

Practice directions to parties to appeal proceedings before the Board of Appeal of the European Chemicals Agency

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A. INTRODUCTION

1. The purpose of these Practice Directions is to provide guidance to the parties and their representatives on the practical aspects of the appeal proceedings before the Board of Appeal (the 'BoA') of the European Chemicals Agency (the 'Agency').
2. These Practice Directions have been adopted in accordance with Article 27(2) and (3) 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 Agency¹ (the 'Rules of Procedure') as amended by Commission Implementing Regulation (EU) 2016/823². The Practice Directions implement the Rules of Procedure by providing more details on the processing of appeals; they neither amend nor replace the Rules of Procedure.
3. The Practice Directions were initially adopted on 8 March 2010 and updated on 29 February 2017 following the entry into force of the Commission Regulation amending the Rules of Procedure. This new update of the Practice Directions takes into account the administrative practice related to the processing of appeals, introduces changes related to means of communication between the parties to appeal proceedings and the Registry of the BoA ('the Registry') and to the organisational aspects of the hearings before the BoA, namely concerning remotely held hearings.
4. In order to ensure the smooth running of proceedings, parties are requested to follow these Practice Directions carefully.

B. COMMUNICATION WITH THE BOARD OF APPEAL

5. All procedural documents, such as the notice of appeal, the defence and applications to intervene, as well as any other correspondence sent to the BoA, must be lodged at the Registry.
6. Any personal data that is submitted to the BoA and its Registry during the appeal proceedings is protected under Regulation (EU) No 2018/1725. Such data is processed in accordance with the Agency's data protection policy³.

Means of communication

7. It is strongly recommended that parties and interveners to appeal proceedings lodge procedural documents using **the dedicated webform** available [on BoA's section of the Agency's website](#).

The webform allows for the submission of larger documents than can be submitted via a single email (see paragraph 12 below). Furthermore, by submitting documents in accordance with the instructions in the webform, parties

1 OJ L 206, 2.8.2008, p. 5.

2 Commission Implementing Regulation (EU) 2016/823 of 25 May 2016 amending Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 137, 26.5.2016, p. 4).

3 More information on the Agency's data protection policy can be found [here](#).

and interveners are less likely to omit information required by the Rules of Procedure. This limits the need for regularisation of submissions.

Parties may lodge procedural documents also by email, fax, post or hand.

8. Procedural documents submitted by email must be sent to the following email address: appeal@echa.europa.eu.
9. The address for submitting or sending documents by post is:

European Chemicals Agency
Registry of the Board of Appeal
P.O. Box 400
00121 Helsinki
Finland
10. Documents may be also lodged by hand at Agency's reception during its opening hours⁴:

Telakkakatu 6
00150 Helsinki
Finland
11. It is the sender's responsibility to ensure that documents reach the Registry in their entirety within the time limit set out in the relevant legislation.

Requirements for communication via the webform or email

12. When sending procedural documents using the webform or email the following additional requirements must be taken into account:
 - (a) when using the webform the maximum file size is 100 megabytes (MB).
 - (b) if parties choose not to use the webform and send documents using email, they should note that the maximum size of the email, with all its attachments, is 10 MB.

Any email above the size of 10 MB must be therefore divided into two or more emails where each email is less than 10 MB and sent in several parts. In the case of such split transmissions, each individual transmission should include in the cover message:

- the appeal number, if available, or an indication of the contested decision;
- the title of the submission (e.g. notice of appeal, defence, observations on the defence, application to intervene);
- the total number of emails, their sequential number and the page numbers of the submitted sheets (e.g. email no. 1 (of 5) containing pages 1-25 of the notice of appeal or containing Annex A and B).

⁴ Opening hours of the reception, including a list of public holidays, can be found on the Agency's website.

- (c) in order to ensure the integrity of the document, only a copy of the physically signed original or a document bearing a verifiable digital signature in accordance with EU legislation on electronic signing is accepted.

13. In its first submission to the BoA, the party concerned is requested to:

- (a) state whether it agrees that documents related to appeal proceedings are served on it or, where appropriate, its representative by email or other technical means of communication (e.g. using cloud services);
- (b) specify the email address that the Registry may use for that purpose.

Please note that for service by email, documents from the Registry are transmitted in PDF format. The recipient's device must therefore be equipped with software that is able to read that format.

14. Where a party has indicated that it agrees to procedural documents being served on it or its representative by email or other technical means of communication, the Registry, if feasible, notifies the procedural documents to that party by the accepted technical means of communication.

Where the Registry sends documents by email or other technical means of communication, recipients are requested to acknowledge receipt of those documents without delay.

Copies of procedural documents

15. Where a procedural document consists of 15 pages or more (including annexes) the party submitting the document must provide the Registry with copies of that document in accordance with the instructions set out in paragraphs 16 and 17 below.

The parties may provide the Registry with copies that are printed recto-verso. However, the text of the original should appear on one side of the page only (see also paragraph 54(c) below).

16. Where the submission is lodged by post or by hand, the signed original shall be accompanied by four paper copies.

17. Where the procedural document was previously submitted by electronic means, the signed original used to create the version sent electronically as well as four paper copies must be sent by post or lodged by hand at the Registry.

Where the procedural document was previously submitted by electronic means the copies shall be sent immediately, and at the latest within 24 hours, following the despatch of the electronic copy without any corrections or amendments, even of a minor nature, being made thereto.

In the event of any discrepancies between the version sent by email or fax and the versions sent later by post or delivered by hand, the date on which the latter documents are lodged shall be deemed to be the date of receipt.

18. When submitting documents in PDF format (text and image), wherever possible, the parties are requested to provide the PDF documents in searchable format, that is, printed to PDF or scanned in a format that allows the use of text search in a PDF reader.

C. APPEAL FEE

Payment of the appeal fee

19. The rules applicable to the payment of the appeal fee are set out in the Fee Regulations applicable to the REACH Regulation⁵ and the Biocidal Products Regulation⁶ respectively.

Appellants are responsible for ensuring that the correct appeal fee is paid as set out in the most recently amended version of the respective Fee Regulation which can be found in the *Official Journal of the European Union*⁷. Also, when paying the appeal fee, the appellants shall ensure that their payment complies with any other applicable European Union rules, in particular as regards trade sanctions⁸.

20. An appeal is not considered to be received by the BoA until the full amount of the relevant appeal fee has been received by the Agency (Article 10(5) of the REACH Fee Regulation and Article 4(2) of the BPR Fee Regulation). The appellant must therefore pay the appeal fee before submitting the notice of appeal. The Registry does not send an invoice.

21. The appellant must pay the relevant amount in euro (EUR) by bank transfer. The applicable bank account details can be found [on BoA's section of the Agency's website](#). The Agency does not accept cash payments or cheques.

All bank charges and associated risks related to the payment of an appeal fee made to the Agency must be borne and paid by the appellant. The appellant's bank should therefore be instructed accordingly. Within the Single Euro Payments Area (SEPA) it is obligatory to use the IBAN and BIC/SWIFT codes.

Each payment of an appeal fee must indicate in the reference field the identity of the appellant(s) and, if available, the identification number(s) of the contested decision and the date of that decision.

22. A proof of payment must be attached to the notice of appeal (Article 6(2) of the Rules of Procedure).

5 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 (OJ L 396, 30.12.2006, p. 1).

6 Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

7 For appeals against decisions adopted under the REACH Regulation, see Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 107, 17.4.2008, p. 6, the 'REACH Fee Regulation').

For appeals against decisions adopted under the Biocidal Products Regulation, see Commission Implementing Regulation (EU) No 564/2013 of 18 June 2013 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 167, 19.6.2013, p. 17, the 'BPR Fee Regulation').

8 See for example Council Regulation (EU) No 269/2014 of 31 July 2014.

Reduction of the appeal fee

23. For an appeal lodged against a decision adopted by the Agency under the REACH Regulation, an appellant may be entitled to a reduced appeal fee if it can demonstrate that it is a micro, small or medium-sized enterprise ('SME') as defined in Article 2 of the REACH Fee Regulation.

If an appellant is entitled to a reduced appeal fee (i.e. where the appellant is an SME), it must inform the BoA thereof at the time the notice of appeal is lodged (Article 13(1) of the REACH Fee Regulation).

For an appeal lodged against a decision adopted by the Agency under the Biocidal Products Regulation, there is a single appeal fee applicable to all appellants (see Annex III to the BPR Fee Regulation).

Refund of the appeal fee

24. The appeal fee is refunded if the Executive Director of the Agency rectifies the contested decision, or if the appeal is decided in favour of the appellant (Article 10(4) of the REACH Fee Regulation, Article 4(4) of the BPR Fee Regulation, and Article 21(1)(h) of the Rules of Procedure).
25. If the appellant is entitled to a refund of the appeal fee, the Registry accordingly informs the Agency's financial unit that further instructs the appellant as to the refund of the appeal fee. In particular, if the appeal fee is to be refunded, the appellant is requested to complete and submit a Legal Entities Form (LEF) and a Financial Identification Form (BAF) together with the necessary supporting documents.

D. WRITTEN SUBMISSIONS

Notice of appeal

26. Appeals must be lodged within three months of the notification of the decision to the person concerned, or in the absence thereof, of the day it became known to the latter (Article 92(2) of the REACH Regulation).
27. An appeal must be lodged with the BoA in writing in the form of a notice of appeal containing, amongst other information, the remedies (form of order) sought, the pleas in law (for example 'error of assessment') and the arguments of fact and law relied on (Article 6(1)(e) of the Rules of Procedure).

The information to be included in the notice of appeal and the documents that must be annexed to it are listed in Article 6(1) and (2) and Article 9 of the Rules of Procedure.

A check list supporting the filing of an appeal is provided on the BoA's section of the Agency's website.

28. Whilst there is no required form for the notice of appeal, it is recommendable, for the sake of procedural economy and to avoid requests for further clarification, that the appellant takes into account the following:
- the precise wording of the remedies (form of order) sought by the appellant must be stated either at the beginning or at the end of the notice of appeal.

The appellant must specify whether the decision is contested in its entirety or only partially. In the latter case, the contested part must be clearly specified;

- the notice of appeal must contain a brief account of the facts giving rise to the dispute;
- the pleas in law on which the appeal is based must be clearly set out. The notice of appeal must contain not only the pleas in law on which the appellant relies in support of the appeal, but also a succinct presentation of each of the arguments supporting those grounds. Legal arguments should be set out and grouped by reference to the particular pleas in law to which they relate;
- references to the annexes to the notice of appeal must clearly specify the location of the evidence in the annexes and explain how the evidence referred to supports the argument in question.

Clarity and precision in the presentation of the pleas and arguments will allow the claims made to be better understood and avoid further questions for clarification.

29. For the sake of administrative efficiency it is recommended that the notice of appeal does not exceed 30 pages (excluding annexes) in A4 size format. All legal arguments must be included in the body of the notice of appeal.

Single appeal by several appellants

30. In certain circumstances the BoA may accept an appeal by more than one appellant against the same decision of the Agency. In deciding whether to submit an appeal jointly the following should be taken into consideration:
- (a) the appeal must be against the same Agency decision;
 - (b) all appellants to the appeal must present identical pleas in law and rely on identical facts and evidence;
 - (c) all the appellants must explicitly agree to be represented by one representative for the purpose of the proceedings; and
 - (d) there should be no issues of confidentiality between the appellants. However, if such issues of confidentiality arise during the proceedings it is the responsibility of the representative appointed jointly by the appellants to ensure that confidential information is not disclosed amongst the appellants.
31. If an appeal challenging an Agency decision is submitted jointly, a single notice of appeal can be submitted collectively and only one appeal fee is required.
32. Where the above criteria for submitting an appeal jointly are not met, appellants challenging the same decision must submit their appeals individually.

Defence

33. The information to be included in the defence is listed in Article 7(2) of the Rules of Procedure.

34. The precise wording of the remedies (form of order) sought by the Agency must be stated either at the beginning or at the end of the defence.
35. Any fact alleged in the notice of appeal which is contested must be specified and the basis on which it is contested expressly stated.
36. Since the legal framework of the proceedings is fixed by the notice of appeal, the legal arguments developed in the defence must be set out and grouped by reference to the pleas in law as put forward in the notice of appeal.
37. The possibility of raising a plea of inadmissibility in relation to the proceedings by a separate submission is not provided for in the Rules of Procedure. As a result, any challenge to the admissibility, in whole or in part, of an appeal must be included in the actual body of the defence together with arguments related to the merits of the appeal.
38. For the sake of administrative efficiency it is recommended that the defence does not exceed 30 pages (excluding annexes) in A4 size format. All legal arguments must be included in the body of the defence.

Subsequent submissions

39. Only where invited to do so by the BoA the parties may provide further observations on the submissions of the other party.
40. The purpose of subsequent submissions is to allow the appellant and the Agency to make clear their position or to refine their arguments, and to respond to new matters raised in the defence and in other subsequent submissions. The BoA may specify the matters to which those procedural documents should relate.
41. Any fact alleged in a submission of the other party which is contested must be specified and the basis on which it is contested expressly stated.
42. Parties may not introduce any new plea in law after the first exchange of written pleadings unless the BoA decides that it is based on new matters of law or of fact that have come to light in the course of the proceedings (Article 12(2) of the Rules of Procedure).
43. For the sake of administrative efficiency, it is recommended that the subsequent submissions referred to in this section do not exceed 20 pages (excluding annexes) in A4 size format. All legal arguments must be included in the body of the subsequent submission.

Calculating time limits and extension

44. For the purpose of calculating time limits, a document is not considered to have been lodged until it is received at the Registry (Article 10(2) of the Rules of Procedure).
45. Rules for calculating time limits are defined in detail in Article 23 of the Rules of Procedure.
46. Time limits prescribed by the BoA or by the Registrar during the proceedings may be extended on a reasoned application.

47. Applications for an extension of a time limit should be submitted well in advance of the expiry of the deadline for which an extension is sought. This will allow the party concerned to comply with the original deadline in the event that their request for an extension is rejected.
48. Certain time limits in the REACH Regulation and the Rules of Procedure, such as those prescribed for lodging the notice of appeal or submitting an application to intervene, cannot be extended.

Language

49. The language of the notice of appeal is the language of the case. The language of the case must be used in the written and oral proceedings unless the BoA has authorised the use of another official language following the reasoned request of a party. This applies also to all annexes (with the exception of supporting documents; see paragraph 55 below) which must be accompanied by a translation into the language of the case, where needed (Article 14(2) of the Rules of Procedure).
50. If the appellant is the addressee of the decision against which the appeal is brought and the appeal is not lodged in the language of that decision, the appellant must provide evidence that the language of the appeal has been used in earlier submissions giving rise to the decision (second subparagraph of Article 14(1) of the Rules of Procedure).
51. When drafting submissions, parties are advised to take into account the fact that all documents submitted will be translated into English since this is the working language of the Agency and is used by the members of the BoA and the Registry in their day-to-day activities related to appeals.

Form of all submissions

52. All submissions must bear a signature and a date (Article 10(1) of the Rules of Procedure).
53. The following information should appear on the first page of any submission submitted to the BoA:
 - (a) the title of the submission (notice of appeal, defence, application to intervene, statement in intervention, replies to questions, etc.);
 - (b) the appeal number (A-...-...) where this has already been notified by the Registry, or, where this has not yet been notified, the number and date of the contested Agency decision;
 - (c) the name and address of the party lodging the submission;
 - (d) if the party has appointed a representative, the name and business address of that representative;
 - (e) in order to enable verification that documents (original, annexes and their copies) submitted to the BoA have been received in their entirety, the total number of submitted pages should be indicated on the first page of every submission (e.g. '1 of 20');
 - (f) where appropriate, a clear indication of any confidentiality request applicable to that specific submission and which is further specified and

justified within a separate document attached thereto (see Section E below); and

- (g) the address for service and, where applicable, agreement to service being effected by email or other technical means of communication (see also paragraph 13(a) above).

Unless the parties submit procedural documents using the Webform referred to in paragraph 7 above, the information listed above shall be provided using the *Cover Form* which can be found [on BoA's section of the Agency's website](#).

- 54. In particular, since all submissions are processed electronically by the Registry, parties should take into account the following requirements:
 - (a) each paragraph of the submission should be numbered consecutively;
 - (b) each page of the submission and annexes (including page dividers) should be numbered consecutively. Page numbers should preferably appear in the top right-hand corner of each page;
 - (c) in the original copy of the submission the text should appear on one side of the page only (i.e. not 'recto verso'). However, the copies provided in accordance with paragraphs 14 to 16 above may be printed 'recto-verso';
 - (d) the text should be easily legible (e.g. font Verdana 10 or Times New Roman 12), and drafted with sufficient line spacing and margins; and
 - (e) documents should not be bound together or joined, for example, with glue or staples.
- 55. Supporting documents such as the proof of payment of the appeal fee, the proof of existence in law, the authority to act and the summary of the appeal should be grouped together and numbered separately. These documents are not served on any interveners subsequently authorised to participate in the proceedings.

Annexes and Evidence

- 56. Parties must submit all documents that they wish to be taken into consideration as part of the proceedings. The BoA does not have access to any documents submitted to the Agency prior to the appeal proceedings.
- 57. Only documents which are mentioned in the actual text of a written submission, such as the notice of appeal or the defence, and which are necessary to prove or illustrate the arguments therein should be submitted as annexes.
- 58. The parties and interveners must ensure that the evidence relied on to support an argument is clearly indicated both in the relevant submission and in any relevant annexes. Extracts from voluminous documents are acceptable provided that the extract is not taken out of context. If necessary, upon request of the BoA, the entire text from which an extract is taken must be provided.
- 59. With the exception of supporting documents submitted with a notice of appeal (see paragraph 55 above), annexes to procedural documents must be drawn up in the language of the case or be accompanied by a translation into that language. In the case of lengthy documents, translations may be confined to relevant extracts. However, the BoA may at any time require a more extensive or complete translation (third subparagraph of Article 14(2) of the Rules of Procedure).

60. When submitting annexes the following formal requirements must be complied with:
- (a) annexes must be easily legible. An annex will not be accepted if the print quality is inadequate;
 - (b) annexes must be numbered (e.g. Annex 1, 2, 3, 4, etc.);
 - (c) any evidence (documents or other types of evidence) relied on should be indicated, listed and annexed to the submissions. A *Table of Annexes* must be provided for each submission (notice of appeal, defence, etc). The table of annexes should include a description of the content of each annex sufficient to distinguish one from another; and
 - (d) the party must clearly indicate the parts of the annex considered relevant. The parties can use the Evidence Sheets prepared by the Registry for this purpose. The evidence sheet should:
 - identify the facts or claims which each piece of evidence is intended to support, with reference to the relevant passage in the submission,
 - provide an explanation as to how that evidence supports the plea and argument presented, and
 - indicate the exact location of the passage(s) within the evidence intended to support the relevant fact or plea. For this purpose, the parties may highlight or mark the relevant passage(s) of the evidence offered.

Parties can find the abovementioned forms (*Table of Annexes* and *Evidence sheet*) [on BoA's section of the Agency's website](#).

61. Parties should avoid submitting documents that were already submitted as part of earlier submissions in the same appeal. Any references to these earlier submissions must make it clear exactly which part of these earlier submissions is being referred to and how and what it is intended to support.
62. Where evidence is introduced after the first exchange of written pleadings a justification must be provided for the delay in offering it (Article 12(1) of the Rules of Procedure).

Representative

63. Where a party or an intervener has appointed an external representative, that representative must provide an authority to act issued by the represented party or intervener (Article 9 of the Rules of Procedure). Any change in representation must be notified to the Registry in writing without delay.

For the purposes of appeal proceedings, a 'representative' is understood to mean somebody who is acting on behalf of an appellant or intervener but is not an employee of that appellant or intervener.

Announcement of the notice of appeal

64. An announcement of each notice of appeal lodged is published on the BoA's section of the Agency's website (Article 6(6) of the Rules of Procedure).

65. The appellant must attach to the notice of appeal a summary of the dispute. The summary prepared by the appellant may be used by the Registry in the preparation of the appeal announcement to be published.

The summary should not exceed one page and should include:

- (a) the name of the appellant;
 - (b) the contested decision;
 - (c) the remedy sought by the appellant; and
 - (d) a summary of the principal grounds relied on.
66. The appellant must not include confidential information in the summary. The announcement of the notice of appeal is published after any confidentiality request related to the content of the announcement has been dealt with and only after the expiry of the 30 days deadline referred to in Articles 93(1) and (2) of the REACH Regulation.
67. In particular, the announcement must provide enough information on the case to allow potential interested parties to apply to intervene in the proceedings in accordance with Article 8 of the Rules of Procedure (see also Section F below). In case the Chairman decides in accordance with Article 93(2) of the REACH Regulation that the appeal is inadmissible, this information is provided in the announcement.

Regularisation of the notice of appeal and other submissions

68. If a notice of appeal does not comply with the requirements set out in Article 6(1)(a) to (d) and (2) of the Rules of Procedure, the Registrar prescribes a reasonable period to put the notice of appeal in order. Such a period may be prescribed only once (Article 6(3) of the Rules of Procedure).
69. Not all of the formal requirements of the notice of appeal can be corrected later, for example, failure to pay the appeal fee. Appellants should therefore pay particular attention that their submissions fulfil the requirements of the REACH Regulation, the Rules of Procedure and these Practice Directions.
70. If the appellant fails to put the notice of appeal in order, the Registrar refers the matter to the Chairman of the BoA for a decision on the admissibility of the appeal (Article 6(4) of the Rules of Procedure).
71. The Registrar may also request that a notice of appeal or other submission be corrected where it is not in conformity with these Practice Directions.

E. CONFIDENTIALITY REQUESTS

Considerations before submitting a confidentiality claim

72. Parties should bear in mind that confidentiality requests create considerable additional work for all parties concerned, including the requesting party. Consequently, wherever possible, the parties should avoid using confidential information when preparing their submissions. Any request for confidential treatment of information should be therefore limited to what is strictly necessary.
73. In the interests of procedural economy, and in order to avoid unnecessary confidentiality claims, the parties should be aware that:

- (a) only the following documents emanating from the BoA are published on the Agency's website:
- (i) the appeal announcement (Article 6(6) of the Rules of Procedure);
 - (ii) the decision of the Chairman declaring a case inadmissible in accordance with Article 93(2) of the REACH Regulation;
 - (iii) procedural decisions (for example decisions on the application to intervene and confidentiality decisions); and
 - (iv) the final decision, and a very short text summarising the final decision for the general public.
- Other documents contained in the appeal file are not made publicly available.
- (b) a decision of the Chairman taken pursuant to Articles 6(6) and 21(5) and (6) of the Rules of Procedure is distinct from the general right to access documents under Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁹. In particular, the assessment of confidentiality requests pursuant to Articles 6(6) and 21(5) and (6) of the Rules of Procedure pursues a different objective as it is conducted in the context of specific appeal proceedings before the BoA. Therefore, the interests to be considered, including the manner in which they are balanced, may be different from any assessment under Regulation (EC) No 1049/2001;
- (c) since the BoA cannot rely on any matters which have not been the subject of disclosure between the main parties to the proceedings, in general, confidential treatment vis-à-vis the Agency or the appellant is not allowed;
- (d) the information listed in Article 6(6) of the Rules of Procedure is published in the announcement of the appeal (second subparagraph of Article 6(6) of the Rules of Procedure); and
- (e) personal data submitted during appeal proceedings will be processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC¹⁰.

How to submit a confidentiality claim

74. A specific and justified request for the confidential treatment of any information contained in a document filed in connection with proceedings before the BoA should be made in writing at the time the document is lodged (Article 6(1)(g) and Article 7(2)(d) of the Rules of Procedure).

However, where interveners are accepted into the case, the parties are at that stage given the opportunity to request confidentiality vis-à-vis those interveners.

⁹ OJ L 145, 31.5.2001, p. 43.

¹⁰ OJ L 295, 21.11.2018, p. 39.

75. Requests for confidentiality must be submitted by way of a separate application lodged together with the principal submission. The existence of the request should also be clearly indicated on the first page of the submission (see also paragraph 53(f) above).
76. The request for confidential treatment of information must include the following:
- (a) an indication of the information for which confidentiality is claimed and where it is located in the submission (e.g. page and paragraph number);
 - (b) an indication concerning to whom and what the request relates (e.g. the announcement or the final decision);
 - (c) a detailed justification as to why such confidential treatment is necessary.

Applications for confidential treatment must not however include any confidential information as the requests may also be notified to any intervener accepted into the case. The relevant information should therefore be referred to by means of a generic description.

77. Whether particular information is to be regarded as confidential is decided by the Chairman, having regard to all the circumstances of the individual case (Article 6(6) and Article 21(5) and (6) of the Rules of Procedure)¹¹.

The Chairman only adopts a separate reasoned decision on a confidentiality request where it is necessary for the processing of the case, in particular when the information requested to be kept confidential may be necessary to be used in the announcement and/or in the final decision or where a party or intervener objects to the confidentiality request.

Non-confidential versions of submissions

78. The parties are not required to submit non-confidential versions unless interveners are admitted to the case. The parties receive instructions from the Registry on how to prepare and submit non-confidential versions, where necessary.
79. Neither the BoA nor its Registry verify the non-confidential versions submitted by the parties. Consequently, in order to ensure that the non-confidential versions submitted do not contain confidential information, the parties should consider coordinating between themselves which information should be deleted from their submissions before they submit their non-confidential versions to the Registry.

F. INTERVENTION PROCEDURE

80. A person or an entity wishing to intervene in appeal proceedings that is able to demonstrate an interest in the result of the case, has three weeks from the date of the announcement of the notice of appeal in which to make an application to the BoA for leave to intervene (Article 8 of the Rules of Procedure).

¹¹ Certain decisions of the Chairman on requests for confidentiality are available on the BoA's section of the Agency's website. These decisions can be used as guidance when considering requests for confidentiality.

81. The application for leave to intervene must contain the information set out in Article 8(4) and Article 9 of the Rules of Procedure and must, in particular, demonstrate the 'interest in the result of the case'.

However, in relation to appeals against decisions on substance evaluation the Member State whose competent authority has carried out the substance evaluation may intervene without having to establish an interest in the result of the case (second subparagraph of Article 8(1) of the Rules of Procedure). It must, however, comply with the other requirements of Article 8 of the Rules of Procedure.

82. Interveners should take into account the instructions for communications and submissions provided above (see in particular Sections B and D).
83. The application for leave to intervene is served by the Registry on the parties who are invited to submit observations on that application before the BoA decides on it (second subparagraph of Article 8(4) of the Rules of Procedure).
84. If the BoA allows the intervention, the intervener receives a copy of every procedural document submitted by the parties to the Board of Appeal in the case in question. Confidential items or documents are excluded from such communication (Article 8(5) of the Rules of Procedure).
85. Interveners must note that the information they receive during the appeal proceedings can be used by them only in the context of those proceedings and must not be made public by them.
86. The Chairman prescribes a period within which the intervener may provide a statement in intervention. The statement in intervention must include the information set out in Article 8(6) of the Rules of Procedure.
87. The Chairman may invite the parties to provide observations on any statement in intervention submitted (Article 8(6) of the Rules of Procedure).
88. Interveners should note that, as the appellant and the Agency are the main parties in the proceedings, the role of the intervener is by its nature an ancillary one (second subparagraph of Article 8(3) of the Rules of Procedure). Interveners do not have the same procedural rights as the main parties. In particular, interveners are not necessarily requested to comment on all procedural documents and do not have the right to request a hearing.

Furthermore, interveners may not submit new pleas of law which would modify the subject matter of the case. The intervention must also be limited to supporting or opposing the remedy sought by one of the parties (first subparagraph of Article 8(3) of the Rules of Procedure).

G. STAY OF PROCEEDINGS

89. At the request of a party or of its own motion, the BoA may, after hearing the parties, stay the proceedings (Article 25 Rules of Procedure).
90. If the Board of Appeal has prescribed a time limit for the stay of proceedings, the BoA, after hearing the parties, may decide on its own motion or on the request of a party that the proceedings be resumed before the end of the stay.
91. The stay of proceedings takes effect on the date indicated in the decision to stay or, in the absence of such an indication, on the date of that decision.

92. During the period in which proceedings are stayed, all procedural time limits are suspended except for the time limit prescribed in Article 8(2) of the Rules of Procedure for an application to intervene.
93. Where the decision to stay the proceedings does not set the length of stay, it ends on the date indicated in the decision to resume the proceedings or, in the absence of such indication, on the date of the latter decision.
94. From the date of the resumption of proceedings following a stay, any suspended procedural time limits continue to run from the date of that resumption unless otherwise decided by the BoA.

H. ORAL PROCEDURE

Request for a hearing

95. The BoA notifies the parties of the closure of the written procedure (Article 12(4) of the Rules of Procedure). The BoA may also indicate, in the same notification, that it considers that a hearing is necessary. In such a case, paragraph 96 below does not apply.
96. If a party considers that a hearing is necessary, it must submit a request to that effect, no later than two weeks from the date of notification of the closure of the written part of the proceedings (Article 13(1) of the Rules of Procedure). Where the above two weeks time limit has expired without any request for a hearing being received, the BoA may nonetheless consider that a hearing is necessary. In that case, the parties are notified accordingly.

Language used in oral proceedings

97. The hearing is conducted in the language of the case (Article 14(2) of the Rules of Procedure).
98. A request to use an official language of the European Union other than the language of the case should, where possible, be submitted together with the request for the hearing, or at the time the party concerned is informed by the BoA of the organisation of a hearing. Any requests to use an official language of the European Union other than the language of the case must be reasoned. The BoA decides on the request after consulting the parties to the proceedings (Article 14(3) of the Rules of Procedure).

Summons

99. Summons to the hearing is notified to the parties, any interveners admitted into the case, and any other person invited to attend the hearing. The summons to a hearing contains the time, date and place of the hearing as well as further information related to the conduct of the hearing, in particular information on the parties' specific requests regarding the conduct of the hearing.
100. An announcement of the hearing is published on the BoA's section of the Agency's website.

Place of the hearing

101. Hearings may be held either in-person or remotely via video-conference or similar technology.
102. If the hearing is held in-person, it takes place at the Agency's premises in Helsinki, Finland. The Registry will provide to the parties, any interveners admitted to the case, and any other person invited to attend the hearing further information regarding the attendance of the hearing.

Hearings cannot be held in a hybrid manner, where some of the parties' representatives are present in the Agency's premises and some attend the hearing remotely. When a hearing is held in-person, all the parties and their representatives must be present in-person, in the same room. When a hearing is held remotely, the BoA, the parties and their representatives will all attend the hearing from their respective locations.

Before a remotely held hearing takes place, the Registry organises a testing session in order to check the connections and solve any technical issues that the participants of the hearing may have. All the representatives of the parties are requested to attend the testing session in order to facilitate the smooth conduct of the hearing on the scheduled date.

Parties should note that remotely held hearings may be affected by the unexpected technical issues that any of the attendees may have during the hearing. Therefore, some flexibility and patience are required from all attendees.

Attendance at the hearing

103. The hearing is held in public, except where the BoA decides to restrict publicity, partly or totally. This may be done, in particular, when taking into account the confidential nature of certain information that the parties, and if appropriate any interveners admitted to the case, must be able to discuss.
104. In light of the resources and costs involved in organising a hearing, the date set for the hearing can be changed only in exceptional circumstances. Any such request must be duly reasoned, accompanied by appropriate supporting documents, and submitted to the BoA as soon as the party becomes aware of the circumstances leading to the request.
105. The working language of the BoA is English, however, the language of the case can be also another official language of the European Union. When a hearing requires the use of interpretation services, the parties receive notice to attend the remote hearing from the Registry at least two months before it takes place. Due to constraints related to the organisation of interpretation services, requests to change the date of a hearing cannot normally be granted. If the language of the case is not English the appellant may nonetheless accept the hearing to be held in English only.
106. Instructions to members of the public wanting to attend the hearing are published [on BoA's section of the Agency's website](#).

I. PUBLICATION OF DECISIONS

107. Final decisions of the BoA are published [on the BoA's section of the Agency's website](#) as soon as the main parties to the proceedings have been notified (Article 21(5) of the Rules of Procedure).

Publication of a final decision may be affected by supervening technical issues or unresolved issues of confidentiality. The BoA's section of the Agency's website contains a section in which the full text of all final decisions of the BoA can be found, subject to appropriate redactions for reasons of confidentiality.

108. The BoA may also decide to publish on its section of the Agency's website certain other procedural decisions adopted during appeal proceedings (e.g. intervention or confidentiality decisions), as well as summaries of final decisions.

J. ENTRY INTO FORCE OF THESE PRACTICE DIRECTIONS

109. These Practice Directions are published [on BoA's section of the Agency's website](#). They enter into force on the day following their adoption.
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