



MB/M/03/2009 final

**Minutes of the Meeting of the Management Board
25/26 June 2009**

I. Documents submitted to the Management Board

Draft agenda	<i>(MB/A/03/2009)</i>
Draft minutes	<i>(MB/M/02/2009)</i>
Election of a Deputy-Chair	<i>(MB/38/2009)</i>
REACH-IT information security policy, including aspects related to public access to information	
- REACH-IT access for MSCA and Commission	<i>(MB/39/2009)</i>
- REACH-IT access for enforcement authorities	<i>(MB/40/2009)</i>
Opinion on the ECHA's final accounts 2008	<i>(MB/41/2009)</i>
Rules of the financial management of the Agency	
- Guidelines for managing cash reserve	<i>(MB/42/2009)</i>
- Implementing rules for the Financial Regulation	<i>(MB/43/2009)</i>
Implementing rules for the Staff Regulations on the Appraisal of the ED and members of the BoA	<i>(MB/44/2009)</i> <i>(MB/44/2009 ADD)</i>
Probationary period report of the technically qualified Member of the Board of Appeal	<i>(MB/RD/02/2009)</i>
Appointment of a Committee member	<i>(MB/45/2009)</i>
Amendment to the Guide on Reimbursement	<i>(MB/46/2009)</i>
Integrated Quality Management System	<i>(MB/47/2009)</i>
Roadmap on the public dissemination of non-confidential information on substances	<i>(MB/48/2009)</i>
Report of the Executive Director	<i>(MB/49/2009)</i>
Board of Appeal	
- Readiness of the Board of Appeal	<i>(MB/50/2009)</i>
- Administrative arrangements for safeguarding the independence of the Board of Appeal	<i>(MB/51/2009)</i>
Planning cycle of ECHA, including update of the Management Board's Rolling Plan	<i>(MB/52/2009)</i> <i>(MB/53/2009)</i>
Transfers within the budget 2009	<i>(MB/54/2009)</i>

II. Summary Record of the Proceedings

Introductory remarks

The Chair opened the meeting by welcoming the other Board members.

He announced that a Commission decision to replace Mr David Grant LAWRENCE as Board member by Mr Gustaaf BORCHARDT was scheduled for adoption for the morning of the first day of the meeting. The Chair welcomed Mr BORCHARDT and used the opportunity to thank Mr LAWRENCE sincerely for his work on the Management Board, acknowledging his key role during the set-up phase of ECHA and in particular the establishment of the Agency's Board of Appeal.

He introduced the observers attending the meeting and informed the Board members of the proxy votes of which he had been notified (details are listed in Annex IV of these minutes). In this context, it was clarified that it is the duty of any Member who casts a proxy vote to identify any potential conflict of interest and communicate this accordingly.

1. Agenda (MB/A/03/2009)

The Chair informed the Board that agenda item 7.2 "implementing rules for the ECHA Financial Regulation" would be postponed to a later meeting.

He indicated that several room documents that had been made available for the meeting.

On this basis, the agenda was adopted.

2. Declaration of specific interests

None of the Board members present declared a conflict of interest with regard to the agenda items.

3. Minutes
(*MB/M/02/2009*)

The minutes of the meeting on 24/25 April 2009 were approved with some modifications (see corrigendum in the annex).

4. Election of a Deputy-Chair
(*MB/38/2009*)

The Management Board elected Mr Antonello LAPALORCIA, whose term of office as Deputy-Chair was due to come to an end on 27 June 2009, for a second term for this position.

Noting the overwhelming support for Mr LAPALORCIA, the Chair congratulated him on his re-election, on behalf of the Board.

5. REACH-IT information security, including aspects related to public access to information
(*MB/39/2009, MB/39/2009 rev.01 and rev.02, MB/40/200*)

The agenda item was introduced by the Head of the Executive Office who holds the function of Security Officer of ECHA.

5.1. REACH-IT access for Member State Competent Authorities and the Commission

A summary was given on progress since the 12th Board meeting in April 2009 when the Board was initially concerned with REACH-IT access for Member State Competent Authorities and the Commission services. These developments included a (second) written consultation by the Security Officers Network (SON) in May, and deliberations at the CARACAL¹ meeting on 15-16 June 2009, as well as bilateral meetings with Member States. As a result, a revised declaration and revised Standard Security Requirements were presented as annexes to the meeting document MB/39/2009 rev.01. The modifications allowed, in particular, for a higher degree of flexibility with regard to the precise security measures to be put in place locally in the Member States. Referring to a request at the April Management Board meeting, Members were informed that the Executive Director has asked the Commission for legal advice on the relationship between REACH and horizontal EU and national legislation on access to environmental information.

This was followed by an extensive exchange of views which centred on the technical aspects of the proposal; the wording of the proposed declaration; and on the question of whether national provisions on access to information may overrule ECHA's prerogative to decide on the disclosure of information that is held by the Agency and made available to Member States for the purpose of implementing REACH and CLP.

¹ Competent authority meeting for the REACH and CLP Regulations

Whilst some technical modifications to the annexes were proposed, most of the Management Board members said they could support the proposed approach, i.e. that Member States sign a declaration accompanied by a set of security requirements for obtaining access to REACH-IT.

A discussion took place however, on the wording of the declaration, and it was agreed that the model declaration should be updated in the light of new findings - in particular, regarding the legal question of the relationship between EU and national legislation on access to environmental information. In order to accommodate some of the technical changes to the annexes of the meeting document, the Secretariat presented a revised document MB/39/2009 rev.02 that formed the basis for the decision of the Management Board on the matter².

With regard to the request for legal advice on the matter, a Commission representative informed the Board that work on a reply was ongoing and that the Commission services noted that the Management Board is awaiting guidance on the issue. In this context, it was noted that the latter issue was to be looked at from different angles, namely whether data had been downloaded locally, was held in the cache memory of a local computer, or merely potentially accessible through the IT-system.

The meeting also held an exchange of views on the use of REACH-IT data for purposes not directly linked to the implementation of the REACH or CLP Regulation, e.g. for the implementation of other Community or national legislation. On this, a Board member appointed by the European Commission to represent interested parties stated that one of the purposes of REACH would be to overcome a situation of “toxic ignorance” by collecting substance-related information, based on the principle: “Do it once, do it right, do it on a European level”. Looking at the provisions of the REACH Regulation, he expressed his confidence that the REACH Regulation as a whole, including the recitals, provides a sound legal basis for the data transfer from ECHA to the MS, also for uses not directly linked to the REACH or CLP implementation.

Other aspects discussed included the anchorage of REACH-IT access for Member States and the Commission in the REACH Regulation, and liability aspects in case of security breaches.

Clarification was also sought on the reasons for which the Commission services would need access to REACH-IT. In response to this, a Commission representative referred to the duties of the Commission linked to deciding on applications for authorisation, restrictions or the duty of the Commission to update the technical annexes of the legislation. The Commission would also need access to registration dossiers in REACH-IT in order to decide on requests for ECHA to prepare scientific dossiers for the identification of a substance as being of very high concern, or on restriction proposals.

With regard to procedural aspects, Board members noted that a more systematic approach to defining the security rules, starting from the identification of the risks and standards and then looking at MSCA needs, would have brought added value to the draft decision presented to the Board. At the same time, it was acknowledged by many Board members that, given the importance of the issue, there is a good cause for ECHA to establish clear and safe rules before granting access to REACH-IT. It was equally noted that a high interest exists in many Member States to access the database in order to implement REACH, and the work of the ECHA Committees, efficiently.

² An alternative wording was still included for section 3 e) of Annex 2 of MB/39/2009 rev.02.

The Management Board ultimately approved the general approach to be used in granting access to REACH-IT to MSCAs and to the Commission, as outlined in document MB/39/2009 rev.02, and agreed that those Member States that accept the declaration and security requirements, annexed to the document, would be able to access REACH-IT on this basis. The Board further concluded that a new proposal will be submitted to it by the Secretariat in September 2009, that will, in particular, include the outcome of the Commission consultation on the question of the relation between confidentiality duties and the right of access to environmental information. To this end, the Commission was called upon to provide guidance in due time. The decision was taken based on the understanding that any declaration signed by an MSCA shall be replaced by a revised version, once available.

Two Member State representatives expressed reservations, declaring that they could not support the proposed declaration. These two members submitted written declarations which are attached to these minutes³.

It was further agreed that translations of the annexes to document MB/39/2009 rev.02 will be made available to the MSCAs.

5.2. (Specific) REACH-IT access for enforcement authorities

The Management Board received a presentation on the RIPE project (REACH Information Portal for Enforcement) which ECHA intends to implement until the end of 2010 in order to facilitate the access of the numerous enforcement authorities in the Member States to the relevant data needed for their purposes. To this end, basic requirements for a specific IT tool, in terms of content and security, have been prepared by ECHA, in cooperation with the Forum for Exchange of Information on Enforcement and the Security Officers Network (the "SON"). Similar to REACH-IT access, the proposed access to RIPE would depend upon a declaration to be signed by a legal representative of the respective authority.

In the subsequent exchange of views, Management Board members welcomed the RIPE proposal. A number of technical remarks were made regarding the annexes of meeting document MB/40/2009. Board members noted that, contrary to the granting of access to REACH-IT to MSCAs, there would be no time pressure for deciding on the actual security requirements for RIPE, nor for the content of the declaration to be signed prior to obtaining access to RIPE. It was therefore agreed that no decision on this would be required at this point in time. In order to allow ECHA to start developing the IT tool, it was however necessary to agree upon the selection of data which will be available to enforcers through RIPE.

The Management endorsed the general approach on RIPE and approved the selection of data that shall be made available to enforcement authorities as contained in Annex 1 to document MB/40/2009. The Board also agreed that an information letter to the MSCAs on RIPE should be sent by the Secretariat.

³ See Annex III

6. Opinion on the ECHA final accounts 2008
(*MB/41/2009, MB/41/2009rev.01*)

The agenda item was discussed in the presence of ECHA's accounting officer, appointed by the Management Board in 2008.

The Executive Director presented the background of the requested decision and the structure of the Agency's final accounts for the year 2008, which he had drawn up under his own responsibility upon receipt of the European Court of Auditor's observations. He also presented the Agency's reply to these observations.

Following this, Martin LYNCH, Chair of the Management Board's Working Group on Planning and Reporting, presented the working group's recommendations for the Board's opinion which had been prepared during a meeting in the afternoon before the Board meeting (MB/41/2009 Annex 1 rev.01). Overall, he concluded that there is sufficient assurance that the accounts are accurately prepared; furthermore the comments by the Court of Auditors relate to specific circumstances associated with the start-up of the Agency. The Board could thus be confident that the procedures and resources in place in the Agency are being reinforced and further developed to ensure that regulatory duties and legal obligations are fully complied with.

The Board took note that the Court of Auditors made relatively few comments given its early stage of establishment.

Board members welcomed the draft replies of the Executive Director to the observations of the Court of Auditors.

The Management Board took note of ECHA's final accounts 2008 and adopted its opinion on these accounts as contained in document MB/41/2009 rev.01. The Board instructed the Executive Director to forward the accounts and the opinion by 1 July 2009 at the latest, to the European Parliament, the Council, the Commission, and the Court of Auditors.

7. Rules for the financial management of the Agency
(*MB/43/2009*)

The Director for Resources presented a solution for managing the excess cash income from fees received from industry, which had already been outlined at previous Board meetings.

He recalled that the sole source of revenue for ECHA, after the first registration deadline of 30 November 2010 up until the end of the current financial perspectives period (2007-2013), will be the fees paid by industry - estimated to amount to over EUR 300 million. As it does not have sufficient in-house expertise, the Agency intends to outsource the management of these cash reserves to the Commission, DG Economic and Financial Affairs (ECFIN), Treasury Unit, subject to guidelines established by ECHA. This would allow ECHA to focus on its core business of implementing the REACH Regulation. As ECHA is now ready to start specific negotiations with the Commission, DG ECFIN, the Director for Resources asked the Management Board to approve the cash management guidelines as presented.

The Management Board approved the proposed guidelines and authorised the Executive Director to enter into negotiations with the aforementioned Commission service, with a view to establishing a service-level agreement on the matter.

8. Implementing Rule on the Appraisal of the Executive Director and the Members of the Board of Appeal
(*MB/44/2009*)

The Board adopted the draft Implementing Rule on the Appraisal of the Executive Director and of the Members of the Board of Appeal (subject to the agreement of the Commission) and the corresponding forms. With regard to the procedure for the probationary report and management trial period, it was clarified that while the Chair, in his role as review assessor, keeps his independence, he shall take into account, in his review, the opinion of the Management Board, as far as possible. It was also clarified that the Chair's function in the appraisal process would be as an independent moderator rather than linked to his role as Chair of the Board⁴.

9. Probationary period report of the technically qualified Member of the Board of Appeal
(*MB/RD/02/2009*)

The Board confirmed the technically qualified Member of the Board of Appeal, whose probationary period ends on 30 June 2009, in his function.

Following Mr Grant LAWRENCE's replacement as a Member of the Board, Mr Gustaaf BORCHARDT was designated as reporting officer and Member of the working group for the Chair and the Members of the Board of Appeal.

10. Appointment of Committee members
(*MB/45/2009; MB/45/2009 rev.01*)

The Management Board appointed:

- Mr Marian RUCKI, nominated by the Czech Republic, as a Member of the Risk Assessment Committee;
- Mr Marko SUSNIK, nominated by Austria, as a Member of the Socio-Economic Analysis Committee;
- Mr Mark FAHERTY, nominated by Ireland, as a Member of the Socio-Economic Analysis Committee.

⁴ To this end, two clarifying changes to document MB/43/2009 were made at the Board meeting.

11. Amendment to the Guide on Reimbursement⁵
(MB/46/2009)

Having regard to concerns raised by Members of the ECHA Committees, the Forum and the Management Board, with respect to the appropriateness of the amount deducted from the daily allowance of invitees to Agency meetings for the lunch offered at ECHA, the Secretariat proposed a immediate change to the Guide on Reimbursement, in advance of a more in depth revision of the Guide in September 2009.

The Management Board decided that section 3.3.1, 5th subparagraph of the ECHA Guide for Reimbursement MB/78/2008 shall be amended as follows:

“Where meals are offered by the Agency or other organisations for the meeting concerned, an automatic deduction of EUR 10 will be made for each lunch offered. Similarly, a deduction of EUR 40 will be made if the individual attends a dinner offered“.

12. ECHA Integrated Quality Management System
(MB/47/2009)

Board members received a report from the Executive Director on the progress made on ECHA’s Integrated Quality Management System, describing developments and summarising the achievements made since September 2008.

Following this, a Board member appointed by the European Commission to represent interested parties who participates in the ECHA Quality Steering Committee presented his view on the report. He concluded that ECHA was progressing well, welcoming the commitment of the Management, and the fact that the quality policy is well connected to the work programme. He recommended further detailed planning and suggested that the role of the Quality Steering Committee should be considered in this. In conclusion, the Board member emphasised the importance of maintaining momentum within the Agency and to proceed efficiently with the implementation of the quality policy.

In the subsequent exchange of views, Board members welcomed ECHA’s efforts and the progress made in establishing its quality policy. It was reiterated that there is a need to keep up the momentum and persist in continuous efforts because the implementation of a quality management system would always involve a high workload, and thus require the strong commitment of staff, as well as good monitoring by the management. Moreover, a Member State representative pointed out that the establishment of a quality management system, on top of a regular workload, is no easy task for staff and recommended that each unit should have a staff member responsible for quality issues.

Another Board member pointed out that quality policy should in the first place focus on a high level of customer satisfaction, and suggested that a special contact point for complaints be put in place at ECHA.

⁵ The order of agenda items follows the draft agenda as adopted at the beginning of the meeting. Ultimately, agenda items 7,8,9,10 and 11 were dealt with on the second meeting day, and items 12,13 and 14 were brought forward to the first day.

Referring to discussions at previous meetings, several Board members enquired about ECHA's plans to comply with the EU Eco-Management and Audit Scheme (EMAS), which is a management tool for companies and other organisations to evaluate, report and improve their environmental performance.

In his reply, the Executive Director thanked Members for their valuable comments and agreed that customer satisfaction should be an important element in ECHA's work. With regard to compliance with EMAS, he informed the Board that ECHA is at present focusing on achieving compliance with the ISO 9001 standard which will be a good foundation upon which to build further measures at a later stage, such as EMAS. The Board member participating in the Quality Steering Committee confirmed that the ISO 9001 standard would be a solid base for later expansions. He also pointed to the risks of an overly complex quality system.

The Board took note of the information provided and congratulated the Executive Director and his staff on the progress made. It encouraged the Agency to continue work in this field with the same momentum and motivation. The efforts should, in particular, focus on customer orientation, ownership of processes and compliance with the REACH and CLP regulations, as well as achieving, in future, compliance with other relevant standards, such as EMAS.

13. Roadmap on the public dissemination of non-confidential information on substances
(*MB/48/2009*)

The Director for Registration and IT Tools presented a roadmap to the Management Board which outlined the approach and planning that ECHA intends to undertake, in order to ensure the public dissemination of non-confidential information on chemicals from the end of 2009 onwards.

Board members were informed, in particular, about the progress made on the development of a "filter tool" that, in accordance with criteria pre-defined by ECHA, will allow for the automated dissemination on ECHA's website of information available in the IUCLID 5 format. A round table with representatives from stakeholder organisations will be held in Brussels on 6 July 2009 at which the principles for dissemination will be explained and discussed. Further to this consultation, the criteria applied by the filter tool for the selection of public information could be adapted.

A Board member appointed by the Commission to represent interested parties stressed that ECHA should ensure the equal participation of all stakeholders and take the views of the general public into account when setting up the principles for dissemination. He asked ECHA to report back from the workshop on 6 July 2009 at the September Management Board meeting. On the basis of this report, the Management Board could potentially decide, in the form of internal rules, on the basic principles for dissemination.

Several Board members asked whether ECHA could apply a two-step approach, and already begin disseminating those parts of the registration data that are clearly identifiable as non confidential.

The Director for Registration and IT Tools clarified that ECHA would indeed ensure the balanced participation of all stakeholders in the process. She also indicated that ECHA is

already applying a phased approach. However, as registration dossiers do not arrive in document form at ECHA, an IT-based solution would be the only realistic method of dissemination, bearing in mind that a IUCLID file contains several hundred information fields. The Director further informed the Board that ECHA would also encounter a big challenge in making the information available in an understandable way, and thus, be accessible not only to experts but also to the broader public. In addition, a number of complex technical issues need to be resolved, for example the treatment of notification dossiers submitted under the former EU chemicals legislation, or the inclusion of the C&L information that will arrive at a later stage. In closing, the Director noted that the so called “grey zone” of information that needs to be filtered before dissemination would also include information that may be contained in a IUCLID dossier but not required by REACH; the reason being that companies frequently use IUCLID as a central store for all kinds of information on their chemicals, including uses not covered by REACH.

The Chair thanked the Secretariat for the preparation of a clearly structured roadmap and for the report provided, and concluded that the Management Board looked forward to being kept informed about the developments on the issue – remaining ready to play a constructive role in the process of implementing the roadmap.

14. Information on the budgetary procedure 2010

The Management Board received a report from the Executive Director on recent developments in the budgetary procedure for 2010 and the request by ECHA for a temporary bridging subsidy due to the fact that the bulk of fee income will be generated towards the end of the year 2010, leading to a lack of synchronisation of revenue and expenditure over the preceding months.

The Management Board had, in February 2009, considered that a temporary subsidy of EUR 45 million would be required in addition to the assigned revenue from 2008 (€ 8.7 million) to ensure the smooth operation of the Agency until significant fee income is forecast to arrive.

Further discussions between the Commission and the Agency, which focused on establishing the absolute minimum requirements while considering the very tight budgetary situation, led to a final Commission request of EUR 38.7 million, whereby EUR 8.7 million would be financed through assigned revenue (ECHA positive outturn account for 2008) and EUR 30 million through ‘fresh money’ in 2010. However, the Commission also adopted a review clause that permits the reassessment of the cash flow needs of ECHA in 2010, in order to increase the budget to ensure the functioning of the Agency. The Executive Director reported that the Commission’s Preliminary Draft Budget does not foresee the two additional posts for the implementation of the CLP Regulation that had been requested by ECHA for 2010.

He further informed the Board that, as agreed at the April meeting, the Secretariat has prepared a letter from the Management Board to the budgetary authority to create awareness of the need to secure the required number of over 100 new staff and at least EUR 38.7 million in Community subsidies for ECHA, if not more, to guarantee operations. The letter was made available to Board members before the meeting and could be used by Members for further distribution in their Member States.

A representative of ECHA's parent Directorate General of the Commission recalled that the situation would be difficult to manage as the long term financial programming did not foresee any subsidy for ECHA in 2010. The Agency would, on the other hand, not be legally allowed to take any loans. He stressed the difficulties the Commission experienced when allocating the subsidy proposal for ECHA in the 2010 PDB but pointed to the review clause which would require careful monitoring of the cash needs on a monthly base so that an amending budget could be prepared in a timely manner. He also pointed out that the management would be required to act very diligently with regard to expenditure in 2010 and underlined the importance of making the budgetary authority aware of the situation. Finally, he invited Board members to contact the services responsible for the meetings of the ECOFIN Council urgently.

The Board agreed that the Chair should send the proposed letter to the budgetary authority and committed to make use of it to create awareness of the budgetary constraints ECHA will face in 2010.

15. Report of the Executive Director
(MB/49/2009)

The Board received a report from the Executive Director on the recent activities and developments of the Agency.

The report was followed by an exchange of views.

Board members acknowledged the successful start of the SIEF campaign but called, at the same time, for enhanced efforts to support SIEF formation. Reference was made to recent Council deliberations on the issue. ECHA and the Commission would therefore be asked to give as much support as possible in this field.

Concern was raised by a Board member with regard to the definition of a 'legal entity' being applied, and its impact on SMEs: ECHA and the Commission were asked to examine this matter further. In addition, Board members indicated that they would like to receive feedback on the likely impact of the ongoing revision of the Biocides legislation and RoHS Directive on ECHA's tasks and resources. Another issue raised was the urgent translation of guidance.

The Executive Director thanked the Board for the comments provided, and agreed to speed up the SIEF campaign. He also proposed that ECHA will look into the issue of SME-status as far as the Guidance managed by ECHA is concerned. In response to the comment on guidance translation, he informed the Board that a letter on the issue had been sent to the Member States before the June CARACAL meeting and that progress was being made in organising the critical review of translations, together with the Member States.

The Management Board took note of the report. It was agreed that the Secretariat would provide information at the next Board meeting on the proposal for a new EC biocides regulation that had been eventually adopted by the Commission and which contains a number of new tasks for ECHA.

16. Readiness of the Board of Appeal
(*MB/50/2009; MB/51/2009*)

The Management Board received a report on the readiness of the Board of Appeal from the Chair of the latter.

Board members were informed that since April 2009, the Board of Appeal has been constituted in its complete composition. It is now fully operational and ready to manage and decide on appeals within acceptable time frames. The preparatory work of the Registry in advance of the setting up of the full Board of Appeal was explicitly acknowledged.

Following this, the Executive Director outlined the administrative arrangements agreed between him and the Chair of the Board of Appeal in order to safeguard the independence of the Board of Appeal.

The Management Board took note of the information provided and welcomed the report by the Chair of the Board of Appeal, as well as the agreed administrative arrangements to ensure the independence of the Board from the Secretariat, when carrying out its duties.

17. Planning cycle of ECHA, including update of the Rolling Plan
(*MB/52/2009; MB/53/2009*)

The Executive Director presented a systematic approach for the timing of the steps that lead to the adoption of the planning and reporting documents of ECHA, chiefly the work programme, the multi-annual work programme (MAWP), the budget and the staff policy plan (MASPP). The meeting document MB/52/2009 was accompanied by an updated Rolling Plan of the Management Board (MB/53/2009) and a list of proposed dates for meetings in 2010.

Following this, the Chair of the Board's working group on planning and reporting re-iterated the background of the MAWP and MASPP, which aim at expanding the horizon of ECHA's planning beyond the annual work programme.

When noting the dates for meetings in 2010, it was proposed that the Management Board could hold one meeting per year in an EU Member State other than Finland. This would follow the example of other EU Agencies and would offer an opportunity to put the work of the Board into a European perspective, allow for a better understanding of the different challenges in implementing the legislation, and in particular combine such external meetings with promoting REACH in the Member States amongst officials, experts and also the broader public. This proposal was welcomed by the Board and one representative of a Member State offered to host the first external Board meeting in his country.

The Board took note of the information provided and noted that the Secretariat will submit in late June/ early July the draft work programme for 2010 for written consultation by the Management Board.

18. Budget transfers
(MB/54/2009)

The Director for Resources reported on budget transfers carried out under the remit of the Executive Director, since the February 2009 Management Board meeting.

The Management Board took note of the information provided.

19. Any other business

Annual appraisal of the Executive Director

The Chair informed the other Board members that he had received the annual appraisal report of the Executive Director from the reporting officers designated amongst the Members.

Building issues

The Executive Director gave an overview on current and future rental projects which shall ensure sufficient office space for new staff and also resolve some security concerns. The Executive Director pointed out that no decision by the Management Board was needed at this point in time. The Secretariat would start developing the plans in the coming weeks and consult the Management Board in September before also submitting a proposal to the budgetary authority. Board members agreed that security is a pertinent basis on which to take decisions on the matter.

Application of a Swiss national expert

With regard to the application of a Swiss national expert as a seconded national expert, the Board agreed that the question would touch on horizontal aspects relevant for all Community institutions and should be dealt with as recommended by the Commission representatives on the Board. The Board would therefore not support such recruitment at this point in time. At the same time, the excellent collaboration with Switzerland on the international level was highlighted and it was clarified that the technical implementation of the REACH and CLP Regulation would have to be seen as a separate issue.

REACH and EC Cosmetic legislation

Following a request at the April 2009 Management Board meeting, the Senior legal advisor of ECHA informed the Board of the relationship between the REACH legislation and the EC Cosmetics legislation for which a recast procedure was concluded recently by the co-legislators. Board members thanked the Secretariat for the information. A representative of a Member State referred to Non-Governmental Organisations in his Member States that take the view that any substance tested under REACH on animals after the phase-out deadlines for animal tests of the Cosmetics legislation could not be used in cosmetic products. This view would be based on an opinion of the Advocate General at the European Court of Justice.

Guidance on DMEL (Derived Minimum Effect Level)

The Secretariat informed the Board that, in agreement with the Commission, ECHA would currently not consider that an update of the guidance with regard to DMEL (Derived Minimum Effect Level) would be required. It was noted that the issue has links to the question of the cumulative effects of chemicals of very high concern and that the Swedish Presidency is expected to look into the issue.

Visit by the Executive Director of EFSA

The Executive Director reported on a very constructive visit by the Executive Director of the European Food Safety Authority to ECHA in May 2009. A Memorandum of Understanding between the two Agencies was signed on this occasion.

20. Next meeting and closure

The Chair reminded Members that the next meeting of the Management Board would be held in Helsinki on 29/30 September 2009, in the “Margot Wallström” room of the Agency’s conference centre.

He also informed the Board that Mr John ROBERTS, representative of the United Kingdom, would be replaced as a Board member due to a change in his position in his administration. The Chair thanked Mr ROBERTS on behalf of the Management Board for the very good cooperation and his active involvement in the activities of the Management Board. This was followed by applause.



III. Decisions taken/ Conclusions reached by the Management Board

The Management Board

- approved the minutes contained in document MB/M/02/2009, subject to the amendments indicated in the corrigendum attached to the present minutes.
- adopted the agenda as contained in MB/A/03/2009.
- approved the general approach for granting access to REACH-IT to Member State Competent Authorities and the Commission as contained in document MB/39/2009 rev.02 and agreed that Member States may use the declaration and security requirements contained in the annexes to the document to obtain access to REACH-IT.⁶
- endorsed the general approach of RIPE (REACH Information Portal for Enforcement) and approved the selection of data that shall be made available to enforcement authorities as contained in Annex 1 to document MB/40/2009.
- adopted its opinion on ECHA's final accounts for the financial year 2008, as contained in document MB/41/2009 rev.01, and instructed the Executive Director to forward the accounts and the opinion by 1 July 2009, at the latest, to the European Parliament, the Council, the Commission, and the Court of Auditors.
- approved guidelines for managing excess cash income from fees as outlined in document MB/43/2009 and authorised the Executive Director to enter into negotiations with the relevant Commission service, with a view to establishing a service level agreement on the matter.
- adopted the draft decision contained in annex 1 to document MB/44/2009, subject to the agreement of the Commission. Upon the agreement of the Commission, the Chair is authorised to formalise the adoption of this implementing rule. For practical reasons, the Chair is granted strictly limited discretion to accept minor technical or linguistic changes proposed by the Commission provided that these do not alter the content of the Board's decision.
- adopted the necessary forms for the probationary period report and the appraisal performance report of the Executive Director and of the Chair and the members of the Board of Appeal, in accordance with the models contained in the annexes to document MB/44/2009.
- appointed:
 1. Mr Marian RUCKI, nominated by the Czech Republic, as a Member of the Risk Assessment Committee;
 2. Mr Marko SUSNIK, nominated by Austria, as a Member of the Socio-Economic Analysis Committee;
 3. Mr Mark FAHERTY, nominated by Ireland, as a Member of the Socio-Economic Analysis Committee.

⁶ Statements by two representatives of Member States who expressed reservations are reflected below.

- decided, based on the report of the reporting officers contained in document RD/02/2009 that the technical member of the Board of Appeal shall be confirmed in his function.
- designated Mr. Gustaaf BORCHARDT as reporting officer for the Chair and the members of the Board of Appeal.
- decided that section 3.3.1, 5th subparagraph of the ECHA Guide for Reimbursement MB/78/2008 shall be amended as follows:

“Where meals are offered by the Agency or other organisations for the meeting concerned, an automatic deduction of EUR 10 will be made for each lunch offered. Similarly, a deduction of EUR 40 will be made if the individual attends a dinner offered“.

Statement by the Danish representative on the decision under agenda point 5.1. (Access to REACH-IT for Member State Competent Authorities and the Commission

"Per Nylykke can not support the Declaration of Commitment by MSCA as adopted by a majority of MB-members for 2 reasons:

The requested opinion by the Commission on the question concerning the implications of national or European legislation on public access to information has not been received.

According to fundamental Danish legislation and the principle of public access to information, citizens have the right to access official documents. Consequently, a Danish authority is obliged to disclose information to the citizen upon request. However, a document or parts of a document must not be disclosed if it contains confidential information and if the disclosure of such information can be considered to harm commercial interests of natural or legal persons including intellectual property rights unless overriding public interest so require. The authority is required to examine, before disclose of information, whether any information is confidential, and act accordingly.

Moreover, Directive 2003/4/EC on public access to environmental information provides that MS shall ensure that public authorities are required to make available environmental information held by or for them.

Therefore at this meeting, the Danish representative cannot acknowledge that ECHA has the exclusive responsibility to decide on the dissemination of information stored in REACH-IT"

Statement by the Swedish representative on the decision under agenda point 5.1. (Access to REACH-IT for Member State Competent Authorities and the Commission

“Sweden cannot support the Declaration of Commitment by MSCA as adopted by a majority of MB-members.

According to the Swedish constitution, (the Swedish Freedom of the Press Act) and the principle of public access to information, everyone has the right of access to official documents. Consequently, a Swedish authority that receives a request, in this case the Swedish Chemicals Agency, is obliged to examine on a case-by-case basis whether the information is confidential or if it could be disclosed without causing damage. Unless the information is covered by one of the provisions laid down in the Swedish Secrecy Act the Swedish authority is obliged to disclose information that it holds to the applicant upon request.

Moreover, the Directive 2003/04/EG on public access to environmental information provides that member states shall ensure that public authorities are required to make available environmental information held by or for them.

On these grounds, Sweden cannot acknowledge that ECHA has the exclusive responsibility to decide on the dissemination of information stored in Reach-IT.

The requested opinion from the COM on the legal interpretation on the relationship between Reach and horizontal national or EU legislation on public access to data is not yet available. However, the obligation not to disclose information in a non-disclosure agreement cannot limit the application of rules regarding freedom of access to information laid down in national or, as is the case for ECHA, in community legislation. It must be made clear that such agreements do not limit and are without prejudice to legislation about access to documents.”

List of agreed follow-up actions

- The Secretariat will present revised modalities for the access to REACH-IT for Member States and the Commission based on the Commission's advice on the open legal questions and the first experiences gained.
- The Secretariat will inform Member States about the modalities for obtaining access to REACH-IT, as well as the RIPE project.
- The Secretariat will keep the Management Board informed of the progress made in implementing the Roadmap for the dissemination of non-confidential information of chemicals and in particular about the results of a workshop to be held on 6 July 2009.
- The Secretariat will inform the Board of the proposal for a biocide Regulation at the September 2009 Board meeting.

IV. List of Attendees

Representatives of the Member States

Zoltán ADAMIS (HU)
Maria ALAJŐE (EE)
Aurelija BAJORAITIENĖ (LT)
Marta CIRAJ (SI)
Francis E. FARRUGIA (MT)
Ethel FORSBERG (SE)
Ana FRESNO RUIZ (ES)
Ekaterina GECHEVA-ZAHARIEVA (BG)
Claude GEIMER (LU)
Thomas JAKL (AT)
Katarzyna KITAJEWSKA (PL)
Pirkko KIVELA (FI)
Antonello LAPALORCIA (IT) also acting as proxy of Odile GAUTHIER (FR)
Martin LYNCH (IE)
Leandros NICOLAIDES (CY)
Alexander NIES (DE) also acting as proxy of Bernd LANGE (EP)
and Alexander DE ROO (EP)
Edita NOVÁKOVÁ (SK)
Per NYLYKKE (DK)
Teodor OGNEAN (RO)
Armands PLATE (LV)
John ROBERTS (UK)
Fernanda SANTIAGO (PT)
Maria-Miranda XEPAPADAKI-TOMARA (EL)

Representatives of the Commission

Gustaaf BORCHARDT also acting as proxy of Elke ANKLAM for the 2nd day
Heinz ZOUREK also acting as proxy of Elke ANKLAM for the 1st day
and Grant LAWRENCE for the 1st day

Individuals from interested parties (appointed by the Commission)

Martin FUEHR (University of Darmstadt)
Tony MUSU (ETUC)
Alain PERROY (CEFIC)

Other Observers

Jan Karel KWISTHOUT	on behalf of Arnoldus VAN DER WIELEN (NL)
Catherine MIR	on behalf of Odile GAUTHIER (FR)
Katerina SEBKOVA	on behalf of Karel BLAHA (CZ)
Astrid BARTELS	(COM)
Bartłomiej BALCERZYK	(COM)
Gwenole COZIGOU	(COM) on behalf of Heinz ZOUREK for the 2 nd day
Mario BECCIA	expert accompanying Antonello LAPALORCIA (IT)

ECHA staff

Geert DANCET	(Executive Director)
Andreas HERDINA	(Director of Cooperation)
Jef MAES	(Director of Resources)
Christel MUSSET	(Director of Registration and IT Tools)
Minna HEIKKILÄ	(Senior Legal Advisor)
Jack DE BRUIJN	(Head of the Risk Management Unit)
Markku JUNKKARI	(Senior Organisational Advisor)
Ann THUVANDER	(Chair of the Committee for Socio-economic Analysis)
Mercedes ORTUNO	(Chair of the Board of Appeal) for agenda item 16
Kari KLEMETTI	(Information Security Officer) for agenda item 5
Mervi MUSTAKALLIO	(Planning and Monitoring Officer) for agenda items 6 and 17
Helene LILGALS	(Accounting Officer) for agenda item 6
Stephen HOLLINS	(Vice Chairman of the Staff Committee) for agenda item 8
Gaida LAPITAJIS	(Quality Manager) for agenda item 12
Sari HAUKKA	(Registrar of the Board of Appeal) for agenda item 16
Alain LEFEBVRE	(Head of Unit, Executive Office)
Frank BÜCHLER	(Legal Officer, Executive Office)
Andrea IBER	(Legal Officer, Executive Office)

Annex

Corrigendum to Document: MB/M/02/2009

(Agreed at the Management Board meeting on 25 June 2009)

**Minutes of the Meeting of ECHA's Management Board
held on
25/26 April 2009**

5. General Report 2008
(MB/17/200, MB/17/2009 rev.01)

[page 7, 2nd paragraph]

[...] For an organisation representing workers' interests it would be legitimate to point to substances that may cause occupational diseases. He asked for consideration of the fact that the success of REACH is of common interest to industry, workers, and consumers, and that society as a whole would benefit from the safer use of chemicals. ***“This view was supported by another board member representing interested parties who reminded the Board that at the last meeting on agenda point 5 the Board members who commented on the topic of the candidate list (SVHC) explicitly or implicitly referred to the “SIN-list” issued by ChemSec (International Chemical Secretariat) as a helpful instrument.***

7. Report of the working group on reimbursement of REACH tasks to Member States
(MB/19/2009, MB/19/2009rev.01; MB/20/2009, MB/20/2009 rev. 01)

[page 10, 1st paragraph]

Some Members proposed clarifications to be added such as that the Management Board can not place obligations upon national authorities. Questions were also raised with regard to situations in which rapporteurs and co-rapporteurs were from different Member States; the format of the invoices eventually used; and whether the system would also allow for the payment of lower ~~fees~~ ***transfers*** to Member States if the work on a specific dossier was less than the average time foreseen in the draft decision.[...]

8. REACH-IT Information Security
(MB/21/2009; MB/21/2009rev.01; MB/RD/01/2009)

[page 12, 1st paragraph]

[...] With regard to the detailed requirements, many Board members expected a corresponding degree of flexibility on how these standard requirements were to be implemented, without lowering the overall level of security. ***Some Member State representatives raised concerns with regard to the approach taken to identify the specific security requirements which MSCAs would have to respect. It was equally noted that a more detailed preparation of the technical details would have been desirable.***

15. Report on Guidance activities
(MB/34/2009)

[page 16, first paragraph, 7th sentence]

[...]A Board member appointed by the Commission stated that it would be the responsibility of the ***Commission*** to strive towards a harmonised interpretation of European legislative acts, keeping in mind that the only competence for making binding interpretation would lie with the Community Courts. The Board also agreed that MSCAs should be informed by ECHA whenever a legal question is referred to the Commission.

