

Administrative arrangements for safeguarding the independence of the Board of Appeal

CONSIDERATIONS

The mandate of the Board of Appeal (BoA), which is assisted by the Registry (RBoA), is to hear and decide on appeals brought against certain decisions taken by ECHA with total impartiality and full independence. Independence and impartiality are two important elements of the very foundation of the appeal system created by the REACH Regulation¹; the credibility of that system will be strengthened in the eyes of the stakeholders involved if these elements are fully safeguarded. The importance of impartial and independent appeal bodies in EU agencies has been also emphasised by the European Institutions in the 'Joint Statement and Common Approach on decentralised agencies', adopted on 19 July 2012², which states that this should be guaranteed on the basis of comparable and objectively verifiable criteria to be defined by the agencies. Accordingly, and in line with the REACH Regulation, the members of the BoA are prohibited from performing any other duties in the Agency as this may compromise the BoA's impartiality and independence. The staff members of its Registry, including the Registrar, in accordance with the Rules of Procedure³, may not participate in any proceedings of the Agency relating to decisions which may be subject of appeals⁴. Likewise, ECHA's other staff members can neither participate in the decision-making processes of the BoA, nor supervise its decisions or activities.

It is also necessary to underline that the ECHA Secretariat and the BoA share a common vision of contributing to a successful implementation of the REACH and Biocidal Products Regulations and to raising confidence of ECHA's stakeholders in ECHA's activities that implement those Regulations. This implies functional continuity, mutual cooperation and requires communication in various aspects, without however jeopardizing the impartiality of the BoA. The ECHA Secretariat and the BoA are committed to constructive cooperation whilst respecting their respective roles and responsibilities.

According to the REACH Regulation, ECHA has a single administrative structure which provides also the BoA with suitable support services and infrastructure. However, no detailed rules defining the relationship between the ECHA Secretariat and the BoA can be found in the Regulation⁵. Instead, the Regulation merely stipulates that the BoA is a body of the Agency and its members are appointed by the Management Board. When setting up the Agency the Management Board decided to establish a full-time BoA composed of three members, supported as needed by a number of alternate and additional members⁶. The Management Board authorised the Executive Director to sign employment contracts with the three full-time BoA members on behalf of the Agency. Therefore, there are certain practical aspects that have to be organised in line with the principles of good administration and to make clear, without any shadow of a doubt, the independence of the BoA.

¹ Regulation (EC) No 1907/2006.

² http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf.

³ Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; 'Rules of Procedure').

⁴ See Article 5(4) of the Rules of Procedure.

⁵ Except the requirement that Board of Appeal members may not perform any other duty in the Agency.

⁶ See document MB/17/2008, as confirmed by MB/22/2015.

Being part of ECHA's administrative structure also brings into consideration some other principles of good administration such as equality, transparency and mutual cooperation that shall be reconciled with the basic principle of independence.

The Rules of Procedure, establishing a Registry under the auspices of the BoA, confers certain organisational powers on the Chairman of the BoA (hereinafter 'the Chairman') over the other members of the BoA, including the alternates⁷.

The Management Board is assisted by a subgroup on the BoA (MBSG BoA) on all issues related to the BoA and its members⁸. In 2022, the MBSG BoA reviewed and advised on the present update of the arrangements agreed between the Chairman and the Executive Director.

In the absence of express provisions concerning a particular situation, rules applicable to the similar situations in EU Law can be used and interpreted by analogy, provided that they do not undermine the independence of the BoA.

AGREED ARRANGEMENTS

Coordination

For a good coordination of the administrative aspects, it is important that the Chairman and the Executive Director meet on a regular basis. To this end, quarterly coordination meetings are held to discuss:

- Planning and reporting (e.g. programming document, annual activity report);
- Workload forecasting and resource planning and implementation, including staff and budget;
- Preparation and implementation of Agency-wide management policies (e.g. general rules related to human resources, security, audit, planning, quality, IT solutions, communication);
- When appropriate, temporary assignment of services and staff in support of the BoA and, where appropriate, assignment of the Registry's staff in support of the rest of the Agency; and
- Any other issues that may arise.

The participants of the quarterly meetings are the Executive Director, the Chairman, the full-time members of the BoA, and the Registrar who provides the secretariat of the meetings. The Executive Director or the Chairman may invite other staff members of ECHA to attend the meetings. The agenda is decided between the Executive Director and the Chairman. The meetings can also be organised more frequently, if considered necessary.

Employment conditions of the Chairman and the other BoA members

The REACH Regulation provides that ECHA's staff consists mainly of 'temporary agents' within the meaning of the EU Staff Regulations⁹. Also the three full-time members of the BoA are temporary agents of ECHA with a specific status. This requires that equality between staff members shall be taken into consideration but shall not prejudice the necessary independence of the members of the BoA.

⁷ Distribution of workload, replacement of members, etc.

⁸ Terms of Reference of the Subgroup BoA, Management Board Decision 64/2019.

⁹ See document MB/17/2008, as confirmed by MB/22/2015.

That means in practice that the BoA members fulfil the general working conditions of ECHA staff, while their specificities regarding recruitment procedures, functions, appraisal and independence are taken appropriately into account¹⁰. According to the Rules of Procedure, the Chairman has certain organisational powers in relation to the other full-time members and alternates, particularly in order to guarantee the efficient functioning of the Board. For these reasons, the Chairman also exercises necessary powers to coordinate the work within the BoA, without being a hierarchical superior of the other BoA members within the meaning of the Staff Regulations.

It is especially important and in the mutual interest of the BoA, the ECHA Secretariat and the Agency in general, to safeguard the independence of the BoA and its members as well as the external perception of its impartiality. In particular, whilst the Executive Director is responsible for all staff matters of the Agency, he has no managerial powers as regards the members of the BoA. However, in line with the Staff Regulations, it is necessary that certain decisions affecting the working conditions of BoA members, such as, those on leave, training and missions, which have been taken by the Chairman, as responsible for the organisation of the BoA's work, are subsequently communicated and signed off by the ECHA's Director of Resources as a matter of correct administration and for confirming that the final decision has been communicated to the BoA member concerned.

As regards the reclassification of the three full-time BoA members, the general Staff Regulations implementing rules in force in the Agency apply¹¹, which take into account BoA members' specificities. These rules foresee the consultation of the Reporting Officers of BoA members and that the decision on reclassification is taken in agreement with the Management Board, and in case of disagreement, decided by the Management Board alone. In 2021, the Management Board decided¹² to consider the reclassification of the BoA members generally in the context of the decision on the renewal of their mandate and their corresponding employment contract, unless specific circumstances require an earlier assessment. In practice, the consultation of the Reporting Officers is initiated by the Director of Resources and the Reporting Officers are invited annually to indicate whether specific circumstances require an earlier consideration of reclassification.

In order to maintain fluent and transparent communication with the Executive Director and coherence in the external activities of ECHA, the Chairman informs the Executive Director in the context of the regular coordination meetings about the external activities of the BoA members as its representatives.

¹⁰ See (1) Implementing provisions on the procedure governing the engagement and use of temporary staff under Article 2(f) of the Conditions of Employment of Other Servants of the European Union (MB/01/2018 final); (2) Management Board Decision 36/2018 Concerning the probationary period appraisal, managerial trial appraisal and the annual performance appraisal of the Executive Director and the members of the Board of Appeal, implementing Articles 43 and 44 of the Staff Regulations and Articles 14 and 15(2) of the CEOS and (3) Guidelines on the selection and appointment procedure of the Chairman, two other members of the Board of Appeal (BoA) of the European Chemicals Agency, their alternates and additional members and their alternates (Version II, October 2020, European Commission).

¹¹ General provisions for implementing Article 54 of the Conditions of Employment of Other Servants of the European Union (Management Board Decision 12/2023).

¹² MB/M/02/2021 final.

The Registry of the Board of Appeal

To ensure that the BoA can operate smoothly and efficiently, a Registry is established under its auspices and a Registrar who is heading the Registry is appointed by the Chairman of the BoA¹³. In addition to the responsibilities of the Registry and the Registrar set out in the Rules of Procedure, the latter assists the BoA in its functions by managing the human, financial and technical resources of the Registry, thus relieving the BoA of administrative burden. For efficiency reasons and consistent with the powers conferred to the Executive Director, all the administrative arrangements required by the Staff Regulations to make the Registrar's appointment effective are carried out by the Executive Director, in consultation with the Chairman, in particular the contract signature.

For continuously guaranteeing the independence of the Board of Appeal, and avoiding any perception of lacking independence, the Executive Director delegates the powers of being the Reporting Officer for the Registrar, as defined in the Agency's implementing rules for the Staff Regulations, to the Chairman (see annex).

Since the function of the Reporting Officer for the Registrar is exercised by the Chairman by delegation from the Executive Director, the appeal assessor for the Registrar is the Commission representative in the Management Board Subgroup Board of Appeal.

The Registry constitutes a unit of ECHA that reports, by way of delegation, to the Chairman. The staff of the Registry, including the Registrar, supports the Board of Appeal in carrying out its activities. Therefore, Registry staff may not participate in any proceedings of the Agency relating to decisions which may be the subject of appeals.

The Registrar manages as Head of Unit the human, financial and technical resources of the Registry within the administrative and financial framework of the Agency. The Registrar is thereby enabled to act as the direct hierarchical superior of the Registry staff and performs the function of their reporting officer. The Chairman is the appeal assessor/countersigning officer for Registry staff.

The human and financial resources allocated to the Registry¹⁴ are allocated by the Management Board in the context of the adoption of ECHA's programming document. For general coordination purposes, matters related to the implementation of the work programme are discussed in the context of the regular coordination meetings.

The Registry's work programme and objectives are set within ECHA's strategic plan and priorities, in line with the specific role of the BoA. The contributions of the BoA to the planning and reporting activities of ECHA are submitted, in agreement with the Chairman, by the Registrar to the Executive Director.

The Registrar ensures, in co-operation with the Chairman, an accurate assessment of the Registry's staff and budgetary needs in order to provide the BoA with the necessary support. The Executive Director, as Authorising Officer for ECHA's budget, delegated the management of the budget lines related to the activities of the BoA, to the Registrar.

¹³ Article 5(5) Commission Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of 25 May 2016.

¹⁴ Note that this budget line includes both the Registry and BoA.

Whenever necessary, the Registrar, in consultation with the Chairman, participates in ECHA administrative planning and the follow-up of its implementation in order to guarantee that BoA's administrative, financial and organisational needs are effectively identified and addressed. The Director of Resources informs and consults the Registrar on administrative, organisational and financial issues which can affect the Registry's staff or its activities.

For those administrative matters, such as contract renewals, related to the management of Registry staff that have to be exercised by the Executive Director as the contract concluding authority under the EU Staff Regulations¹⁵, the Executive Director takes formally the relevant decisions and actions on the basis of joint proposals from the Chairman and the Director for Resources who will ensure coherence with the general rules of the Agency.

As regards the reclassification of Registry staff, the general Staff Regulations implementing rules in force in the Agency apply¹⁶. In practice the Director for Resources represents the interests of the Registry staff members in close consultation with the Chairman. The Chairman is invited to submit in writing and present the Registry staff proposed for reclassification to all Directors participating in the opening meeting of the reclassification exercise. The Director of Resources informs the Chairman about the reclassification status of these Registry staff members before the draft list containing all ECHA staff members proposed for reclassification will be published internally.

Access to support services of the Agency

At the request of the Chairman, the ECHA Secretariat provides the same level of administrative support to the BoA and its Registry as to other operational and horizontal units. This includes, for instance, support on communication activities, financial assistance and interim placements.

This document replaces the previous administrative arrangements as signed in 2016¹⁷ and shall take effect from the date of signature by both parties.

Done at Helsinki, 5 September 2023

Dr. Sharon MCGUINNESS
Executive Director

Antoine BUCHET
Chairman of the Board of Appeal

Signed

Signed

Annex: Delegation of power from the Executive Director to the Chairman of the Board of Appeal (Executive Director decision 75/2019).

¹⁵ Other examples are decisions on contract conclusion or internal inquiries.

¹⁶ MB/ General provisions for implementing Article 54 of the Conditions of Employment of Other Servants of the European Union (Management Board Decision 12/2023) for Temporary Agents and General provisions for implementing Article 87(3) of the Conditions of Employment of Other Servants of the European Union (Management Board Decision 6/2016) for Contract Agents.

¹⁷ See Document MB/21/2016 final.