

Revised administrative arrangements for safeguarding the independence of the Board of Appeal and delegation of powers

42nd Meeting of the Management Board 22-23 June 2016

Item	11.2
Action	For endorsement
Status	Final - public

Proposal

The Management Board is invited:

- to take note of revised administrative arrangements for safeguarding the independence of the Board of Appeal, and
- to endorse a delegation from the Executive Director to the Chairman of the Board of Appeal for exercising the powers as reporting officer over the Registrar, as foreseen in these administrative arrangements.

Background

In 2009 the Executive Director and the Chairman of the Board of Appeal (BoA) signed administrative arrangements for safeguarding the independence of the BoA¹. These arrangements foresee that the Management Board Working Group on the BoA (MBWG BoA) 'reviews the arrangements [...] regarding the practical questions linked to the administrative organisation and the clear separation of the BoA from the ECHA Secretariat, and presents them to the plenary of the Management Board for information'.

With a view to the forthcoming entry into force of revised rules of organisation and procedure of the BoA² (the 'Rules of Procedure') and corresponding legal advice provided by the Commission, the arrangements require revision, in particular for integrating modified provisions regarding the appointment of the Registrar and the powers of the Chairman.

The attached draft revised administrative arrangements have been agreed between the Chairman and the Executive Director and have been reviewed by the MBWG BoA.

The Management Board discussed the revision of the rules of organisation and procedure of the BoA and the need for adapting the administrative arrangements in 2014 and 2015³.

Rationale

The draft administrative arrangements are clarifying in detail the necessary working arrangements between the ECHA Secretariat and the BoA and its Registry on day to day matters such as planning and reporting, Agency-wide policies (e.g. Conflict of Interest policy), access to

¹ Document MB/51/2009 final.

² Commission Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of 25 May 2016.

³ See minutes of the meetings of the Management Board MB/M/02/2014, MB/M/02/2015 and MB/03/2015. Additional background can be found in document MB/36/2015 and in a letter sent by the Commission services on 16 December 2014 (annex 2 to document [MB/22/2015](#)).

support services (e.g. communication, finance and interim placements), etc. The document also adds further detail to the employment conditions of the BoA members and the Registrar.

As the draft Rules of Procedure will clearly state that the Registrar is appointed by the Chairman who shall have managerial and organisational powers to give directions to the Registrar on matters relating to the exercise of the functions of the BoA, the Commission considered⁴ that certain additional measures are to be taken to safeguard the independence of the BoA:

- a delegation of powers from the Executive Director to the Chairman concerning the yearly evaluation of performance of the Registrar;
- a delegation of powers from the Executive Director to the Registrar concerning the yearly evaluation of the Registry staff.

For the Chairman a delegation decision will be provided with regard to the reporting officer duties over the Registrar, which covers especially the yearly evaluation, but also wider issues, such as the assignment of work or approval of leaves. It will also be mentioned that the Chairman will be the countersigning officer and appeal assessor for the Registry staff (i.e. she will review the yearly evaluation of staff who challenge the initial assessment by the Registrar or whose performance has been judged unsatisfactory). Taking into account that the resulting limitation of the Executive Director's powers as contract concluding authority is not foreseen in the applicable Staff Regulations or REACH, it is proposed that the Management Board endorses the delegations of powers, noting that the Executive Director will remain ultimately responsible for the staff and resources management vis-à-vis the discharge authority.

As the Registrar is appointed as Head of Unit under the Staff Regulations implementing rules on middle management staff⁵, it follows that such function includes reporting officer duties over the staff of the Unit concerned, including the annual evaluation (but also assignment of the work, approval of leaves, and other financial and human resources related powers). A specific delegation decision is therefore not needed.

In conclusion, the draft administrative arrangements and delegation decisions try to foresee and clarify all the possible situations where cooperation is taking place between the ECHA Secretariat and the BoA and its Registry. However, the good cooperation that already exists will continue to be based also on sound judgement and collegial working relationships.

Alternative options

There is an alternative option not to change the current administrative arrangements. This would require less implementation work by the Secretariat and the BoA. However, this would go against the advice of the Commission and earlier Management Board conclusions and lead to legal uncertainty, especially with regard to the day to day management and matters of (human) resources.

Drawbacks

The Executive Director retains the ultimate responsibility for the financial and staff management, and is held accountable by the European Parliament through the annual discharge. The necessary measures for guaranteeing the independence of the BoA as foreseen in the Rules of Procedure and the revised administrative arrangements limit the controls at the disposal of the Executive Director for ensuring the necessary compliance. However, the Secretariat is confident that with the current arrangements the necessary safeguards are in place and that the necessary controls can and should be exercised by the Management Board as appointing authority of the BoA members with the assistance of the Working Group on the BoA.

Attachment:

- Administrative Arrangements for safeguarding the independence of the Board of Appeal

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⁴ Letter of 13 December 2014 to the Chair of the Management Board

⁵ Document MB/29/2009

Administrative arrangements for safeguarding the independence of the Board of Appeal

CONSIDERATIONS

1. 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 Regulation⁶; the credibility of the appeals system will be strengthened in the eyes of the actors 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 2012⁷, 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 (as well as the staff members of its Registry, in accordance with the Rules of Procedure) are prohibited from participating in the operational decision-making of the Agency as this may compromise the BoA's impartiality and independence⁸. Likewise, ECHA's other staff members can neither participate in the decision-making processes of the BoA, nor supervise its decisions or activities.
2. 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 Product 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.
3. 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 Regulation⁹. 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 members¹⁰. 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.
4. 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.
5. The Regulation laying down the rules of organisation and procedure of the BoA¹¹, establishing a Registry under the auspices of the BoA, confers certain organisational

⁶ Regulation (EC) No 1907/2006.

⁷ http://europa.eu/agencies/documents/joint_statement_and_common_approach_2012_en.pdf.

⁸ See also Article 5(4) of Commission Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of 25 May 2016.

⁹ Except the requirement that Board of Appeal members may not perform any other duty in the Agency.

¹⁰ See document MB/17/2008, as confirmed by MB/22/2015.

¹¹ Commission Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of 25 May 2016.

powers on the Chairman of the BoA (hereinafter 'the Chairman') over the members of the BoA and the alternates¹².

6. The Management Board established on 24 April 2009 a working group on the BoA (MBWG BoA). The mandate of the MBWG BoA is to prepare all issues related to the BoA or its members which necessitate a discussion in the Management Board. In 2016, the MBWG BoA reviewed and advised on the present arrangements agreed between the Chairman and the Executive Director.
7. In the absence of express provisions concerning a particular situation, the common approach in EU Law is to use provisions applicable to similar situations found elsewhere in EU Law¹³. Further, in this respect it shall be taken into consideration that if this approach is followed in the current situation with the absence of specific rules it cannot be interpreted in a way which would be detrimental to the independence of the BoA.

AGREED ARRANGEMENTS

Coordination

8. 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 (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
 - 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 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

9. The REACH Regulation provides that ECHA's staff consists mainly of 'temporary agents' within the meaning of the EU Staff Regulations.¹⁴ 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.
10. That means in practice that the BoA members fulfil the general working conditions of ECHA staff. According to the Rules of Procedure, the Chairman has certain organisational powers in relation to the other members and alternates, particularly in order to guarantee the efficient functioning of the Board. For these reasons, the Chairman also

¹² Distribution of workload, replacement of members, etc.

¹³ Lorenz case (120/73). In this case the BoA of the Office for Harmonization in the Internal Market and rules defining its role in relation to the Office can be used by analogy where appropriate, taking into account the difference in size of the Boards.

¹⁴ See document MB/17/2008, as confirmed by MB/22/2015.

exercises necessary powers to coordinate the work within the BoA, without being a hierarchical superior of the other BoA members in the sense of the Staff Regulations.

11. 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.
12. 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.

The Registry of the Board of Appeal

13. 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 BoA¹⁵. 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.
14. 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).
15. 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 with the highest seniority in grade.
16. 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 its work on appeals. Therefore, Registry staff may not participate in any proceedings of the Agency relating to decisions which may be the subject of appeals.
17. 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.

¹⁵ Article 5(5) Commission Regulation (EC) No 771/2008 as amended by Commission Regulation (EU) 2016/823 of 25 May 2016.

18. The human and financial resources allocated to the Registry¹⁶ are allocated by the Management Board in the context of the adoption of ECHA's work programme. For general coordination purposes, matters related to the implementation of the work programme are discussed in the context of the regular coordination meetings.
19. The Registry's work programme and objectives are set within the strategy and the priorities identified in the work programme 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.
20. 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 appeal proceedings, to the Registrar.
21. 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.
22. 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 Regulations¹⁷, 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.
23. As regards the reclassification of Registry staff, the general Staff Regulations implementing rules in force in the Agency apply. In practice the Director for Resources represents the interests of the Registry 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. For transparency reasons, high level information on the outcome of the appraisal of Registry staff compared to other ECHA staff will be provided annually to the Working Group on the BoA.

Access to support services of the Agency

24. 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.
25. This document replaces the previous administrative arrangements as signed in 2009¹⁸ and shall take effect from the date of signature by both parties.

Geert DANCET
Executive Director

Mercedes ORTUÑO
Chairman of the Board of Appeal

¹⁶ Note that this budget line includes both the Registry and BoA.

¹⁷ Other examples are decisions on contract conclusion or internal inquiries.

¹⁸ See Document MB/51/2009 final.

Helsinki,

Annex:

Delegation to the Chairman of the Board of Appeal (Decision by the Executive Director)

<p>Owner: Geert Dancet Activity/ Process: Activity 9 Validity: Indefinite Revision: N/A Classification: Internal</p>	<p>Distribution: Executive Director Quality Manager All Directors All Heads of Unit All BoA members and Registry staff ECHAnet</p>
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Helsinki,

AS THE EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

Having regard to Article 2 and 43 of the Staff Regulations (and Article 15(2) of CEOS);

Having regard to Commission Regulation 2016/823 of 25 May 2016 on the Rules of Organisation and Procedure of the Board of Appeal, and in particular Article 5(5) thereof,

I HAVE DECIDED THE FOLLOWING:

1. Reporting Officer duties with regard to the Registrar

The power to exercise the duties of reporting officer with regard to the Registrar are delegated to the Chairman of the Board of Appeal. These powers include:

- Managerial and organisational powers to give directions to the Registrar on matters relating to the exercise of the functions of the Board of Appeal;
- The approval of annual leave, mission and training requests;
- The conduct of the annual performance appraisal exercise.

2. Countersigning officer and appeal assessor duties with regard to the Registry staff

The power to exercise the duties of countersigning officer and appeal assessor with regard to the staff of the Registry (in the framework of the annual performance appraisal exercise) is delegated to the Chairman of the Board of Appeal.

3. Entry into force

This decision shall apply as from 1 August 2016.

Done at Helsinki,

Geert Dancet
Executive Director

Helsinki,

**Delegation of the power to authorise decisions and
communications to the Director of Resources
(Decision by the Executive Director)**

<p>Owner: Shay O'Malley Activity/ Process: Activity 13 & 14 Finance, procurement and accounting & Human resources and Corporate services Validity: Indefinite Revision: N/A Classification: Internal</p>	<p>Distribution: Executive Director Quality Manager All Directors All Heads of Unit ECHAnet</p>
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AS THE EXECUTIVE DIRECTOR OF THE EUROPEAN CHEMICALS AGENCY

I HAVE DECIDED THE FOLLOWING:

Human Resources

1. The power to sign communications with regard to the expression of intent for renewal of employment contracts is delegated to Shay O'Malley, Director of Resources.
2. The power to sign agreements under the Active Senior Initiative is delegated to Shay O'Malley, Director of Resources.
3. The power to authorise the following decisions with regard to traineeships in ECHA in accordance with ED/02/2015 (Rules governing the traineeship scheme of the European Chemicals Agency) is delegated to Shay O'Malley, Director of Resources:
 - Final decision on admission to a traineeship (Art.7(3));
 - Authorisation of exceptions to one (costing) trainee per year per unit (Art.4(1));
 - Signature of the traineeship contracts (Art.8).
4. The power to authorise all decisions and communications with regard to entitlements of statutory staff members is delegated to Shay O'Malley, Director of Resources.
5. The power to approve the following requests related to time and leave management is delegated to Shay O'Malley, Director of Resources:
 - Spending sick leave away from the place of employment;
 - Special leave for medical treatment or examination abroad;
 - Extension of special leave for serious illness of a child, spouse or relative in ascending line;
 - Family leave;
 - Parental leave;
 - Part-time work to which the staff member has an undisputable right;
 - Special part-time arrangements for breastfeeding;
 - Work outside flexitime limits;
 - Compensation for overtime worked.
6. Based on a proposal of the Chairman of the Board of Appeal, the power to formally approve all leave, mission and training requests with regard to the permanent members of the Board of Appeal.
7. The power to authorise the acceptance of honours, decorations and favours and of hospitality (in unclear situations) and of gifts between 50 and 150 EUR from the same source in a given calendar year, is delegated to Shay O'Malley, Director of Resources.
8. The power to adopt a duly reasoned opinion and where necessary to take mitigating measures before recruitment of a non-managerial statutory staff member, with regard to actual or potential conflicts of interest in relation to the position offered (in line with Article 11 and 11a (2) of the Staff Regulations), is delegated to Shay O'Malley, Director of Resources.

Finance

Helsinki,

9. The power to sign the VAT and Excise duty exemption certificate implementing Article 15(10) of Directive 77/388/EEC and Article 23(1) of Directive 92/12/EEC is delegated to Shay O'Malley, Director of Resources.

SME verification

10. The power to sign any communications and decisions regarding the verification of enterprises' status as SME, which strictly follow the standard procedures, is delegated to Shay O'Malley, Director of Resources.

Other

11. The power to sign communications to the authorities of the EU Member States, to Accredited Stakeholder Organisations, to the European Commission and to other supra-national organisations on routine matters in subject fields under his responsibility, is delegated to Shay O'Malley, Director of Resources.
12. The power to authorise speaking requests for events inside the EU area (reference is made to WIN-0009) and to authorise the publication of a text or speech in accordance with Article 17a of the Staff Regulations, is delegated to Shay O'Malley, Director of Resources for the staff members under his supervision.
13. Any such signature power as indicated above can be further subdelegated by the Director of Resources, subject to the following conditions:
14. Clear instructions for the task at hand are documented in the IQMS;
 - When the delegate is not a Director, Head of Unit or Chair of an ECHA Committee, the subdelegation shall require the approval of the Executive Director;
 - Any subdelegation of tasks that form part of a (sub)process subject to interest management shall be preceded by a detailed check of the annual declaration of interest of the staff member in question and shall not apply to decisions and communications concerning any of the organisations in which the individual concerned has declared an interest;
 - Any such subdelegation shall be recorded, using the template (TEM-0059) and a copy shall be sent to the Head of the Executive Office for registration in a corporate register of delegations.
15. The above delegations do not apply to decisions and communications concerning any of the organisations in which Shay O'Malley, Director of Resources, has declared an interest in annual or ad hoc declarations of interest.
16. This decision shall revoke decision ED/04/2015 and shall apply as from 1 January 2016.

Done at Helsinki,

Geert Dancet
Executive Director