

## **REVISION OF RULES OF PROCEDURE FOR THE FORUM FOR EXCHANGE OF INFORMATION ON ENFORCEMENT**

### *Article 1*

#### *Forum Responsibility*

1. In accordance with Article 76(1) (f) of Regulation No 1907/2006 ("the REACH Regulation"), the European Chemicals Agency (hereinafter referred to as 'the Agency') shall comprise a Forum for Exchange of Information on Enforcement (hereinafter referred to as "the Forum").
2. The Forum shall coordinate a network of Member State authorities responsible for enforcement of the REACH Regulation, Regulation (EC) No 1272/2008 ("the CLP Regulation"), Regulation (EU) No 649/2012 ("the PIC Regulation") and Regulation (EU) No 2019/1021 ("the POPs Regulation").
3. In accordance with Article 76(1) paragraphs (h) and (l) of the Regulation (EU) No 528/2012 ("Biocidal Product Regulation" or "BPR"), the Forum shall also coordinate a network of Member State authorities responsible for enforcement of BPR through the dedicated Forum Biocidal Products Regulation Subgroup (hereinafter referred to as "BPR Subgroup").

### *Article 2*

#### *Tasks*

1. In accordance with Article 77(4) of the REACH Regulation the Forum shall undertake the following tasks:
  - (a) spreading good practice and highlighting problems at Community level;
  - (b) proposing, coordinating and evaluating harmonised enforcement projects and joint inspections;
  - (c) coordinating exchange of inspectors;
  - (d) identifying enforcement strategies, as well as best practice in enforcement;
  - (e) developing working methods and tools of use to local inspectors;
  - (f) developing an electronic information exchange procedure;
  - (g) liaising with industry, taking particular account of the specific needs of SMEs, and other stakeholders, including relevant international organisations, as necessary;
  - (h) examining proposals for restrictions with a view to advising on enforceability.
2. In accordance with Article 46(3) of the CLP Regulation, Article 18(2) of the PIC Regulation, Article 76(1) paragraphs (h) and (l) of the Biocidal Products Regulation and Article 8(2) of the POPs Regulation, the Forum shall undertake tasks listed in paragraph 1 points (a) to (g) above in relation to these Regulations.
3. In addition, the Forum shall agree on common issues to be covered in the report indicated in Article 127 of the REACH Regulation and may agree on common issues to be covered in the report indicated in Article 46(2) of the CLP Regulation, Article 22 of the PIC Regulation, Article 65(3) of the Biocidal Products Regulation and Article 13(1)(a) of the POPs Regulation.
4. The Forum may agree to advise on other issues related to enforceability of the REACH

CLP, PIC, POPs or the Biocidal Products Regulations.

5. The Forum shall endeavour to work with Member State authorities responsible for other legislations such as customs or occupational safety and health. In particular, the Forum shall involve the authorities responsible for waste when dealing with waste-related issues, in accordance with Article 8(2) of the POPs Regulation.
6. The Forum shall establish a work programme in order to plan the execution of its tasks.

### *Article 3 Membership*

1. In accordance with Article 86(1) of the REACH Regulation, the Forum is composed of members appointed by the Member States and a maximum of five additional members co-opted by the Forum. Only the members appointed by the Member States have the right to vote.
2. Members nominated by the EEA-EFTA States that are Iceland, Liechtenstein and Norway have the same rights and obligations as other members except the right to vote.
3. Members co-opted by the Forum referred to in Article 4, shall have the same rights and obligations as other members, except the right to vote and right to have an alternate to a member.

### *Article 4 Co-opting members*

1. In accordance with Article 86(1) of the REACH Regulation, the Forum shall aim to have a broad range of relevant expertise among its members. To this end the Forum may co-opt a maximum of five additional members chosen on the basis of their specific competence.
2. Following a proposal from a member, the Forum may decide whether additional members should be co-opted and shall agree on the required specific competences and selection procedure by a two-thirds majority of all members having the right to vote.
3. Co-opted members shall be appointed for a term of three years, which may be renewed by the Forum, if it considers that the specific competence of the co-opted member continues to be necessary for the Forum.
4. If the co-opted member is not fulfilling his/her duties, following a justified proposal from the Chair, the Forum may conclude on a termination of the term of the co-opted member before his/her three year term expires. The conclusion on termination of the term of co-opted members is taken by a two-thirds majority of all members having the right to vote.
5. Additional members can be co-opted at any point in time.

### *Article 5 Term of office and replacing members*

1. In accordance with Article 86(1) of the REACH Regulation, the term of office of members shall be three years starting on the date of appointment and shall be renewable.
2. A member's term of office shall end:
  - a) at the expiry of the three-year term period;
  - b) with his or her resignation submitted in writing to the European Chemicals Agency;
  - c) in case of death; or
  - d) following a communication to the Agency from the Member State concerned

indicating another appointment.

The new member thus appointed shall start serving a full term of three years, starting from the date of appointment by the Member State.

3. Members referred to in Articles 3(1) and 3(2) may have up to three alternates. Member State concerned shall specify whether the alternate shall represent the Forum member in the Forum or in the BPR Subgroup or both. Member State concerned may appoint an alternate to a member at any point in time and shall communicate it to the Agency. The term of office of an alternate to a member starts from the date of appointment and ends at the end of the term of the corresponding Forum member. All other provisions of these Rules of Procedure for the members are, where relevant, applicable also to the alternates to the members.
4. Where relevant, an alternate to a member shall represent and vote for the appointed member in the absence of the member when he/she is not in attendance at the physical or virtual meeting of the Forum (hereinafter, referred to as 'meeting'). At the request of the member, the alternate to a member may respond on behalf of the member in case of written procedures, consultations launched by the ECHA Harmonised Enforcement team (hereinafter, referred to as 'Harmonised Enforcement team') or any request for urgent advice from members between meetings.
5. The members may, in exceptional cases when they are prevented from participating in a meeting of the Forum, identify in advance a person who shall, without the need to have a recourse to the procedure laid down in Article 6(4), be invited by the Agency to participate in a meeting as an invited expert or as his/her alternate if such has been appointed.
6. If prevented from participating in a meeting, members of the Forum or their alternates having the right to vote may do so by proxy. In addition to his/her own vote, each member having the right to vote or his/her alternate may cast a maximum of two votes by proxy. The proxy shall be notified to the Forum at the beginning of the meeting and shall be recorded in the minutes.

## *Article 6*

### *Other participants of the meetings*

1. The meetings of the Forum and its working groups shall be open to advisers, invited experts and observers, as specified in paragraphs 2 to 8.
2. The Executive Director and his representatives and representatives of the European Commission shall be entitled to take part in the meetings of the Forum and its working groups.
3. Advisers are participants of the Forum meetings or its working groups, accompanying members to provide advice on scientific or technical matters. The members shall notify the names of their advisers to the Harmonised Enforcement team before the meeting which they are due to attend.
4. Invited experts are experts in technical or scientific fields, who can, upon request of a member or the Harmonised Enforcement team, be invited by the Agency in coordination with the Chair to participate for one or more points of the agenda in the meeting of the Forum or its working groups.
5. A maximum of 2 participants may accompany a member or his/her alternate per meeting of the Forum or its working groups.
6. Observers are other participants of the meetings of the Forum or its working groups under paragraphs 6 to 8 who are not members, advisers or invited experts.
7. Representatives of stakeholder organisations may be admitted by the Forum as

observers to the meeting of the Forum or its working groups upon request of members of the Forum or the Management Board. These stakeholder observers shall conform to the ECHA "Code of conduct for observers from stakeholder organisations at ECHA meetings".

8. Pursuant to Articles 106 and 107 of the REACH Regulation, representatives of third countries and international organisations may take part in the meetings as observers if the Management Board has invited them, in agreement with the Forum, to participate in the work of the Agency.
9. Other observers may be admitted upon request of a member of the Forum or of the Chair.
10. The Forum shall agree by two-thirds majority of all members having the right to vote on the admission of observers referred to in paragraphs 6 and 8.
11. The Chair may decide to hold the meeting or parts thereof in a closed session.
12. Invited experts and observers referred to in paragraphs 6 to 8 shall have the same access to the documents of the meeting that they take part in as the members and participants referred to in paragraph 1, except in relation to the issues that the Chair identifies as confidential or where their participation is excluded. Advisers' access to documents is left for the discretion of the respective member.

#### *Article 7*

##### *Election and replacing of the Chair and Vice-Chairs*

1. The Forum shall be chaired by one of the members elected in accordance with the procedure specified in this Article.
2. The Forum shall elect a Chair and two Vice-Chairs from among its members having the right to vote.
3. The term of office of the Chair and the Vice-Chairs shall be 3 years, which shall be renewable once.
4. Candidatures for the Chair and the Vice-Chairs shall be submitted in writing by any of the members to the Harmonised Enforcement team. When accepting, the candidates shall explain their motivation to the plenary.
5. The election shall be by secret ballot, which shall be provided by means of an online tool, if the election is held during a virtual meeting.
6. Two tellers shall be designated amongst the members to assist in the counting of the vote during a physical meeting.
7. At each round, the candidate with the lowest number of votes shall withdraw. Rounds will run until one candidate receives two-thirds majority of favourable votes of the members having the right to vote, who are present or represented by proxy or alternate to a member.
8. If the election cannot be organised during physical meeting, the Chair and Vice-Chairs may be elected during a virtual meeting.
9. If the Chair and both the Vice-Chairs are unable to attend a meeting, the meeting shall be chaired by the longest serving member from among members appointed by the EU Member States or, in the event of equal length of service, by the oldest of these members.
10. If the office of Chair or one of the Vice-Chairs falls vacant before the end of the term

of office, the successor shall be appointed at the next meeting of the Forum in accordance with the procedure described in this Article. The member then elected shall serve as Chair or Vice-Chair for a full term of office.

11. Where there is reasonable doubt in the integrity or competence of the Chair or the Vice-Chairs, the Forum may decide, with a two-thirds majority of the members present and having the right to vote, to remove him or her or them from the duties.

#### *Article 8*

##### *Responsibilities of the Chair*

The Chair is responsible for the efficient conduct of the business of the Forum and shall in particular:

- a) plan the work of the Forum together with the members and the Harmonised Enforcement team;
- b) cooperate with the Harmonised Enforcement team on preparing draft agendas and draft meeting minutes;
- c) monitor that the Rules of Procedure are respected and propose measures in case of breach;
- d) ensure that at the beginning of each meeting any potential conflict of interest is declared regarding any particular item to be discussed by the Forum and take any other measures<sup>1</sup> necessary to guarantee the impartiality of the output of the Forum and independence of the Forum's decision making;
- e) ensure that the work of the Forum is consistent with its tasks indicated in Article 77(4) of the REACH Regulation;
- f) endeavour to ensure, together with the Forum and the Harmonised Enforcement team, consistency of the Forum's work;
- g) co-ordinate together with the Harmonised Enforcement team the work of the Forum with that of other committees of the Agency as well as with other relevant Community bodies;
- h) endeavour to reach consensus in the conclusions of the Forum;
- i) execute any additional powers entrusted to the Chair by the Forum.

#### *Article 9*

##### *Independence*

1. Based on Article 88(2) of the REACH Regulation, members shall make a declaration of commitment to fulfil their duties and a declaration of interests which could be considered to be prejudicial to their independence. The declarations shall be made in accordance with the templates available at the links provided in the Annex. These declarations shall be made annually in writing and be entered in a register held by the Agency. In addition, the declarations of interests shall be published on the Agency's website without prejudice to Article 11(1). Members who have not submitted the declaration of interests shall not take part in meetings of the Forum and its working groups or adoption of conclusions in written procedures. The Chair may impose the same requirements on members of working groups that are not Forum members.
2. According to Article 88(3) of the REACH Regulation, members, their advisers and invited

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<sup>1</sup> Any such measures, beyond the ones foreseen in Article 88(3) of the REACH Regulation (i.e. exclusion from the voting on the relevant agenda point), are to be specified in the guidance document ED/53/2013 (ECHA/Forum-15/2013/13.2).

- experts participating in the meeting shall declare at each meeting any interest which could be considered to be prejudicial to their independence<sup>2</sup> with respect to any point on the agenda. Any members declaring such interests shall not participate in any voting on the relevant agenda point. The Chair may decide if other measures are necessary.
3. Members, where relevant, shall declare before their participation in a written procedure organised according to Article 18 any interest which could be considered to be prejudicial to their independence with respect to the conclusion to be adopted. Any members declaring such interests shall not participate in the written procedure. The Chair may decide if other measures are necessary.
  4. Following Article 86(3) of the REACH Regulation, members, their advisers and invited experts of the Forum or its working groups shall not accept from any Member States any instructions incompatible with their individual tasks or with the tasks and responsibilities of the Forum. Similarly, these persons should refrain from accepting any such instructions from any other parties.
  5. Members who work as private consultants or who are employed by a consultancy company (including employees of universities or public institutes) and provide such services and who currently have contracts with chemical industry or downstream users associations, chemical companies, or other potential registrants or authorisation applicants, or other bodies which can be considered as an interest group in the context of the field dealt with by the Forum, should withdraw from current contracts and refrain from entering into any new contracts with the aforementioned legal entities.
  6. Members may not be employed by a private enterprise that could have any direct interest in the matter dealt with by the Forum nor by an industry association or other body which can be considered as an interest group in the context of the field dealt with by the Forum. The member shall resign from the Forum before entering into service in any such enterprise or association.
  7. The Chair, or the Vice-Chair if the Chair is not available, is representing the Forum towards other parties. Individual members and invited experts participating in the work of the working groups may be mandated by the Chair to represent the Forum on specific issues and/or occasions. In particular, all speaking invitations to represent the Forum, which a Forum member accepts must be approved in advance by the Chair, or the Vice-Chair if the Chair is not available, and recorded by the Harmonised Enforcement team. To that end the invited member shall provide to the Chair and the Harmonised Enforcement team the title, summary of content, the organiser and date of the event. Only after receiving the Chair's confirmation, the invited speaker may accept the invitation. The Chair may request the individual member for the presentation or documents prepared for the event by the member.
  8. Members may speak about the Forum work without the approval of the Chair only in the capacity of their Member State or when coordinating Forum activities in their Member State with national authorities. When a member speaks only in the capacity of a Member State the communication about the Forum activities needs to be restricted to national perspective and national experience with regard to the involvement in the Forum activities. In such cases the presentation/communication needs to make clear that the statements are their personal opinion and related to their Member State.

#### *Article 10*

##### *Confidentiality*

1. Members, their advisers, invited experts and observers of the Forum and its working groups shall not disclose to any persons other than representatives of relevant public authorities of the Member States, the Commission and Community bodies any

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<sup>2</sup> [http://echa.europa.eu/documents/10162/13607/ed\\_decision\\_28\\_2014\\_en.pdf](http://echa.europa.eu/documents/10162/13607/ed_decision_28_2014_en.pdf)

information acquired as a result of their participation in work in the Forum unless otherwise stipulated in Community or national law or already publicly available. They shall make a written declaration of confidentiality in accordance with the template available at the link provided in the Annex.

2. The obligation to maintain confidentiality shall continue to apply even after participation of members, their advisers, invited experts and observers in the work or in the meetings of the Forum has ceased.

### *Article 11*

#### *Transparency*

1. In accordance with Article 88(1) of the REACH Regulation, the membership shall be made public unless the Executive Director decides not to publish the appointment at the request of an individual member.
2. The Forum shall operate in accordance with the need for a high level of transparency, without prejudice to legitimate requests for confidentiality or the independence of members, their advisers and invited experts vis-à-vis external influence.
3. The following documents of the Forum are published on the Agency's web site, subject to respect of confidentiality requirements:
  - a) Rules of Procedure;
  - b) Final minutes of plenary meetings, pursuant to Article 15(1);
  - c) Draft agendas of plenary meetings;
  - d) The annual declaration of interests in accordance with Article 9(1);
  - e) The names of the members of the Forum together with their brief CVs;
  - f) Forum Work Programme

### *Article 12*

#### *Invitation to meetings*

1. The meetings of the Forum shall be convened by invitation from the Executive Director or an authorised member of the ECHA Secretariat following a consultation with the Chair or, alternatively, at request of a majority of the members.
2. The invitation to a meeting and the provisional draft agenda shall be circulated no later than 33 calendar days before the meeting.

### *Article 13*

#### *Agenda for meetings*

1. A provisional draft agenda shall be drawn up by the Harmonised Enforcement team in cooperation with the Chair and circulated to the Forum with the invitation to the meeting.
2. Members may request items to be included in the agenda. Such requests shall be submitted to the Harmonised Enforcement team within 7 calendar days of the circulation of the provisional draft agenda. The Harmonised Enforcement team will examine these requests and consult the Chair about adding them to the agenda.
3. A final draft agenda shall be circulated 15 calendar days before the meeting at the latest. The agenda shall be adopted at the beginning of each meeting.
4. If the Forum so decides, additional items may be added to the agenda at any time, and items on the agenda may be deleted or carried over to a subsequent meeting.

*Article 14**Documentation for the meetings*

Documentation for the meeting shall be made available as early as possible to allow preparation for the meeting. With due consideration of their volume, documents shall be circulated 15 calendar days before the meeting at the latest. In case the previous meeting was less than 3 months before, the documents may be circulated 12 calendar days before the meeting.

*Article 15**Minutes*

1. Minutes of each plenary meeting shall as a general rule include:
  - a) any specific interests declared by the participants to any points of the agenda pursuant to Article 9(2);
  - b) a summary record of the proceedings;
  - c) the conclusions reached by the Forum;
  - d) the list of attendees;
  - e) action points.
2. Taking into account Article 6(11), draft minutes shall be distributed to participants of the meeting of the Forum no later than six weeks after the meeting. Written comments shall be provided to the Harmonised Enforcement team within the specified deadline, which shall be a minimum of 14 calendar days. The minutes shall be adopted at a following meeting or by written procedure.

*Article 16**Working groups*

1. Where appropriate, the Forum may establish time bound or permanent working groups. A working group shall be chaired and may be vice-chaired by a member of the Forum or an alternate to a member. The vice chair may share or take over some of the tasks of the working group chair. The working group chair or vice chair shall report to the Forum.
2. Permanent working groups shall be established to implement the repetitive and cyclical activities foreseen in the Forum's remit<sup>3</sup>. The mandate of such working groups may cover a broad scope of cyclical activities. The position of the chair of a permanent working group shall be subject to review every two years and may change if needed.
3. Time bound working groups shall be established for activities with a foreseeable duration<sup>4</sup>. The mandate of such working group shall be specific and its duration limited.
4. The Forum conclusion establishing the mandate, objectives and duration of the activity of a working group shall also include its composition, and shall be recorded in the minutes of the meeting.
5. Working groups are composed of volunteering members of the Forum, alternates to the members and/or invited experts on the basis of the required expertise. The working group members should then receive an invitation from the Executive Director

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<sup>3</sup> Such as e.g. advice on enforceability of restrictions, prioritisation of coordinated enforcement projects or training for trainers.

<sup>4</sup> Such as e.g. a single coordinated enforcement project



or an authorised member of the ECHA Secretariat, following a consultation of the Chair.

6. The mandate, composition and the objectives of a working group shall be determined by the Forum and reviewed at each plenary meeting.
7. The members of the working groups under the Forum shall work in accordance with the relevant working procedures adopted by the Forum.
8. Draft agendas, meeting dates and minutes of the working group meetings shall be made available to the Forum.
9. Working groups under the Forum shall apply these Rules of Procedure, as applicable.
10. In exceptional circumstances, where the Forum cannot form a working group, but has to undertake an urgent task, it may temporarily establish a task force. The task forces follow the rules of the working groups, except that they are not chaired by Forum members or alternates, but are coordinated by the Harmonised Enforcement team. If a task force is formed, the Forum shall make further attempts to form a working group to carry on the activities of the task force at the next plenary meeting.

#### *Article 17*

##### *BPR Subgroup*

1. The BPR Subgroup shall be established for the purposes of coordinating a network of MS authorities responsible for enforcement of the BPR as stipulated in Article 1(3).
2. The BPR Subgroup shall be composed of Forum members appointed by the Member States, in line with Article 3(1), Forum members appointed by Iceland, Liechtenstein and Norway, in line with Article 3(2) and a member representing Switzerland. Only Forum members appointed by the Member States have the right to vote.
3. A member representing Switzerland shall be appointed by the same process as Forum members.
4. A Forum member referred to in Articles 3(1) and 3(2), absent from the meetings of the BPR Subgroup, may be represented by one of the alternates appointed according to Article 5(3) and empowered to represent him in the BPR Subgroup. Such alternate may also represent the Forum members in all proceedings of the BPR Subgroup on request of the Forum member, as stipulated by Article 5(4).
5. The BPR Subgroup shall be chaired by the BPR Subgroup Chair.
6. The BPR Subgroup shall elect its Chair and two Vice Chairs by the same process and adhering to the same rules as described in Article 7. An alternate empowered to deal with matters of BPR may be elected as the BPR Subgroup Chair or Vice Chair if the Forum member from his or her country is not attending the BPR Subgroup meetings. Should the Forum member from the country of an alternate elected as BPR Subgroup Chair or Vice Chair attend a BPR Subgroup meeting, than this alternate cannot be chairing during that meeting.
7. In case not stated to the contrary in the Rules of Procedure their provisions shall, where relevant, be applicable also to members, alternates and all proceedings of the BPR Subgroup and its working groups.
8. The BPR Subgroup and the Forum shall endeavour to keep its activities closely coordinated where it is appropriate. To this end they shall hold back-to-back plenary meetings, where they report to each about their activities and conclusions.

### *Article 18*

#### *Quorum and Conclusions of the Forum*

1. The quorum necessary for a meeting is achieved when at least half of all members having the right to vote are present or represented by a proxy at the meeting at the time of the agenda point in question.
2. Members having declared a conflict of interest regarding an agenda point under Article 9(2) shall not be regarded as a part of the quorum for the purposes described under paragraph 1, and shall not participate in voting on that agenda point.
3. If the quorum is not achieved, the Chair may decide to immediately launch a written procedure in accordance with Article 19.
4. When preparing its conclusion the Forum shall use its best endeavours to reach a consensus.
5. Unless these Rules of Procedure otherwise specify, if consensus cannot be reached, the conclusion of the Forum shall consist of the position of the simple majority of all members having the right to vote, including its grounds. During virtual meetings, members may cast their votes using online voting tools. Members not supporting the majority position shall present their minority position(s), including their grounds, which may also be recorded.

### *Article 19*

#### *Written Procedure*

1. The Forum can adopt conclusions by written procedure. To this end, the Harmonised Enforcement team, in consultation with the Chair, shall send the members the draft documents on which their opinion is sought and indicate the response period.
2. The period shall not be shorter than 14 calendar days. In exceptional cases, or if agreed beforehand by the Forum by consensus, the period can be shortened.
3. Without prejudice to paragraph 5 any member who does not respond within the response period is considered to have given his tacit agreement to the distributed document. A document is agreed by consensus when all members having the right to vote have agreed expressively or tacitly. In the event of non-consensus, Article 18(5) shall apply.
4. If major and justified objections are submitted to the Harmonised Enforcement team, the Chair shall decide whether the written procedure should be suspended and the adoption of the draft conclusion postponed to the next meeting of the Forum.
5. The Harmonised Enforcement team shall inform the Forum of the outcome of the written procedure and forward the written procedure report to the Forum for its next meeting.

### *Article 20*

#### *Reimbursement*

The Agency shall reimburse members of the Forum and, where appropriate other participants invited to attend physical meetings of the Forum or its working groups in accordance with the rules adopted by the Management Board on the reimbursement of travel and other expenses.

*Article 21*

*General provisions*

1. The conclusion to amend these Rules of Procedure shall be taken by a two thirds majority of all members having the right to vote. Amendment of the Rules of Procedure shall be adopted by the Management Board.
2. The Rules of Procedure and their amendments shall apply from the date they have been adopted by the Management Board.

ANNEX: Links to the ECHA Declaration templates

**Links to the ECHA Declaration templates**

[Declaration of interest and commitment](#)

[Declaration of confidentiality](#)