

BoA/02/2018

**DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY OF
17 DECEMBER 2018 ADOPTING INSTRUCTIONS TO THE REGISTRAR OF THE BOARD
OF APPEAL**

THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY (the 'Board of Appeal'),

Having regard to 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 Agency¹, as amended by Commission Implementing Regulation (EU) 2016/823², (the 'Rules of Procedure'), and in particular Articles 5(7) and 27 thereof,

Whereas, following the amendments to the Rules of Procedure introduced by Commission Implementing Regulation (EU) 2016/823, as well as the practical experience of appeal proceedings gained by the Board of Appeal and its Registry, it is necessary to repeal and replace the Decision of the Board of Appeal of 30 November 2010 laying down instructions to the Registrar of the Board of Appeal,

HAS ADOPTED THIS DECISION:

Article 1

The tasks of the Registrar

1. The Registry of the Board of Appeal shall be headed by the Registrar who shall, inter alia, be responsible for:
 - (a) the maintenance of the Register of appeals of the Board of Appeal and the files of pending cases;
 - (b) the receipt, transmission, service and custody of all documents related to proceedings before the Board of Appeal;
 - (c) all correspondence relating to appeals brought before the Board of Appeal;
 - (d) the announcements and publications of the Board of Appeal;
 - (e) verifying that the time limits and other formal conditions relating to the lodging of appeals and other procedural documents are complied with;
 - (f) arranging the translations and interpretation required by the Board of Appeal;
 - (g) the treatment of initial applications for access to documents pursuant to Article 3(3) of the Decision on the Implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents³;
 - (h) arranging any payments of reimbursement, compensation or fees related to appeal proceedings in accordance with the applicable rules;
 - (i) assisting the Board of Appeal in the exercise of its duties.

¹ OJ L 206, 2.8.2008, p. 5.

² OJ L 137, 26.5.2016, p. 4.

³ Decision MB/12/2008 final of 23 April 2008, as amended by decision ED/04/2009 of 25 March 2009.

2. Should the Registrar be absent or prevented from carrying out the duties set out in the Rules of Procedure, the rules adopted on the basis thereof, or these Instructions, or if the post of Registrar is vacant, those duties shall be performed by the member of staff of the Registry present in the highest function group with the highest grade or, in the event of equal grade, the subordinate with the greatest seniority in the grade or, in the event of equal seniority, the one who is eldest.
3. The Registrar may authorise a member of staff of the Registry to perform any of the tasks mentioned in the first paragraph.
4. The Chairman of the Board of Appeal or the Board of Appeal, as the case may be, may delegate power of signature to the Registrar for the purpose of setting or extending time limits which, pursuant to the Rules of Procedure, it falls to the Chairman or the Board of Appeal to prescribe.

Article 2
Admissibility of appeals

1. Where appropriate, the Registrar shall prescribe a reasonable period within which the appellant is to comply with the requirements laid down for a notice of appeal in Article 6(1)(a) to (d) and Article 6(2) of the Rules of Procedure.
2. If the Registrar, after the expiry of the period referred to in the first paragraph, considers that an appeal is vitiated by an irregularity which is liable to render the appeal inadmissible or deemed not to have been filed, the Registrar shall, without delay, send a reasoned opinion to the Chairman.

Article 3
The Register

1. Documents placed in the case file in cases brought before the Board of Appeal shall be entered in the Register of appeals in the order in which they are lodged.
2. Decisions and other documents drawn up by the Board of Appeal shall be registered on the day of issue.
3. Entries in the Register shall be numbered consecutively. They shall contain the information necessary for identifying the document, in particular:
 - (a) the name of the sender or addressee;
 - (b) the date of lodgement;
 - (c) the date of registration;
 - (d) the case number.
4. Where a correction is made to the Register, a note to that effect shall be made therein.
5. When a document has been registered, the Registrar shall make a note to that effect on the original. The registration number of each document drawn up by the Board of Appeal shall be noted on its first page.

6. If the Register is kept in electronic form, it shall be set up and maintained in such a way that no registration can be deleted therefrom or that following any amendment or rectification an audit trail of the amendment or rectification can be found.

Article 4

The case number

1. When a notice of appeal initiating proceedings is registered, the case shall be numbered sequentially starting with '001'. The number shall be preceded by 'A-', and followed by an indication of the year that shall correspond to the date deemed to be the date of lodging of the document for the purposes of compliance with the time limit set in Article 92(2) of Regulation (EC) No 1907/2006⁴.
2. If an appeal case is to be re-examined by the Board of Appeal following an action within the meaning of Article 94 of Regulation (EC) No 1907/2006, that case shall keep the number previously given to it when it was before the Board of Appeal with the letters RENV added after the number.

Article 5

The case file

1. The case file shall contain the originals of the procedural documents produced by the parties, including their annexes, with the exception of those the acceptance of which has been refused pursuant to Article 6 of these Instructions. It shall contain also the decisions taken in the case, including any decisions relating to refusal to accept documents, the minutes of the hearing, notifications served by the Registrar and any other documents or correspondence taken into account when deciding the appeal.
2. The documents contained in the case file shall be numbered in the order they are received.
3. Confidential and non-confidential versions of procedural documents, if any, shall be kept in separate sections of the file.
4. At the close of the proceedings, the Registrar shall arrange for the case file to be closed and archived. The closed file shall contain a list of the documents contained in the file, an indication of their total page count, and a cover page showing the case number, the parties and the date on which the file was closed.

Article 6

Non-acceptance of documents and regularisation

1. The Registrar shall verify that documents lodged are in conformity with the provisions of the Rules of Procedure and the Practice directions to parties to appeal proceedings before the Board of Appeal. If the documents lodged do not comply with the requirements set out in the abovementioned documents, the Registrar shall, without

⁴ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (OJ L 396, 30.12.2006, p. 1, as corrected by OJ L 136, 29.5.2007, p. 3).

prejudice to Article 6(3) of the Rules of Procedure, prescribe a reasonable period within which a party is to comply with those requirements.

2. If the party concerned fails to rectify the irregularity or challenges the request for regularisation, the Registrar shall refer the matter to the Chairman for a decision to be taken.
3. The Registrar shall refuse to register documents which are not provided for by the Rules of Procedure. If in doubt, or in the event of a challenge by the parties, the Registrar shall refer the matter to the Chairman for a decision to be taken.
4. Save in the cases expressly authorised by the Board of Appeal in accordance with Article 14 of the Rules of Procedure, the Registrar shall refuse to accept pleadings or procedural documents drawn up in a language other than the language of the case.

Article 7 **Service**

1. The Registrar shall ensure that, where the Rules of Procedure provide for a document to be served, the copy of the document is accompanied by a communication specifying the case number and a brief indication of the nature of the document. The copy of that communication shall be kept in the case file.
2. Where, pursuant to Articles 6(1)(h), 7(2)(e) and 8(4)(h) of the Rules of Procedure, a party or an intervener has agreed that service is to be effected on it or its representative by telefax or other technical means of communication, service of the document to be served shall be effected, in accordance with Article 22 of the Rules of Procedure, by such means. However, where service cannot for technical reasons or on account of their nature or length be transmitted by such means service shall be effected either by registered post with a form for acknowledgment of receipt, by personal delivery to the addressee against a receipt or by telefax.

Article 8 **Observance of time limits**

In accordance with Article 24(2) of the Rules of Procedure, documents received at the Registry after the expiry of the period prescribed for their lodgement, including any extensions, will not be accepted unless the Board of Appeal has decided otherwise.

Article 9 **Hearings**

1. The Registrar shall ensure that hearings to be held before the Board of Appeal are announced on the Agency's website.
2. In accordance with Article 13(6) of the Rules of Procedure, the Registrar shall draw up the minutes for every hearing. The minutes shall be sent to the parties.

Article 10

Witnesses and experts

1. The Registrar shall take the measures necessary for giving effect to orders requiring the taking of expert opinion or the hearing of witnesses.
2. The Registrar shall obtain from witnesses evidence of their expenses and loss of earnings and from experts a fee note accounting for their expenses and services.

Article 11

Originals of decisions

1. Originals of decisions of the Board of Appeal shall be placed in the case file.
2. If the decision of the Board of Appeal is contested before the Court of Justice of the European Union within the meaning of Article 94(1) of Regulation (EC) No 1907/2006 or rectified in accordance with Article 26 of the Rules of procedure, a note to that effect shall be made in the margin of the original decision concerned.

Article 12

Publication of documents

For the purposes of Article 6(6) and Article 21(5) of the Rules of Procedure the Registrar shall ensure that an announcement of an appeal and final decisions of the Board of Appeal are published on the Agency's website.

Article 13

Advice for parties

1. The Registrar shall make known to the parties the Practice directions to parties to appeal proceedings before the Board of Appeal. This may be done by referring the parties to the place where the abovementioned document is published.
2. When requested by the parties, the Registrar shall provide them with information on the practice followed pursuant to the Rules of Procedure, the Practice Directions to parties to appeal proceedings before the Board of Appeal and these Instructions.

Article 14

Derogations from these Instructions

Where special circumstances or the proper administration of proceedings require, the Board of Appeal or the Chairman, as the case may be, may derogate from any of these Instructions.

Article 15
Entry into force

1. Decision No BoA/05/2010 of 30 November 2010 of the Board of Appeal of the European Chemicals Agency laying down instructions to the Registrar of the Board of Appeal is hereby repealed and replaced by this Decision.
2. This Decision shall enter into force on the day following its adoption.

Done at Helsinki, 17 December 2018

Mercedes ORTUÑO
Chairman of the Board of
Appeal

Andrew FASEY
Member of the Board of
Appeal

Sari HAUKKA
Member of the Board of
Appeal