               <ul style="list-style-type: none"> <li>○ Incl. reports from subgroups</li> <li>○ Incl. Quarterly Report on ECHA's activities</li> </ul> </li> <li>• C Items for information</li> <li>• Any other business</li> </ul>

The meeting documents are mostly prepared under the responsibility of the Executive Director, unless they are, for example, submitted as proposals from a Management Board subgroup or from the Board of Appeal. Documents are usually presented for the following actions<sup>44</sup>:

<b>For automatic adoption</b>	These relate to a routine formal decision that is required directly or indirectly by legislation. The decisions are recorded in the minutes as being adopted by the Board. The minutes are signed by the Chair after approval and, where appropriate, the Secretariat keeps additional documentation signed by the Chair for individual decisions. The documents submitted for automatic adoption are submitted 21 days prior to the Management Board meeting and are not discussed in the meeting, unless requested by a member.
<b>For adoption/approval</b>	These relate to a formal decision that is required directly or indirectly by legislation. The decisions are recorded in the minutes as being adopted by the Board. The minutes are signed by the Chair after approval and, where appropriate, the Secretariat keeps additional documentation signed by the Chair for individual decisions. The adoption of these points is usually preceded by an exchange of views.
<b>For endorsement</b>	These usually relate to a decision or policy initiative of strategic nature that falls within the remit of the Executive Director, for which he or she is seeking the support of the Management Board. Endorsement ensures the Management Board's agreement with the proposed approach. These are recorded in the minutes as being endorsed by the Management Board.
<b>For information</b>	These are agenda items for topics on which the Management should or would like to be informed because of the strategic relevance. They can take the form of an oral report, presentation or document. The minutes record the submission of the information to the Board as well as any directions arising from Board discussions or specific issues raised by the Board. These items are not discussed in the meeting, unless requested by a member.

Occasionally a document may also be submitted "for discussion" or "for guidance" in order to emphasise that a strategic orientation from the Board is sought.

<sup>44</sup> Management Board documents are numbered according to the following scheme: The first document submitted during a calendar year has as reference MB/01/[yyyy] and further documents bear consecutive numbers. In the same way, the first written procedure during a calendar year has as reference MB/WP/01/[yyyy]. After the Management Board's action on a document, a final version is prepared carrying the date of the respective meeting. Should a separate formal decision be issued on the basis of a document it bears a Management Board decision number, composed of a unique number and the year: Management Board Decision xxxx/yyyy.

At the first meeting of each year, the secretariat of the Management Board presents an updated Rolling Plan to the Management Board which provides an indicative forward planning of the meetings and the items on the agenda for the years N, N+1 and N+2.

## **b) Meeting documentation**

The meeting documentation is prepared under the responsibility of the Executive Director. Exceptions from this rule are the regular reports from the Chairman of the Board of Appeal, reports from subgroups or outcome reports from selection procedures for Board of Appeal positions or the Executive Director.

Meeting documents should be concise and focus on the relevant aspects as far as possible. They should explain the purpose and the reasoning and set out the requested action without confronting Board members with an excessive level of detail. The Secretariat strives to inform the Board always about the rationale for proposing a specific decision, available alternatives and drawbacks connected with the proposal.

In accordance with the Board's Rules of Procedure, the relevant documentation for agenda items subject to decision making is to be submitted to the Board fifteen calendar days before each meeting and 21 calendar days for items foreseen for automatic adoption. The Management Board receives the first finalised meeting documents already together with the invitation and agenda electronically via the S-CIRCABC tool<sup>45</sup>. The remaining meeting documents, however, have to be submitted as soon as possible before the meeting takes place.

## **6.4 Decision making**

### **a) General**

The decision making of the Management Board is defined in Article 82 of the REACH Regulation and in the Board's Rules of Procedures<sup>46</sup>.

The Board takes its decisions at the plenary meetings. All decisions of the Management Board are adopted by a two-thirds majority of all voting members. The quorum necessary for the meeting to be valid is achieved when at least two thirds of all voting members (currently 22) are present, connected remotely or represented by a proxy.

Each voting member may cast a maximum of two proxy votes in addition to his/her own vote. The proxy must be notified to the Chair in writing and at the latest at the beginning of the meeting and are announced in the beginning of the meeting and recorded in the minutes. Votes take place by a showing of hands, unless a secret ballot is requested by at least one-third of the members or is foreseen by the Rules of Procedure. In case a meeting is held virtually, voting may take place by means of an appropriate functionality of the remote conferencing system used.

When a Management Board meeting is held virtually and members are connected remotely, decisions taken by the Management Board may be confirmed in a written procedure or by way of members casting their votes using appropriate online voting tools. Exceptionally, in case a member of the Management Board temporarily faces difficulties to connect remotely, his/her vote may be cast via email before the voting is closed.

The Board has developed the practice to take decisions by consensus, unless a vote is explicitly requested.

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<sup>45</sup> S-CIRCABC is a secured internet based document sharing and information exchange solution operated by the European Commission (<https://circabc.europa.eu/>). The Secretariat of the Management Board manages the access rights for Board members.

<sup>46</sup> See MB/52/2019 final.

## b) Written procedures

Between two Board meetings, urgent business may be submitted to the Board by written procedure.

A written procedure is initiated by the Chair in consultation with the Executive Director and concerns usually matters already addressed during previous meetings. Written procedures are also used if a meeting cannot be convened due to force majeure. A full report on the outcome is made at the latest at the following plenary meeting. Votes shall be cast by return email sent to the secretariat of the Management Board or by online voting, if available, within ten working days, which can be extended by the Chair. When written procedures are launched to confirm the decisions taken in a Management Board meeting held virtually, the timelines for casting votes and raising objections may be shortened.

The Management Board has established the practice that active responses are required by Board members to be counted as positive or negative vote. It is not taken into account if a Board member does not react to a written procedure (i.e. tacit consent does not apply).

## c) Procedures requiring prior European Commission consent

Certain decisions, such as implementing rules of the Staff, Fee or Financial Regulations, require a formal agreement of the European Commission before they can be formally adopted by the Board. It is not sufficient for this purpose that the Commission representatives in the Board agree to a proposal. The draft decision, once adopted, is forwarded by the Secretariat to the Commission and the institution then takes then a formal decision of which ECHA is then notified.

Upon receipt of the Commission's agreement, the Chair can formalise the Board decision. Should the Commission propose amendments or take a decision which is not fully in line with the Management Board draft decision, the matter has to be referred again to the Board. However, the Chair has the discretion to accept minor technical or linguistic changes proposed by the Commission, without the need to refer the decision back to the Board, provided that these do not alter the content of the Board's decision<sup>47</sup>.

## 6.5 Management Board subgroups<sup>48</sup>

To facilitate the preparation of decisions, Management Board subgroups are created. They provide input and advice in key areas of the Board's attention: the implementation and follow-up of ECHA's Strategy, as well as finance, audit and risk management matters. In addition, the Management Board has duties with regards the Board of Appeal and in the appraisal procedure of the Executive Director and Board of Appeal members.

Standing subgroups of the Management Board
<ul style="list-style-type: none"><li>• Board of Appeal</li><li>• Reporting Officers for the Board of Appeal members</li><li>• Reporting Officers for the Executive Director</li><li>• Strategy Planning and Implementation</li><li>• Finance, Audit and Risk</li></ul>

Every standing subgroup is equipped with its Terms of Reference, adopted by the Management Board. A list of all subgroups, their composition and Terms of Reference are available on the Management Board CIRCA webpages and published on the ECHA website.

<sup>47</sup> See MB Decision MB/06/2009(D) of 26 February 2009.

<sup>48</sup> Section technically updated (Management Board decision 67/2019) further to the adoption of the Terms of Reference of Management Board subgroups in December 2019 (Management Board decisions 62-66/2019).

Additional topics where the Management Board's decision needs to be prepared are, as a first step, included in a permanent subgroup. In case this is not possible, ad hoc subgroups are established (with Terms of Reference adopted by the Management Board). These are established for an initial duration of six months, i.e. covering two Board meetings. Following a report back to the plenary, the outcomes are reviewed and the mandate prolonged if required. Subgroups set their own working methods.

It is possible for members to send a replacement on their behalf to subgroup meetings in exceptional cases (see above 1.3). As a rule, Board members not participating in a specific subgroup may request from the Secretariat the documents sent to the participants<sup>49</sup>. Conclusions are prepared after the meetings of the subgroups, following a common template. Subgroups report to the following Management Board meeting and subgroups' meeting agendas are made available to all Board members.

## **6.6 Minutes and Preliminary Conclusions**

### **a) Minutes**

Minutes record the proceedings, decisions and conclusions of the Board meetings. More specifically, the minutes of each meeting indicate

- documents submitted to the Management Board;
- a summary record of the proceedings;
- the decision taken or the conclusions reached by the Board;
- the list of attendees and
- a list of agreed follow-up actions.

The minutes strive to be clear and concise. Viewpoints voiced are grouped together by summarising the main arguments raised. The origin of the statements is only mentioned where this is necessary for the understanding of the point made. Minority positions and formal reserves can nevertheless be recorded in the minutes at the request of a Board member or the Chair<sup>50</sup>.

The minutes are finalised and approved at the following Board meeting. Agreed amendments are documented in a corrigendum, which is attached to the minutes of the latter meeting. Minutes are published on the ECHA website.

### **b) Preliminary Conclusions**

The Preliminary Conclusions report the main results of a meeting. They are prepared by the secretariat of the Management Board within one working day after the meeting and then validated by the Executive Director and the Chair.

An internal version of the Preliminary Conclusions is sent within two working days to the Management Board. Elements which contain non-public information are marked by means of square brackets. Board members are invited to review the document within two further working days and inform the Secretariat if there are any other elements which are not to be considered public. Based on the feedback, a public version of the document is produced in liaison with the Chair and made available on the ECHA website.

The preliminary conclusions do not constitute official records of the meetings. The formal minutes which are approved by the Management Board remain the only authoritative source for the documentation of the Management Board proceedings. The purpose of the preliminary conclusions is mainly to enhance transparency and to provide a service to members.

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<sup>49</sup> Exceptions may apply, in particular for restricted documents submitted to the working group on audit matters.

<sup>50</sup> See MB/01/2008 final.

## **6.7 Publication of documents**

Relevant Management Board documents, including agenda and approved minutes, are published after the meetings on the ECHA webpage. A public version of the Preliminary Conclusions is made available on the webpage shortly after each plenary meeting.

Documents submitted to the Management are classified as internal unless it is explicitly stated otherwise on the document. Management Board documents indicate whether they are foreseen for publication. The Board agrees or disagrees with that as part of the action for that document. As a rule, the documents submitted to the Management Board are available in the final version on the internet.

The decision not to proactively publish a document does not affect the accessibility of that document under the Regulation (EC) No 1049/2001 on access to document, under which disclosure may be required in response to individual requests.

The annual declarations of interest of members are published on the internet. For ECHA publications, the Secretariat may also take pictures during meetings or ECHA events without requesting explicit prior authorisation from Board members or other meeting attendees.

## **6.8 Media relations**

The Management Board's Code of Conduct addresses issues related to media contacts of Board members.

After approval by the Chair, the Secretariat occasionally issues press releases. The Chair may also be interviewed by media representatives. The public version of the Preliminary Conclusions is, however, the main tool for providing information also to specialised media services.

## **6.9 Data protection**

The European data protection rules apply to Management Board members and their contact details and other information are processed in accordance with Regulation (EU) 2018/1725. This means, for example, that contact details of former members are kept by the Secretariat only as long as this is needed for the operation of the Board.

Meeting of the Management Board in ECHA are usually video recorded, except if a meeting takes place "in camera". The recordings will only be accessible to the Secretariat and will be permanently deleted once the final minutes have been adopted. The minutes, which are published on the ECHA website, include the list of participants. ECHA ensures on its part that your personal data is processed as required by Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data. Members have the right to access and rectify that data. To exercise these rights, please contact the data controller at: [mb-secretariat@echa.europa.eu](mailto:mb-secretariat@echa.europa.eu).

## **6.10 Reimbursement**

Management Board members are not remunerated by ECHA, but by their administration (or body) of origin. ECHA covers the travel costs and pays a daily subsistence allowance<sup>51</sup>, according to the Agency's Guide for reimbursement<sup>52</sup>. The participants are generally asked to arrange their travel in the most economical way possible in terms of time and money. However, in case the participant needs to prolong his or her stay due to inconvenient meeting schedules, the participant may forward a derogation request.<sup>53</sup>

ECHA provides a convenient internet-based support service for this through a contracted travel agency.

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<sup>51</sup> The Commission representatives and some Member State representative do not request payments.

<sup>52</sup> See Management Board decision 14/2018.

<sup>53</sup> In the event of a prolonged and justified stay, the participant receives 50% of the daily subsistence allowance in respect of the preceding, and 25% in respect of the day following the meeting.

Persons of trust attending on behalf of a Board member are entitled to reimbursement. The same applies for persons invited on the basis of the Board's Rules of Procedure or the Chair of the Forum if he or she intends to make use of the right to attend Board meetings

### **6.11 Continuous improvement**

The Management Board is committed to continuously improving his own working practices. For this purpose, regular self-evaluations are organised, which are followed by the appropriate revisions of the Rules of Procedures and of the Operating Framework.

As part of its improvement actions, the Management Board gets regular refreshers and topical training on its key areas of responsibility, provided by the Secretariat.