

**DECISION OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**19 December 2016**

**Request for rectification of a decision**

<b>Case number</b>	A-013-2014
<b>Language of the case</b>	English
<b>Appellant</b>	BASF SE, Germany
<b>Intervener</b>	The French REACH Competent Authority
<b>Contested Decision</b>	Decision of 11 September 2014 on the substance evaluation of octocrilene adopted by the European Chemicals Agency pursuant to Article 46(1), and in accordance with the procedure laid down in Articles 50 and 52, of Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter the 'REACH Regulation')

The Decision was notified to the Appellant through the annotation number SEV-D-2114287467-34-01/F

**THE BOARD OF APPEAL**

composed of Mercedes Ortuño (Chairman and Rapporteur), Andrew Fasey (Technically Qualified Member) and Rafael López Parada (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

### Decision

1. On 7 December 2016, the Board of Appeal adopted and notified to the Parties and the Intervener a final decision in case A-013-2014 dismissing the appeal in its entirety (hereinafter the 'Decision'). On the same day, the Appellant requested the Board of Appeal to provide it with a statement and/or rectify the Decision to make it clear that the suspensive effect of the appeal pursuant to Article 91(2) of the REACH Regulation extends to all information requirements set out in the Contested Decision.
2. On 8 December 2016, pursuant to Article 26 of Commission Regulation (EC) No 771/2008 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, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.05.2016, p. 4; hereinafter the 'Rules of Procedure'), the Board of Appeal informed the Parties that it intends to rectify the Decision.
3. On 12 December 2016, the Agency informed the Board of Appeal that it agreed with the proposed rectification. In particular, the Agency stated that it agreed that the Appellant had challenged the Contested Decision in its entirety and that all information requests in the Contested Decision should have fallen under the suspensive effect provided for in Article 91(2) of the REACH Regulation during the appeal proceedings.
4. The Board of Appeal observes that, since the Appellant was clearly challenging the Contested Decision in its entirety, the suspensive effect provided for in Article 91(2) of the REACH Regulation should apply to all the information requirements set out the Contested Decision.
5. The Board of Appeal therefore finds that paragraphs 170 and 171, and Point 2 of the Order of the Board of Appeal's Decision of 7 December 2016 contain an 'obvious mistake' within the meaning of Article 26 of the Rules of Procedure as they imply that the suspensive effect provided for in Article 91(2) of the REACH Regulation applies only to certain of the information requirements set out in the Contested Decision.
6. In view of the above, the Board of Appeal finds that paragraphs 170 and 171, and Point 2 of the Order of the Board of Appeal's Decision of 7 December 2016 should be rectified.

On those grounds,

THE BOARD OF APPEAL

hereby decides:

**1. Paragraphs 170 and 171 of the Decision of the Board of Appeal of 7 December 2016 in the present case should read:**

**'170. The Contested Decision, upheld in the present appeal proceedings, required the registrant, now the Appellant, to submit information by 18 September 2016, which is 24 months plus one week from the adoption of the Contested Decision on 11 September 2014. The Board of Appeal considers however that, because of the duration of the present appeal proceedings, the deadline set in the Contested Decision should be interpreted, in the light of the principle of suspensive effect laid down in Article 91(2), as if it referred to 24 months plus one week from the date of notification of the Board of Appeal's decision of 19 December 2016 rectifying the Board of Appeal's final decision of 7 December 2016 in the present case.'**

**171. Consequently, the information required by the Contested Decision shall be submitted to the Agency within 24 months plus one week from the date of notification of the Board of Appeal's decision of 19 December 2016 rectifying the Board of Appeal's final decision of 7 December 2016 in the present case.'**

**Instead of:**

**'170. The Contested Decision, upheld in the present appeal proceedings, required the registrant, now the Appellant, to submit inter alia information on bioaccumulation (recalculation of the BCF value from data on the bioaccumulation test already provided, or a new test to be conducted according to OECD TG 305 in Zebra fish (dietary route of exposure) and Androgenised Female Stickleback Screen (variant of OECD TG 230)) by 18 September 2016, which is 24 months plus one week from the adoption of the Contested Decision on 11 September 2014. The Board of Appeal considers however that, because of the duration of the present appeal proceedings, the deadline set in the Contested Decision should be interpreted, in the light of the principle of suspensive effect laid down in Article 91(2), as if it referred to 24 months plus one week from the date of notification of the final decision of the Board of Appeal.**

**171. Consequently, the information required on bioaccumulation (recalculation of the BCF value from data on the bioaccumulation test already provided, or a new test to be conducted according to OECD TG 305 in Zebra fish (dietary route of exposure) and Androgenised Female Stickleback Screen (variant of OECD TG 230)) requested in points 7 and 9 of Section II of the Contested Decision respectively shall be submitted to the Agency within 24 months plus one week from the date of notification of the Board of Appeal's decision in the present case.'**

- 2. Point 2 of the Order to the Decision of the Board of Appeal of 7 December 2016 in the present case should read:**

**'2. Decides that the information requested in the Contested Decision shall be submitted to the Agency by 26 December 2018.'**

**Instead of:**

**'2. Decides that the information on bioaccumulation (recalculation of the BCF value from data on the bioaccumulation test already provided, or a new test to be conducted according to OECD TG 305 in Zebra fish (dietary route of exposure) and Androgenised Female Stickleback Screen (variant of OECD TG 230)) requested in points 7 and 9 of Section II of the Contested Decision respectively shall be submitted to the Agency by 14 December 2018.'**

- 3. The final decision of the Board of Appeal in the present case published on the website of the Agency pursuant to Article 21(5) of the Rules of Procedure will be amended to take into consideration the present decision of the Board of Appeal.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Alen MOČILNIKAR  
Registrar of the Board of Appeal