

For the first time, the General Court rules on decisions of the Board of Appeal in substance evaluation cases

The Court considered the scope and intensity of the power of review of the Board of Appeal (BoA) when reviewing Agency's decisions in substance evaluation cases.

The first case ([T-125/17](#)) was filed by a registrant, BASF Grenzach. The BoA had rejected BASF Grenzach's appeal against a request for further information on the substance triclosan (an antibacterial used in consumer products). BASF argued that the BoA should have carried out a full re-evaluation of triclosan, and not limited itself to the arguments and evidence put forward in the appeal procedure.

The second case ([T-755/17](#)) was filed by the Federal Republic of Germany. The BoA had partially annulled a request for further information on the substance BENPAT (a rubber additive). Germany argued that only the Member States, and not ECHA, have the competence to decide what information should be requested under substance evaluation. Therefore, the BoA should not have examined the scientific content of the request at all.

In its judgments, the Court confirmed that the BoA is empowered to review ECHA decisions not only concerning legal aspects, but also concerning scientific and technical aspects. Also, the intensity of the review carried out by the BoA can be greater than that of a review carried out by the EU Courts in cases involving the assessment of highly complex scientific and technical facts. The judgments furthermore confirmed that:

- the BoA is not required to conduct a completely new ('*de novo*') evaluation,
- the procedure before the BoA has an adversarial nature, and
- the BoA is mainly to confine itself to examining the pleas and arguments of the appellant.

The Court also considered in its judgments that decisions under substance evaluation are ECHA decisions, adopted according to a specific procedure that involves Member States. In such cases, before substituting a contested ECHA decision containing an error, the BoA must take into account the role of the Member States in ECHA's decision-making procedure, and consider whether it is more appropriate to send the case back.