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 Agency (Text with EEA relevance)

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(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

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) Regulation (EC) No 1907/2006 empowers the European Chemicals Agency, hereinafter the 'Agency', to take individual decisions on the registration and evaluation of chemicals, and establishes a Board of Appeal to decide on appeals against the decisions referred to in Article 91(1) of that Regulation.

(2) Since Regulation (EC) No 1907/2006 lays down only basic rules regarding appeal procedures, it is necessary to provide for detailed rules on organisation of the Board of Appeal as well as for detailed rules of procedure applicable to appeals before that Board.

(3) In order to ensure a balanced evaluation of appeals from a legal and technical point of view, both legally and technically qualified members of the Board of Appeal as defined in Commission Regulation (EC) No 1238/2007 of 23 October 2007 on laying down rules on the qualifications of the members of the Board of Appeal of the European Chemicals Agency[(2)] should participate in each appeal.

(4) According to Article 89 of Regulation (EC) No 1907/2006, the Board of Appeal is to consist of one Chairman and two other members, each of whom shall have alternates. It is essential for the Chairman to ensure the quality and consistency of the decisions of the Board of Appeal.

(5) To facilitate the handling of appeals, a rapporteur should be designated for each case and his tasks should be determined.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 771/2008. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(6) To ensure that the Board of Appeal can operate smoothly and efficiently, a Registry should be established under its auspices.

(7) For the same reasons, the Board of Appeal should be empowered to lay down rules for its own functioning and procedure.

(8) In order to enable the Board of Appeal to reach final decisions within a reasonable time, the number of the members of the Board of Appeal may be increased by the Management Board of the Agency in accordance with the second subparagraph of Article 89(3) of Regulation (EC) No 1907/2006. Accordingly, the Board of Appeal should be empowered to lay down criteria for the allocation of cases between its members.

(9) Proof of payment of the appeal fee which is required for any appeal pursuant to 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 (REACH)[3] should be attached to the notice of appeal and should be a condition for the admissibility of the appeal.

(10) If necessary and on the basis of experience in the application of this Regulation, the Commission should review the effectiveness of its provisions and their operation in practice, and amend them where appropriate.

(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:

CHAPTER I

Organisation of the Board of Appeal

Section 1

The Board of Appeal

Article 1

Composition

1 Each appeal shall be decided by three members of the Board of Appeal of the Agency, hereinafter ‘the Board of Appeal’.

At least one member shall be legally qualified and at least one member shall be technically qualified in accordance with Regulation (EC) No 1238/2007.

2 The Chairman of the Board of Appeal, or one of his alternates, shall preside over all appeals.

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3 The Chairman shall ensure the quality and consistency of the decisions of the Board of Appeal.

[F1 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.**]**

Textual Amendments

F1 Inserted by 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).

*[*F1 *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.**]**

Textual Amendments

F1 Inserted by 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).

*[*F1 *Article 1b*

Withdrawal of an appeal

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

Textual Amendments

F1 Inserted by 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).

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Article 2

Exclusion of members

Where the procedure under Article 90(7) of Regulation (EC) No 1907/2006 is applied, the member of the Board of Appeal concerned shall be invited to present his comments regarding the reasons for any objection raised under Article 90(6) of that Regulation before a decision is taken.

Pending a decision under Article 90(7) of that Regulation, the proceedings shall be suspended.

Article 3

Replacement of members

1 The Board of Appeal shall replace a member by an alternate where it decides to exclude him from the proceedings in accordance with Article 90(7) of Regulation (EC) No 1907/2006.

2 The Chairman may replace any member of the Board of Appeal, at the request of that member, by an alternate in the event of leave, sickness, unavoidable commitments of that member or where, for other reasons, that member is precluded from participating in the proceedings. The criteria for selection of an alternate shall be prescribed in accordance with the procedure set out in Article 27(3).

If a member is unable to ask for replacement, the Chairman may replace him on his own initiative.

The Chairman may reject a request for a replacement only by a reasoned decision.

If the Chairman is precluded from participating in the proceedings, he shall designate his alternate. If the Chairman is unable to do so, the longer serving of the other members deciding the appeal, or, where those other members have the same length of service on the Board of Appeal, the older member shall designate the alternate.

3 If a member is replaced before a hearing has been held, the proceedings shall not be suspended and the replacement shall be without prejudice to any procedural steps already taken.

If a member is replaced after a hearing has been held, the hearing shall be held again unless the parties, the alternate and the other two members deciding the appeal agree otherwise.

4 If a member is replaced, the alternate concerned shall be bound by any interim decision taken prior to that replacement.

5 The absence of a member after the Board of Appeal has taken a final decision shall not preclude the Board of Appeal from carrying out the remaining procedural steps.

If the Chairman is unable to sign the decision or to carry out other remaining procedural steps, the longer serving of the other members deciding the appeal, or, where those other members have the same length of service on the Board of Appeal, the older member shall carry out those steps on behalf of the Chairman.

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Article 4

Rapporteur

1 The Chairman shall designate one of the other members deciding an appeal as rapporteur for the case or fulfil that function himself, taking into consideration the need to ensure a balanced distribution of workload between all members.

2 The rapporteur shall carry out a preliminary study of the appeal.

3 The Board of Appeal may, upon a proposal from the rapporteur, prescribe any of the procedural measures provided for in Article 15.

The implementation of those measures may be entrusted to the rapporteur.

4 The rapporteur shall prepare a draft decision.

Section 2

The Registry

Article 5

Registry and Registrar

1 The Registry is hereby established within the Agency under the auspices of the Board of Appeal. The person appointed as Registrar under paragraph 5 shall be the head of the Registry.

2 The task of the Registry shall be the receipt, transmission and custody of documents, and the effecting of other services as provided for by this Regulation.

3 A Register of appeals shall be kept in the Registry in which references to all notices of appeal and related documents are entered.

[[F2]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[(4)].

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.**]**

6 The Registrar shall verify that the time limits and other formal conditions relating to the lodging of appeals are complied with.

7 General instructions to the Registrar shall be adopted in accordance with the procedure set out in Article 27(3).