

BACKGROUND PAPER

Forum for Exchange of Information on Enforcement

1. Introduction

The Forum for Exchange of Information on Enforcement (Forum) plays a major role in facilitating the coordination and cooperation between the Member State (MS) authorities responsible for enforcement of the REACH, CLP, BPR, PIC and POP legislation and ensuring its effectiveness across the European Community. Forum's task related to BPR are carried out by its BPR Subgroup (BPRS). The Forum also plays an important role in assessing the enforceability of proposals for restrictions submitted to the European Chemicals Agency (ECHA).

This document is intended to support the MSs in appointing the most suitable members for the Forum or renewing the membership of the current member by outlining the Forum's, role, tasks and operation. It also gives a tentative estimation of workload as well as the general requirements for competences of the Forum members.

2. Composition, role and tasks of the Forum

Forum is composed of 31 members appointed directly by each of the 28 Member States and the three EEA-EFTA countries. Only the members appointed by MSs have the right to vote. In principle, Forum has also the possibility to co-opt up to five additional members. In order to ensure smooth functioning and taking conclusions, the Forum Rules of Procedure allow for alternate members and proxy vote in case a member with voting right is absent from a meeting.

According to Article 76(1) of the Reach Regulation¹ the Forum shall coordinate the "*network of Member State authorities responsible for enforcement*" of REACH.

In light of Recital 105 of REACH the overarching aim of the Forum is to contribute to a more harmonised and stronger enforcement in the MSs. Therefore, the Forum has the following specific tasks, which are specified in Article 77(4) of REACH:

- (a) *Spreading good practice and highlighting problems at Community level;*
- (b) *Proposing, co-ordinating and evaluating harmonised enforcement projects and joint inspections;*
- (c) *Co-ordinating exchange of inspectors;*
- (d) *Identifying enforcement strategies, as well as best practice in enforcement;*
- (e) *Developing working methods and tools of use to local inspectors;*
- (f) *Developing an electronic information exchange procedure;*
- (g) *Liaising with industry and other stakeholders, including relevant international organisations, as necessary;*
- (h) *Examine proposals for restrictions with a view to advising on enforceability*

¹ Regulation (EC) No 1907/2006 , OJ L 396, 30.12.2006 p.1, corrected version in OJ L 136, 29.5.2007, p. 3

Article 46(3) of the CLP Regulation, Article 18(2) of the PIC Regulation, Article 76(1)(l) of the BPR and Article 8(2) of the POPs Regulation also refer to these tasks when empowering the Forum with harmonising enforcement of these regulations.

The tasks of the Forum are not further elaborated under REACH, CLP, BPR, PIC and POP because they are directly related to enforcement and expertise in enforcement of chemicals legislation, which, in accordance with Article 125 is allotted to the MSs.

To meet its aim, the Forum should be a platform where representatives of enforcement authorities meet to make strategic decisions on planning and coordination of enforcement activities, on approaches to enforcing REACH, CLP, BPR, PIC and POP provisions and on exchange of experience between the inspectors practically involved in enforcement.

In this respect, it is important to specify the borderline between ECHA and the Forum. The Forum is part of ECHA and ECHA Secretariat will provide it organisational and administrative support as well as expertise. However, the subject of the deliberations and actions of the Forum is outside the remit of ECHA, because enforcement is managed at national level.

Therefore, any conclusions or initiatives of the Forum will be effective only in so far as the Forum members are dedicated to implement them and in a position to commit national resources to this purpose.

For the Forum to be successful in achieving its aim, its members should possess sound practical expertise in enforcement of chemicals legislation but most importantly, **the capacity to commit national resources to coordinated enforcement activities**. The latter capacity implies that the members should exercise a position of relative influence in the national enforcement service.

3. Agreed Forum working procedures

In line with Article 86(4) the Forum has drafted the Rules of Procedure (ROPs), adopted by the ECHA Management Board. These ROPs specify the procedures for delegating certain tasks to working groups.

It is foreseen that the Forum members will focus on giving direction and agreeing common approaches to enforcement and will in most cases delegate the elaboration of technical details necessary for fulfilment of the tasks of the Forum to working groups. These should be composed of at least two Forum members, one of them chairing and another member as a back up, and specialised experts. The working groups will receive a clear mandate from the Forum plenary and report to the plenary of the Forum, which will take further decisions on the required follow-up, including committing national resources to a joint activity.

The plenary meetings of the Forum take place in Helsinki. The meeting of the working groups may take place in other MSs, if meeting facilities are offered by the host country.

ECHA provides the secretariat for the Forum. The secretariat is in particular:

- Planning the work and organising the meetings of Forum and working groups
- Supporting the Chair and the Vice chairs of the Forum as well as the chairs of the working groups
- Organising the follow-up of the Forum decisions and meetings
- Organising written procedures and facilitating other Forum activities

- Contributing with regulatory expertise to the discussions and documents of the Forum and its WGs
- Managing the creation of relevant IT tools for the national enforcement authorities, in particular the Interact portal
- Organising the training events for national enforcement authorities prepared by the Forum
- Preparing communication materials about the Forum such as press releases, information on national enforcement on ECHA website and other information materials
- Facilitating and organising other activities in support of national enforcement authorities undertaken by the Forum and supported by the ECHA
- Co-ordinating work within the Agency and with the other REACH Committees in the Agency, and promote consistency of opinions within the Forum and between the committees, if necessary.

4. Expectations of expertise and capacities from the Forum members

In accordance with Article 86(1) Members States are to appoint one member of the Forum *“on the basis of their role and experience in enforcement of chemicals legislation”*. The members shall also be supported by the scientific and technical resources available at the competent authorities in the MSs (Article 86(3)).

ECHA reimburses the travel and subsistence expenses of the members for the meetings of the Forum. The members may be accompanied by advisers during the meetings.

Personal expertise of the Forum member

The Forum and its BPR Subgroup (BPRS) will take decisions on planning and coordination of inspection work and sharing of experience. It will also discuss specific practical issues in enforcement of REACH, CLP, BPR, PIC and POPs. Therefore, the members must be able to discuss the relevant technical problems related to enforcement and possess broad overview of legislation relevant for enforcement of chemicals legislation (notably REACH, CLP and BPR) or good access to relevant expertise on these legislations (e.g. PIC and POP).

In this respect, it is essential that each Forum member should have practical experience in inspections/enforcement of chemicals legislation or direct access to experts with such experience.

The expertise of the Forum as a whole should cover the following broad areas:

- Requirements of the REACH, CLP, BPR, PIC and POP
- Enforcement of one or more of the following:
 - Chemicals legislation
 - Workplace legislation
 - Environmental and or Waste legislation
 - Consumer protection legislation
 - Other related legislation

Institutional capacities of the Forum member – a clear mandate to coordinate enforcement

As foreseen by Article 86(1) the Forum members must maintain relevant contacts in MS competent authorities. As required by Article 86(2), a Forum member must have a clear mandate from his MS to ensure *“coordination between the tasks of the Forum and the work of the MS competent authority”*.

To ensure that the Forum fulfils its tasks, the members of the Forum appointed by the MSs should be representatives of national enforcement authorities, having a mandate to commit human and financial resources for joint activities needed for the execution of the activities of the Forum, such as harmonised enforcement projects or identification of enforcement strategies. They should also have a mandate to call upon national scientific or technical experts to take part in discussions related to the tasks of the Forum or its Working Groups.

It is critical that the mandate of the Forum member grants him/her realistic capacity to use national resources to participate in Forum activities such as coordinated projects, development of documents in WGs or collection of grassroots-level enforcement experience.

In addition, effective coordination and networking is necessary at national level – especially with authorities responsible for related fields legislations such as workplace safety, environment and waste. Appropriate infrastructures established in the MS facilitate the activities of the Forum and its working groups (Article 86(3)). As an example of networking necessary at national level, the Forum members will be required to solicit the appointment of NEA Administrator and its backup in cooperation with the national member of the Security Officers Network.

5. Further appointment considerations

As stated in recital 105 of REACH it is necessary that in the light of the increased responsibility of natural and legal persons for ensuring the safe use of chemicals, enforcement needs to be strengthened. More harmonised enforcement and the level playing field for companies operating in the EU has also become the focus of discussions between ECHA, the Commission, MSs and various stakeholders.

More considerations on personal experience and capacities

In addition to expertise and capacities mentioned under point 4, MSs may also consider to candidates who possess:

- Experience in discussing chemicals enforcement at international level, ,i.e. chemicals management policy
- Experience in joint, cross-border enforcement projects
- Knowledge of the enforcement organisation in other MSs

Expected workload

Experience of the first term of the Forum has shown that a number of its activities and initiatives is steadily increasing and demands more commitment in terms of time and resources.

The Forum and BPRS are currently meeting in plenary three times a year for a total of 12 to 15 days per year, including workshops with stakeholders and travel time. The functioning of the Forum requires that members attend the plenary and working group meetings which are held on a regular basis. This includes preparation time for the meetings, which, depending on the number of enforcement questions can be considerable. In addition, the members will be required to provide contribution to the discussions during the meetings.

Additional contributions are expected for the working group meetings, especially for the working group on restrictions, depending on the number of proposed restrictions. Tasks

may be distributed amongst the Forum members to set up the process for forming advice on enforceability of restrictions by the Forum. The working groups of the Forum preparing enforcement projects and discussing enforcement related legal, scientific and technical issues meet several times per year, depending on the mandate given by the Forum. In between the meetings the members are required to develop or contribute to preparation of relevant documents where the resource requirements can be considerable.

In addition, the members may be required to contribute towards other Forum initiatives such as preparation of the training events for enforcement trainers or exchanges of inspectors.

Considering the above, **it is estimated that the Forum member should expect to commit about 30% - 40% of his time per year for dealing with the Forum related issues.** This estimation includes plenary meetings, preparation and follow up as well as coordination of national activities including occasional contribution to working groups. The upper limit of the range foresees more active participation in the work such as chairing of working groups. These tasks could be partially shared or delegated to advisers and/or experts, but it is crucial that the MSs foresee and recognise this time commitment when appointing members.