

Helsinki, 17 December 2008  
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**10TH MEETING OF THE MANAGEMENT BOARD**

**17-18 DECEMBER 2008**

**Helsinki**

**Declarations of the members and alternates of the Board of Appeal**

**(Decision by the Management Board)**

## Summary

*As the appointing authority of the members and alternates of the Board of Appeal, within the meaning of Article 89(3) of the REACH Regulation, the Management Board is invited to adopt the models for the declaration of commitment and confidentiality and the declaration of interests that a member of the Board of Appeal, its additional members and/or an alternate will be asked to make upon taking up his/her duties on the Board of Appeal.*

### 1. Introduction

Pursuant to the applicable rules of procedure, members of the Management Board, of ECHA's Committees and Forum are obliged to make a declaration of commitment to fulfil their duties and a declaration of interests. The same obligation applies also to the staff of the Agency on the basis of the Executive Director's decision<sup>1</sup> prescribing a declaration of commitment and confidentiality, a declaration of interests and guidance on conflict on interests and on invitations and gifts.

Considering that the 'permanent' members of the Board of Appeal are appointed as members of temporary staff within the meaning of Conditions of Employment of Other Servants of the European Union, ECHA's Code of good administrative behaviour and the above Executive Director's decision, should also in principle apply to the members.

However, taking into account that it is the Management Board who, in its role of the appointing authority, appoints the Board of Appeal, the above-mentioned decision does not apply to the members and alternates of the Board of Appeal. Consequently the Management Board is called upon to adopt similar declarations in respect of members and alternates of the Board of Appeal.

The purpose of the present note is to propose that the Management Board adopt the declaration of commitment and confidentiality and the declaration of the interests applicable to the members of the Board of Appeal. Even though alternates and additional members of the Board of Appeal are not staff of the Agency within the meaning of Article 103(3) of Regulation (EC) No 1907/2006<sup>2</sup> (hereinafter the "REACH Regulation"), the obligation to make a written declaration of commitment and confidentiality and to produce the annual declaration of interests should also apply to these 'non-permanent members' of the Board of Appeal.

### 2. Legal basis

The general obligation for the staff of the Agency to complete, upon taking up their posts, the declaration of commitment and confidentiality and declaration of interests, as outlined in the

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<sup>1</sup> Decision by the Interim Executive Director, ED/01/2007 of 31 October 2007 on Guidance on conflicts of interest and invitations and gifts as well as declarations of commitment, confidentiality and interests.

<sup>2</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 (OJ L 396, 30.12.2006, p. 1, corrected by OJ L 136, 29.5.2007, p. 3).

decision of the Executive Director, stems from the provisions of Article 88(2) and 105 of the REACH Regulation.<sup>3</sup>

The necessity for the members of the Board of Appeal to submit themselves to the obligation of signing the declarations is further warranted by the provision of Article 90(2) of the REACH Regulation, providing that *the members of the Board of Appeal shall be independent and shall not be bound by any instructions* in making their decisions. Furthermore, according to Article 90(5) of Regulation (EC) No 1907/2006, *members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they participated in the decision under appeal.*

With regard to confidentiality, the Commission Regulation governing the appeal procedure before the Board of Appeal<sup>4</sup> also provides that its deliberations shall be and shall remain secret. As the tasks and responsibilities of non-permanent members, who represent the members of the Board of Appeal in their absence, are in principle identical, the above-mentioned provisions of Article 90 also apply to non-permanent members.

In addition, these requirements were also evoked in the call for expression of interest in the appointment as members of the Board of Appeal or their alternates or additional members and their alternates<sup>5</sup> which stated that *the members and their alternates will be required to declare any interests, which may conflict with their duty to the Board of Appeal, in compliance with Article 90(5) and (6) of Regulation (EC) No 1907/2006.*

With regard to all of the above, it is proposed that the Management Board in its role of the appointing authority of the Board of Appeal members and alternates, within the meaning of Article 89(3) of the REACH Regulation, requests the members and alternates of the Board of Appeal to make a declaration of commitment and confidentiality and to produce an annual declaration of interests.

### 3. Declarations

With regard to the **declaration of commitment and confidentiality**, it is proposed that the members of the Board of Appeal and their alternates complete and sign a form resembling the one that had been previously approved by the Management Board for the members of the Committees and of the Forum, modified to better reflect the tasks of a member or of an alternate of the Board of Appeal. The models of the declaration of commitment and confidentiality are contained in Annex 1 and Annex 2.

The text of the declaration intended for alternates and additional members of the Board of Appeal differs slightly from the one intended for permanent members, in order to take into

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<sup>3</sup> Article 88(2) of the REACH Regulation provides that *members of the Management Board, the Executive Director and members of the Committees and of the Forum 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. These declarations shall be made annually in writing and, without prejudice to paragraph 1, be entered in a register held by the Agency which is accessible to the public, on request, at the Agency's offices.*

Article 105 of the REACH Regulation provides that *members of the Management Board, members of the Committees and of the Forum, experts and officials and other servants of the Agency, shall be required, even after their duties have ceased, not to disclose information of the kind covered by the duty of professional secrecy.*

<sup>4</sup> Article 19(1) of Commission Regulation (EC) No 771/2008 of 1 August 2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5).

<sup>5</sup> OJ C 41 A, 15.2.2008, p. 4 and 11.

account the characteristics linked to the ‘ad hoc’ nature of the positions of non-permanent members, as their permanent presence in Helsinki will not be required. When an alternate or additional member is asked to participate in an appeal procedure, the Registry of the Board of Appeal will send the related procedural documents to the address designated by him for that purposes. In order to take note of that, the fifth paragraph of the declaration applicable to alternates and additional members evokes the responsibility of non-permanent members for the proper handling of the documents, related to a given appeal case, while they are in their possession.

Regarding the **annual declaration of interests**, it is proposed that the Management Board adopt the form similar to that used for the staff of the Agency, pursuant to which financial interests in a company relevant to the operating area of ECHA exceeding 10 000 euros have to be reported.

It has to be however noted that, in the case of members of the Committees and of the Forum, the Management Board set that threshold at the amount of 50 000 euros. Nevertheless, in order to underline the importance of having the independent Board of Appeal, it is proposed that the stricter threshold of 10 000 euros be applied to members of the Board of Appeal and their alternates. The model of the declaration of interests is attached to this note as annex 3.

By analogy to Article 88(2) of the REACH Regulation, it is proposed that these declarations be kept in the Registry of the Board of Appeal and be accessible to the public, on request at the Registrar’s offices. The Registrar should also see that the members of the Board of Appeal and their alternates make declaration of interests on an annual basis.

#### **4. Action requested**

The Management Board is invited to:

- decide that the members and alternates of the Board of Appeal be requested to make a declaration of commitment and confidentiality and an annual declaration of interests in accordance with the models contained in Annexes 1 to 3;
- give the Registrar of the Board of Appeal the mandate to administer the practical actions related to the gathering of the declarations and their keeping.

#### **Attachment(s):**

- Declaration of commitment and confidentiality of the members of the Board of Appeal (Annex 1)
- Declaration of commitment and confidentiality of alternates and additional members of the Board of Appeal (Annex 2)
- Annual declaration of interests of members and alternates of the Board of Appeal of ECHA (Annex 3)

**DECLARATION OF COMMITMENT AND  
CONFIDENTIALITY OF THE MEMBERS OF THE BOARD  
OF APPEAL OF ECHA**

I, the undersigned ....., hereby declare that I shall make all reasonable efforts to fulfil my tasks as a member of the Board of Appeal of the European Chemicals Agency.

More particularly, and without prejudice to Article 90(5) of Regulation (EC) No 1907/2006, I undertake to exercise conscientiously the tasks entrusted to me by the Board of Appeal. While performing my tasks, I shall act independently and shall not seek or accept any instructions from anyone. I will avoid any situation which may give rise to a conflict of interest and I shall declare any private or business interest that may conflict with my responsibilities as a member of the Board of Appeal. Furthermore, I shall refrain from performing activities or accepting any gifts or benefits which could be prejudicial to my independence.

I undertake to submit a separate annual declaration of my financial interests.

I hereby declare that I am aware of my obligations to respect confidentiality and undertake to exercise the greatest discretion with regard to all facts and information coming to my knowledge in the course of or in connection with the performance of my duties at the Board of Appeal. I further undertake not to disclose any information related to appeal proceedings and to deliberations of the Board of Appeal which shall be and shall remain secret. I accept without reservation that I continue to be bound by this obligation after having left the Agency.

I understand that this Declaration will be kept in the Registry of the Board of Appeal and accessible to the public, on request, at the Registry's offices.

Done at ..... on .....

Signature: .....



Board of Appeal

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**DECLARATION OF COMMITMENT AND  
CONFIDENTIALITY OF ALTERNATES AND ADDITIONAL  
MEMBERS OF THE BOARD OF APPEAL OF ECHA**

I, the undersigned ....., hereby declare that I shall make all reasonable efforts to fulfil my tasks as an alternate and/or additional member of the Board of Appeal of the European Chemicals Agency.

More particularly, and without prejudice to Article 90(5) of Regulation (EC) No 1907/2006, I undertake to exercise conscientiously the tasks entrusted to me by the Board of Appeal. While performing my tasks, I shall act independently and shall not seek or accept any instructions from anyone. I will avoid any situation which may give rise to a conflict of interest and I shall declare any private or business interest that may conflict with my responsibilities as an alternate and/or additional member of the Board of Appeal. Furthermore, I shall refrain from performing activities or accepting any gifts or benefits which could be prejudicial to my independence.

I undertake to submit a separate annual declaration of my financial interests.

I hereby declare that I am aware of my obligations to respect confidentiality and undertake to exercise the greatest discretion with regard to all facts and information coming to my knowledge in the course of or in connection with the performance of my tasks on the Board of Appeal. I further undertake not to disclose any information related to appeal proceedings and to deliberations of the Board of Appeal which shall be and shall remain secret.

I understand that I am responsible for maintaining the confidentiality of any documents or electronic files sent and for returning, erasing or destroying all confidential documents or files upon completing my tasks.

I am aware that I continue to be bound by this undertaking after the completion of my duties as an alternate and/or additional member of the Board of Appeal of ECHA.

I understand that this Declaration will be kept in the Registry of the Board of Appeal and accessible to the public, on request, at the Registry's offices.

Done at ..... on .....

Signature: .....

**Board of Appeal**

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**ANNUAL DECLARATION OF INTERESTS OF MEMBERS AND  
ALTERNATES OF THE BOARD OF APPEAL OF ECHA**

I, the undersigned .....,

- a member of the Board of Appeal  
 an alternate of the member of the Board of Appeal  
 an additional member of the Board of Appeal  
 an alternate of an additional member of the Board of Appeal

hereby declare to have the following interests

1. Work and activities in organisations relevant to the operating area of ECHA during the past 5 years <sup>1</sup>:

Name of organisation	Position/Tasks	Period

2. Financial interests in a company relevant to the operating area of ECHA during the past 5 years and exceeding 10 000 € and/or voting right of 5 % or more per company <sup>2</sup>:

Name of the company	Current/Past

3. Other activities, interests or facts whether or not related to such organisations <sup>3</sup> which you consider should be made known to the Board of Appeal, including matters relating to the members of your household <sup>4</sup>:

.....  
 .....  
 .....  
 .....

<sup>1</sup> Work and activities, whether or not remunerated, for and/or on behalf of such a company or organisation and other links with the industry and organisations of REACH relevance. See points 3.3, 3.4 and 3.5 of the ECHA Guidance on conflicts of interest.

<sup>2</sup> Investment funds excluded. See point 3.2 of the ECHA Guidance on conflicts of interest.

<sup>3</sup> See point 3.5 of the ECHA Guidance on conflicts of interest.

<sup>4</sup> A household member means: spouse, partner, or child living at the same address as the member of the Board of Appeal concerned. The names of these persons do not need to be declared.

I, ....., hereby declare on my honour that, to the best of my knowledge, the only direct or indirect interests I have in organisations relevant to the operating area of ECHA related to my position referred to above are those listed above.

I further declare that should any changes occur and should it appear that I have or acquire additional interests that should be made known to the Board of Appeal, I shall forthwith declare them and complete a new declaration of interests detailing the changes.

I understand that this Declaration will be kept in the Registry of the Board of Appeal and accessible to the public, on request, at the Registry's offices.

Done at ..... on .....

Signature: .....