



Helsinki,
Doc: **MB/M/02/2008 final**

MINUTES OF THE MEETING OF ECHA'S MANAGEMENT BOARD
held on 23/24 April 2008

(Document approved by the Management Board)

I. Documents submitted to the Management Board

Draft Agenda	MB/A/02/2008 rev 1
Draft Minutes	MB/M/01/2008
Implementing rules for Regulation EC 1049/2001 (Access to documents)	MB/12/2008 rev 1
Implementation of Art. 118(3) – Review of rejection of confidentiality claims	MB/17/2008
Rules on transparency regarding safety of substances	MB/18/2008
Guidance on “Substances in Articles”	MB/19/2008
Rules of Procedure of Committees and Forum	MB/20/2008
Replacement of members of RAC and SEAC	MB/21/2008 + MB/31/2008
Arrangements for the appointment of the Board of Appeal	MB/022/2008 rev 1
Implementing rules for the Staff Regulations	MB/23/2008 + MB/24/2008
Revision of Reimbursement Rules	MB/25/2008
General Report 2007	MB/26/2008 rev 01
Readiness of REACH processes	MB/27/2008
REACH-IT readiness	MB/28/2008
Pre-registration promotion campaign and readiness	MB/29/2008
Rolling plan (update)	MB/30/2008
Participation of OECD in the activities of ECHA	MB/16/2008
ECHA Inauguration	MB/32/2008

II. Summary Record of the Proceeding

Introductory remarks

The Chair congratulated Mr Ognean on his official appointment by the Council as representative of Romania on the Management Board. Mr Ognean briefly introduced himself to the other Board Members.

The Chair also presented the observers attending the meeting on behalf or in support of Board Members and informed the Board of the proxies that had been notified (details are listed under heading IV of these Minutes).

1. Draft agenda *(MB/A/02/2008 rev 1)*

The Board identified a number of additional points to be dealt with under ‘Any Other Business’ (for details, see chapter II. 19) or under related items already contained in the draft agenda.

On this basis, the Board adopted the draft agenda

2. Draft minutes *(MB/M/01/2008)*

The Board discussed and agreed on several amendments to the draft minutes of the meeting on 13/14 February 2008, which had been submitted in writing by Board Members. In addition, one of the Members wished to clarify under heading 13 of the minutes (‘Reimbursement of tasks executed by the Member States’) that the ED had been asked to provide more information regarding the underlying assumptions for the number of substances to be examined. (The amendments agreed are listed in the corrigendum in the annex to the present minutes).

One of the Members raised the issue of an article in ‘Chemical Watch’, which had been published following the Board meeting in February. He said that the necessary confidentiality of the Board’s deliberation should be ensured. He also asked for an official press release to be issued after each Board meeting. The Chair noted that the article in question had accurately reported the final decision on the procedure for finalising guidance which the Board had adopted after a written procedure, but had not revealed confidential deliberations.

The Chair suggested producing shortly after each meeting (i.e. within two days) a flash report on the main outcome. Such a document could be drafted by the Secretariat under supervision of the Chair and each member could use this for immediate communication

purposes. Such report would be produced from the next meeting onwards. This proposal was accepted.

3. Implementing rules for Regulation EC 1049/2001 (Access to documents) (*MB/12/2008 rev 1*)

The floor was given to Minna Heikkilä, Senior Legal Advisor, who presented the meeting document, which contained a revised version of the draft Decision following the last Board meeting in December. The new draft accommodated a series of amendments proposed by Board Members.

In the meantime, further amendments had been submitted by the NL (made available on CIRCA) and by Mr Pallemmaerts who also withdrew his amendments from the last meeting (tabled as room documents).

Ms Heikkilä clarified that the Århus Regulation applied to access to documents where the document contained environmental information while the Access to documents Regulation (1049/2001) applied in general to access to documents. The decision proposed would apply only to cases under the access to documents Regulation (1049/2001).

With regard to the wording proposed by the NL, Ms Heikkilä explained that Article 5 (2) of Regulation 1049/2001 already covered the group of cases concerned by the proposed amendment.

The Board then discussed the amendments from Mr Pallemmaerts and other amendments orally submitted by Members and finally agreed to accommodate the following modifications:

- From Annex 1 of the meeting document (comments by Marc Pallemmaerts): the content of proposed recital 4 was accepted. The content of the proposal for recital 5 would be merged with recital 3;
- Paragraph 2 of Article 1 would be deleted
- The middle line in Article 2.4 would be deleted.

A clean version of the revised document was circulated.

On this basis of these modifications, the Board adopted the Decision contained in Annex 1 of document MB/12/2008 rev 01.

4. Implementation of Art. 118(3) – Review of rejection of confidentiality claims (*MB/17/2008*)

Ms Minna Heikkilä presented the proposal for a Decision for remedies in the context of treatment of confidentiality claims according to Article 118 (3) of the REACH

Regulation. She clarified that the meeting document also contained, for information of the Board, the related draft Standard Operating Procedure of the Agency.

She also acknowledged receipt of the amendments proposed from Mr Pallemmaerts and explained why in her view they should not be accepted.

The Board welcomed the proposal prepared by the Secretariat. Several Members raised the issue of how the Agency would exercise its discretion in assessing whether or not disclosure of certain information could be potentially harmful. This also included the question of what kind of evidence would be requested from the party concerned. Once practical experience has been gained in this respect, the Secretariat should report back to the Management Board.

Regarding specific amendments to be made, upon discussion it was decided to accept one modification proposed by Mr Pallemmaerts, i.e. for Article 3, paragraph 2 of the draft Decision (tabled at the meeting).

On this basis, the Board adopted the Decision contained in Annex 1 of document MB/17/2008 rev01.

5. Rules on transparency regarding safety of substances (*MB/18/2008*)

Mr Bjorn Hansen, Director for 'Cooperation', presented the meeting document.

The two draft rules described in the meeting document were based on Article 109 of the REACH Regulation. These concerned the publications of decisions and the related supporting documents (draft rule 1) as well as the publication of comments and information received from outside parties (draft rule 2).

Mr Hansen then recalled the procedure to follow, i.e. the need to consult the Commission before final adoption of the transparency rules by the Management Board.

In response to the presentation of the meeting document, some Board Members suggested reconsidering the types of decisions to be published under draft rule 1 (those related to testing proposals according to Article 40, paragraph 3, and Article 41, paragraph 3, of the REACH Regulation).

Some Members suggested taking into account additional aspects related to the publication of information, such as, for instance, the issue of access to information for workers (Art. 35) or the Agency's discretion in making its opinions available on the web (Article 64, paragraph 6).

The Board questioned the feasibility of producing non-confidential versions of Agency decisions, unless an approach could be developed which made the work simple. A

discussion about the publication of support documents was seen as premature as the actual format and content of these documents had not yet been fully defined.

Regarding the overall approach, some Board members said that the publication of ‘raw’ information could turn out to be misleading. Only relevant information should be made available to the public. Others argued that information should not be withheld simply because there was a risk that it might be misunderstood.

In response to these comments, Mr Hansen explained that certain information related to testing proposals had to be published in any case. He was therefore in favour of providing also information about the full process and outcome. He acknowledged that the format of the decision support document still needed to be finalised. This was precisely the reason why at this stage no concrete proposal related to the publication of these documents had been made in the meeting document.

The Chair concluded the discussion by asking the ECHA Secretariat to

- link the document to the overall picture of information to be published by the Agency;
- avoid the duplication (public and non-public versions) of documents
- postpone the discussion on the publication of decision support documents.

In terms of next steps, it was decided that the ECHA Secretariat should, in the light of the Board’s deliberation, prepare a first set of rules. The Commission should be consulted informally on these rules (i.e. at the technical level) before submitting a related document to the Board in June for approval. This would then be followed by the official consultation of the Commission and, subsequently, final adoption of the rules by the Board in September.

6. Guidance on “Substances in Articles” (*MB/19/2008*)

The ED introduced the agenda item. He recalled the genesis of the document, including the fact that no consensus on important parts of the document (i.e. the application of the 0.1 % threshold of substances of very high concern) had been reached among the Member States.

The ED said that the guidance was now submitted to the Management Board for advice, in line with the procedure agreed for the finalisation of guidance documents. Pending the availability of related case-law, the ED intended to follow the Commission’s legal interpretation supported by a majority of Member States. Remaining dissenting views should within two weeks be officially notified to the Agency. In order to clarify fully the consequences of these diverging interpretations for industry, the Member States concerned should also provide information about the possible impact on the enforcement of REACH.

The subsequent discussion by the Board focused mainly on the appropriate procedure to follow before publication of the guidance by ECHA.

In terms of substance, a representative of one of the Member States concerned said that while the Commission's view could be considered as a possible interpretation, a more restrictive approach could also have been adopted in legal terms. The minority position should be followed as it would ensure better chemical safety.

During the discussion it became clear that none of the members was able to notify a change in position of their Member State so that there was indeed a majority of Member States aligned with the content of the guidance document as handed over by the Commission. Some members representing the opposing minority of Member States then suggested publishing the guidance without the controversial parts.

Some Board Members questioned the need for the ED to follow the Commission's legal interpretation.

The ED stressed that he did not consider postponing the publication as a viable option. This viewpoint was supported by a representative of the Commission, who also recalled that the functioning of the internal market was at stake. This aspect was echoed by some representatives of the Member States, one of the Members appointed by the EP as well as by the representative of industry, who made a final plea for publishing the majority interpretation without dissenting views that lead industry to confusion.

In order to conclude on the issue of a possible postponement, the Chair asked the Board Members to indicate, on an informal basis, their support for a further five-month review period. This was done by show of hands, with the result that 11 Members favoured a postponement and 19 were against. Two Members abstained. The Chair concluded that the option of postponing was thus discarded. The ED reacted that the large minority induce him to start the review process as soon as possible but that this process will involve the different stages of the agreed update procedure and thus be lengthy.

Regarding the procedure to follow for the transmission of dissenting views, some Member States questioned the need of submitting these through the Permanent Representations. Some suggested that this should also be possible via the national Competent Authorities. The two weeks deadline for submitting the notification was considered to be too short. In addition, the ED was asked to communicate to the Member States his final conclusions on the matter in writing. Such a letter should then trigger the deadline. Some Member States stated that it would be difficult to provide detailed information on the enforcement aspects.

Whilst underlining again his intention to publish the guidance quickly and in line with the Commission's interpretation, the ED clarified the procedural issues as follows

- Notifications by the Competent Authorities would be accepted if they included an explicit declaration that the view expressed was the official position of the Member State concerned.
- If notification letters would be silent on enforcement, Member States should subsequently communicate that aspect as soon as possible.
- The notification process would be started by a letter from him to all Member States, addressed to the Permanent Representations to the European Union, summarizing the issue at stake as well as the result of the Management Board meeting.
- The deadline for replies to these letters would be extended to three weeks.

The Chairman saw no objection to this proposal and asked the members to inform their capitals of the agreed procedure.

7. Rules of Procedure of Committees and Forum (*MB/20/2008*)

Ms Leena Ylä-Mononen, Head of Unit for Committees, presented the draft rules of procedures for the Committee for Risk Assessment, the Committee for Socio-economic Analysis, the Member States Committee and the Forum. In line with the REACH Regulation, these had been submitted to the Management Board for approval. In addition, the intention was to seek the opinion of the Management Board on the possibility of appointing alternates in view of a future revision of the rules of procedure.

Ms Ylä-Mononen explained the way in which the rules of procedure had been prepared. Rules of similar bodies outside the Agency had been examined beforehand. Discussions in the three ECHA Committees and the Forum had taken place independently. This had resulted in minor inconsistencies between the four sets of rules of procedure. Some of these were also due to the different remits of the bodies concerned.

The introductory presentation was followed by an extensive exchange of views by the Board.

The discussion first centered on the issue of alternates. A majority of interventions by Board Members favoured the possibility of appointing alternates, especially as far as the Member State Committee was concerned. Others opposed this option and took the view that the appointment of alternates was excluded for legal reasons, as the REACH Regulation did not explicitly provide for such a possibility.

In spite of the considerable support voiced for having alternates, the Board nevertheless decided not to overrule the Committees' and the Forum's own view in this respect. Instead, the Chair concluded that, where necessary, the use of proxies should first be tested. As far as the Member State Committee was concerned, the need for alternates (as

an alternative to the system of proxies) should be reconsidered at a later stage - in the light of practical experience - and by taking into account the legal requirements of the REACH Regulation.

Regarding the provisions on written procedures, some members objected to the deadline (of 5 days) given for reaction. The ECHA Secretariat reassured the Board that the use of a shortened deadline for urgent cases would be strictly limited to exceptional circumstances. It was also clarified that for written procedures a system of proxies had not been foreseen.

The Board then discussed the notion of 'co-opting' additional members to the committees, as provided for in Article 85 (4) of the REACH Regulation. According to one of the Board Members, the approval by the Management Board would be required for the appointment of these members. However, this viewpoint was neither supported by ECHA's Legal Advisor nor by other Board Members. It was nevertheless decided to keep the Board regularly informed about the co-opting of additional members by the Committees or the Forum.

On the possibility for observers to participate at the meetings, two representatives of interested parties questioned the provision according to which the procedure for admitting observers should be laid down by a two-thirds majority. They also demanded that observers should be reimbursed.

Another representative of interested parties stated that the participation of 'case-holders' as observers should not constitute a common rule. Such participation should rather be considered on a case-by-case basis and a special invitation to a meeting should be required.

These Board Members, supported by a series of other Members, also criticised the provision allowing for the exclusion of an observer upon a request by a single Committee Member. The ECHA Secretariat explained that this should be seen as a safeguard clause to be applied in the last resort. The Board nevertheless took the view that the provision in question sent out the wrong signal. As an alternative solution, the possibility of holding closed session should be explicitly included into the rules of procedure.

Regarding the confidentiality clause, one of the representatives of interested parties felt that it unduly restricted the possibilities of NGOs observers to report back to their organisations. In the same context, the Commission said the confidentiality clause in some of the rules of procedures did not allow for internal reporting of the representatives of the Commission.

Finally, the same representative of interested parties raised the issue of the threshold for declaring financial interests. As a consequence, the Management Board invited the Secretariat to review, if necessary, the threshold of financial interests of € 50.000 in the light of the rules and practise of the other comparable bodies and to report back to the Management Board on this.

Further to these discussions the Management agreed as follows:

Secretariat and the Committees and the Forum should to ensure a maximum degree of harmonisation when the rules of procedure are revised for the first time, taking the rules of procedure of the SEAC as the basis, where appropriate.

In article 6, paragraph 11 (RAC, SEAC), 10 (MSC) or 8 (Forum) the provision on exclusion of observers should be replaced by the clause “*The Chair may decide to hold the meeting or parts thereof in a closed session.*”

On this basis, the Management Board

approved the draft rules of procedure of the Committee for Risk Assessment, Committee for Socio-economic Analysis and the Member State Committee as laid down in Annexes 1, 2 and 3, of document MB/20/2008 respectively;

adopted the draft rules of procedure of the Forum for Exchange of Information on Enforcement as laid down in Annex 4 of document MB/20/2008.

8. Replacement of members of RAC and SEAC (*MB/21/2008 + MB/31/2008*)

Ms Leena Ylä-Mononen presented the proposal for replacing certain members of the Committee for Risk Assessment and the Committee for Socio-Economic Analysis.

The Management Board decided to appoint

- Mr Paul KREUZER and Ms DI PROSPERO FANGHELLA as members of the Risk Assessment Committee and
- Mr João LOURENÇO as a member of the Committee for Socio-economic Analysis.

9. Arrangements for the appointment of the Board of Appeal (*MB/22/2008 rev 01*)

A revised meeting document was tabled, which contained a new timetable for the appointment process.

After presentation of the document by the ED, the Commission was asked to update the Board on the state of the pre-selection procedure. The Commission stated that only a limited number of candidates had applied for the positions as regular Board of Appeal Members. Everything would be done to be on schedule. However, the interviews had not yet been carried out and, therefore, it remained to be seen whether the candidates that

applied were suitable. If the vacancy notice had to be republished, the Board would be informed immediately.

One of the Board members asked why the vacancy notice had indicated an age limit for the candidates. It was explained that the reason was to ensure that Board members could carry out at least one full five-year term before retirement.

Regarding the position of chairperson of the Board, the ED clarified that the Commission took the view that one single Chairperson with one alternate should be appointed.

Several Board members were in favour of a vote by secret ballot. Subject to this specific modification the Board approved the overall approach for the appointment process as contained in meeting document MB/022/2008 rev 01.

In addition, the Board decided to appoint

Jukka Malm (FI)
Alexander Nies (DE) and
Grant Lawrence (COM)

as members of the preparatory group.

10. Implementing rules for the Staff Regulations (*MB/23/2008 + MB/24/2008*)

The documents were briefly presented by Udo Heider, Director for Resources.

Without further discussion, the Management Board approved the draft decision contained in the annex to document MB/23/2008 as well as the draft decisions contained in the annex 1, 2 and 3 of document MB/24/2008.

The Board entrusted the ECHA Secretariat with submitting these documents to the Commission for approval.

11. Revision of Reimbursement Rules (*MB/25/2008*)

The Director for Resources presented the proposal for revised reimbursement rules.

During a short exchange of views some Members took the view that the 5-days deadline for booking flights after receipt of the meeting invitation was too short.

Some participants pointed to existing problems in the timely reimbursement by the Agency.

In response to a question by the Commission, the ECHA Secretariat explained that the envisaged increase for the accommodation allowance was due to the fact that the current amount had proved to be insufficient for Helsinki.

One member asked for reconsidering the minimum duration of a flight needed for getting a business class ticket reimbursement. It was agreed to revisit these issues at a later stage.

The Board then adopted the reimbursement rules as contained in the meeting document.

12. General Report 2007 (*MB/26/2008 rev 01*)

The ED presented the draft General Report of ECHA's activities in 2007. The revised document takes into account comments received from the Commission.

The Chair recalled that the document was the first document of this kind produced by the Agency and only covered the first 7 months of activity. The current scope and format should therefore not be seen as a precedent for the future.

The Board agreed on two editorial improvements and some factual corrections.

On this basis, the Board adopted the General Report 2007 and entrusted the Executive Director with forwarding the document to the Member States, the European Parliament, the Council, the Commission, the European Economic and Social Committee and the Court of Auditors.

13./14. REACH-IT Readiness and Readiness of REACH processes (*MB/28/2008*) and (*MB/27/2008*)

The ED gave a status report on the readiness of REACH IT.

The Chair, whilst underlining the seriousness of the situation, welcomed the fact that the ED had informed the Board in an open and detailed manner about the difficulties with which the Agency was faced.

The Board expressed its concern about the current situation and pointed to the risk of the confidence in the Agency being jeopardised. It was stressed that the main priority was to ensure full functionality of the use of REACH IT by industry in order to ensure that companies could comply with their legal obligations under REACH as from 1 June 2008. If necessary, a 'Plan B' should be established.

The Board also highlighted the need to keep both the Member States and industry informed about further developments. Open and regular communication should be ensured for this purpose.

Furthermore, the Board suggested reviewing the implementation of the REACH IT-related contract. An external assessment was considered to be possibly useful.

The acting Director for Operations completed the debriefing by providing information on the readiness of REACH processes. He focused in particular on the alternative solutions ('work arounds') that had become necessary due to the deficiencies of REACH IT. It was also pointed out that the development of alternative solutions was resource intensive and it may thus have an effect on the implementation of the work programme for 2008.

In conclusion, the ED undertook to send an information update on readiness to the Board on 6 May, 18 May and 29 May 2008. Stakeholders would also be informed immediately after each of these dates.

15. Pre-registration promotion campaign and readiness (*MB/29/2007*)

The related document was presented by Joachim Kreysa Director for Cooperation.

This was followed by an exchange of views.

The Chair expressed his thanks to those Members of the Board that had circulated information about REACH awareness in their respective Member States.

The representative of the Trade Unions said that his organisation would help in raising awareness among workers, for instance by sending out electronic leaflets (which should be provided by ECHA).

The involvement of the 'European Enterprise Network' was suggested and the Commission confirmed their involvement.

One Member stressed the special difficulty in reaching companies concerned by the REACH Regulation that were not part of the chemical industry. Informing SMEs was also mentioned as a particular problem.

Finally, one Member stressed the need to inform companies on readiness of the IT system and the fact that the start of pre-registration will not be postponed.

16. Rolling plan (*MB/30/2008*)

The ED briefly presented the updated rolling plan of Management Board activities.

It was agreed to build into the rolling plan the reporting on REACH IT milestones and on progress in implementing the work programme. The Chair also asked the Members of the Board to take note of the proposed meeting dates for 2009.

17. Participation of OECD in the activities of ECHA (*MB/16/2008*)

The meeting document was presented by Joachim Kreysa Director for Cooperation. He underlined that the envisaged cooperation with OECD would focus, in particular, on technical issues such as the IUCLID and QSAR tools.

One of the Board Members raised the question to what extent the Member States of the OECD would profit from the cooperation between the OECD Secretariat and ECHA.

Whilst being in favour of technical cooperation, another Member questioned the value of OECD participation in committee work, especially as far as the Member State Committee was concerned.

A representative of interested parties supported strong cooperation with the OECD as the objective should be to make REACH the international standard.

The question was raised to what extent the opening would be reciprocal.

The Chair concluded that, generally speaking, ECHA should have the possibility to cooperate with the OECD, although the Committees should not be put under pressure to include observers from this body.

With this caveat, the Management Board

- approved, subject to agreement of the relevant Committees, the participation of the OECD as observers in the work of the Agency;
- charged the ECHA Secretariat with seeking the agreement of the relevant Committees as to such a participation and to invite the observers from the OECD as appropriate and
- authorised the Executive Director to extend, where appropriate, such an invitation to the participation in the activities of working groups that are no formal components of the Agency.

18. ECHA Inauguration (*MB/32/2008*)

The ED presented the information note on the ECHA inauguration event scheduled for 3 June 2008. Commission President Barroso, Vice-President Verheugen, and Finnish Prime Minister Vanhanen are expected to participate.

The ED stressed that this event would be a unique possibility to attract broad media attention. A special programme for journalists had been planned.

The Chair requested to make all practical information related to the inauguration event available as soon as possible.

19. Any other Business

Fee Regulation

The Chair drew attention to the fact that the 'Fee Regulation' had been published and it was agreed to make it also available on ECHA's website.

'Only representative'

The Commission was invited to provide ECHA in writing with its new interpretation regarding the remit of 'only representatives'.

A Board Member representing the Commission explained briefly the new developments in this respect. Although the opinion of the Commission's Legal Service could not be given out, he undertook to supply ECHA with a paper containing the main arguments.

The Chair stressed that the Commission should also update the Competent Authorities on this issue.

The ED explained that the guidance documents would also have to take account of this new legal interpretation. IUCLID and the registration process would have to be modified accordingly.

Workload for Member States' Competent Authorities

One of the Board members criticised that an increasing number of activities for the Member States' Competent Authorities were being launched (the example of 'risks communication' was quoted). ECHA should rather give priority to the implementation of the REACH requirements.

In response, the Chair said that that he understood the concern raised and that the Agency had clearly to focus on core-activities. It was nevertheless up to the individual Member State to decide whether or not it wished to participate in additional activities.

Budget

The Commission explained that the agreement reached in a Trialogue between the Budgetary Authority and the Commission in November 2007 on the financing of such

projects as Galileo would mean a budget cut of about 3 million for ECHA in the Preliminary Draft Budget for 2009.

In order to overcome this shortfall, the Commission intends to propose to the Budgetary Authority to allow for a carry-over of part of the 2007 budget surplus of about € 1.5 million and to budget for an EFTA contribution of about € 1.5 million, as the ETA agreement is scheduled to be ratified this summer.

Testing Methods Regulation

The Commission informed the meeting that the adoption of the ‘Testing Methods’ Regulation had been delayed because of the language requirements.

As the ‘scrutiny’ procedure had been applied for the first time, the EP had tested the inherent procedural opportunities. The EP had advocated, in particular, the validation of alternative test methods. Final approval by the EP was expected for May 2008.

Announcements by the ED

The ED underlined the importance for all Member States to participate in the ‘training for trainers’ on 20 May 2008.

He informed the Board that a series of management posts had been published by the Agency.

Accessibility of Management Board documents

One of the Board Members suggested making Board documents directly available to members of the Committee and the Forum. It was agreed that the Secretariat would examine this possibility and report back at the next Board meeting.

20. Next meeting and closure

The Chair recalled that the next meeting would be held on 18/19 June 2008 (two full days).

Important agenda items will include:

- Appointment of Board of Appeal (subject to delivery of list of candidates by the Commission)
- Revision of Financial Regulation
- Report on operations after 1 June
- Decision following report on probationary period of the ED

- Interim reports of working groups (“Multi-annual Work Programme” and “Reimbursement of Member States”)

Given their retirement from their duties as Board members, the Chair expressed his thanks to Mr Martin Lynch (IE) and Mr Helge Andreasen (DK) for their helpful and constructive role in the activities of the Management Board. This received applause from the whole Board.

III. Decisions taken/ Conclusions reached by the Management Board

The Management Board

- Approved the minutes contained in document MB/M/01/2008 subject to the amendments indicated in the corrigendum attached to the present minutes;
- On the basis of the modifications listed under II.3 of the present minutes, adopted the Decision on the implementation of Regulation EC No1049/2001 regarding public access to documents (contained in Annex 1 of document MB/12/2008 rev 01);
- On the basis of the modifications indicated under II.4 of the present minutes, adopted the Decision on the implementation of Art. 118(3) – Review of rejection of confidentiality claims (contained in Annex 1 of document MB/17/2008 rev01);
- On the basis of the modifications indicated under II.7 of the present minutes, approved the draft rules of procedure of the Committee for Risk Assessment, Committee for Socio-economic Analysis and the Member State Committee as laid down in Annexes 1, 2 and 3, of document MB/20/2008 respectively;
- On the basis of the modifications indicated under II.7 of the present minutes, adopted the draft rules of procedure of the Forum for Exchange of Information on Enforcement as laid down in Annex 4 of document MB/20/2008;
- Decided to appoint Mr Paul KREUZER and Ms DI PROSPERO FANGHELLA as members of the -Risk Assessment Committee;
- Decided to appoint Mr João LOURENÇO as a member of the Committee for Socio-economic Analysis;
- Approved the overall approach for the appointment process of the Members of the Board of appeal as contained in meeting document MB/022/2008 rev 01 (with the modification that the Board will vote by secret ballot) and appointed Messrs Jukka Malm (FI), Alexander Nies (DE) and Grant Lawrence (COM) as members of the preparatory group.
- Approved the draft decision contained in the annex to document MB/23/2008 as well as the draft decisions contained in the annex 1, 2 and 3 of document MB/24/2008 and entrusted the ECHA Secretariat with submitting these documents to the Commission for approval.
- Adopted revised reimbursement rules as contained in document MB/25/2008;

- On the basis of editorial improvements and factual corrections agreed at the meeting, adopted the General Report 2007 contained in document MB/26/2008;
- Approved, subject to agreement of the relevant Committees, the participation of the OECD as observers in the work of the Agency. The ECHA Secretariat was charged with seeking the agreement of the relevant Committees as to such participation and to invite the observers from the OECD as appropriate. The Executive Director was authorised to extend, where appropriate, such an invitation to the participation in the activities of working groups that are no formal components of the Agency.

IV. List of Attendees

Representatives of the Member States

Zoltán ADAMIS (HU)
Helge ANDREASEN (DK)
Aurelija BAJORAITIENĖ (LT)
Karel BLÁHA (CZ)
Francis E. FARRUGIA (MT)
Ana FRESNO RUIZ (ES) also acting as proxy of António GONÇALVES
HENRIQUES (PT) and of E. GECHEVA (BG)
Odile GAUTHIER (FR) also acting as proxy of Ethel FORSBERG (SE)
Claude GEIMER (LU)
Thomas JAKL (AT)
Katarzyna KITAJEWSKA (PL)
Antonello LAPALORCIA (IT)
Marc LEEMANS (BE)
Martin LYNCH (IE)
Jukka MALM (FI) also acting as proxy of Ilze KIRSTUKA (LV)
Leandros NICOLAIDES (CY)
Alexander NIES (DE) also acting as proxy of Marta CIRAJ (SI)
Edita NOVÁKOVÁ (SK)
Teodor OGNEAN (RO)
John ROBERTS (UK)
Arnoldus VAN DER WIELEN (NL)
Maria-Miranda XEPAPADAKI-TOMARA (EL)

Representatives of the Commission

Heinz ZOUREK (COM) also acting as proxy of Grant LAWRENCE (COM) on 24 April
Anneli PAULI (COM) also acting as proxy of Hein ZOUREK (COM) and Grant
LAWRENCE (COM) on 23 April

Independent persons (appointed by the European Parliament)

Bernd LANGE
Alexander DE ROO

Individuals from interested parties (appointed by the Commission)

Tony MUSU (ETUC)
Alain PERROY (CEFIC)

Observers

Simona FAJFAR on behalf of Marta CIRAJ (SI)
Jan HAMMAR on behalf of Ethel FORSBERG (SE)
Fernanda SANTIAGO on behalf of António GONÇALVES HENRIQUES (PT)
Veneta VLADIMIROVA on behalf of Ekaterina GECHEVA-ZAHARIEVA (BG)
Laura DEGALLAIX (BEUC) on behalf of Marc PALLEMAERTS (IEEP)
Graham WILLMOTT on behalf of Heinz ZOUREK (COM)
Francis ROCHFORD (IE)
Astrid BARTELS (COM)

ECHA staff

Geert DANCET (Executive Director)

Sharon MUNN (Chair RAC)
Anna-Liisa SUNDQVIST (Chair MSC)

Joachim KREYSA (Director 'Cooperation')
Bjørn HANSEN (Director 'Operations')

Leena YLÄ-MONONEN (Head of Unit 'Committees')
Alastair MACPHAIL (Head of Unit 'Human Resources')
Juhani SORMUNEN (Head of Unit 'Communication & External Relations')

Minna HEIKKILÄ (Senior Legal Advisor)
Régis DURAND (Audit & Quality Control)

Alen MOCILNIKAR (Legal Advisor, Registrar of the Board of Appeal)

Martin KRÖGER (Secretary of the Management Board)

Corrigendum to Document: MB/M/01/2008

(Agreed at the Management Board meeting on 23 April 2008)

**Minutes of the Meeting of ECHA's Management Board
held on
13/14 February 2008**

[....]

4. Decision on the eligibility criteria for the Committee for Risk assessment (RAC) and the Committee for Socio-economic Analysis (SEAC)
(MB/15/2008)

[....]

A broad majority of the Board members supported the view that the Board had discretionary power when appointing Committee members. However, many had doubts as to whether further rules on independence at this stage should be codified in the form of a Decision or whether a case-by-case analysis against a set of criteria would be more appropriate. Some members stated that they would prefer to establish guiding principles. They also stressed that the Board should remain free to apply these on a case-by-case basis.

With regard to the particular problem of employees of chambers of commerce (where such chambers ~~or similar bodies~~ were established under public law to serve a public interest), the Board concluded that their nomination could be regarded as unproblematic.

As a result of this discussion, the Chair concluded that it is preferred not to codify the transparency principles at this point in time, but to reproduce the principles for employment or membership of companies or associations as well as consultants in the minutes of this meeting and apply these principles on a case-by-case basis.

[....]

7. Preparation of the Multi-annual Work Programme
(MB/04/2008)

The ED explained the proposed format of the Agency's Multi-annual Work Programme as well as the idea of establishing a small working group in responsible for preparing the document.

One of the Board members representing interested parties took the view that the programme would have to undergo a public consultation process in line with the requirements of the Regulation on the application of the provisions of the Aarhus Convention¹. The Commission clarified that internal work programmes of Community institutions were exempt from this consultation procedure. It was then argued that, according to the REACH Regulation, the Multi-annual Work Programme had to contain a

¹ Regulation (EC) N° 1367/ 2007 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

list of substances within the context of authorisation process². Therefore a public consultation on the whole Programme would be required. However, other Board members clarified that the Regulation provided for a specific consultation process on the list concerned³. One of the Board Members suggested that, regardless of the legal requirements, the general public should be given the opportunity to react to the Multi-annual Work Programme. The ED reacted positively to this idea and said that the possibility of providing comments on-line would be envisaged. The Chair supported the view expressed by the ED and proposed that the issue of the procedure to be applied, including with respect to any on-line consultation process, be considered by the working group.

The Board then endorsed the procedure for preparing a Multi-annual Work Programme (as contained in document MB/04/2008) and nominated the following persons as members of the working group

Ms Odile Gauthier

Mr Antonello Lapalorcia

Mr Arnold Van der Wielen

Mr Jukka Malm

Ms Anneli Pauli (subject to her approval, given that she was not present at the meeting).

8. Consultation procedure on guidance
(*MB/30/2007 rev 1*)

The Director for ‘Cooperation’ presented the revised document that had been produced further to the Management Board meeting of December 2007.

The Chair asked the Board to discuss the paper in two stages covering, first, the problem of lack of consensus on the content of a guidance document for which Germany, Austria and Denmark had put forward alternative text proposals; second, the many other issues raised last time and for which France and Denmark had circulated comments or suggestions. He invited to the Board to start with comments on the latter area.

A first set of comments by Board members centered on the use of the ‘fast track’ procedure, the need to inform the Competent Authorities and the Management Board periodically about progress, the regular involvement of the Committees and the composition of the Partner Expert Group.

Further issues raised included the role of national authorities and courts in interpreting the REACH Regulation as well as the respective role of the Commission, the ED ~~or~~ and fora consisting of representatives of Member States, including the Management Board, in the elaboration and approval of guidance documents, and the status of such documents.

² Reference was made to Article 59 (1) of the REACH Regulation

³ Reference was made to Article 59 (4) of the REACH Regulation

On the lack of consensus on the content of guidance documents, several representatives of the Member States wished to give the final word to the Board and insisted on informing the users on the Agency's website of any dissenting views to guidance adopted by majority views. Other members drew attention to the fact that the Regulation gave the power for issuing guidance to the Agency and the Executive Director and to the need to provide the users with clear and unambiguous guidance documents.

[....]

13. Reimbursement of tasks executed by the Member States
(MB/09/2008)

The ED presented the meeting document, including a possible way forward and a certain number of basic principles on which a system of transfer of a proportion of the fees to the Member States Competent Authorities should be based. The working group to be established would be chaired by the ED and should consist of experts nominated by the interested Board members as well as expert staff from the Agency.

The Commission informed participants that the Fee Regulation had been submitted to the European Parliament. Formal adoption had been scheduled for end of March 2008.

The discussion focused on the issue of how to reconcile a simple and workable system with the need to base the reimbursement on real costs incurred. In this context, the question was raised how such costs would be calculated and whether indirect costs, in particular overheads linked to rent, IT-infrastructure etc., would be covered. Differences in the legal structures of the Competent Authorities would need to be taken into account.

~~The underlying assumptions regarding~~ The number of substances to be examined under REACH evaluation and authorisation and the number of man-days spent for the two types of tasks for Member States were also discussed and found by some to be underestimated. The ED was asked to provide the Board members with the underlying assumptions leading to those numbers. The Commission expressed a general warning for any review of the model, since the Agency will not be in a position to ask for additional subsidies from the Community budget during the current financial perspectives (2007-2013), nor would it be easy to increase the fees further than what has been put forward in the draft fee regulation.

The ED underlined that the Court of Auditors and the Internal Audit Service had criticised over-simplified systems of cost calculation (e.g. where no distinction between the Member States was made).

Board members representing DE, UK and SE as well as the Commission expressed their interest in nominating experts to the working group.

The Chair concluded that the Board endorsed the conclusions contained in document MB/09/2008 as a basis for further work on the subject. It invited the working group to take account of the issues raised by the Management Board and to provide an interim report at the Board meeting in June 2008.

[....]

17. Implementing rules of Regulation EC 1049/2001 ('Access to documents')
(MB/12/2008)

The Senior Legal Advisor presented the meeting document and the Decision submitted for adoption. She said that a specific instrument for the review of rejection of confidentiality claims (see Article 118 (3) of the REACH Regulation) would be produced at a later stage in the form of a Standard Operating Procedure.

One of the representatives of interested parties took the view that the Regulation on the application of the provisions of the Aarhus Convention⁴ should be taken into account in the context of the implementing rules for 'Access to documents'. He also saw a role for the Chairperson in deciding on request for access to documents issued by the Board. He referred to the full set of proposed amendments which the secretariat should circulate.

One of the Commission representatives disagreed with the former speaker and asked not to confuse the two sets of documents. The Aarhus Convention focuses on environmental information and not on documents for which access is requested. In his view, it would be sufficient to add a recital specifying that "this is without prejudice to Regulation 1687/06". By analogy with the Commission, all confirmatory applications could be dealt with by the Executive Director and thus leaving the Chair out of these short-timed procedures.

The above-mentioned representative of interested parties replied that the scope of the Aarhus Convention and its implementing Regulation (1367/ 2007) and that of the general Regulation on access to documents (1049/2001) overlapped, and that the special rules of Regulation 1367/2007 had to be applied by the Agency in dealing with requests for access to documents, whenever such documents contained environmental information as defined in the latter Regulation.

One Member asked for deletion of Article 5 (8) of the implementing rules because it was considered to go beyond the remit of the Management Board. This was agreed.

Another Member suggested to make explicit reference to Articles 118 and 119 of the REACH Regulation and said he would make available specific proposals for amendments.

⁴ Regulation (EC) N° 1367/ 2007 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies

Other members stressed the need to keep the requests free of charge, to make reference to the linguistic regime and to ensure access to register in electronic form.

The Chair concluded that, as there is time left for adoption of this rule, all proposed amendments should be circulated together with a revised text of the draft implementing rules for final decision by the Board at the next Board meeting.

18. Implementation of the 'Aarhus' Regulation
(MB/14/2008)

The Senior Legal Advisor, presented the meeting document and made clear that the 'Aarhus' Regulation, together with the recent Commission Decision, were fully and directly applicable to the Agency. In her view, No further specific implementing rules were needed at this stage.

One of the representatives of interested parties expressed disagreement with this view, and drew the attention of the meeting of the express provisions of Article 13 of the 'Aarhus' Regulation, requiring Community bodies such as the Agency to consider the need for application measures. He reminded the meeting of the discussion that took place on this matter at the 1st meeting of the Management Board, and of the decision recorded in the minutes of that meeting in which it had explicitly 'asked the Interim Executive Director to submit, at the appropriate stage, draft rules for implementing the Regulation (EC) N° 1367/ 2007'.

In view of this earlier decision, the Chair proposed that the issue be revisited at a later meeting.

~~One of the representatives of interested parties said that the issue of internal procedures for dealing with request under the 'Aarhus Regulation' should nevertheless be revisited at a later stage.~~

[....]

IV. List of Attendees

Representatives of the Member States

[....]

~~Mr~~ Leandros NICOLAIDES (CY)

[....]