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.

([1]) OJ L 396, 30.12.2006, p. 1.
([2]) 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 (OJ L 206, 2.8.2008, p. 5).
([3]) 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).
([4]) 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).

(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

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. 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.

(*) 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).';

(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:

'2. Proof of payment of the appeal fee pursuant to Article 10 of Regulation (EC) No 340/2008 or, where applicable, pursuant to Article 4 of Commission Implementing Regulation (EU) No 564/2013 (*) shall be attached to the notice of appeal.

(*) 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).';

(7) in Article 6(3), the second subparagraph is replaced by the following:

'During that period, time shall not run for the purposes of the time limit set out in Article 93(1) and (2) of Regulation (EC) No 1907/2006.';

(8) in Article 6(5), the following subparagraph is inserted:

'When the appellant is not the addressee of the contested decision, the Registrar shall inform the latter of the lodgement of an appeal against such decision.';

(9) in Article 6(6), the second subparagraph is replaced by the following:

'Without prejudice to the first subparagraph, the Chairman shall decide whether information indicated by an appellant pursuant to paragraph 1(g) is to be regarded as confidential and shall ensure that any information which is regarded as confidential is not published in the announcement. The practical details of publication shall be prescribed in accordance with the procedure set out in Article 27(3).';

(10) in Article 7(2), point (d) is replaced by the following:

'(d) where appropriate, an indication as to what information in the defence is to be regarded as confidential and why;';

(11) Article 8 is replaced by the following:

'Article 8

Intervention

1. Any person establishing an interest in the result of the case submitted to the Board of Appeal may intervene in the proceedings before the Board of Appeal.

By derogation to the first paragraph, in cases relating to Title VI Chapter 2 of Regulation (EC) No 1907/2006, the Member State whose competent authority has carried out the substance evaluation may intervene without having to establish an interest in the result of that case.

2. An application stating the circumstances establishing the right to intervene shall be submitted within three weeks of publication of the announcement referred to in Article 6(6).

3. The intervention shall be limited to supporting or opposing, in whole or in part, the form of remedy sought by one of the parties.

The intervention shall not confer the same procedural rights as those conferred on the parties and shall be ancillary to the main proceedings. It shall become devoid of purpose if the case is removed from the register of the Board of Appeal as a result of a party's discontinuance or withdrawal from the proceedings or of an amicable agreement between the parties, or where the notice of appeal is declared inadmissible.

Interveners shall accept the case as they find it at the time of their intervention.

4. The application to intervene shall contain:

(a) the description of the case;

(b) the name of the parties;

(c) the name and address of the intervener;

(d) where the intervener has appointed a representative in accordance with Article 9, the name and the business address of the representative;

(e) an address for service, if different from those under points (c) and (d);

(f) the remedy sought, by one or more of the parties, in support of which the intervener is applying for leave to intervene;

(g) a statement of the circumstances establishing the right to intervene;

(h) an indication whether the intervener agrees that service is to be effected on him or, where appropriate, on his representative by telefax, e-mail or other technical means of communication.

The application to intervene shall be served on the parties in order to obtain any observations they may wish to make on that application before the Board of Appeal decides on it.

5. Where the Board of Appeal decides to allow the intervention, the intervener shall receive a copy of every procedural document served on the parties provided for that purpose to the Board of Appeal by the parties. Confidential items or documents shall be excluded from such communication.

6. The Board of Appeal shall decide whether or not to allow the application to intervene.

Where the Board of Appeal allows the intervention, the Chairman shall prescribe a period within which the intervener may submit a statement in intervention.

The statement in intervention shall contain:

(a) a statement of the remedy sought by the intervener in support of or opposing, in whole or in part, the remedy sought by one of the parties;

(b) the pleas in law and the arguments of fact and law relied on;

(c) where appropriate, the nature of any evidence offered in support;

(d) where appropriate, an indication as to what information in the application to intervene is to be regarded as confidential and why.

After the statement in intervention has been lodged, the Chairman may prescribe a time-limit within which the parties may reply to that statement.

7. Interveners shall bear their own costs.';

(12) Article 9 is replaced by the following:

'Article 9

Representation

Where a party or intervener has appointed a representative, that representative shall provide an authority to act issued by the represented party or intervener.';

(13) in Article 11(1), point (c) is replaced by the following:

'(c) the appeal is not brought against a decision referred to in Article 91(1) of Regulation (EC) No 1907/2006 or Article 77(1) of Regulation (EU) No 528/2012.';

(14) in Article 13, paragraph 4 is replaced by the following:

'4. Hearings before the Board of Appeal shall be public, unless the Board of Appeal, of its own motion or at the request of a party, decides otherwise, when duly justified.';

(15) in Article 15(2), the following point (d) is added:

'(d) to facilitate the amicable agreement between the parties.';

(16) the following Article 17a is inserted:

'Article 17a

Costs

The parties shall bear their own costs.';

(17) in Article 21(1), point (h) is replaced by the following:

'(h) the order of the Board of Appeal, including where necessary an award of costs for taking evidence and a decision on the refund of fees pursuant to Article 10(4) of Regulation (EC) No 340/2008 or Article 4(4) of Implementing Regulation (EU) No 564/2013.';

(18) in Article 21, the following paragraph 6 is added:

'6. The Chairman shall decide whether the information indicated by the appellant pursuant to Article 6(1)(g), the Agency pursuant to Article 7(2)(d) or an intervener pursuant to Article 8(6)(d) is to be regarded as confidential. The Chairman shall ensure that any information which is regarded as confidential is not published in the final decision.'.