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**MINUTES OF THE MEETING OF ECHA'S MANAGEMENT
BOARD**

held on 17 December 2007

(Document approved by the Management Board)

I. Documents submitted to the Management Board

Draft Agenda	MB/A/05/2007
Draft Minutes of the Board Meeting of 16/17 October 2007	MB/M/04/2007
Appointment of the Executive Director	MB/22/2007
Draft Budget 2008 and Establishment Plan	MB/23/2007
Draft Financial Regulation	MB/24/2007
Appointment of the members of the Committee for Risk Assessment	MB/25/2007
Appointment of the members of the Committee for Socio-economic Analysis	MB/26/2007
Update on appointment by Member States of members for the Forum and the Member State Committee	MB/27/2007
Communication Strategy	MB/28/2007
Reinforced cooperation with the Member States Competent Authorities	MB/29/2007
Consultation procedure on guidance	MB/30/2007
Cooperation with external partners	MB/31/2007

II. Summary Record of the Proceeding

Introduction by the Chair

The Chair welcomed the new representative of Belgium (a copy of the related Council Decision had been made available to the Board beforehand).

The Chair then presented the observers attending the meeting on behalf or in support of Board members and informed the Board of the proxies that had been notified (details are listed under heading IV of these Minutes).

1. Draft Agenda (*MB/A/05/2007*)

The Board identified a number of additional points to be dealt with under ‘Any Other Business’ (for details, see chapter II. 13) and agreed to regroup slightly the order of items proposed in the draft agenda.

The Chair drew attention to the fact that the meeting document ‘Consultation Procedure on Guidance’ (*MB/30/2007*) had been submitted ‘for endorsement’, although the initial indication in the agenda had indicated that it was ‘for discussion’.

On this basis the agenda was adopted.

2. Draft Minutes (*MB/M/04/2007*)

After agreeing on several amendments (see corrigendum in the annex), the Board approved the draft Minutes of its meeting on 16/17 October 2007.

3. Appointment of the Executive Director (*MB/22/2007*)

A representative of the Commission debriefed the Board on the outcome of the complaint that a number of NGOs had lodged against the Commission’s short list of candidates under the Regulation on the application of the provision of the Aarhus Convention to the European institutions and bodies. The Commission’s representative explained that the request for review had been dismissed as inadmissible. The Commission had taken the view that the shortlist could not be regarded as an administrative decision under the terms of the Aarhus Convention.

The Chairman recalled that the Board had received a summary record on the hearing of Mr Dancet in the European Parliament (EP) on 21 November 2007. Following the hearing, no official reaction of the EP had been communicated to the Board so far. The Chair gave therefore the floor to one of the Board members appointed by the EP to obtain

further information. The Board member stated that, as a result of the hearing, all political groups in the EP were in favour of the candidate selected by the Board.

The Chair clarified that according to the REACH Regulation an official assessment of the hearing by the EP was not a prerequisite for the appointment of the Executive Director (ED).

The Commission explained that, after the entry into force of his new contract, the professional relationship between the Executive Director with the Commission would be changed from a secondment 'in the interest of the service' into a secondment 'at his own request'.

The Board then discussed, on the basis of the meeting document MB/22/2007, the details of the terms of employment for the Executive Director. It was decided that the ED should be subject to a probationary period and an annual appraisal in line with the relevant statutory rules of the European institutions. As a result, the Board approved a revised draft contract (corrigendum to annex 1 of document MB/22/2007) and empowered the Chairman to sign it on behalf of the Agency. The Board appointed Mr Jakl (AT), Ms Gauthier (FR) and Ms Pauli (COM) as reporting officers for the appraisal procedures.

By way of vote, the Board appointed Mr Geert Dancet unanimously as the Agency's Executive Director. The Chairman congratulated Mr Dancet on his appointment and the contract was signed by both parties.

4. Draft Budget 2008 and Establishment Plan (MB/23/2007)

The ED explained that, in spite of attempts by the Council during the budgetary readings to cut the appropriation, the EP had approved ECHA's budget for 2008 as initially proposed by the Commission.

The floor was given to the acting Director of 'Resources' who presented the proposals made in the meeting document. He confirmed that the establishment plan had also been approved by the EP. In its present form, the plan contained a considerable number of 'Assistant' posts. It remained to be seen whether this was actually suitable for ECHA's purposes also taking account of the lower interest in the selections for scientific and other assistants now under way. If not, a proposal would be made to the Board at a later stage to change some of these posts into positions for 'Administrators'.

In response to questions raised by some of the Board members, the ED explained that ECHA staff members were usually employed as 'Temporary Agents'. Gaps had been filled with a limited number of contractual staff. A considerable number of interim staff had also been hired mainly in order to cover the period until secretaries could be recruited from a future ECHA reserve list.

The ED clarified that translation costs for technical guidance documents had already been catered for in the budget for 2007. Similar appropriation had been earmarked for translations in ECHA's budget for 2008.

One of the Board members asked for the Agency's budget to be presented in a consistent format in all documents submitted to the Board, which he considered to be a prerequisite for ensuring proper reporting. This was accepted.

On the basis of the above-mentioned clarifications, the Board adopted the final budget for 2008 and the establishment plan contained in document MB/23/2007.

5. Draft Financial Regulation
(MB/24/2007)

An updated version of document MB/24/2007 was made available, which contained the Commission's Decision¹ accepting the derogations requested by ECHA to the Framework Financial Regulation².

The acting Director of 'Resources' recalled that the derogation requested was linked to the possibility of joint procurement procedures with the contracting authorities of the Agency's host country (Article 74 of ECHA's draft Financial Regulation).

Responding to a question from one of the Board members, he said that the issue of creating a reserve fund would be addressed after the adoption the revised Framework Financial Regulation, which the Commission would finalise in early 2008. It was also made clear that the issue of reimbursements of Member States for services provided to ECHA³ was a matter to be concluded at a later stage, i.e. after adoption of the Fee Regulation.

Subsequently, the Board adopted the Financial Regulation in the form approved by the Commission in its above-mentioned Decision.

6. Appointment of the members of the Committee for Risk Assessment (RAC)
(MB/25/2007)

The ED stated that, based on the nomination by the Member States, he had established a list of nominees for both the Committee for Risk Assessment and the Committee for Socio-economic Analysis. In line with Article 85 of the REACH Regulation, these lists had been published on ECHA's website.

The floor was then given to the acting Head of Unit of 'Committees' who presented the meeting document and the decision to be taken by the Board. She explained, in particular, that it was proposed to appoint all the candidates of the Member States that had

¹ Commission Decision C (2007) 6640 of 13 December 2007

² Regulation (EC, Euratom) N° 2343/2002

³ In line with Article 87 (3) of the REACH Regulation

nominated up to two candidates. With regard to Latvia, it was proposed to appoint two of the three candidates on the basis of the criteria contained in document MB/25/2007.

At the request of the Chair, the representative of Latvia said that her country wished to clarify its proposal by recommending the nomination of Mr Kadikis and Ms Tomsonė as members for the RAC.

After that, the Board had a general discussion about eligibility and appointment criteria.

One of the Board members said that his country had nominated only one candidate in order to signal its preference for having a small committee. Nevertheless, he could agree to a general policy of appointing up to two members per country if the Board had a preference for such a solution. He stressed, however, that his country reserved its right to nominate a second candidate at a later stage in case this should be necessary to ensure an adequate information flow between the RAC and the national competent authority.

Other Board members underlined the need for all Committee members to meet the requirements of the REACH Regulation in terms of qualification and experience.

Two Board members explained why their countries had nominated candidates that were nationals from another Member State. They said that this was particularly due to the lack of appropriate human resources in their own countries.

One of the Board members voiced general concern about such an approach whilst others said that the professional qualification of the candidates should be regarded as the most important criterion given the scientific nature of the RAC.

In this context, the Chair drew attention to the fact that the REACH Regulation contained concrete provisions (i.e. Article 85, paragraphs 5 to 7) on the relationship between the Committee members and the nominating Member States.

The ED reassured the Board that countries which had not yet nominated candidates for the Committees would be able to do so at a later stage, although it should be kept in mind that good knowledge of risk management was an essential criterion for this scientific committee.

The Board decided to appoint as member of the RAC all nominees listed in annex one of document MB/25/2007⁴, with the exception of the candidates nominated by Latvia. In this particular case Mr Normunds Kadikis and Ms Margita Tomsonė were appointed by the Board as members of the RAC.

⁴ The Executive Director's publication notice of 4 December 2007 containing the list of nominees for the RAC (according to article 85 of the REACH Regulation)

7. Appointment of the members of the Committee for Socio-economic Analysis (SEAC)
(MB/26/2007)

The paper was presented by the acting Head of Unit of 'Committees', who drew particular attention to the need for having an in-depth discussion about whether or not voting members of the Committee could originate from the private sector.

As an introductory remark, the Chair said he considered access to high quality scientific advice as well as independence and impartiality of the Committees to be of paramount importance. The latter implies that the members of the Committees are seen to be independent from all interest groups, including from industry. At the same time, the Committees should clearly be able to benefit from the invaluable expertise that could be provided by industry. In his view, this access could be secured in other ways than through membership of the Committees.

At the request of the Chair, the seven Board members whose countries were particularly concerned by the issue provided additional information and clarification with regard to the nominations made.

Several of these Board members made reference to the declarations of interest to be provided by Committee members according to Article 88 of the REACH Regulation, which they considered to be a sufficient means to ensure sound decision-making. The importance of making available to the Committee the best possible scientific expertise was also underlined, which in many Member States mainly exist within the industry. Recital 104 of the REACH Regulation was mentioned in this context. One of the members stated that the REACH Regulation did not explicitly exclude private sector representatives from becoming members in ECHA's committees. For some, it should be possible to exclude candidates originating from companies but not from associations as they are not supposed to favour specific companies over others. It also became clear that in certain cases the documentation provided on the candidates was not up to date as certain candidates in the meantime no longer worked for the private sector or were prepared to step down from the present contractual arrangements if they would be nominated to the committee. Finally, one member had sympathy for the arguments developed by the Chair and was willing to go back to his authorities to seek a reconsideration of the candidatures.

Whilst acknowledging the value of these arguments, the Chair pointed to the possible risk of jeopardising the adequate protection of confidential data, in particular with regard to data provided by competitors of the company by which the Committee member was employed. He also stressed that the public credibility of the Committee was at stake and urged to apply a precautionary approach.

Board members representing interested parties were invited by the Chair to provide comments on the issue. The representative of the trade unions took the view that the

participation of voting Committee members employed by industry would put the trust of workers in the independence of the Committee into question. The representatives of the chemical industry said the essential criterion should be the competence of the Committee member, given that socio-economic analysis was a particularly difficult field. Special exclusion criteria for industry should be avoided, although preserving the independence of Committee members was equally important. The representative of environmental NGOs referred to recital 95 of the REACH Regulation, i.e. the importance of the credibility of the Agency. He considered that declarations of interest alone would not provide adequate safeguards. Given that the methods of socio-economic analysis were not yet clearly defined, the independence of the Committee members was even more important.

Many other Board members supported the general line taken by the Chair, in particular with regard to the need to avoid negative repercussions on the public image of the Agency. This would in their view not only apply to candidates coming from individual companies but also from industry associations. Some argued not to exclude per se consultants.

Asked by the Chair how the Agency could secure enough professional knowledge of the Committee in the absence of members from industry or industry associations, the ED explained that the scarcity of knowledge on socio-economic assessment was known in the Agency and was in fact largely due to the limited role such assessment has played in the current chemical legislation in Europe. That is why the Agency had with the help of the Commission taken contact with the counterparts in the US and Canada which have more experience in this field and had established ways to transfer this know-how to the Agency and to the SEAC.

The Chair concluded that a clear majority of the Board members was in favour of excluding employees of individual companies or industry associations from the participation in the Committees. The guiding principle for consultants should be full transparency and avoiding in advance potential conflicts of interest.

It was therefore decided to postpone the appointment of the members of the SEAC to the next Board meeting in February 2008. The Board mandated the Chair to write a letter to the Member States concerned in order to explain the view of the Board, to develop the principles with regard to selection criteria for candidates from the private sector and to ask for further clarification of the nominations should the Member States concerned maintain these. If needed, the Member States concerned should reconsider the nominations made.

8. Update on the appointment by Member States of members for the Forum and the Member State Committee
(MB/27/2007)

The acting Head of Unit 'Committees' debriefed the Board on the appointments by Member States of members for the Forum and the Member State Committee.

The Forum had already held a first meeting.

The Chair wished these bodies success in their endeavours and said the Board was looking forward to considering their draft Rules of Procedure.

9. Reinforced cooperation with the Member States Competent Authorities
(MB/29/2007)

The ED presented the recommendations made in the meeting document, in particular the idea of using the REACH-CA meetings as a forum for ECHA for discussions between the Agency and the Member States on regulatory issues.

The Commission welcomed the proposed approach, which was also explicitly supported by a series of other Board members.

One of the Board members said that she would have preferred separate meetings between ECHA and the Competent Authorities independent from the European Commission. Therefore, her preference was for using the Member State Committee for the purposes identified by the Agency. However, she was ready to align herself with the view of the majority. Other members preferred to use the REACH-CA meetings for regulatory matters and enquired about the formal status of the REACH-CA meetings, given their envisaged role in finalising guidance documents, and about the role of the Commission as chair of the CA meeting while discussing Agency matters.

The Chair took note of the reservations voiced. He concluded that there was nevertheless broad support for the plan to hold REACH-CA meetings organised jointly by the Commission and ECHA. He considered this to be the most efficient way forward. Potential problems could be revisited at a later stage. It should, however, be made sure that ECHA would chair those parts of the REACH-CA meetings for which it would be directly responsible.

10. Consultation procedure on guidance
(MB/30/2007)

After a presentation of the meeting document by the ED a general exchange of views took place.

The Board welcomed the good quality of the document. The discussion centred, in particular, on whether or not consensus for the adoption of guidance documents was needed and how dissenting opinions could be properly documented.

Some Member States representatives argued that guidance documents should always be unanimously approved in order to ensure their legal validity as well as harmonised application of the REACH provisions across the EU. Reference was made to the written proposal by Austria to have dissenting views flagged within the guidance. It was also said that some parts of the documents, in particular the notion of ‘urgent’ amendments, required further clarification.

Other members warned against transforming the REACH-CA meetings into a compulsory and formal decision-making body or they pointed to fact that it would be difficult to strive for unanimity in all cases.

With regard to the envisaged ‘Partners Expert Group’ (PEG), one of the members inquired how these would be selected. Another member said that existing stakeholder groups should not predetermine the composition of the PEG. He also asked for European-wide organisations active in the field of human health to be eligible for participation. This was agreed.

The ED undertook to clarify the document where needed. On the use of previous stakeholder groups, he said that these would only be involved if they were still relevant. Concerning the publication of dissenting views on guidance documents, he took the view that this would be problematic and produce confusion among the users of these documents also in terms of enforcement.

The Chair appreciated the view of those Member States wishing to have dissenting views recorded but pointed to the risk of sending out ambiguous messages. He concluded that it was the Agency’s responsibility to make guidance available in time. The Agency should nevertheless do its utmost to accommodate the views of the Member States. The text would now be discussed in the REACH-CA meeting and the Board would be able to take note of that discussion before concluding on the procedure.

11. Cooperation with external partners
(*MB/31/2007*)

The paper on cooperation with external partners was presented by the acting Director of ‘Cooperation’. He underlined that it was necessary to strike the right balance between the benefits and potential drawbacks of the involvement of external stakeholders but that ECHA is committed to transparency, openness and involvement of stakeholders.

In the subsequent discussion, the overall approach proposed in the meeting document met with broad support. Some of the Board members said that the participation of stakeholders in the activities of ECHA should be handled in an open and flexible manner, e.g. on the basis of an open list of interested parties. Others suggested amending the list

of eligible organisations by adding EU-wide associations of SME or European NGOs covering public health.

One of the participants said that the involvement of third countries should normally be based on the principle of reciprocity. Another Board member pointed to specific nature of EEA/EFTA countries. The Commission said that the special case of Turkey should be taken into account because of the existing customs union of this country and the EU.

In response, the ED underlined his readiness to apply an open policy and undertook to produce, in the light of the comments made, a more concise policy document on cooperation with external partners to be published on the website of the Agency.

The Chair asked for such a paper to be resubmitted to the Board before publication.

For the rest, the Board expressed its support for the conclusions and recommendations contained in document MB/31/2007.

12. Communication strategy
(MB/28/2007)

Due to time constraints, this agenda item was postponed to the next Management Board meeting. Members were invited to provide written comments on the document, which should reach the Agency by 18 January 2008 at the latest.

13. Any Other Business

Fee Regulation

A Commission representative said that in the ‘comitology’ procedure there had been strong support for the Commission’s proposal. He explained that the proposal took account of the size of the companies concerned, notably with regard to SMEs.

The draft ‘Fee Regulation’ had now been notified to the European Parliament, which would have one month to react. He anticipated that the final adoption would take place in March.

On demand from the members, he also agreed that the draft fee regulation could be circulated to the members including the fee grids.

REACH-IT

The Commission stated that current delays in the execution of the contract for the development of REACH-IT fell entirely within the responsibility of the contractor. Attention was drawn to the complexity of the project.

The ED clarified that ECHA would take over the REACH-IT related contract in January 2008. It was agreed to provide the Board at its next meeting with a detailed report on progress.

Board of Appeal

A representative of the Commission informed the Board that a vacancy notice for the members of the Board of Appeal had been drafted in close cooperation with ECHA. Final approval of this document would be subject to a formal Commission Decision. The publication of the notice had been scheduled for the second half of January 2008. The Commission list of candidates would be made available in May.

Against this background, the Board stressed the risk of the Board of Appeal not being operational in time and urged the Commission to speed up the process.

Infrastructure

The ED reported on progress in building ECHA's infrastructure. He said that on 29 October the lease agreement was transferred to ECHA and that the construction of the conference centre was well under way and on schedule.

Seat agreement

The Board was informed that the Finnish Parliament had adopted the seat agreement between Finland and ECHA.

Steering committee on quality policy

The Chair repeated the invitation to interested Board members to sit on the ECHA steering committee on quality policy. Expressions of interest should reach the Agency by the end of 2007 at the latest.

Slovenian initiative on chemical safety

An information note on ideas of Slovenia regarding awareness-raising in the field of chemical safety was circulated.

The ED pointed to the link with the activities of the future network on risk communication, which would also discuss how best to contribute to the Slovenian project.

The Chair welcomed the initiative and invited Board members to follow it up with the Slovenian authorities on a bilateral basis.

14. Next meeting and closure

The Chair recalled that the next meeting would be held on 13/14 February 2008.

On this occasion, pending items would be finalised (including the nomination of the SEAC members, the Communication Strategy and a debriefing on new developments regarding REACH-IT).

III. Decisions taken/ Conclusions reached by the Management Board

The Management Board

- in line with Article 84 of the REACH Regulation⁵, appointed unanimously Mr Geert DANCET as Executive Director of ECHA;
- approved the contract of the Executive Director as contained in a corrigendum to annex 1 of document MB/22/2007;
- empowered the Chairman to sign this contract on behalf of the Agency;
- appointed Mr Jakl (AT), Ms Gauthier (FR) and Ms Pauli (COM) as reporting officers for the appraisal procedures related to the contract of the Executive Director.
- adopted the final budget for 2008 and the establishment plan contained in document MB/23/2007;
- adopted ECHA's Financial Regulation in the form approved by the Commission in its Decision C (2007) 6640;
- appointed as member of the Risk Assessment Committee (RAC) all nominees listed in annex one of document MB/25/2007⁶, with the exception of the candidates nominated by Latvia. In the latter case, Mr Normunds Kadikis and Ms Margita Tomson were appointed by the Board as members of the RAC;
- mandated the Chair to write a letter to the Member States in order to explain the Board's view on the participation of persons originating from the private sector in the Committee for Socio-economic Analysis.

⁵ Regulation (EC) N° 1970/2006 of 18 December 2006

⁶ The Executive Director's publication notice of 4 December 2007 containing the list of nominees for the RAC (according to article 85 of the REACH Regulation)

IV. List of Attendees

Representatives of the Member States

Zoltán ADAMIS (HU)
Maria ALAJŐE (EE)
Helge ANDREASEN (DK)
Aurelija BAJORAITIENĖ (LT)
Karel BLÁHA (CZ)
Marta CIRAJ (SI)
Francis E. FARRUGIA (MT)
Ethel FORSBERG (SE)
Ana FRESNO RUIZ (ES)
Odile GAUTHIER (FR)
Ekaterina Spasova GECHEVA-ZAHARIEVA (BG)
Claude GEIMER (LU)
Thomas JAKL (AT)
Ilze KIRSTUKA (LV)
Katarzyna KITAJEWSKA (PL)
Antonello LAPALORCIA (IT)
Marc LEEMANS (BE)
Martin LYNCH (IE)
Jukka MALM (FI)
Rodica MOROHOI (RO)
Alexander NIES (DE)
Edita NOVÁKOVÁ (SK)
John ROBERTS (UK)
Arnold VAN DER WIELEN (NL)
Maria-Miranda XEPAPADAKI-TOMARA (EL) also acting as proxy of
Mr NICOLAIDES (CY)

Representatives of the Commission

Heinz ZOUREK (COM)
Grant LAWRENCE (COM)

Independent persons (appointed by the European Parliament)

Bernd LANGE also acting as proxy of
Mr DE ROO

Individuals from interested parties (appointed by the Commission)

Tony MUSU (ETUC)
Marc PALLEMAERTS (IEEP)
Alain PERROY (CEFIC)

Observers

Fernanda SANTIAGO attending on behalf of Mr GONÇALVES
HENRIQUES (PT)
Elke ANKLAM (COM) attending on behalf of Ms Anneli PAULI (COM)

Teodor OGNEAN (RO)

Astrid BARTELS (COM)

ECHA staff

Geert DANCET (Executive Director)

Joachim KREYSA (Acting Director 'Cooperation')
Bjørn HANSEN (Acting Director 'Operations')
Udo HEIDER (Acting Director 'Resources')

Minna HEIKKILÄ (Legal Advisor)

Leena YLÄ-MONONEN (Acting Head of Unit 'Committees')
Alastair MACPHAIL (Acting Head of Unit 'Human Resources')

Martin KRÖGER (Secretary of the Management Board)