

BoA/01/2023

**DECISION OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY
OF 14 MARCH 2023 ADOPTING
A CODE OF CONDUCT APPLICABLE TO THE MEMBERS OF THE BOARD OF APPEAL
WHO ARE STAFF MEMBERS OF THE AGENCY**

THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY (the 'Board of Appeal'),

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (the 'REACH Regulation')¹, and in particular Articles 90 and 103 thereof,

Having regard to Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products², and in particular Article 77 thereof,

Having regard to Commission Regulation (EC) No 771/2008 of 1 August 2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency³ (the 'Rules of Procedure'), and in particular Article 27(3) thereof,

Whereas:

- (1) Article 90(2) of the REACH Regulation provides that the members of the Board of Appeal are independent and cannot be bound by any instructions.
- (2) Ethical standards of conduct are key elements to ensure the necessary independence and impartiality of the members of the Board of Appeal and foster the trust of stakeholders and European Union citizens in the activities of the Board of Appeal.
- (3) As regards the ethical standards of conduct to be observed, the Chairman and the two other members of the Board of Appeal within the meaning of Article 89(1) of the REACH Regulation are staff members of the European Chemicals Agency (the 'Agency') and, as such, are bound by the Staff Regulations of Officials of the European Union⁴ (the 'Staff Regulations') and the measures adopted by the Management Board of the Agency, in agreement with the Commission, to implement the rules contained in that Regulation. Former members of the Board of Appeal continue to be bound by certain of the rules set out in those provisions.

¹ OJ L 396, 30.12.2006, p. 1.

² OJ L 167, 27.6.2012, p. 1.

³ OJ L 206, 2.8.2008, p. 5.

⁴ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385).

BoA/01/2023

- (4) In view of the nature of the powers conferred on the Board of Appeal to review independently and impartially decisions of the Agency, and in the interest of transparency, all the ethical standards of conduct applicable to the members of the Board of Appeal should be set out in a Code of Conduct.
- (5) Adherence to this Code of Conduct should help to avoid any potential situations of conflict of interests within the meaning of Article 90 of the REACH Regulation and should ensure confidence in the independence and impartiality of the Board of Appeal.
- (6) Alternate and additional members of the Board of Appeal within the meaning of Article 89(2) and (3) of the REACH Regulation are not staff members of the Agency and therefore are not bound by all the measures applicable to staff of the Agency. Consequently, they are not bound by the present Code of Conduct. Alternate and additional members of the Board of Appeal continue to be bound by the Decision of the Board of Appeal of 1 February 2018 repealing Decision BoA/02/2010 and adopting revised Code of Conduct of the members of the Board of Appeal as regards its alternate and additional members (BoA/01/2018).
- (7) The Management Board of the Agency (the 'Management Board') took note of the Board of Appeal's intention to adopt the present Code of Conduct.

Hereby adopts the Code of Conduct annexed to this Decision.

Done at Helsinki, 14 March 2023

Antoine BUCHET

Chairman of the Board of
Appeal

Nikolaos GEORGIADIS

Member of the Board of
Appeal

Marijke SCHURMANS

Member of the Board of
Appeal

Annex

Code of Conduct applicable to the members of the Board of Appeal who are staff members of the Agency

ANNEX

CODE OF CONDUCT APPLICABLE TO THE MEMBERS OF THE BOARD OF APPEAL WHO ARE STAFF MEMBERS OF THE AGENCY

Article 1

Scope and objectives

1. This Code of Conduct applies to the members of the Board of Appeal referred to in Article 89(1) of the REACH Regulation who are staff members of the Agency, as well as, where appropriate, to former such members of the Board of Appeal.
2. This Code of Conduct compiles and provides guidance on the ethical standards of conduct to be observed by the members of the Board of Appeal.

Article 2

General principles

Under Article 103(1) and (2) of the REACH Regulation, the members of the Board of Appeal are, as staff members of the Agency, subject to the regulations and rules applicable to officials and other servants of the European Union and the implementing rules and policies on staff issues adopted by the Management Board, in agreement with the Commission.

Article 3

General behaviour

1. The members of the Board of Appeal shall comply with their duty of loyalty in accordance with Article 11 of the Staff Regulations. They shall treat all staff members with respect.

The members of the Board of Appeal are committed to equality of treatment and shall not engage in any discriminatory behaviour.

2. The members of the Board of Appeal shall respect the principles set out in the Code of Good Administrative Behaviour for the Staff of the European Chemicals Agency (the 'Code of good administrative behaviour')⁵. In applying those rules, the members of the Board of Appeal shall pay particular attention to the following:
 - (a) With respect to Article 9 of the Code of good administrative behaviour (objectivity), the members of the Board of Appeal shall give full consideration to all arguments and evidence submitted in accordance with the Rules of Procedure and give each of them their proper weight in each decision;

⁵ Adopted by Decision of the Management Board MB/11/2008 of 14 February 2008. Amended by Decision of the Management Board MB/21/2013 of 20 June 2013.

- (b) With respect to Article 10 of the Code of good administrative behaviour (legitimate expectations and consistency), the members of the Board of Appeal shall strive to ensure consistency in their decision-making;
- (c) With respect to Article 16 of the Code of good administrative behaviour (listening to all parties with a direct interest), the members of the Board of Appeal shall ensure that the parties to an appeal, as well as any interveners, are given sufficient opportunities to provide observations on the submissions in a case and to make an oral presentation as required by Article 93(2) of the REACH Regulation; and
- (d) With respect to Article 17 of the Code of good administrative behaviour (reasonable time-limit for replying), the members of the Board of Appeal shall ensure that appeals are processed at a satisfactory rate.

Article 4

Independence and impartiality

1. Under Articles 11 and 11a of the Staff Regulations, Article 90(2) to (7) of the REACH Regulation, and Article 8 of the Code of good administrative behaviour, the members of the Board of Appeal shall perform their duties with complete independence and integrity, without taking account of any personal or national interest. They shall neither seek nor follow any instructions from the institutions of the European Union, any entities of the Member States, or any private or public entities.

The members of the Board of Appeal shall act impartially and shall not give preferential treatment to any entity or individual. In this respect, the members of the Board of Appeal shall not be guided by personal or national interest, or any outside influences.

Under Article 90(3) of the REACH Regulation, the members of the Board of Appeal may not perform any other duties in the Agency as this may compromise the Board of Appeal's impartiality and independence.

Under Article 90(5) of the REACH Regulation, the members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.

2. To comply with the provisions on independence and impartiality, the members of the Board of Appeal shall conform with the Agency's Policy on prevention and management of potential conflicts of Interest⁶.

In conformity with that Policy, the members of the Board of Appeal shall complete an annual declaration of interests which shall be published on the Agency's website.

In addition, the members of the Board of Appeal shall complete a specific declaration of interests in relation to each appeal case before they begin to work on that case.

⁶ PRO-0067. Adopted by the Management Board on 25 March 2021: Management Board Decision 8/2021, reference document MB/06/2021 final.

Following the receipt of an appeal, the Chairman shall check the annual and specific declaration of interest forms completed by the members of the Board of Appeal. The declaration of interest forms completed by the Chairman shall be checked by the longer serving of the other two members deciding the appeal, or, where those other members have the same length of service on the Board of Appeal, the older member shall perform this task.

Article 5

Duty of discretion and secrecy of deliberations

1. In accordance with Article 339 of the Treaty on the Functioning of the European Union and Article 17 of the Staff Regulations, the members of the Board of Appeal shall act with the restraint that their function require. They must not disclose, or use for their personal benefit, information that becomes known to them in the course of, or in connection with, the performance of their duties unless that information has already been made public or is accessible to the public.
2. In accordance with Article 19(1) of the Rules of Procedure, the members of the Board of Appeal must respect the secrecy of deliberations. In particular, the following shall be, and shall remain, secret:
 - (a) Oral and written opinions expressed in relation to the legal, scientific, or technical aspects of an appeal case which a member of the Board of Appeal has expressed during the examination and deliberation of that case, including the drafting of the decisions concerning that case; and
 - (b) Any voting in a case.

The deliberations shall include all meetings, correspondence, and any comments concerning the appeal case in question between the members of the Board of Appeal.

Article 6

Outside activities

1. In relation to outside activities, the members of the Board of Appeal shall respect Article 12b of the Staff Regulations and the related rules adopted by the Management Board, in agreement with the Commission, including the Commission Decision of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the service (C(2018) 4048 final).
2. Where, in accordance with the rules on outside activities referred to in the first paragraph of this Article, permission for engaging in outside activities is required, the members of the Board of Appeal shall seek prior permission from the Management Board.
3. In applying the rules on outside activities, and when evaluating such activities, particular attention shall be paid to the following:

- (a) Any outside activity shall appropriately take into account the specific role and characteristics of the Board of Appeal that acts independently and impartially in accordance with Article 90(2) of the REACH Regulation, and
- (b) Members of the Board of Appeal shall not act or express themselves in a manner which adversely affects the public perception of their independence, their integrity, or the dignity of their office.

Article 7

Publications, conferences, and speeches

Under Article 17a of the Staff Regulations, the members of the Board of Appeal shall exercise their right to freedom of expression with due respect to the principles of loyalty and impartiality.

In particular, the members of the Board of Appeal shall:

- (a) in cases pending before the Board of Appeal, limit themselves to the elements contained in the published announcement of the case; and
- (b) in closed cases, refrain from expressing themselves on information that can be covered by the secrecy of deliberations under Article 5(2) of this Code of Conduct.

Article 8

Contact with the media or the public

The Registrar of the Board of Appeal is the contact point for any enquiries from the public and the media regarding the activities of the Board of Appeal.

Article 9

Duty related to gifts or hospitality

1. In relation to gifts and hospitality, the members of the Board of Appeal shall be bound by Article 11 of the Staff Regulations and the Decision of the Executive Director of 18 December 2012 on gifts and hospitality (ED/159/2012).

In accordance with those rules, any gifts and hospitality must not be accepted unless required by representational, social, courtesy, or diplomatic usage.

2. Where explicit prior permission for the acceptance of gifts or hospitality is required by the rules referred to in the first paragraph of this Article, a member of the Board of Appeal shall request such permission from the Management Board.

Article 10

Occupational activities after ceasing to be a member of the Board of Appeal

1. After they cease to be a member of the Board of the Appeal, the former members of the Board of Appeal shall continue to be bound by their duty of integrity, dignity, loyalty and discretion regarding the cases and information that became known to them during their term(s) of office.
2. In relation to occupational activities after ceasing to be a member of the Board of Appeal, the members of the Board of Appeal shall respect Articles 16 and 17 of the Staff Regulations and the related rules adopted by the Management Board, in agreement with the Commission. Those rules include the Commission Decision of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the service (C(2018) 4048 final) and the Post-employment guidance adopted by decision of the Executive Director of the Agency on 26 October 2018 (ED/72/2018).
3. Where approval is required to engage in occupational activities after leaving the service at the Agency under the rules referred to in the second paragraph of this Article, members of the Board of Appeal and former members of the Board of Appeal shall request such permission from the Management Board.
4. Without prejudice to the powers conferred on the Management Board to impose other conditions following a request for approval to engage in an occupation after leaving the service at the Agency, the former members of the Board of Appeal, after ceasing to be a member of the Board of Appeal, will in any event not become involved:
 - (a) In any manner whatsoever, in cases which were pending before the Board of Appeal in which they were a member when they ceased to be a member,
 - (b) For a period of two years, in any manner whatsoever, in cases directly and clearly connected with cases, including concluded cases, which they have dealt with as a member of the Board of Appeal, and
 - (c) For a period of two years, as representatives of parties or experts, in either the written or oral part of the proceedings, in cases before the Board of Appeal.

Article 11

Application of the Code

1. The members of the Board of Appeal shall ensure that this Code of Conduct is observed and that it is applied in good faith.
2. Where the members of the Board of Appeal, and former members of the Board of Appeal, are required to apply for permission from the Management Board under this Code of Conduct, such an application shall be submitted to the Director of Resources of the Agency.

3. Failure to comply with the rules set out in this Code of Conduct may result in disciplinary measures as provided in Article 86 and Annex IX to the Staff Regulations. Any such measures will be taken in accordance with the decision of the Management Board on Implementing rules on the conduct of administrative inquiries and disciplinary proceedings⁷.
4. Under Article 90(4) of the REACH Regulation, the members of the Board of Appeal may not be removed from office during their respective terms, unless there are serious grounds for such removal and the Commission, after obtaining the opinion of the Management Board, takes a decision to this effect.

Article 12

Entry into force and review

1. This Code of Conduct shall enter into force one week after its adoption.
2. This Code of Conduct shall be reviewed no later than five years after its entry into force.

⁷ Adopted by the Management Board on 23 June 2022: Management Board Decision 18/2022, reference document MB/23/2022.