

Joint Statement of three institutions on the Common approach on regulatory agencies

Meeting of the Management Board 13-14 December 2012

Item	19
Action	For information
Status	Final

Summary

This note provides background on recommendations of the Joint Statement on a Common approach on decentralised EU agencies as far as the conclusions reached by Council, Parliament and Commission can be implemented by the Agency itself. The institutional text has been submitted to the Management Board already in September 2012 (MB/50/2012).

Taking into account the specificities of each agency, the Commission committed present a roadmap with concrete timetables for the planned initiatives by the end of 2012. The implementation of the roadmap should be done in cooperation with agencies whenever relevant. The Commission committed to inform regularly, and for the first time by the end of 2013, about progress.

As part of the coordination of the Network of Heads of EU Agencies, ECHA was providing regular input into the process leading to the adoption of the joint text and is now together with the other agencies contributing to the implementation. During a meeting of the network of Heads of Agencies in October 2012 the Commission's Secretariat General debriefed on the approach it intends to take. A number of actions have also been initiated by the Heads of Agencies (e.g. regarding communication activities, coordination of scientific work and independence).

Overall, it can be concluded that the inter-institutional text is of high relevance for ECHA. It is, however, not legally binding. Many, if not most, of the actions that do not require a initiative by the Commission are already applied by ECHA, either by default through the design of the REACH Regulation or in the form of practices developed since 2007. ECHA will pay due attention to the text in the further development of its practices.

Matters for consideration

The following aspects should be taken into account when assessing the inter-institutional text and its relevance for ECHA:

1. the Joint Statement and the Common Approach were developed horizontally for all EU agencies. EU agencies were mainly established in the 1990-ies and years 2000 and this in various waves. Large differences exist between them when it comes to their functions, the organisational structure and the founding provisions. ECHA is one of the more recently created agencies and quite many of the elements foreseen in the Common Approach were provided for by ECHA from the outset through its founding legal act, or they were addressed in the course of the Agency's set-up (e.g. composition and voting arrangements of the Management Board, seat agreement, obligation to adopt multi-annual work programmes etc.)

2. The Joint Statement is not addressed to agencies but to all institutional actors with different responsibilities:
 - **The European Commission** (e.g. for providing coordination, templates, guidelines, support structures etc in order to implement certain recommendations as concluded)
 - **The Member States** (e.g. for facilitating agency structures and providing the necessary resources and experts)
 - **The Council / European Council** (e.g. for justifying requests for agencies budget in particular if these are reduced)
 - **The EU legislative authority** acting on the basis of proposals by the European Commission (e.g. if changes to founding legal acts are required)
 - **The Agencies** themselves as far as this is possible without the involvement of other actors or legislative changes.
3. Certain elements of the Common Approach cannot be implemented without changes to the Agencies' founding regulation or other regulations such as the Framework Financial Regulation applicable to decentralised agencies. This applies for example, but not only, to:
 - The preparation of a single annual report. (This proposal is much welcomed by ECHA but the requirements and timelines for the general report under REACH, the annual activity report under the Financial Regulation and the Management Board's assessment thereof make it difficult to implement it within the current framework).
 - The assignment of appointing authority powers to the Management Board (This contradicts the current Article 83(2)f of the REACH Regulation which assigns this role to the Executive Director)
 - The installation of an Executive Bureau if such as body should have powers which go beyond the ones of existing working groups of the Management Board or audit or planning and reporting
4. The institutional text fully acknowledges its legally non-binding character. It also states that without prejudice to their attributions in the legislative and annual budgetary procedures, the institutions will take the Common Approach into account in the context of all their future decisions concerning EU decentralised agencies, following a case by case analysis. Agencies can, however, not anticipate such initiatives.

Action requested

The Management Board is invited to take note of the information provided in this note.

Attachments:

- Annex 1 Joint Statement and Common Approach of the European Parliament, the Council of the EU and the European Commission on decentralised agencies (see MB/50/2012 submitted to the September 2012 Management Board meeting)
- Annex 2 Detailed Follow-up to the Common Approach on EU decentralised agencies as far as actions can be taken by ECHA and do not require a change in legislation or initiatives by the Commission or Member States

JOINT STATEMENT

of the European Parliament, the Council of the EU and the European Commission on decentralised agencies

(MB/50/2012 available at CIRCA under the documents for the September 2012 Management Board meeting)

Annex 2: Follow-up to the Common Approach on EU decentralised agencies as far as actions can be taken by ECHA and do not require a change in legislation or initiatives by the Commission or Member States

Structure and governance of agencies

Relevant § of the Common Approach	Situation in ECHA
<p>§ 11 Development of a policy on preventing and managing conflict of interests concerning members of the Management Board, whether or not they sit in personal capacity</p>	<p>Such a policy is in place in ECHA (Agency policy on managing potential conflicts of interests covers the Management Board and eligibility guidelines were adopted).</p> <p>Contrary to some EU Agencies founding regulations, the REACH Regulation also contains explicit provisions on declarations of interest of Management Board members, inter alia.</p> <p>It is expected that the Commission would deploy initiatives to align the approaches of EU bodies, such as agencies, with those of the institutions.</p>
<p>§ 18 Development of a policy on preventing and managing conflict of interests concerning the Director.</p>	<p>See above</p>

Other internal bodies

Relevant § of the Common Approach	Situation in ECHA
<p>§ 20 Improvement of the functioning of scientific committees:</p> <p>Agencies should exchange information on their experience with scientific committees and possibly contribute to developing a coordinated approach to common problems in this area.</p> <p>Selection procedures should be periodically reviewed, notably in the context of the agency's evaluations. The following elements should be assessed: their degree of transparency, their cost-effectiveness, and their suitability to ensure independence and competence of members of scientific committees and to prevent conflicts of interests.</p> <p>The independence of the scientific experts should be fully ensured, inter alia by promoting the highest standards, setting sound selection criteria and promoting best practices. The Commission will provide guidelines on standards, criteria and best practice, including on how EU agencies' national counterparts should be involved. In addition, this issue should also be covered by the regular external evaluations of the agencies.</p>	<p>The REACH Regulation already contains explicit provisions regarding the avoidance of duplication of work and cooperation with other EU bodies. On the broader issue of scientific cooperation, the Heads of Agencies Network has started an initiative together with the scientific advisor of the President of the European Commission. ECHA's Senior Scientific advisor is actively contributing to this.</p> <p>This § mainly addresses Member States when nominating Committee members. The ECHA Management Board has adopted eligibility criteria (provisional) which address the conflict of interest aspects. The qualification aspects on the other hand are contained in the REACH Regulation.</p> <p>This § is mainly addressed at the Commission. ECHA welcomes any Commission initiative in providing guidelines and standards on the independence of scientific experts, as foreseen in the text, and is looking forward for cooperation with the Commission and other agencies on this.</p>
<p>§ 21 For Boards of appeal, the same measures as for scientific committees, notably in terms of exchange of best practice and assessment of selection procedures, should apply. The impartiality and independence of their members should continue to be guaranteed, on the basis of transparent and objectively verifiable criteria to be defined by agencies. In this context, recruitment of Board of Appeal's members from among the staff of the agency and/or the agency's Board should be taken with great care.</p>	<p>ECHA has adopted a series of measures which address this aspect, including the code of conduct of the Board of appeal and eligibility criteria for the appointment of the appeal functions.</p> <p>See also above § 20</p>

Operation of agencies

Relevant § of the Common Approach	Situation in ECHA
<p>§ 25 Streamlining of Agencies' international relations:</p> <p>Agencies whose mandate or work programme foresees cooperation with third countries and/or international organisations should have a clear strategy for those activities. This strategy should, in principle, be embedded in the annual and/or multi-annual work programme(s), with a specification of associated resources, and should lay down a number of principles and modalities for international cooperation.</p> <p>This strategy and appropriate working arrangements with partner DGs in the Commission should ensure that the agencies operate within their mandate and the existing institutional framework, and that they are not seen as representing the EU position to an outside audience or as committing the EU to international obligations.</p> <p>The strategy and specific initiatives with an international dimension (e.g. administrative arrangements with third countries) should be subject to approval by the Management Board.</p> <p>An early exchange of information should take place on respective international activities between agencies, the Commission and the relevant EU Delegations, to ensure the consistency of EU policy.</p>	<p>ECHA's international activities are incorporated in the annual work programme and the support to the Commission's international activities is formally agreed on an annual basis with the Commission services.</p> <p>The Management Board's approval is foreseen in ECHA's founding legal act for certain initiatives with international relevance, i.e. in Article 106 of the REACH Regulation. ECHA has not concluded any legally binding administrative arrangements with third countries, only memoranda of understanding or statements of intent were signed without legally binding obligations.</p>
<p>§ 26 Communication activities</p> <p>The content and implementation of an agency's communication strategy should be coherent, relevant and coordinated with the strategies and activities of the Commission and the other institutions in order to take into consideration the broader EU image. Communication activities should not be detrimental to agencies' core tasks.</p>	<p>ECHA has a coherent communication policy which was presented to the Management Board in December 2011. The REACH Regulation highlights that communication is central for the success of REACH and should, hence, be considered as part of ECHA's core tasks.</p>

Programming of activities and resources

Relevant § of the Common Approach	Situation in ECHA
<p>§ 28 In addition to annual work programmes, agencies should draw up multiannual strategic programmes or guidelines, tailored to the specificities of their activities. This should be linked with multiannual resource planning (budget and staff in particular).</p>	<p>REACH requires ECHA already to prepare a multi-annual work programmes which has to include a multi-annual staffing plan.</p>
<p>§ 29 The Commission should be consulted and issue a formal advice on annual and multi-annual work programmes. The European Parliament should be consulted on the multiannual work programmes, provided that the purpose of the consultations is an exchange of views and the outcome is not binding on the agency. For the annual work programme, the actual practice of the agency's Director presenting it to the relevant EP committee should continue.</p>	<p>The Commission is consulted as part of the Management Board during the preparation of annual and multi-annual work programmes. The European Parliament is consulted in the framework of a public consultation of the multi-annual work programme and has delivered input in the past. The formal consultations will be done once the legal provisions for it will be in place.</p> <p>The Executive Director is annually appearing for an exchange of views with the ENVI Committee since 2007.</p>
<p>§ 30 Multi-annual work programmes should include the actions necessary to respond to the outcome of overall evaluations</p>	<p>ECHA will address such aspects in future updates of its multi-annual work programme as appropriate.</p>
<p>§ 31 With the Commission, develop key performance indicators to be included in work programmes</p>	<p>ECHA's annual work programme already features key performance indicators since a number of years and these indicators are constantly improved.</p> <p>Joint work between agencies and the Commission in this area is welcomed since it is a challenging task to identify the right indicators which help the management and the Management Board without creating unnecessary reporting obligation. On ECHA's initiative, the Heads of Agencies Network established in 2011 a "Performance Development Network". This Network, where the Commission will be invited to participate aims at developing best</p>

	<p>practices, especially also for key performance indicators. ECHA has already established since several years such indicators and which are included in the work programmes.</p> <p>ECHA is also linking the annual work programmes with the multi-annual planning.</p>
<p>§ 32 The Director should report to the Management Board on the agency's progress in implementing the multiannual work programme. This reporting should take place prior to setting the objectives of the following annual work programme and be integrated in the reporting cycle on the annual work programme</p>	<p>This reporting takes place in the context of regular reports to the Management Board and will be further developed and consolidated in the future.</p>

Founding, management of budgetary resources and budgetary procedure

Relevant § of the Common Approach	Situation in ECHA
<p>§ 35 Provide adequate explanations if the Commission's opinion on the draft staff policy plan is not fully taken into account</p>	<p>ECHA always provided this information in the past to the Management Board and motivated its proposals in view of the Commission's opinion. The Commission has issued a new template for multi-annual staff policy plans which will be used for the 2013 update.</p>
<p>§ 36 Agencies should improve their internal planning and general revenue forecasting in order to reduce their high carry over and cancellation rates. The Commission will provide guidance in this regard. In addition, agencies should improve their management of commitments in order to align them with real needs.</p>	<p>Commission guidance on this issue, as proposed in the Common Approach, will be welcomed. However, as discussed in the Management Board in the past years, certain carry overs can well be justified and carry overs are not necessarily a signal of a lack of proper budget planning.</p>
<p>§ 40 All agencies should apply, more systematically than at present, a system of activity based budgeting / activity based management (ABB/ABM). The available ABB/ABM tools (i.e. to plan, monitor, report and</p>	<p>Also here the proposed Commission support is welcomed. ECHA moved since 2007 gradually to an activity based budget and management system and the practice applied at the moment in</p>

<p>evaluate activities) should be adapted to the reality of agencies. In this context, agencies should be encouraged to exchange best practice and their idea to develop an ABB/ABM toolbox is to be welcomed. The Commission will provide assistance in this regard, for instance by giving a general ABB training to agencies.</p>	<p>ECHA can be considered as comparatively advanced. A related cost accounting system has been set up, specifically in view of managing the different costs centre's related to the different regulations that ECHA manages; REACH, Biocides and PIC.</p>
<p>§ 41 In order to avoid automatism, all relevant actors should respect their duty, within the budgetary procedure, to provide adequate justification for their requests with regard to each agency's budget (initial budget request, increases, and decreases).</p>	<p>This proposal is very much welcomed. Via its Management Board, ECHA is submitting every year detailed justifications for the requested resources to the Commission and the Budgetary Authority. The Agency would very much appreciate to have the opportunity to discuss budget cuts proposed by the Council on the basis of the principle that assigned tasks have to be matched with resources.</p>
<p>§ 44 Any modification to agencies' budgets which does not require the budget authority's approval should be communicated to the latter, together with adequate justification.</p>	<p>ECHA formally notifies any budget amendment to the Budgetary Authority, as required by its Financial Regulation.</p>
<p>§ 52. The internal auditor shall continue to report to the executive director and to the management board. The appropriate follow-up of IAS audit conclusions should be organised at board level, possibly by the Executive Board if there is one. This should not increase administrative expenses.</p>	<p>The ECHA Management Board has set up a working group on audit matters which reports regularly to the full Board. The follow-up of IAS audit conclusions is, therefore, organised at Board level. The full Board receives the annual IAS reports. The working group on audit meets often back to back to the Management Board meetings; hence the administrative expenses are very low, especially when compared to other working groups of the Management Board.</p>
<p>§ 53. Concerning the internal audit architecture of agencies, agencies should have the possibility to set up internal audit services to complement the work of the IAS. Therefore, Agencies (Executive Directors and Boards) may decide to set up an Internal Audit Capability (IAC) that follows internationally recognised standards of internal auditing and coordinate audit work and exchange information with IAS. If this is not cost-effective or possible, agencies may decide to contribute resources and share a full-</p>	<p>ECHA has already in 2008 established an Internal Audit Capability which is coordinating closely with the IAS and submits annual reports to the Management Board.</p>

<p>fledged IAC with another agency. IACs should also be required to coordinate audit plans with the IAS.</p>	
<p>§ 56. Agencies should systematically inform their partner Directorate General and the Directorate General for the Budget within the Commission of the results of the audit of the European Court of Auditors (at the earliest stage possible), as well as of the measures taken to meet the recommendations of the discharge authority and those of the Court.</p>	<p>The Court of Auditors usually submits the results of the audits to the Agency and to the Management Board, where the Commission is represented. Some audit reports contain a clause which prohibits the Agency from sharing the documents with other parties. The recommendation should thus also be taken up with the Court of Auditors.</p>
<p>§ 58 Fully self-financed agencies to submit to the European Parliament, Council and the Commission, an annual report on the execution of their budget and consider recommendations</p>	<p>Reporting on budget execution is part of the regular reporting of ECHA; in particular the annual activity report of the authorising officer contains information on the budget execution.</p>
<p>§ 61. Ex-ante evaluation of agencies' activities/programmes should be either made mandatory for programmes/activities of a significant budget, or done at the request of the Management board or the executive board, if deemed necessary. Ex-post evaluation should be mandatory for all programmes/activities.</p>	<p>It is an obligation from the Financial Regulation for projects and programmes that entail significant expenditure. ECHA will duly take account of this recommendation for future programmes.</p>
<p>§ 62. Agencies should prepare a roadmap with a follow-up action plan regarding the conclusions of retrospective evaluations, and report on progress bi-annually to the Commission. Follow-up to evaluations should be a task of the Management Board and of the Executive Board if there is one.</p>	<p>ECHA has provided the Management Board in June 2012 with a follow-up of the first ex-post evaluation study (ECHA review): The formal evaluation of ECHA is expected to be presented in the form of the REACH review and any follow-up will be presented to the Management Board where the Commission is represented.</p>

Transparency and relations with stakeholders

Relevant § of the Common Approach	Situation in ECHA
<p>§ 64 Agencies' websites should be made as multilingual as possible, in order to facilitate their consultation by citizens of all Member States. Agencies should provide, via their websites, information necessary to ensure transparency, including financial transparency.</p>	<p>ECHA has a multi-lingual website with information on important activities, including financial issues such as budget, amendments , procurements etc.</p>
<p>§ 65 Agencies' relations with stakeholders should be coherent with their mandate, the institutional division of tasks in international relations, EU policies and priorities and Commission's actions. Agencies should exercise their functions in coordination with the different actors charged with the definition and implementation of the given policy. Agencies should also clarify the sharing of roles between them and their national counterparts. When relevant stakeholders are not represented in management boards, they should be involved in agencies' internal bodies and/or advisory groups/working groups, if appropriate.</p>	<p>To be noted that the Common Approach covers national authorities, international organisations etc. as stakeholders in the context of this recommendation.</p> <p>ECHA's legal mandate contains very clear rules about the different roles of the national and EU actors and is strongly build on cooperation with the national level.</p> <p>For accredited stakeholder organisations, the Management Board has endorsed an ECHA policy on stakeholder involvement (endorsed by the Management Board in December 2011).</p> <p>All relevant stakeholders, including Member States, Commission and interest parties, are participating in the Management Board and in the other Agency bodies.</p>