

Administrative arrangements for alternate/additional members of the Board of Appeal

58th Meeting of the Management Board 17-18 June 2020

Proposal

The Management Board is invited to endorse the administrative arrangements to be put in place with regards alternate/additional members (AAMs) of the Board of Appeal (BoA) who are employed with other EU bodies or institutions and to instruct the Executive Director to formalise these arrangements.

The administrative arrangements will be formalised by way of signing a Service Level Agreement between the ECHA Secretariat, represented by the Executive Director, and the EU bodies or institutions where the AAMs are employed (see Annex I).

The Management Board Subgroup Board of Appeal reviewed the draft SLA and recommended its endorsement to the Management Board.

Background

In accordance with the REACH Regulation¹, the Chairman and the two members of the ECHA Board of Appeal shall have alternates who shall represent them in their absence. Moreover, the ECHA Management Board may appoint additional members and their alternates if this is necessary to ensure that appeals can be processed at a satisfactory rate. The MB has appointed alternate and additional members².

AAMs are not staff members of ECHA and therefore they are not required to suspend their professional activities. As a general rule, AAMs receive remuneration for their work and they are entitled to the reimbursement of travel and accommodation expenses and the payment of a daily allowance, in accordance with ECHA's guide³. In addition, the MB Decision⁴ on the remuneration of AAMs sets out inter alia the daily rates of remuneration and the maximum remuneration per case for AAMs designated to act in appeal cases.

However, a number of currently appointed AAMs are employed by other EU agencies or institutions and ECHA had sought clarification from the Commission DG HR on the applicable administrative framework for these staff members in performing duties as AAM. According to the guidance received from the Commission⁵, performing duties as AAM is not considered 'outside activity'. The authorisation for a staff member of an EU institution or of an EU Agency to perform duties as an AAM of the BoA should be given in the framework of a mission and not an outside activity. This activity is considered part of the duties of the staff member and is part of their job description. Hence, no remuneration could be linked to this task, which would be covered by mission costs only.

¹ Article 89.

² The full list of BoA members is available under <https://echa.europa.eu/about-us/who-we-are/board-of-appeal/the-board-of-appeal/composition-of-the-board-of-appeal>

³ Management Board Decision 14/2018.

⁴ MB/10/2014 final.

⁵ Note of the Commission No Ares(2019)2578672 of 12 April 2019 containing information for Agencies regarding the decisions on outside activities.

Rationale

In light of the guidance received from the Commission services, it is necessary to formalise the arrangements for a fair and transparent cost-sharing. It is also necessary that the arrangements guarantee the independence of AAMs, in line with Article 90 of the REACH Regulation, in particular with regards to their performance appraisal and being free from any instructions.

It is proposed that the arrangements are formalised in a Service Level Agreement (SLA), which will be concluded between the EU body or institution where the AAMs are employed and the ECHA Secretariat. The draft SLA has been consulted with these bodies and institutions, as well as with the BoA Chair and Registrar. In order to preserve the independence of BoA members, it is proposed that the Management Board endorses the approach and the main elements of the SLA and the Executive Director would be instructed to conclude the SLAs.

The draft SLA reflects the agreement of the other EU body or institution that a member of its staff will perform duties as an AAM of the BoA, in accordance with the appointment decision signed by the Chair of ECHA's Management Board. In case the AAMs are required to travel to Helsinki, Finland, the costs of the mission are covered by ECHA (two administrative modalities foreseen). Furthermore, the draft SLA makes explicit reference to the independence of BoA members and to the fact that AAMs shall not be bound by any instructions when performing their duties for ECHA's BoA.

Alternative options

The Management Board may decide not to endorse the approach or the draft SLA. This option is not recommended, as it would not serve the clarity and transparency of the arrangements.

Drawbacks

There is some administrative burden involved in concluding the SLAs. However, AAMs are appointed for five years, which is renewable, therefore it is expected that the SLAs cover a long time-period and the effort in concluding them will be offset by the clarity and predictability they provide.

Attachment:

- Annex: Template for the Service Level Agreement

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