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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[(1)], and in particular Articles 93(4) and 132 thereof,

Whereas:

(1) The review of Commission Regulation (EC) No 771/2008[(2)] concluded that Regulation (EC) No 771/2008 should be amended in various respects.

(2) Regulation (EU) No 528/2012 of the European Parliament and of the Council[(3)] empowers the Agency to take certain individual decisions and entrusts the Board of Appeal established under Regulation (EC) No 1907/2006 with the competence to decide upon appeals brought against the decisions referred to in Article 77(1) of Regulation (EU) No 528/2012. It is therefore necessary to provide rules concerning the appeals brought against the decisions referred to in Article 77(1) of Regulation (EU) No 528/2012.

(3) Fees applicable for appeals against a decision by the Agency under Article 77 of Regulation (EU) No 528/2012 are established by Commission Implementing Regulation (EU) No 564/2013[(4)]. It is therefore necessary to provide rules on the fees applicable for appeals against a decision by the Agency under Article 77 of Regulation (EU) No 528/2012.

(4) Since the Board of Appeal is currently established as a permanent structure within the Agency, it is necessary to ensure that appeals can be processed at a satisfactory rate. Therefore, the possibility to allocate appeals to additional or alternate members should be provided.

(5) Drawing on current practice, it is also appropriate to provide the possibility for the parties to find an amicable agreement between them. In order to increase transparency, a member of the Board of Appeal should be appointed to facilitate the amicable agreement. A summary of the amicable agreement should be publicly available on the Agency's website.

(6) In order to ensure the independence of the Board of Appeal, it is necessary that the Registrar should be appointed directly by the Chairman of the Board of Appeal.

(7) For reasons of legal certainty, it is also appropriate to clarify the existing provisions on the confidentiality requests, in particular that the elements requested in the announcement cannot be claimed confidential.

(8) To ensure an effective participation of the interveners, the intervention procedure should be streamlined to ensure further clarity and the deadline for submitting the application to intervene should be extended. In cases relating to Title VI Chapter 2 of Regulation (EC) No 1907/2006, the Member States application to intervene should be allowed without having to justify their interest in the result of the case.

(9) For reasons of legal certainty, it is appropriate to clarify the provisions on the costs in the sense that the parties bear their own costs.

(10) To ease access to justice and reduce costs, it is also appropriate to clarify that parties can be represented by any person with authority to act and not necessarily by a representative with power of attorney.

(11) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 771/2008 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 25 May 2016.

For the Commission

The President

Jean-Claude JUNCKER

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/823. (See end of Document for details)*

ANNEX

Regulation (EC) No 771/2008 is amended as follows:

(1) in Article 1 the following paragraph 4 is added:

4. To ensure that the appeals can be processed at a satisfactory rate, the Chairman, after consultation of the Management Board of the Agency, may allocate the appeal to alternate or additional members. In such cases, the Chairman may designate an alternate Chairman.;

(2) the following Article 1a is inserted:

Article 1a

Amicable agreement

In the interest of the procedure the Chairman of the Board of Appeal may invite the parties to reach an amicable agreement. In that case the Chairman shall appoint a single member to facilitate the amicable agreement. The Chairman shall communicate the decision to appoint a single member to the parties.

If the parties reach an amicable agreement, the single member shall close the proceedings and a summary of the amicable agreement shall be published on the website of the Agency. In the absence of an amicable agreement within 2 months from the decision to allocate the case to a single member, the case shall be referred back to the Board of Appeal.;

(3) the following Article 1b is inserted:

Article 1b

Withdrawal of an appeal

Where an appeal is withdrawn, the Chairman shall close the proceedings.;

(4) in Article 5, paragraphs 4 and 5 are replaced by the following:

4. The staff of the Registry, including the Registrar, shall not participate in any proceedings of the Agency relating to decisions which may be the subject of appeals under Article 91(1) of Regulation (EC) No 1907/2006 or under Article 77(1) of Regulation (EU) No 528/2012 of the European Parliament and of the Council[(5)].

5 The Board of Appeal shall be assisted in the exercise of its duties by a Registrar, who shall be appointed by the Chairman.

The Chairman shall have managerial and organisational powers to give directions to the Registrar on matters relating to the exercise of the functions of the Board of Appeal.;

(5) in Article 6(1), point (g) is replaced by the following:

(g) where appropriate, an indication as to what information in the notice of appeal is to be regarded as confidential and why;;

(6) in Article 6, paragraph 2 is replaced by the following: