



Helsinki, 23 June 2010

MB/32/2010/D final

**Referral and Consultation procedure  
for requests for access to environmental information or access to documents or  
other information contained in REACH-IT received by a Member State  
Competent Authority/Mandated National Institution or the Commission**

(Decision by the Management Board)

## THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY

Having regard to Articles 118 and 119 of Regulation (EC) No 1907/2006 of the European Parliament and the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directive 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC,

Having regard to Article 5 of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents,

Having regard to Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies,

Having regard to Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC,

Whereas:

(1) A Declaration of Commitment by a Member State Competent Authority (MSCA) / Mandated National Institution with respect to Security aspects for REACH-IT (hereinafter referred to as “declaration of commitment”) has been endorsed by the Management Board, and approved and signed by each MSCA requesting access to REACH-IT. The declaration of commitment will also be the basis for granting access to REACH-IT to the relevant Commission services.

(2) Standard Security Requirements necessary for receiving access to REACH-IT have been discussed within ECHA’s Security Officers Network and endorsed by the Management Board (MB/WP/02/2009).

(3) MSCAs or mandated national institutions or the Commission might receive requests for public access to environmental information or access to documents or other information contained in REACH-IT. These requests need to be counterbalanced however by the fundamental rights of the protection of confidentiality and business secrets, as foreseen by Article 6 of the Treaty on European Union. Due account should also be taken of Articles 118(2) and 119(2) of Regulation (EC) No 1907/2006 providing protection to commercial interests of persons submitting information to ECHA.

(4) Article 5 of Regulation (EC) No 1049/2001 stipulates that a Member State receiving a request for a document in its possession, originating from a institution, unless it is clear that the document shall or shall not be disclosed, shall consult with the institution concerned in order to take a decision that does not jeopardise the

attainment of the objectives of Regulation (EC) No 1049/2001. The Member State may instead refer the request to the institution. Article 118(1) of Regulation (EC) No 1907/2006 stipulates that Regulation (EC) No 1049/2001 shall apply to documents held by ECHA.

(5) Fourth bullet-point of declaration of commitment stipulates that the Member State Competent Authority, or the Commission, as applicable, undertakes to consult ECHA and take into account its opinion on any requests for access to environmental information contained in REACH-IT or access to documents or other information contained in REACH-IT with a view to facilitating common interpretation of the confidential character of the requested data and thus avoiding potential divergence of decisions on such requests.

(6) ECHA has committed itself to take a coordination role to promote consistent decision-making in the field of access requests to data contained in REACH-IT and prevent unlawful disclosure. ECHA is therefore inviting the Member States and/or the Commission to refer information requests or to consult the Agency, while respecting and making use of the provisions foreseen in Regulation (EC) No 1049/2001 and respecting commitments signed up to in declaration of commitment. In this perspective a referral and consultation procedure needs to be established.

(7) The referral and consultation procedure set out in this Decision does not limit the Member State's competence to respond to requests for public access to information contained in REACH-IT in accordance with applicable laws and the REACH-IT Declaration of commitment.

HAS ADOPTED THIS DECISION:

#### *Article 1*

##### *Scope*

This Decision lays down the procedure for the consultation of the European Chemicals Agency (ECHA) by a Member State Competent Authority (MSCA) or a mandated national institution or the Commission and the referral procedure, in the event that the MSCA or mandated national institution or the Commission receives a request for public access to environmental information or access to documents or other information contained in REACH-IT.

This procedure concerns documents and information originating from the Agency, that is to say, documents drawn up or received by it and in its possession, but that are made available to the MSCA or mandated national institution or the Commission through the REACH-IT tool or other electronic means.

## *Article 2*

### *Purpose*

The consultation and referral procedure shall facilitate common interpretation of the confidential or public character of the requested data, thereby avoiding potential divergence of decisions on such requests and promoting a coherent application of the European legislation across the European Union.

## *Article 3*

### *Referral of requests for access to information*

1. In the event that an MSCA or mandated national institution or the Commission wishes to refer to ECHA a request for access to information it has received, it should forward the request as early as possible after receipt to the Agency via the Agency's website or by electronic mail. The phrase "Access request to REACH-IT - Referral" should be stated clearly in the subject line and it should be accompanied by the original request for access to information. Any other relevant information may also be included. Private data will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000. The addresses to which referrals of requests for access to information are to be sent are listed in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.
2. As soon as the referred request for access to information is registered, an acknowledgment of receipt shall be sent to the original applicant and the MSCA or mandated national institution concerned or the Commission, unless the answer can be sent by return post.
3. Upon registration by ECHA, the provisions of Regulation (EC) No 1049/2001 and its implementing rules as adopted by the ECHA Management Board, including the deadlines foreseen in it, shall apply to the request and the request shall be processed accordingly.
4. ECHA shall treat the request for access to information with due consideration of the fact that, in accordance with Article 118(2) of the REACH Regulation, the disclosure of the information referred to therein shall normally be deemed to undermine the protection of the commercial interests of the party concerned. ECHA shall also take into account its decisions taken, in accordance with Article 119(2) of the REACH Regulation, regarding the confidentiality requests made by registrants.
5. The response by ECHA to the request for access to information shall be sent to the original applicant and the MSCA or mandated national institution or the Commission.
6. The acknowledgement of receipt and the answer shall be sent in writing, by electronic means.

7. ECHA shall make a manual of decisions available to the MSCAs and mandated national institutions and the Commission over the Internet via a site with restricted access.

#### *Article 4*

##### *Consultation request*

1. When an MSCA or mandated national institution or the Commission consult ECHA on a request for access to information it has received, it should send the request without undue delay to the Agency via the Agency's website or by electronic mail. The phrase "Access request to REACH-IT - Consultation" should be stated clearly in the subject line and the deadline for the Member State or the Commission to reply to the request should be indicated. The addresses to which consultation requests are to be sent are listed in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.

2. A consultation request should always be accompanied by the original request for access to information and a first assessment of the case by the MSCA or mandated national institution or the Commission. Any other relevant information may also be included. Private data will be processed in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000.

3. The Agency shall strive to answer consultation requests within five working days from the date of registration of the request. If a request relates to a very long document or to a very large number of documents, the deadline may be extended by five working days. Reasons shall be given for any extension of the deadline and it shall be notified to the MSCA or mandated national institution or the Commission, beforehand.

4. If a request covers information where a decision under Article 119(2) of the Regulation (EC) 1907/2006 is pending, the Agency will inform the requesting authority accordingly and strive to take the decision as soon as possible.

5. If a consultation request is imprecise or does not include all the necessary information as referred to in this Decision, the Agency shall invite the consulting authority to provide additional information; the timeline for reply shall run only from the time when the Agency has received this information.

6. As soon as the request for consultation is registered, an acknowledgement of receipt shall be sent to the consulting authority, unless the answer can be sent by return post.

7. The acknowledgement of receipt and the answer shall be sent in writing, by electronic means.

8. ECHA shall give its advice with due consideration of the fact that, in accordance with Article 118(2) of the REACH Regulation, the disclosure of the information referred to therein shall normally be deemed to undermine the protection of the

commercial interests of the party concerned. ECHA shall also take into account its decisions taken, in accordance with Article 119(2) of the REACH Regulation, regarding the confidentiality requests made by registrants.

9. ECHA shall include information on the advice given with regard to consultation requests under this Decision into the manual of decisions referred to in Article 3(7) of this Decision. The manual of decisions should also contain the final reply provided by the consulting authority after consultation of the Agency. To this end, the consulting authority shall forward the reply given without undue delay by electronic mail to the address listed in the Annex to this decision.

#### *Article 5*

#### *Entry into force*

This Decision shall enter into force on 01 June 2010.

Helsinki, 23 June 2010

*signed*

For the Management Board  
Thomas JAKL

## ANNEX

### **ADDRESSES FOR SUBMISSION OF TRANSFERRALS OF REQUESTS FOR ACCESS TO INFORMATION AND CONSULTATION REQUESTS**

Via Agency website: [www.echa.europa.eu/about/contact\\_en.asp](http://www.echa.europa.eu/about/contact_en.asp)

By electronic mail: [access-to-documents@echa.europa.eu](mailto:access-to-documents@echa.europa.eu)

**Annex last updated: 1 July 2010**