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Updated consultation procedure for guidance

56th Meeting of the Management Board 12-13 December 2019

Proposal

The Management Board is invited to endorse ECHA's revised approach for the development of guidance documents. The new approach would include a more tailored and flexible way for the Agency to develop new guidance documents and guidance updates, both in terms of procedural steps, and the scope of formal guidance versus other forms of advisory documents. The new procedure would replace the Guidance Consultation Procedure endorsed by the MB in 2013[1].

Background

As part of ECHA's new organisational structure (which is active since January 2019) the Guidance activity was decentralised and brought closer to the units "owning" the content of specific guidance documents. Previously guidance development was centralised and coordinated by the Guidance Team. At the same time, the reorganisation provided also a good opportunity to reflect on the scope of ECHA's Guidance documents and the procedure to develop them. The regulations for which ECHA is in charge require ECHA to provide guidance for industry and authorities while allowing freedom to define in which format such guidance needs to be provided.

Rationale

A tailored approach

ECHA will continue updating and developing guidance documents in a way that will better tailor its advice and assistance to the needs of duty holders. In order to achieve that, needs for guidance development and update will be assessed by the responsible Units - the so called process owners - based on the maturity of the regulatory tasks, upcoming changes and stakeholder feedback.

Guidance documents addressed to authorities were in the past used to ensure a common understanding of the topic at stake. While this was justified in the early years of the regulatory processes, these documents can now in many cases be gradually replaced by a more flexible approach (for example through "approach documents") in order to ensure a more dynamic and efficient buy-in[2]. The publication of all advisory documents on ECHA's website will ensure transparency and predictability.

This review of ECHA's Guidance Consultation Procedure will not change ECHA's practice explaining to companies how to fulfil the legal obligations imposed by those regulations which are managed by ECHA. Guidance documents addressed to industry will continue to be developed and updated in their current format, however, using a more flexible procedure.

Concerning ECHA's additional advisory documents – the so called "Quasi-Guidance" - ECHA will stop its practice of drafting Fact Sheets and Guidance in a nutshell documents. These documents will be gradually obsoleted as the issues that they address, will be tackled by the formal ECHA guidance when publishing a new update. The intention is to provide all relevant information to

[1] Management Board document MB/63/2013 "Revision to the Consultation procedure for Guidance" replacing Management Board document MB/14/2011 final dated 25 March 2011.

[2] ECHA is partly implementing this already, for example in the context of evaluation, Annex XIV recommendation, and ELOC assessment. These type of documents are discussed in the relevant fora, depending on the context, which may include e.g. the relevant Committee, RIME, and/or CARACAL.

the readers, including smaller and medium sized companies, in one single package, rather than via separate documents. This can be done by integrating the relevant content of the factsheets and nutshell documents in the introductory part of the guidance which is considered as more reader-friendly and efficient[3].

More flexible process

The current guidance process is considered to be unnecessarily rigid, requiring certain formal steps that are not always required for a satisfactory outcome. Thus, more flexibility ensuring optimal use of ECHA's resources would be desirable for future updates and provision of new guidance documents. The core of ECHA's current guidance consultation process will however be kept: the procedure foresees the consultation of the partner expert group (PEG), or an equivalent body (such as one of ECHA's expert groups), Committee and/or Forum, Competent Authorities and Commission. ECHA will select the necessary steps of the Guidance Consultation Procedure depending on the topic's needs, and document the rationale behind the choices. This flexibility allows ECHA for example:

- To skip the consultation of a certain body for justified reasons;
- To choose consulting these bodies in parallel or consecutively;
- Preceding the consultation with a concept paper and/or workshop.

The criteria to select the steps in the consultation process will be developed in ECHA's Quality documentation that will be made publicly available. However, these aforementioned changes will not affect the Member State Competent Authorities and the Commission as they will continue to be consulted on guidance updates and new guidance documents.

Alignment ECHA's reimbursement practice for PEGs with the common practice

The ECHA Secretariat will align its reimbursement practice for PEGs with the common practice in ECHA, and in line with the ECHA Guide for Reimbursement for Travel and Accommodation Expenses, as approved by the Management Board. In the past, ECHA reimbursed all Accredited Stakeholder Observer (ASO) representatives in the PEGs, including industry experts. ECHA will stop this practice and only reimburse representatives of non-governmental public interest and workers organisations or organisations representing the interests of smaller and medium sized companies. The practice of reimbursement as applicable in the past for representatives from authorities will continue.

Alternative options

One could consider to continue the current guidance practice. However, this would prevent ECHA from optimising the use of its resources (human and financial) in a more targeted and efficient way while dealing with an increase of the workload. This applies also for ECHA partners (PEG or equivalent body, Committee and/or Forum, Competent Authorities and Commission) that would need to continue allocating resources involved in Guidance updates or provision of new Guidance in a sub-optimal way.

Drawbacks

No relevant drawbacks have been identified.

Attachments:

N/A

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[3] This also has been partly implemented already. Furthermore, practical experience has shown that the readership of these separate documents is relatively low compared to the actual guidance documents.