

**DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY
OF 1 FEBRUARY 2018 REPEALING DECISION BOA/02/2010¹ AND ADOPTING
REVISED CODE OF CONDUCT OF THE MEMBERS OF THE BOARD OF APPEAL AS
REGARDS ITS ALTERNATE AND ADDITIONAL MEMBERS**

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

Having regard to Article 27 of 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 Agency², as amended by Commission Implementing Regulation (EU) 2016/823³ (the 'Rules of Procedure'), and taking into account Article 90 of 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')⁴, and Article 77 of 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 products (the 'BPR')⁵,

Whereas:

- (1) When deciding on appeals against decisions taken by the Agency, the members of the Board of Appeal must be independent and impartial⁶. Ethical standards of conduct and rules on conflict of interests are key elements to ensure the necessary independence and impartiality.
- (2) The Board of Appeal adopted its first Code of Conduct on 22 June 2010. That Code included rules on conflict of interests together with rules on standards of ethical behaviour. Since the adoption of the first Code of Conduct, the Agency has adopted several measures related to the management of conflicts of interest⁷, and eligibility criteria for the members of the Board of Appeal⁸. These measures apply to all members of the Board of Appeal. Therefore, in order to avoid any overlapping of rules and potential contradiction among these legal and self-regulatory tools, the Code of Conduct of the Board of Appeal should be revised to exclude the provisions on conflict of interests.

¹ Decision of the Board of Appeal of the European Chemicals Agency of 22 June 2010 adopting the Code of Conduct of the (regular/alternate/additional) members of the Board of Appeal (BoA/02/2010).

² OJ L 206, 2.8.2008, p. 5.

³ OJ L 137, 26.5.2016, p. 4.

⁴ OJ L 396, 30.12.2006, p. 1.

⁵ OJ L 167, 27.6.2012, p. 1.

⁶ Article 90 of the REACH Regulation.

⁷ MB/45/2011 Policy for Managing Potential conflict of interests, MB/11/2012 on implementation of the ECHA policy on potential conflict of interests management and adopting a Code of Conduct for the Management Board members, the Review of the Policy for Managing Conflicts of interests (MB/07/2014) and MB/09/2014 of 20 March 2014 as well as ECHA PRO-0067 on Prevention and Management of potential conflicts of interest, together with the annual declaration of interests.

⁸ Management Board decision on eligibility MB/45/2013.

- (3) As regards the ethical standards of conduct to be observed, full-time members of the Board of Appeal⁹ are bound by the Staff Regulations of Officials of the European Union¹⁰. As a result, the provisions on ethical standards of conduct contained in the revised Code of Conduct should apply only to the alternate and additional members of the Board of Appeal as they are not covered by the Staff Regulations.
- (4) The revision of the Code of Conduct of the Board of Appeal adopted in 2010 is necessary for the proper functioning of the Board of Appeal¹¹, and in particular to avoid situations which could lead to potential objections of Board of Appeal members due to perception of partiality,¹²

Hereby adopts the Code of Conduct attached to this Decision.

Done at Helsinki, 1 February 2018

Mercedes ORTUÑO

Andrew FASEY

Sari HAUKKA

Chairman of the Board of
Appeal

Member of the Board of
Appeal

Member of the Board of
Appeal

Annexes

- Revised Code of Conduct applicable to alternate and additional members of the Board of Appeal (Annex 1).
- Undertaking which every alternate or additional member of the Board of Appeal should sign as their commitment to the Code of Conduct (Annex 2).

⁹ The three full-time Board of Appeal members are staff members of ECHA.

¹⁰ 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). At the time of the adoption of the Code of Conduct, the latest version of the Staff Regulations is that of 2014.

¹¹ As provided for by Article 27(1) and Recital 7 of the Rules of Procedure.

¹² Ensure full operability of the Board of Appeal by diminishing potential objections foreseen by Article 90(6) of the REACH Regulation.

ANNEX 1

Article 1 **Definitions**

For the purposes of this Code of Conduct:

1. Full-time members of the Board of Appeal: refers to members of the Board of Appeal as mentioned in Article 89(1) of the REACH Regulation. Full-time members are ECHA staff.
2. Alternate and additional members of the Board of Appeal: refers to members of the Board of Appeal as mentioned in Article 89(2) of the REACH Regulation and who are not ECHA staff.

Article 2 **Scope**

1. This Code of Conduct applies to alternate and additional members of the Board of Appeal.
2. This Code of Conduct addresses the conduct and ethical standards to be observed by the alternate and additional members of the Board of Appeal when performing duties in appeal proceedings and in outside activities as far as they can affect the public perception of the independence and impartiality of the Board of Appeal.
3. This Code of Conduct shall not apply to full-time members.

Article 3 **Principles to observe when working on appeals**

When working and deciding on appeals lodged before the Board of Appeal, alternate and additional members of the Board of Appeal shall respect the following principles:

1. Lawfulness: alternate and additional members of the Board of Appeal shall act according to the REACH Regulation, the BPR, the Rules of Procedure and the European Code of Good Administrative Behaviour.
2. Loyalty: alternate and additional members of the Board of Appeal shall comply with their duty of loyalty towards the Board of Appeal. They shall treat all members of the Board of Appeal and its Registry staff members with respect. Alternate and additional members shall refrain from making any statement outside the Board of Appeal which may harm its reputation.
3. Fairness and objectivity: alternate and additional members of the Board of Appeal shall act fairly and reasonably, taking into consideration all relevant factors and giving each of them its proper weight in each decision.

4. Equality of treatment: alternate and additional members of the Board of Appeal shall not engage in any discriminatory behaviour.
5. Impartiality and independence: members of the Board of Appeal shall act impartially and shall not give preferential treatment to any entity or individual. In this respect, alternate and additional members of the Board of Appeal shall not be guided by personal or national interest, or any outside influences of any kind, including political pressure or influence. Pursuant to Article 90(2) of the REACH Regulation, members of the Board of Appeal shall be independent and in making their decisions they shall not be bound by any instructions.

Article 4

Outside activity

1. When alternate and additional members of the Board of Appeal are involved in an outside activity (for example, conferences, meetings or publishing articles) that deals directly or indirectly with subjects that concern the Board of Appeal and its functions they shall inform the Chairman in writing, in advance, indicating the subject covered and the nature of the activity (for example, publication or speaking engagement), and the date or duration of the activity. In such activities, alternate and additional members shall clarify that their opinions are personal and do not represent the opinion or position of the Board of Appeal.
2. Alternate and additional members should not undertake any activity or take any actions that might objectively undermine the perception of their, or the Board of Appeal's, independence and impartiality.

Article 5

Contact with the media or the public

1. 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.
2. If alternate and additional members of the Board of Appeal are approached about any topic related to their functions as a member of the Board of Appeal they must communicate this fact to the Registrar. In giving any opinion the alternate and additional members will clearly specify that they are expressing their personal opinion and not that of the Board of Appeal. They will not reveal restricted information nor information known as a consequence of their position. They will act with loyalty and impartiality.

Article 6

Duty of discretion

1. Alternate and additional members of the Board of Appeal shall act with the restraint that their functions require. They must not disclose information that becomes known to them in the course of, or in connection with, the performance of their duties unless

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that information has already been made public. In particular, case-related information, such as deliberations, must be kept secret.

2. Alternate and additional members of the Board of Appeal undertake not to use to their personal benefit any facts or information that become known to them in the course of, or in connection with, specific appeal cases.

Article 7

Duty not to accept gifts or hospitality

Alternate and additional members of the Board of Appeal shall be bound by the Decision of the Executive Director of 18 December 2012 on gifts and hospitality (ED/159/2012).

Article 8

Commitment to the Code of Conduct

All alternate and additional members of the Board of Appeal shall sign the undertaking attached to this Code of Conduct (see Annex 2).

Article 9

Application

Any question concerning the application or interpretation of this Code of Conduct must be addressed to the Chairman of the Board of Appeal.

Article 10

Entry into force

This Code of Conduct shall enter into force on one week after its adoption.

This Code of Conduct repeals and replaces the Code of Conduct of the Board of Appeal adopted on 22 June 2010 (BoA/02/2010).

ANNEX 2

Undertaking of commitment to the Code of Conduct of the ECHA Board of Appeal
(in accordance with Article 8 of the Code of Conduct¹)

SURNAME: _____

NAME: _____

DATE OF APPOINTMENT: _____

I, _____, as alternate/additional member of the Board
of Appeal, commit to respect the above Code of Conduct.

Date:

Signature:

¹ Revised Code of Conduct applicable to alternate and additional members of the Board of Appeal adopted by the Board of Appeal on 1 February 2018 (BoA/01/2018).