

PRELIMINARY CONCLUSIONS

34TH MANAGEMENT BOARD MEETING
17-18 JUNE 2014, HELSINKI

1. Quarterly report on ECHA's activities

The Management Board heard the quarterly report on the Agency's activities and welcomed the achievements. A discussion dealt with a variety of issues from the areas of the Agency's work. Several members emphasised that the progress with ECHA recommendations for the Authorisation List should continue as planned, calling for the separation of the ECHA process from policy developments at Commission level. An update was also provided on the status of the development of the revised Compliance Check Strategy.

2. Multi-annual Work Programme 2014-2018 (review of annexes)

When adopting the ECHA 2014-2018 Multi-annual Work Programme (MAWP) in September 2013, the Management Board concluded that the annexes of the MAWP will be reviewed annually whereas the body of the text will be fixed for five years unless there is an imminent need for changes. The ECHA Secretariat has reviewed the annexes, proposing several amendments. The proposal was reviewed and refined by the Management Board Working Group on Planning and Reporting. With minor clarifications on the submission of dossiers and technical completeness check, compliance check and testing proposals the Management Board adopted the amendments to the annexes of the MAWP 2014-2018.

3. Opinion of the final accounts for 2013

The Management Board took note of the Agency's final accounts for 2013 as well as the Court of Auditor's observations thereon. As in previous years, the Court of Auditors provided positive observations on the accounts and ECHA's financial management and this was strongly welcomed by the Board. Based on a recommendation prepared by the Working Group on audit matters, the Board members adopted its opinion on the Final Annual Accounts, noting that the Court of Auditors made no reservations and confirming that the Board has obtained sufficient assurance to conclude that the said accounts, taken as a whole, represent a true and fair view of the implementation of ECHA's budget.

4. Budget 2014

a) Amendments to the REACH/CLP budget and budget transfers

The Management Board adopted several amendments to the 2014 budget and took note of budget transfers within the responsibility of the Executive Director.

The technical amendments concerned:

- The remaining balance of the 2013 budgetary outturn account should, as foreseen by the Financial Regulation, be entered to the budget (REACH and CLP) as revenue.
- The special Biocides contribution from Norway received last December and for which a new dedicated budget line needs to be created. The inclusion of the funds in the 2014 budget was welcomed by the Norwegian observer.
- The net impact of the cashed bonds will be affected and the reserve will need to be decreased accordingly. This is a technical adjustment, ECHA made adequate profit with the investment in the past years, exceeding the Euribor reference rate.

b) Amendment to the Biocides budget

The Board was informed that the fee revenue from the BPR continues to be significantly below the forecast. Based on a proposal by the Executive Director, the Board therefore reduced the biocides expenditure by €1 million. It is expected that this should affect only in a limited way the Work Programme objectives, provided that the level of industry submissions remains on a lower than planned level. The reduction may have negative longer term implications for the implementation of Biocides tasks.

Furthermore, the Secretariat informed the Board that despite this reduction and the recently provided guarantee of €1.5 million by the Commission, there is still a potential gap of ca. €600 000 EUR in the Biocides budget. The Board was asked for guidance on how to address this situation of uncertainty about sufficient resources for basic obligations for ECHA under the Biocidal Products Regulation. The options included a request to the Commission for increased subsidy and further downsizing the Work Programme with a potentially disrupting effect on the implementation of the legislation. It was noted that a ring-fenced reserve fund, as proposed by ECHA in recent years to the Commission, would have been of significant benefit in this difficult and uncertain budgetary situation.

A Commission representative noted that the Commission could not commit to a subsidy increase at this stage and could not create a buffer for Biocides by further increasing the provided guarantee.

The Management Board held a fruitful exchange of views on the complex matter, discussing also the possible short and medium-term implications for the Biocides tasks and the consequences for the level of fees at EU and national level (under review in 2015). In terms of advice to the Executive Director, a call was made to continue discussions with the Commission on how to manage the situation with the lowest possible disruptive impact. If needed, a proposal for modification of the Work Programme should be prepared for the next Board meeting. The Working Group on Planning and Reporting should be involved in this exercise and it should be considered carefully which actions to reduce, should this be necessary.

5. Update of the Decision on the Transfer of Fees to the Member States

In line with a mandate given in the previous Management Board meeting, the Board's specialised Working Group presented a proposal for a revised Decision on the Transfer of Fees to Member States. The proposed amendments concerned in particular the transfer of fees for the purposes of substance evaluation.

The Working Group and the ECHA Secretariat explained that the changes are necessary to accommodate budgetary constraints. After the 2013 registration deadline, ECHA will only receive significant fee income for the 2018 registration deadline. Overall, the fee income will be at much lower levels compared to 2010-2013. At the same time, new fee transfers will have to be financed in the area of authorisation applications and restrictions. Overall, the amount of fee transfers will nevertheless increase in the coming years.

A number of Member State representatives expressed reservations since the level of fee transfers per substance evaluation was on average proposed to significantly decrease compared to the current decision. These members were concerned that this would put the involvement of Member States in this REACH activity at risk which was seen as a basic activity for ensuring regulatory output of REACH. Other members supported the proposal as reasonable in view of the lower revenue.

In depth background discussions, including during an adhoc meeting of interested Board members, helped to establish a mutual understanding of the situation in general and on the required changes to the nature of current fee transfer modalities.

The Board agreed that an improved proposal should be developed for the next Management Board meeting. This proposal should clarify that the proposal made by the Working Group is based on the following principles: Encouraging efficiency; fee transfer contributes to the activities at Member State level but should avoid excess compensation; limitations in the budget also require the setting of an absolute ceiling and require reduction of fee transfer to Member States per activity; the implementation needs to be monitored and the modalities reviewed if the ceiling is triggered or work undertaken by Member States overly affected.

6. Audit matters

a) Annual reports from the Internal Audit Capability and the Internal Audit Service

The Executive Director presented the annual reports produced by the Commission's Internal Audit Service (IAS) and the ECHA Internal Audit Capability (IAC). The reports summarised the results of audits conducted during 2013, highlighting the key recommendations and the follow-up actions. The Management Board welcomed the outcome of the audits and the actions taken by ECHA in response.

b) Report from the MB Working Group on audit matters and mandates of its members

The Working Group on Audit presented a general overview of its activities and findings since the December 2013 meeting. The Chair of the Working Group presented the Working Group's assessment on audit activities and proposed modification of terms of reference for the Audit Working Group, which will be put forward for adoption in September.

7. Appointment of Committee members

The Board members appointed five new nominees for RAC and SEAC and renewed the three-year terms of six RAC or SEAC members, who have been nominated by their Member States according to the process agreed by the Board. The names of the Committee members will be published on the ECHA website together with their declarations of interest.

8. Multi-annual IT planning

The Management Board took note of the key components of the priorities, challenges of the Multi-annual IT planning as well as the impact on resources of the IT multi-annual perspective for 2014 to 2016. The update presented by the Director of Information Systems referred to the IT multi-annual perspective (2012-2015) presented to the 24th MB in December 2011, updated with the targets achieved by ECHA during the past years. The report was strongly welcomed by the Management Board as providing comprehensive information which is also useful for planning the coming years.

9. Board of Appeal issues

a) Report from the Chairman

The Management Board took note of the annual report on Board of Appeal issues for the period June 2013 - June 2014. The Chairman reported on the latest appeal cases, findings from the Board of Appeal decisions and changes in the BoA team.

The report reflecting the work done by the Board of Appeal was highly appreciated by the Board members. They recognised that since the BoA establishment in 2009, and after dealing with more than 40 appeals, the BoA became a mature body of ECHA, delivering high quality decisions in a timely fashion. It was mentioned that the appeal system as foreseen by REACH is functioning well and appeal proceedings serve to clarify grey areas of the legislation and uncover shortcomings in the REACH processes as set up by the ECHA Secretariat.

b) Report from the MB Working Group on the Board of Appeal

The Working Group on the Board of Appeal gave the annual report on activities undertaken.

c) Structure of the Board of Appeal and its registry

The Working Group on the Board of Appeal informed the other Management Board members that it had progressed with its deliberations concerning the relation between the Board of Appeal and its Registry. The issue of a possible need to improve the perception of independence of the Board of Appeal from the ECHA Secretariat was shared with the other Board members first in 2013.

The Board also took note of reservations identified by the Secretariat in relation to the proposal, highlighting, amongst others, legal, practical and resource implications of the proposal and the satisfaction by stakeholders with the functioning of the appeal system.

In a discussion, several Board members wished to understand the motivation for structural changes in the Board of Appeal, calling for prudence in making modifications to a system which delivers highly acknowledged output. These members were reassured that the findings were of a general, long-term and systemic nature and that

no concrete issues of concern had been identified. This was confirmed by the Chair of the Board of Appeal.

It was noted that the Commission is undertaking a review of the Rules of Procedures of the Board of Appeal. The issues identified will be taken into consideration in this context and feedback will be provided to the Management Board before revising the respective Commission Regulation in 2015. This will allow the Working Group and the Secretariat to present a commonly agreed proposal to the Management Board for endorsement. The Commission will take account of the Management Board's view, without prejudice to its prerogatives in terms of proposing changes to the legislation. At the proposal of the Chair, the Management Board agreed to expand the Working Group on the Board of Appeal with three members for the preparation of the 2015 review.

d) Selection of legally qualified member

The Management Board Working Group mandated its Working Group on the Board of Appeal to prepare a proposal for the selection of (alternate and additional) legally qualified member(s) of the Board of Appeal. A Commission list with qualified candidates is expected to be submitted shortly and appointment decisions scheduled for the September Management Board meeting.

e) Follow-up of appeal decisions

The Head of Legal Affairs presented the role of the Secretariat in defending ECHA's position while ensuring legal quality and consistency during the decision-making, litigation and in answering to complaints and appeal decisions. This included a detailed account about measures taken by the Secretariat in response to appeal cases.

10. Policy on managing potential Conflicts of Interest

a) Conflict of Interest Advisory Committee mandate

The Management Board renewed the mandate of Antonello Lapalorcia as Management Board representative to ECHA's Conflict of Interest Advisory Committee (COIAC). It was noted that the Committee will publish an annual report with summaries of the advice provided.

b) Update on policy implementation

The Management Board members took note of the update on policy implementation on managing potential conflicts of interest, namely on the issue of situations where Committee members/rapporteurs take position on proposals prepared by the nominating Member State. The COIAC Committee had provided advice on this matter. The Board welcomed the progress made in coming to an understanding on the practice developed in the Committees, which will also be better documented.

11. Information items

11.1 ECHA discharge resolution 2012

11.2 Second report under REACH on the Use of Alternatives to Testing on Animals (Art 117(3))

12. Any other business

Progress with review of Biocidal Active Substances

The Secretariat informed on the progress made in the review of Biocidal Active Substances. Board members welcomed ECHA's work in this field and highlighted the importance of the Review Programme for public health and environment protection.

Update on building issues

The Secretariat informed that structured longer term actions have been initiated to allow the Management Board to take an informed decision in 2017 on the future premises of ECHA. Remaining in the current building is an option but requires careful analysis in terms of investment and future need of the Agency. The Board will receive updates on the developments. One Board member suggested renegotiating the current rent.

Update on contract agent reclassification and promotion rates

At the meeting of ECHA's Management Board in March 2014, certain issues were raised with respect to ECHA's proposed reclassification rates in its draft Multi-annual Staff Policy Plan 2015-2017 (MSPP). The Director of Resources noted that the issue was discussed with the Commission and that the Commission's services do not raise any incompliance issue with regard to the ECHA projections. They only underlined the general requirement that ECHA – similar to all EU agencies – should take account of the provisions of the EU Staff Regulations, without intending to indicate any compliance issue.

Further to Management Board discussions in September and December 2013, he further explained the Agency will undertake a reclassification exercise for contract agents in 2014, either using tailor-made rules agreed with the Commission for agencies or on the basis of general Commission implementing rules for agencies if already available before the next Board meeting.

Annual appraisal BoA and ED

The Chair informed the plenary of the receipt of the annual appraisal report of the members of the Board of Appeal and the Executive Director.

Next meeting of the Management Board

The Chair informed that the next meeting of the Board is scheduled to take place from 25 to 26 September 2014, in Helsinki.

After the meeting the Board received a briefing session on **ECHA's Quality certification**, for which audits have started.
