

*Defendant:* European Commission

### **Form of order sought**

- Annul Decision (C(2017 7119 FINAL) of the Secretarial-General of the European Commission dated 18 October 2017 by which communication of the decision of the European Commission Directorate-General for Competition notified to the French authorities on 22 March 2017, concerning the protocol for indemnifying EDF in respect of the closure of the nuclear power plant of Fessenheim was refused;
- Order the European Commission to communicate that letter of 22 March 2017 to the applicants within one week from the judgment to be delivered by the General Court;
- Order the European Commission to pay all the costs.

### **Pleas in law and main arguments**

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the final subparagraph of Article 4(2) of 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 documents (OJ 2001 L 145, p. 43), since there is an overriding public interest justifying disclosure of the information at issue.
2. Second plea in law, alleging infringement of Article 42 of the Charter of Fundamental Rights of the European Union concerning the right of access to documents.
3. Third plea in law, alleging infringement of Article 47 of the Charter of Fundamental Rights of the European Union concerning the right to an effective remedy.

---

### **Action brought on 20 November 2017 — Federal Republic of Germany v ECHA**

(Case T-755/17)

(2018/C 032/51)

*Language of the case: German*

### **Parties**

*Applicant:* Federal Republic of Germany (represented by: D. Klebs and T. Henze, lawyers)

*Defendant:* European Chemicals Agency

### **Form of order sought**

The applicant claims that the Court should:

- annul the decision of the Board of Appeal of the European Chemicals Agency of 8 September 2017 (Case No A-026-2015) to the extent to which the Board of Appeal, in regard to the decision of the Member State Committee of 1 October 2015 concerning the substance 1,4-Benzenediamine, N, N'-mixed phenyl- and tolyl derivatives ('BENPAT') CAS No 68 953-84-4 (EC No 273-227-8):
  - partially annulled that decision in so far as it provided for the identification of metabolites by the registrants during the OECD TG 309 study;
  - partially annulled that decision in so far as it provided for a study to be carried out under OECD TG 308;
  - ordered that the statement on bioaccumulation in the statement of reasons be removed from the decision;
- and order the defendant to pay the costs.

### Pleas in law and main arguments

In support of the action, the applicant puts forward six pleas in law.

The applicant argues, in particular, that the Board of Appeal exceeded its powers in that, in the context of the appeal proceedings, it comprehensively examined the evaluation decision and re-assessed it, and thereby arrived at the (both formally and substantively unjustified) conclusion that the decision of the Member States should be partially annulled and amended.

1. First plea in law, alleging that the Board of Appeal lacks competence in regard to substantive issues relating to the evaluation procedures.
2. Second plea in law, alleging infringement of the *Meroni* line of case-law of the Court of Justice, since the Board of Appeal, as a body of an EU agency, does not have any decision-making power of its own.
3. Third plea in law, alleging infringement of the principle of subsidiarity and of the principle of limited conferral of powers, in that the Board of Appeal infringed the rights of the Member States, institutionalised through their decision-making power within the Agency's Member State Committee, as there is no legal basis in EU law for the Board of Appeal's action.
4. Fourth plea in law, alleging infringement of the provisions of the REACH Regulation <sup>(1)</sup> by reason of the absence of any power of review on the part of the Board of Appeal in relation to the substance of assessment decisions.
5. Fifth plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU, since the Board of Appeal failed to establish its purported power of review.
6. Sixth plea in law, alleging that the contested decision is substantively incorrect and unlawful.

---

<sup>(1)</sup> 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) and 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 (OJ 2006 L 396, p. 1).

---

### Action brought on 10 November 2017 — Kerstens v Commission

(Case T-757/17)

(2018/C 032/52)

Language of the case: French

### Parties

*Applicant:* Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

- annul the Commission's decision of 27 March 2017 addressed to the applicant in so far as it orders that Case CMS 15/017 is to be recommenced *ab initio*;
- annul the Commission's decision of 7 April 2017 addressed to the applicant in so far as it orders that Case CMS 12/063 is to be recommenced *ab initio*;
- award the applicant compensation amounting to EUR 40 000, by way of special non-material damages, to be paid by the European Commission;
- order the Commission to pay the costs, in accordance with Article 134 of the Rules of Procedure of the General Court.