



**Seminar on 10 years of REACH Litigation
24 May 2017**

**Litigation before the EU General Court
and the Board of Appeal**

Similarities and differences

Panel 11:00-13:00

**Introduction by Heikki Kanninen
Chairman of the panel**



General introduction

The ECHA Board of Appeal (ECHA BoA) and the system of review of the administrative acts

Judicial review: an administrative act can be challenged before a court

Administrative review: prior to the judicial review, with various mechanisms to review the administrative acts



Administrative review

with respect to the organisational framework

- **Review of the decision by its author.**
- **Review of the decision by another person/body within the same administrative entity of the author.**
- **Review of the decision by an administrative body separate from the author's entity.**



Administrative review

with respect to the link with the judicial review

- Administrative review can be a requirement before the judicial review.
- Administrative review can be an option, judicial review being possible without any prior administrative review.
- Administrative review can be seen as “part” of the judicial review : application firstly filed before an administrative authority and secondly transferred to a court, when the applicant did not get full satisfaction.



Administrative review

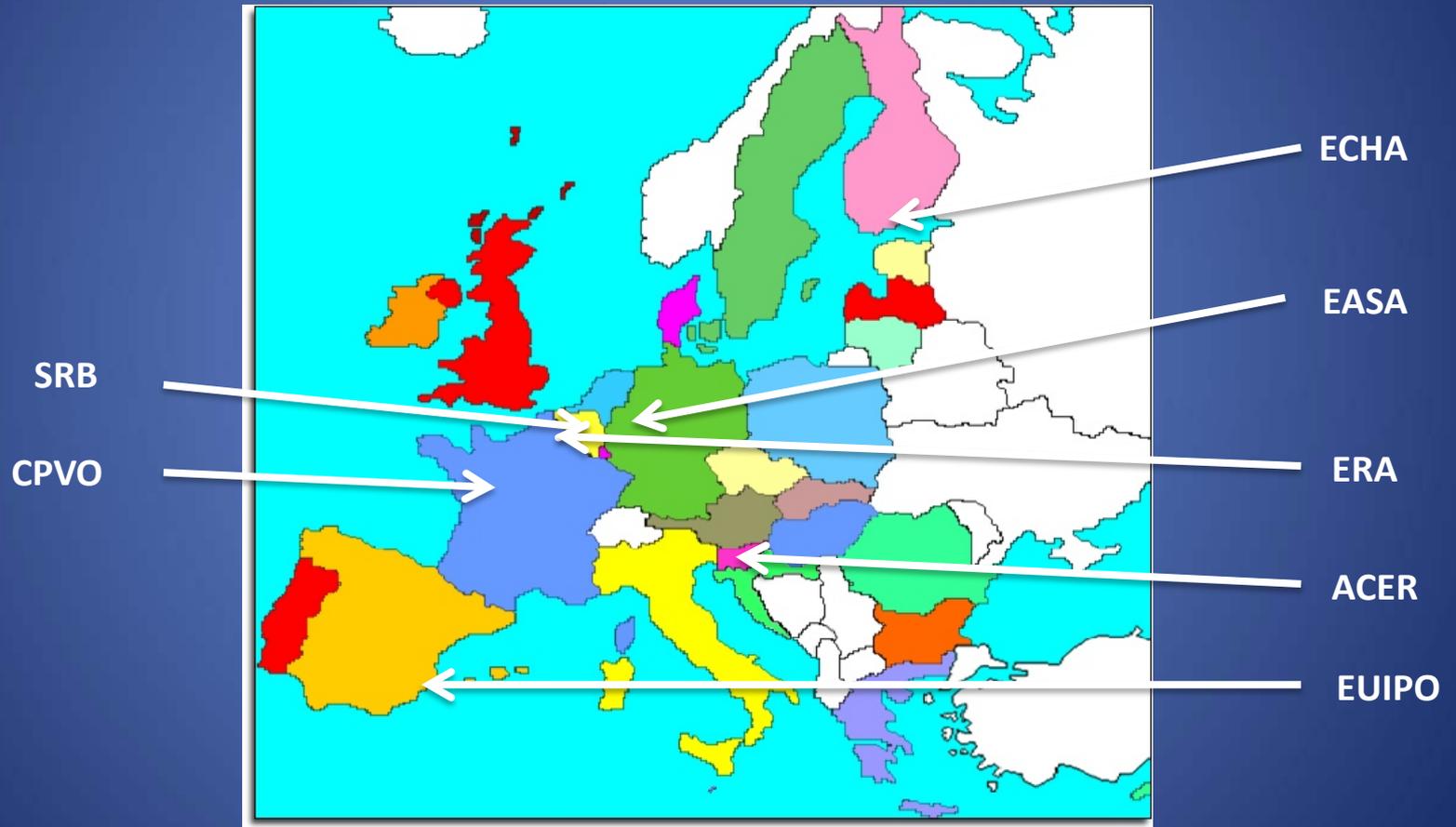
in the EU Member States and at the EU level

In EU Member States: various mechanisms for an administrative review. The administration can correct, amend or withdraw administrative acts prior any application filed before a court. These mechanisms appear as an essential part of an efficient review system.

At the EU level: national mechanisms inspired the EU legislator, who adopted, in various areas, different types of administrative review prior to a judicial review



UE agencies and offices with boards of appeal





No codified rules for the agencies/offices and the various boards of appeal

- **Each agency/office has its own rules. i.e.:**
 - **EU Intellectual Property Office (EUIPO, Alicante)**
 - **EU Chemicals Agency (ECHA, Helsinki)**
 - **Community Plant Variety Office (CPVO, Angers)**
 - **European Aviation Safety Agency (EASA, Cologne)**
 - **Single Resolution Board (SRB, Brussels)**
 - **Agency for the Cooperation of Energy Regulators (ACER, Ljubljana)**
 - **EU Agency for Railways (ERA, Valenciennes)**

- **No global and comprehensive picture for the various boards of appeal of these agencies/offices.**



Reasons for providing an administrative review

- High number of decisions that can potentially generate a huge number of cases before the courts: administrative review as a way to limit the number of cases
- Review as a way to correct manifest and obvious errors through a simplified procedure
- Review by a specialised body (specialised members) before the case is brought before a court with general jurisdiction
- Review procedure can sometimes include the intervention of persons representing special interests



Nature of the review bodies

- **Are they independent and impartial?**
- **Are they acting like a court of justice? If not, how do they look like? Are they part of an administrative authority, are they independent, are they like a quasi-jurisdictional body?**
- **What are the reasons for establishing an appeal body instead of a court of justice?**



Nature of the procedure before the review bodies

- **Administrative procedure?**
- **Judicial procedure?**
- **Mixed procedure?**



Elements for discussion on the panel

What is the purpose of the ECHA BoA? What was the reason to establish it?

- **To give a legal protection within a procedure which is as similar as possible to proceedings before a court of justice?**
- **To enable a review procedure having specific differences with a procedure before a court of justice?**



Elements for discussion on the panel

Which differences?

- **Is the BoA procedure a functional extension of the administrative procedure?**
- **Does the ECHA BoA review the case as a “superior” administrative body?**
- **The impact of the composition of the ECHA BoA?**
- **Is the ECHA BoA an independent and impartial body?**



Elements for discussion on the panel

Similarities and differences between the ECHA BoA and the EU General Court?

- **Who are the parties, the applicant and the defendant? Can third parties intervene to the procedure? Shall the parties be represented by a lawyer?**
- **Rules for the language of procedure**
- **Has the procedure a written part and an oral part? Do parties have a right to an hearing? What is the frequency of hearings and how useful are they?**
- **Can new evidence be brought by the parties before the ECHA BoA and the General Court?**



Elements for discussion on the panel

- **To what extent can the ECHA BoA and the General Court take measures of inquiry and measures of organisation of procedure? What is the purpose of these measures? How do the ECHA BoA and the General Court face the need for expertise in non-legal questions?**
- **How are the rights of defence applied? Is there any confidential information which is not communicated to a party of the proceedings?**
- **How are the grounds of the decision/judgment organised? Does the decision/judgment give an answer to each plea of law and argument or can the reasons be more general?**
- **Are the proceedings free of charge? Can a party be ordered to pay the costs borne by the other party?**



THANK YOU

KIITOS

MERCI