

## Report from the Chairman of the Board of Appeal

### Meeting of the Management Board 19-20 June 2013

<b>Item</b>	10
<b>Action</b>	For information
<b>Status</b>	Final - public

### Action requested

1. The Management Board is invited to note the activities and main developments of the Board of Appeal since the last Report presented to the Management Board in June 2012.
2. The Management Board is invited to comment on the challenges for the BoA identified at section 6.

### Background

As part of ECHA, the BoA reports on its activities in the Annual Report of the Agency<sup>1</sup>, planning its short term and long term activities within the annual and multiannual work programme of the Agency (available on ECHA website). The Chairman of the BoA gives a more detailed annual report to the plenary of the Management Board, as part of the MB Rolling Plan. The BoA has also been in regular contact with the Management Board Working Group for the BoA, whose members<sup>2</sup> act as reporting officers for the BoA members.

This report aims to increase the transparency and accountability required of the BoA, offering to the members of the Management Board (MB) more detailed information to support the slides and information presented during the plenary session on 19 June 2013.

This report addresses the period since June 2012, when the last full report was given to the MB.

### Matters for consideration

1. The Board of Appeal is now dealing with a regular throughput of appeal cases and has had first experiences with oral hearings. Seven appeals were lodged since the last BoA Chairman report to the MB and 3 cases were closed with a final decision. The appeal cases related to evaluation decisions in particular proved to be complicated from a legal and/or scientific point of view.
2. The number of appeal cases is still below the estimates but has increased. The Registry staff is not any more flexibly redeployed in other areas of the Agency and works full time on supporting BoA's decision making. Alternate members have been successfully participated in the decision making when a full member was unavailable.
3. The current challenges for the BoA include:

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<sup>1</sup> Activity 9

<sup>2</sup> Mrs. Ana Fresno, Mr. Gustaaf Borchardt, and Mr. Jan-Karel Kwisthout

- a. finding the right balance between technical and legal considerations when dealing with appeals
- b. the fine tuning of the arrangements of working as a part of the Agency
- c. the preparation for appeals under the Biocides legislation
- d. resource planning against uncertainties in future workload.

**Attachments:**

- Annex I Report from the Chairman of the Board of Appeal
  - Annex II Summary on Decisions Taken and Pending Cases
  - Annex III Table of Appeals
  - Annex IV Statistics
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**ANNEX I****Report from the Chairman of the Board of Appeal**

- 1. Summary
- 2. The Appeal process: who, what & when
- 3. Update on appeal cases
- 4. Resources, expertise & operability
- 5. Management of Conflict of Interests
- 6. Challenges

**1. Summary**

Following the trend observed during the last reporting period, the ECHA Board of Appeal (BoA) continues to receive a steady stream of appeals, albeit at a slower rate than was originally envisaged. Over the reference period of this report - June 2012 to June 2013 - 3 final decisions were taken by the BoA. 1 decision was taken supporting the appeal, 1 decision was taken supporting the original ECHA decision, and 1 appeal was closed after rectification by the Executive Director<sup>3</sup>. A further decision may be taken shortly before the MB meeting, in which case the results will be presented to the MB during the oral presentation of this report. A further 9 appeals are on-going, and amongst them are appeals contesting recent revocations of registrations.

The experience of the BoA over the last year confirms first impressions that the appeal cases – particularly those related to disputes on dossier evaluation – have proven to be highly complicated from a legal and/or scientific perspective.

The appeals are also procedurally challenging, often involving multiple claims for confidentiality and applications to intervene. During the past year, requests for an oral hearings have become frequent practice. Oral hearings give the parties the opportunity to express their arguments directly before the BoA, which in turn benefits from the chance to ask questions of the parties and interveners involved. 4 hearings have been held, 3 of them in Helsinki and one via video-conference.

A considerable number of procedural decisions have therefore had to be taken by the BoA (for example, addressing applications to intervene, requests for time extensions, summons for hearings, etc). Decisions on requests for information to be kept confidential have been taken by the Chairman only. In line with the transparency values of ECHA, the BoA publishes its final decisions, and from summer 2013 on will also publish procedural decisions from closed cases that address confidentiality claims and intervention requests. The attached table (Annex III) sets out the state of play on all appeals received by the BoA to date.

As foreseen on Article 89(2) of REACH Regulation, the three Legally Qualified Alternate Members of the Board of Appeal were called to decide upon cases due to unavailability of the full time member, thereby ensuring the continuous operability of the BoA.

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<sup>3</sup> A-005-2011, A-005-2012, and A-002-2012

## 2. The Appeal process: who, what & when

### 2.1. BoA Team

The BoA team comprises<sup>4</sup> the full-time members<sup>5</sup> and the Alternate/Additional members<sup>6</sup>, all of whom work together with the Registry of the Board of Appeal<sup>7</sup>, which itself provides legal and administrative support to the BoA. Please note that all the AAMs whose position was subject to renewal have been accepted to continue with the exception of Mr Carlo Lupi (alternate technically qualified member), who has decided to resign due to potential new responsibilities as a consultant in the field of REACH. His resignation was informally communicated to the Chairman of the BoA and subsequently submitted in writing to the MB.

### 2.2. The appeal process: Who, What, When

In line with ECHA policy on quality management, the Board of Appeal on 15 December 2012 adopted a quality document explaining the basic steps of the procedure and associated timing (BoA-PRO). This document fills gaps in the Rules of Procedure (e.g., how to process certain confidentiality claims) and facilitates the handling of appeals when simple procedural decisions have to be taken in the absence of one member.

The time required to finalise an appeal has ranged from 2 to 23 months, depending on the complexity of the case, the actors involved, the number of written submissions exchanged by the parties, and whether an oral hearing was held. The internal indicator for adopting a final decision within 90 working days after the end of the written procedure or oral hearing has been achieved.

### 2.3. Reflections on the processing of appeals up to now

- Greater experience with issues, such as identifying the criteria for applications to intervene or confidentiality claims, has helped to streamline such proceedings.
- Confidentiality claims are a frequent issue during appeal proceedings. If the information that is claimed to be confidential is unnecessary for the case announcement, the confidentiality request is granted.
- The appeal system is a legal process inspired by judicial proceedings (equality of arms between parties and respect to the rights of defence), designed to minimize the duration of proceedings whilst guaranteeing the legal rights of the parties. The BoA tries in each case to identify at an early stage the most decisive issues, and narrow the focus of the case and the parties' submissions to those matters.

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<sup>4</sup> The structure of the BoA, based on a dual composition of full-time and part-time members, was reviewed and validated by the MB at the meeting on XX

<sup>5</sup> Chairman Mercedes Ortuño, LQM Mia Pakarinen, TQM Andrew Fasey

<sup>6</sup> Christoph Bartos, Ioannis Dimitrakopoulos, Christopher Hughes, Barry Doherty, Rafael Antonio López Parada, Marc Pallemarts, Henricus Spaas, Jonna Sunell-Huet, Arnold Van Der Wielen

- The oral hearing has proved an effective way to elicit observations from the parties and interveners whilst allowing the BoA to clarify and understand aspects of the cases and the views of the parties on relevant issues. These benefits come at a cost, as the hearing and its preparation prolongs considerably the length of the proceedings.
- The BoA is also considering other measures it can take, within the rules laid down in the Rules of Procedure and the REACH Regulation, to resolve appeal cases as efficiently as possible. For example, in one case the BoA invited the parties involved to further discuss, on a 'one-to-one' basis (i.e., without the BoA being present), a key aspect of the case in anticipation that it could be resolved prior to a BoA decision. Whilst this measure was unsuccessful in that particular case, the BoA plans to take similar measures in the future, perhaps bringing the parties together with the BoA to investigate if there is common ground.

### **3. Update on appeal cases (see also ANNEX II)**

In the period June 2012 - June 2013 seven new appeals were lodged, and 3 cases were closed with a final decision. A number of procedural decisions accompanied these and other appeal cases: 3 decisions on confidentiality claims; 3 intervention requests; 1 decision on the use of other languages in the case; and 89 additional procedural decisions relating to requests for further submissions from the parties or interveners, requests to use another language, rectification applications, requests for extensions of time limits, etc. Nine appeals are still pending, in different phases of the proceedings (e.g., written procedure, oral hearing pending, preparing the final decision). The pending appeals contested ECHA decisions concerning registration fees, registration revocations, and dossier evaluation (disputes on compliance checks).

#### **Some reflections on the issues arising from appeal cases to date**

- In the interests of procedural efficiency, and bearing in mind the possible enforcement consequences of an ECHA decision taken under Article 42 (the follow-up decision to an evaluation decision), the Board of Appeal suggests that ECHA consider the possibility—if the available resources allow it—of continuing to provide assistance to registrants after an evaluation decision has been taken but before the deadline for new information has passed.

This reflection derives from pending cases related to the use of read-across to satisfy registration requirements, and on disputes regarding the substance identification.

- Whilst ECHA decisions are normally thorough and include justification for the decision the BoA observes that some companies may have difficulties in understanding exactly what is being required of them, the implications of the decision as a whole, and the relevance of all of the statement of reasons section.

- Whilst the number of appeals considered by the BoA is still low, the BoA does not believe that any of the appeals it has received are made with any other intention but to legitimately challenge the relevant ECHA decision.
- The BoA will continue to explore whether there are tools at its disposal with which it can enable or encourage the Appellant and the Agency to resolve disputes while there is still time to withdraw the appeal.
- The BoA will consider on a case-by-case basis the extent of the decision that is needed in that particular case. The recently published decision on the first evaluation appeal was relatively long and its scope was broad. As the first decision of its kind, the novel issues needed to be explored and explained in greater detail than may be necessary in future cases. The BoA considered that if the decision was remitted on one basis only, there was a risk that a new ECHA decision may be remitted again on different grounds. In the interests of procedural economy, the BoA decision addressed other issues that it considered to be potentially relevant to any revised decision.

## 4. Resources, expertise & operability

### 4.1. Resources

The structure of the Board of Appeal was examined by the Management Board in March 2013. It confirmed the current structure of three full-time members (legally qualified, technically qualified and a Chairman), with the status of ECHA staff and a variable number of additional/alternate members, non-ECHA staff to be called if needed to participate in the appeal cases.

The BoA is supported by the Registry team (the Registrar, 2 legal advisors, one legal support officer, 2 assistants, and 2 secretaries).

Last year the Chairman reported to the MB about the temporary reallocation of Registry resources while the number of appeal filings dipped lower than expected. From May 2012 the number of appeals started to raise steadily, the reallocation was suspended, and all registry staff are now working full-time for the Registry of the BoA again.

Because it is difficult to predict the number, types, and complexity of appeal cases, planning the use of BoA/Registry resources is problematic. This leads to certain further **reflections**:

- At a certain point, the work of additional members could be important for processing appeals at a satisfactory rate. Moreover, it has proven crucial already to guarantee the operability of the Board of Appeal. The regular update and training of the AAMs is therefore essential.
- The preparation for, and training on, the Biocidal Products Regulation which enters into force in September 2013 is essential. The new appeals on BPR are expected by the second half of 2014.

## 4.2 Expertise

It is the responsibility of the BoA to make timely and well-reasoned decisions from the legal and technical/scientific point of view. It is therefore essential for the BoA to have an in-depth understanding of REACH processes and ECHA working methods.

The training received from ECHA's operational units from June – December 2012 has been helpful in this regard. Training has been received on substance identity issues (with trainees from the relevant unit) and substance evaluation. A broad training on BPR was received from the Commission (DG ENV) on the occasion of the AAMs meeting in May 2013. However, the ECHA secretariat has informed the BoA that, due to resource constraints, no specific training for the BoA and Registry will be possible in 2013, including on the BPR. BoA and Registry staff can continue to apply to attend the regular programme of training within ECHA, but some trainings and events are not suitable when particular substances or cases are discussed. This can also be an issue when ECHA holds workshops that could threaten BoA members' independence and impartiality.

The quarterly BoA/Executive Director meetings are important to ensure that the BoA is regularly updated on ECHA's main developments and operational news. BoA access to ECHA's decisions, as relevant to appeal cases, has been implemented and facilitates the preparatory work of the BoA.

Likewise, during the reporting period, the BoA has been able to participate in meetings of the Member State Committee and the Forum (except in those agenda items where case-related issues may be discussed). This participation provides the BoA with a better understanding of the working methods of the Committees.

Finally, it is also necessary for the BoA to be in contact with a range of stakeholders and to understand their environment. In this respect the BoA members have participated in selected workshops and conferences on REACH and biocides.

## 4.3 Operability

Three alternate legally qualified members, Barry Doherty, Rafael Lopez-Parada, and Marc Pallemmaerts, have been called upon to work as legally qualified members of the Board of Appeal in 5 different appeals to ensure the continuity of the work of the Board of Appeal, as foreseen by Article 89(2) of REACH.

The proceedings foreseen by REACH and the Rules of Procedure of the BoA were observed in all cases, and the MBWG was consulted on the use of alternates in a timely manner. The members were designated according to objective criteria, after the check for potential conflicts of interests was done. Their contributions, based on their experience at Courts and in litigation, has enriched the results of the BoA's work.

An annual meeting is held with all the AAMs for training and information sharing purposes. This year's meeting was held on the 30-31 May 2013. In addition, a quarterly letter from the Chairman updates regularly the alternate members on appeal-related news, the work of the BoA, and ECHA developments.

## 5. Management of Conflict of Interests

As well as the Agency in general, the management of potential conflicts of interest (CoI) is a key issue for the BoA.,.

In 2010 the BoA adopted a Code of Conduct (CoC) that addresses the management of potential CoI. The CoC is applicable both to the full-time and alternate members. It was endorsed by the Management Board in June 2010, and a review is foreseen by the end of 2013.

More recent documents adopted in this field, such as ECHA's Policy for Managing potential conflicts of Interests<sup>8</sup> and the provisional eligibility criteria for members of ECHA bodies<sup>9</sup>, are also applicable to the BoA and its members.

The Court of Auditors (CoA) published in 2012 a special report on the management of potential conflicts of interest in selected EU agencies, based on an audit performed in 2011 on ECHA's policies and practices, including the BoA<sup>10</sup>. The BoA has taken appropriate actions in response to the CoA recommendations and improved its practices for detecting and managing potential CoI (e.g., documenting consultations prior to the case allocation, members providing further information on previous activities and clients).

The review of the CoC will take into consideration the new documents adopted on CoI at ECHA level, the recommendations made by the CoA, and the peculiarities of the BoA as an independent and impartial body within ECHA.

## 6. Challenges

### 6.1. Strike the right balance between legal and technical views

BoA's constant challenge is to improve the operability of REACH with regard to its varied objectives whilst at the same time ensuring its actual and perceived independence and impartiality vis-à-vis the Secretariat. Although BoA decisions must be legally sound, case outcomes should reflect the fundamental objectives of REACH. This means that BoA decisions must balance the tenets of legal reasoning, espoused by the Chair and the legally qualified member, with the scientific viewpoints of the technically qualified member.

### 6.2. Working as a part of ECHA

Another important challenge arises from the fact that the BoA must work as a constituent part of ECHA whilst ensuring that ECHA, as a party to all appeal cases, does not gain an unfair advantage due to its close proximity to BoA. Likewise, BoA must avoid exposure to information that could prejudice its ability to take decisions independently and impartially.

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<sup>8</sup> MB/45/2011

<sup>9</sup> MB/38/2012/D

<sup>10</sup> The Secretariat regularly informed the Management Board of the status of the Court of Auditors special report (No 15/2012). The latest update was given in December 2012 (MB/59/2012 final)



At the same time, mutual cooperation between ECHA and BoA (training, improvement of administrative practices, mutual understanding of working methods, etc.) is important. But given the limitations established by Reach Article 90(3), and the inherent impartiality of the BoA, the means and scope of cooperation must be carefully explored. The Management Board Working Group should be involved in this process.

### **6.3 Manage the new appeals derived from the BPR with the same resources as available for REACH related appeals.**

The new BPR confers on the BoA new competences to decide on appeals against certain decisions adopted by ECHA under the Biocidal Products Regulation. Appeals are allowed against certain decisions on fees, data sharing, and technical equivalence. It is difficult to estimate the possible workload for the next year, but the training and preparation for managing potential appeals has already started. The procedures for managing appeals will replicate those developed for REACH-related appeals.

### **6.4 Staff planning with unpredictable workload**

As mentioned in previous reports, the difficulty of predicting BoA's future workload is a permanent organisational challenge. To date, fewer appeals have been received than expected, but it is still too soon to know whether the rate will increase, particularly as the number of decisions on evaluation rises. The new targeted approach for compliance checks under evaluation will probably lead to a greater the number of notices of appeal.

The Registry team supporting the BoA's activities needs to be in place regardless of the uncertainty on the numbers of appeals. Resources have to be estimated on the basis of theoretical calculations and tentative figures provided by the Agency. Different workload scenarios have to be foreseen and flexible solutions have to be identified.

### **6.5 Keeping high level of knowledge on legal/scientific developments**

In the future, it is likely that dossier- and substance evaluation-related cases will entail considerable interpretive difficulties, assuming that the simpler disputes are resolved in the course of the operational process.

It is therefore essential to maintain a high level of technical expertise that can promote better understanding of the relevant scientific and technical issues. Such understanding can be difficult to achieve with only one technically qualified person working in the BoA and the Registry combined.

### **6.6 Substance Evaluation**

Decisions on substance evaluation could affect a considerable number of appellants per decision on one single substance. The BoA has to consider how to manage such scenarios in an efficient manner.

## 6.7 Procedural Efficiency

As mentioned in section 3.3 and 6.1 above the BoA sees one of its roles as fulfilling the legislative intent of REACH and its implementing regulations. This is in part because the BoA has seen that in several appeal cases the Appellant actively sought the engagement of ECHA in resolving the difficulties they face. The BoA intends to use its power to enable adversarial parties to discuss the relevant issues early on in the registration or evaluation process, in the hope that they can come to an agreement on the case before a final decision needs to be adopted and published. The BoA recognizes that this will not be possible in all cases, and may in fact only be realistic in a few, but it will act in this regard where possible.

- **Annex II Summary on Decisions taken and Pending Cases**
  - **Annex III Table of Appeals**
  - **Annex IV Statistics**
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**ANNEX II****Summary on Decisions taken and Pending Cases****3.1 Final Decisions**

- A-005-2011: Dossier Evaluation (Additional information required)

Summary: In June 2011, an appeal was filed against a decision taken by the Agency in the course of a compliance check. In that decision the appellant was requested to submit additional information following conduct of the 90-day repeated dose toxicity study by inhalation in the rabbit.

Decision of the BoA: The Contested Decision was annulled and the case was remitted to the Agency for further action consistent with the BoA decision.

The BoA decision confirmed that the Agency was entitled to require further information on the substance because of concerns arising from the results of a pre-natal developmental toxicity study on rabbits. The BoA decision also recognised a broad margin of discretion by Agency to require the conduct of further studies according to Section 8.6.4 of Annex X, and subsequently examined how this discretion was exercised, as well as the legality of the measure imposed.

The BoA decision was taken on the basis that in this particular case, a request for information under Section 8.6.4 of Annex X to the REACH Regulation, the Contested Decision breached the principle of proportionality because the Agency did not take all necessary steps to ensure that testing on vertebrate animals was only taken as a last resort, and it failed to ensure that a test using the minimum number of vertebrate animals would be used.

- A-002-2012: Dossier Evaluation (dossier update; waiving; testing proposals)

Summary: In April 2012, an appeal was filed against a decision on a dossier evaluation for the substance Aziridine, CAS No 151-56-4 (EC No 205- 793-9) obliging the Appellant to carry out a long term fish toxicity test.

The Appellant had submitted in their registration dossier a testing proposal for a short-term fish toxicity test in order to fulfil the information requirements set out in Annex IX to the REACH Regulation. Subsequently, and based on the written comments of one of the Member State competent authorities during the evaluation process, the Appellant realised that, in their view, the test was in fact not necessary and withdrew their testing proposal.

Decision of the BoA: the case was closed after rectification by the Executive Director.

- A-005-2012: Registration process related (dispute on the administrative charges)

Summary: The Appellant submitted a dossier for the registration of a substance. In its REACH-IT account the Appellant stated that its enterprise is a "Medium enterprise" and at that time it was not requested by the Agency to prove its size. Consequently, the Appellant paid a reduced registration fee that was confirmed by the Agency.

The Agency requested the Appellant to substantiate its claims related to its small or medium-sized company (SME) status or otherwise incur an administrative charge. In response, the Appellant informed the Agency that it had not received the earlier correspondence in time because of a change of address, as a result it could not provide the required information by the deadline given, and it was in fact a large enterprise and not a medium-sized one.

As a result, in the Contested Decision, dated 28 November 2011, the Agency considered the Appellant to be a large enterprise for the purposes of its registration submissions, and the Agency issued and sent to the Appellant an invoice for the administrative charges. The contested invoice, dated 1 December 2011, levied an administrative charge of 20 700 euros on the Appellant.

Decision of the BoA: the appeal was rejected in its entirety as inadmissible on the grounds that it was submitted after the 3 month deadline, from the date of the decision, to make an appeal.

### 3.3. Other Procedural decisions taken in the course of the cases

In the course of an appeal, the BoA must take frequent procedural decisions, such as responding to confidentiality claims submitted by the parties, addressing applications to intervene in a case, or submitting requests for observations or information from the parties. Most of these decisions are taken by the BoA as a whole, but decisions on confidentiality requests are taken by the Chairman. Decisions on confidentiality requests have to be properly reasoned (in accordance with the principle of sound administration), establish consequences regarding the information that is available publicly (potentially in both the announcement and final decision) and, if applicable, be made available to interveners.

#### Decisions taken on confidentiality requests:

In the reported period, 3 confidentiality related decisions were adopted, (2 requests made by appellants and 1 by the Agency). Typically the appellant requests several pieces of information to be treated as confidential: CAS number (1 instance: granted); chemical substance name and (1 instance: 1 granted); registration number (1 instance: granted); information vis a vis the appellant (1 instance: not granted); 1 blanket request, without specification or justification (1 instance: rejected). Personal data are always protected and are not made public.

In making these decisions the Chairman consults, if needed, the rapporteur of the case. The management of these confidentiality claims is becoming more structured due to the fact that a series of consistent decisions already adopted are helping to inform the new cases. The decisions adjudicating on the confidentiality claims will be also available on-line from June 2013 onward. This information should provide

guidance for the parties to a case requesting confidential treatment of certain information and help avoid unnecessary applications and rejections.

#### Decisions taken on applications to intervene

Three procedural decisions on applications to intervene have been taken in three different cases. The decisions of the BoA have required substantial legal research and a consistent approach to the issue. The requests for intervention were submitted by NGOs focused on animal welfare. In one case the intervention was allowed (ECEAE), but the other two were not allowed because in one the interest in the result of the case was not established, and in the other the Appellant lacked proof that it was a legal person.

#### Decision taken on the use of different languages

One decision was taken rejecting the request to change the language of the case to a different language in the course of the proceedings. It was denied because the need for the change had not been sufficiently justified.

### **3.3 Pending Cases**

- A-001-2012: Dossier Evaluation (Rejection of read-across)

- State of Play: ready for decision.

- Summary: In January 2012 an appeal was filed contesting a decision on a dossier evaluation of the substance dipropylene glycol methyl ether acetate (DPMA). In that decision the Agency requested the Appellant to submit additional information (studies), as it did not accept a read-across proposal from dipropylene glycol methyl ether (DPM) to DPMA.

The Agency considered that, whilst DPMA hydrolyses to DPM, toxicokinetic data suggests that DPMA will still be available in the body for a significant amount of time, a fact that counselled a need for more information on the properties of the DPMA. In addition, the Agency claimed that DPMA contains a functional group, not present in the source substance, that may affect the properties of the target substance.

- A-003-2012: Dossier Evaluation (requesting a test)

- State of Play: ready for decision.

- Summary: In May 2012, an appeal was filed against a decision on a dossier evaluation. The Contested Decision requests the Appellant to perform three additional studies. According to the Appellant, in making the decision the Agency has

not taken into consideration the Appellant's last update to its registration dossier and the waiving concept contained in it.

- -A-004-2012: Dossier Evaluation (compliance check - requesting a test)
  - State of Play: ready for decision.
  - Summary: Appeal lodged on 07 July 2012. The Appellant seeks annulment of a decision requiring two tests to be conducted, claiming that for one of the tests it should be able to take into account the results of a test to be conducted under a U.S. program. For the second test, the Appellant contests the need to conduct it on a second species, claiming that there is no such default information requirement in the REACH Regulation.
  - Application to intervene (ECEAE) accepted.
  
- A-006-2012: Dossier Evaluation (dossier evaluation - use of read-across)
  - State of Play: Oral hearing requested and pending to be held.
  - Summary: Appeal lodged on 20 September 2012. The Appellant claims that it was unnecessary to provide certain information requested in the contested decision using the test methods specified therein as it had already provided and satisfied those data requirements by reference to read-across data relating to two source substances.
  - Application to intervene (PISC) rejected.
  
- A-007-2012: Dossier Evaluation (dossier evaluation - substance identity)
  - State of Play: Oral Hearing held on 4 June; ready for decision.
  - Summary: Appeal lodged on 28 September 2012. The Appellant claims that UVCBs produced, as by-products, from the same or largely identical manufacturing processes should be covered by a single registration. The Appellant also argues that the time limit set by the Agency for further information should not be shorter than the time limit to lodge an appeal.
  
- A-008-2012: Dossier Evaluation (dossier evaluation - substance identity)
  - State of Play: Oral Hearing pending.
  - Summary: The Appeal lodged on 02 October 2012. Appellant contests the requirement to provide a separate registration for what it considers to be a mixture.
  
- A-001-2013: Dossier Evaluation (Compliance check- substance identity)

- State of Play: Written procedure open.

- Summary: Appeal lodged on 8 February 2013. The appeal is against a compliance check decision requiring submission of additional substance identity information regarding the registered UVCB substance (i.e. petroleum additive named Phenol, alkylation products with C10-15 branched olefins derived from propene oligomerization).

The Appellant claims that the required information has already been submitted to the extent that it is technically and practically possible to do so and in accordance with the REACH Regulation and relevant guidance documents. The Appellant contends that the Agency erred in law by not recognising the 'lubricating oil' as a stabiliser.

- A-002-2013 (revocation of a Registration)

- State of Play: Written procedure open.

- Summary: Appeal lodged (in French) on 19 April 2013.

The appeal is against the revocation of the registration number following an SME check and the Appellant's failure to pay the top-up fee. Appellant seeks annulment of the contested decision and the invoice imposing an administrative charge.

- A-003-2013 (revocation of a Registration)

- State of Play: Written procedure open.

- Summary: Appeal lodged on 8 May 2013. The appeal is against the revocation of the registration number following an SME check and the Appellant's failure to pay the top-up fee. Appellant requests the re-instatement of the registration number and undertakes to declare the correct enterprise size and pay the required fees and charges.

More information on pending cases can be found in the appeal announcements published on the BoA section of ECHA's website. All final decisions can also be found in there.

## APPEALS TABLE

## ANNEX III

Order of Reception at BoA	Appeal Case number	Appellant	Country	Decision Being Appealed	Confidentiality Claims	Days from filing to Closure of Written Procedure	Oral Hearing	Days from CWP/ OH to final decision (1)	Days from filing to final decision	Case status	Results
1	A-001-2009	Specialty Chemicals Coordination Center sa/nv	BE	Registration - Rejection (incomplete dossier)	YES	N/A	NO	N/A	44	Closed 30/10/2009	Rectified by ED
2	A-001-2010	Appellant: N.V. Elektriciteits – Produktiemaatschappij Zuid-	NL	Registration - Rejection (Late payment)	YES	259	NO	34	293	Closed 10/10/2011	Appeal Upheld
3	A-001-2011	Feraco Deutschland GmbH, Germany	DE	Registration - Rejection (incomplete dossier, missing: production volumes	NO	N/A	NO	N/A	48	Closed 31/03/2011	Rectified by ED
4	A-002-2011	Feraco (UK) Ltd	UK	Registration - Rejection (incomplete dossier, production volumes missing)	NO	N/A	NO	N/A	48	Closed 31/03/2011	Rectified by ED
5	A-003-2011	BASF SE	DE	Data Sharing (Failure to make all efforts "every effort" to ensure that test costs were shared in a fair, transparent and nondiscriminatory way)	YES	N/A	NO	N/A	95	Closed 27/05/2011	Withdrawn by Appellant
6	A-004-2011	Kronochem GmbH	DE	Registration - Rejection (Late payment)	NO	119	NO	60	179	Closed 07/10/2011	Appeal dismissed
7	A-005-2011	Honeywell	BE	Dossier evaluation (requiring additional testing)	YES	257	YES	89	678	Closed 29/04/2013	Appeal upheld
8	A-006-2011	5N PV GmbH	DE	Administrative Charge Change of fee from SME to large and administrative charge	NO	N/A	NO	N/A	119	Closed 30/11/2011	Withdrawn by Appellant



Order of Reception at BoA	Appeal Case number	Appellant	Country	Decision Being Appealed	Confidentiality Claims	Days from filing to Closure of Written Procedure	Days from filing to final decision (1)	Days from filing to final decision	Case status	Results
9	A-001-2012	Dow Benelux	BE	Dossier evaluation (read across of information)	NO	258	254	512	Closed	Appeal dismissed
10	A-002-2012	BASF SE	DE	Dossier evaluation (update of dossier; waiving of testing proposals)	YES	N/A	N/A	52	Closed 21/06/2012	Rectified by ED
11	A-003-2012	THOR GmbH	DE	Dossier evaluation (late update of dossier; Evaluation of waiving arguments)	YES	194	-	-	Open	
12	A-004-2012	Lanxess Deutschland GmbH	DE	Dossier evaluation Weight of evidence approach and request for additional testing	YES	265	-	-	Open	
13	A-005-2012	SEI EPC Italia SpA	IT	Administrative charge	NO	154	-	210	Closed 27/02/2013	Appeal dismissed
14	A-006-2012	Momentive Specialty Chemicals B.V.	NL	Dossier evaluation (use of read-across data)	YES	-	-	-	Open	
15	A-007-2012	Italcementi SpA	IT	Dossier evaluation (compliance check) Substance identity	NO	172	-	-	Open	Partial rectification
16	A-008-2012	PPH UTEX Sp. zo.o	PL	Dossier evaluation Substance identity	YES	-	-	-	Open	
17	A-001-2013	Infineum UK Ltd	UK	Dossier evaluation Substance identity	YES	-	-	-	Open	
18	A-002-2013	Distilliererie DE LA TOUR	FR	Registration revocation	YES	-	-	-	Open	
19	A-003-2013	Poudres Hermillon	FR	Registration revocation	YES	-	-	-	Open	

<sup>1</sup> The objective of the BoA is to take the final decision within the 90 working days following the closure of the written procedure (ECHA Work Programme 2013, Activity 9)



## APPEAL STATISTICS

### ANNEX IV to Report from the Chairman of the Board of Appeal to the MB/30/2013

