

CLOSED AND OPEN SESSIONS OF THE PLENARY MEETINGS OF THE MEMBER STATE COMMITTEE

INTRODUCTION

ECHA is strongly committed to involve stakeholders in its activities and takes serious efforts in putting this commitment into practice in its daily work. ECHA has established a process through which accredited stakeholder observers can be invited as observers to the meetings of ECHA Committees. While the starting point is to have the Committee meetings open for access by observers there can also be justified reasons why their access to Committee meetings may sometimes need to be limited. This document is outlining the main principles the ECHA Secretariat is using when concluding on the need for closed sessions of the Member State Committee (MSC).

As specified in Article 6 of the MSC Rules of Procedure, the MSC meetings are normally open to advisers, invited experts, case owners and observers. However, closed sessions may be held at the request of the Committee members or by decision of the Chair. A session of a Committee meeting may be closed only for stakeholder observers who are representing ECHA's accredited stakeholder organisations (ASO) which have been accepted by the Committee to follow its work¹ but allowing presence of a case-owner.

When considering open and closed sessions of MSC meetings attention is paid by the ECHA Secretariat to the following aspects:

- transparency needed for meaningful stakeholder participation,
- protection of Committee members' independence and integrity,
- safeguarding smooth running of the REACH processes,
- safeguarding the confidentiality of business information in the various REACH processes.

KEY CONSIDERATIONS ON THE NEED FOR CLOSED SESSIONS

The MSC Working Procedures on processing draft decisions under dossier evaluation² and under substance evaluation³ outline how case owners' and stakeholder organisations' participation in the MSC meetings is organised. Normally, in the plenary agendas the evaluation case-specific MSC deliberations are organised in two separate sessions - open session for the first discussion (Session 1) and closed session for the agreement seeking (Session 2). The invited case-owners and stakeholder observers are expected to respect these meeting arrangements as indicated in the agenda and to

¹ List of ASO as observers at MSC meetings

http://echa.europa.eu/documents/10162/13578/list_aso_msc_observers_en.pdf

² MSC Working procedures on processing draft decisions under dossier evaluation

(http://echa.europa.eu/documents/10162/13578/wp_for_msc_consultation_on_draft_decisions_en.pdf)

³ MSC Working procedures on processing draft decisions under substance evaluation

(http://echa.europa.eu/documents/10162/13578/msc_working_procedure_for_processing_sev_draft_decisions_en.pdf)

follow the provisions of the ECHA Codes of conduct for Committees' stakeholder observers⁴ and for case owners⁵ under the evaluation process.

In general, closed sessions in the MSC plenaries can be justified under the following circumstances:

- discussions expected to involve confidential business information (CBI), in particular for those registration dossiers in which confidentiality claims were included by the registrants in accordance with Article 119(2) of REACH or in cases where CBI as specified in Article 118 of REACH is involved,
- discussions about legal interpretations and related legal aspects, which would be directly usable information for future appeal cases,
- discussions on new strategies concerning implementation of REACH, especially at preliminary stage,
- reports/discussions expected on enforcement issues,
- agreement seeking on draft decisions on testing proposal examinations, compliance checks and substance evaluation to protect the independence and integrity of the members,
- reasoned request by a member,
- any other matter of a sensitive nature for which reasoning will be provided by the Chair.

Furthermore, the stakeholder observers' presence in discussion of a specific dossier evaluation or substance evaluation case would continue to have as a pre-requisite that the case-owner would also have a possibility to participate. However, stakeholder observers could participate in the discussions even in the absence of the case-owner if the case-owner does not oppose stakeholders' presence.

CURRENT PRACTICE

Based on the meeting agenda and the nature of the process-specific elements for Committee's deliberations prior to each meeting the MSC Chair, in close collaboration with the Secretariat, carefully assesses whether there is a need for a closed session for a particular type of discussion. Open and closed sessions are clearly indicated in the meeting agendas and communicated to the MSC stakeholder observers and case owners participating in a meeting well in advance. The draft agendas are placed on the ECHA website, MSC section.

Following the Committee's deliberations held in closed sessions, special briefings are organised at each MSC meeting where the stakeholder observers are debriefed on the outcome of those closed sessions.

Furthermore, the stakeholder observers are provided with non-confidential presentations of the specific dossier/substance evaluation cases introduced at an open session of a MSC meeting.

Information on registration dossiers is available on the ECHA dissemination website for the use of the stakeholder observers when they prepare for a MSC meeting discussion on the evaluation cases. The final decisions on the testing proposal examinations and compliance checks will be published on the ECHA website after consulting with the registrants (confidential information removed).

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⁴ Code of conduct for stakeholder observers at ECHA meetings
(http://echa.europa.eu/documents/10162/13559/conduct_code_stakeholder_observers_en.pdf)

⁵ Code of conduct for case owners of evaluation draft decisions in MSC meetings
(http://echa.europa.eu/documents/10162/13578/ed_05_2011_code_of_conduct_msc_case_owners_en.pdf)