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13TH MEETING OF THE MANAGEMENT BOARD

25-26 JUNE 2009

READINESS OF THE BOARD OF APPEAL

(Document submitted to the Management Board)

1. Introduction

This document summarises the state of readiness of ECHA's BoA, supported by its Registry, to deal with appeals which may be introduced against certain decisions of the Agency.

In September 2008 an earlier status review was submitted to the Management Board (MB) by the Registry in its role of the ECHA Unit in charge of supporting the BoA. However, at that time the members of the BoA had not taken up service or were not yet appointed.

The first member of the BoA (technically qualified), appointed by the MB in 2008, took up service on 1 January 2009 and on 15 April 2009 the BoA was completed with the other member (legally qualified) and the Chairman (also legally qualified). Thus, since 16 April, the BoA has been able to operate as the Board of Appeal of ECHA as provided for in the REACH Regulation.

In the April 2009 meeting, the MB established an ad hoc Working Group (WGBA) with the mandate to prepare all issues related to the BoA or its members.

The purpose of this document is to inform the MB about the readiness of the recently constituted Board in its early stages.

2. The BoA is ready to conduct the appeal process and decide on appeals

Since 16 April, the BoA has been ready to receive and decide on any appeals that are within its jurisdiction and can be lodged against certain decisions of ECHA.

The relevant rules of procedure are already in force. 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 Agency and the temporary guidelines on appeals have been published. On this basis appeals can be received and processed, and comprehensive case management can be accommodated.

Additionally, alternates of the technically qualified and legally qualified members have been appointed by the MB which provides more operability to the BoA in cases of absence or conflict of interests of one of the permanent members, or for coping with increasing numbers of appeals. The alternate of the Chairman is expected to be appointed by the MB within the next few months.

3. The BoA is ready to provide quality work

The BoA is an independent collegiate body which decides on appeals against certain decisions of ECHA in an impartial and independent manner whilst at the same time being part of the Agency. As a public body within the sphere of the EU administration, the BoA has to adopt the principles of good administration and has to use quality management techniques to ensure excellent performance¹.

In the two months of working together, the members of the BoA have by common agreement designed their objectives and the mission and vision of the BoA. They have also individually presented their objectives to the MBWG, as a matter of accountability in the exercise of their duties. The members of the BoA will also be under the appraisal of the MB according to specific rules to be adopted by the MB.

The Board also promptly started to plan and establish a strategy for dealing with the anticipated dynamics of REACH implementation.

¹ In that respect the Common Assessment Framework (CAF) is an essential tool for organizing BoA's work.

4. The BoA is progressively preparing for a possible steep upswing in the number of cases and possible large variations in case characteristics

By this time it is clear that earlier forecasts regarding the number of submissions of appeals for the first two years of the REACH Regulation need to be adjusted. The first wave will probably arrive in 2010 and result from the SIEF preparatory work before the first registration deadline of phase-in substances and subsequently before and after this deadline with respect to various registration modalities.

The period preceding this will be used by the BoA to carry out various projects to strengthen its capacity.

5. Ongoing projects related to the working tools of the BoA

The fact that no appeals have yet been lodged provides the BoA with an opportunity to more intensively develop and test the various operative tools that are necessary elements of its future work and case management.

The preparatory work especially focuses on developments to meet the following challenges:

- the complexity of REACH as a legal system implies various challenging questions or even conflicting elements to be prepared and analysed in advance in order to enable smooth and efficient decision-making;
- REACH involves various legal connections to other fields of law and complex legal questions, which require noteworthy preparatory studies and work.

Some of the projects in which the BoA is currently involved are:

- Adopting , jointly with the Registry, the practical rules for the parties and some other procedural provisions foreseen in Regulation (EC) No 771/2008 (Instructions to the Registrar and Practice directions to the parties and interveners);
- The elaboration of a standard decision-making process for appeals that will facilitate the examination of cases with homogeneous criteria and a consistent system;
- The planning and development, jointly with the Registry, of a template for an IT-tool to analyse all the information included in the case file in the most effective and efficient way;
- The drafting of internal guidelines to facilitate the decision process on difficult aspects linked to potential appeals, such as requests of confidentiality, access to public documents, proportionality, etc.

The BoA Registry has worked on a vast amount of administrative procedures and detailed work instructions, which will be further completed this year. The IT tools (like database) will be further extended as a work flow support system.

6. Ongoing projects to guarantee the BoA's independence

The BoA is part of ECHA but is also fully independent from its secretariat in the exercise of its duties regarding appeals. In order to preserve this independence, the Chairman of the BoA has agreed with the Executive Director of ECHA certain undertakings relating to the administrative arrangements needed for the normal development of the BoA within the administrative structure of ECHA. This will be submitted for the information of the MB as a separate document.

7. Ongoing projects on Communication

In order to be able to fulfil its duty of building trust among stakeholders to the legal redress system provided under the REACH Regulation the BoA is currently working on its stakeholder management program. This requires careful planning, a proper analysis of stakeholder needs and expectations and the key elements to be taken into account in all the activities of the BoA, particularly through effective communication, and by demonstrating transparency and equal treatment.

The ECHA website information about the BoA has been regularly updated and key information has been translated into all Community languages. Further information will be added to include new developments.

8. Action requested

The Management Board is invited to take note of the information provided in this document.