

# Litigation before the General Court and the Board of Appeal – similarities and differences

From ECHA's legal point of view

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William Broere  
Senior Legal Advisor  
European Chemicals Agency

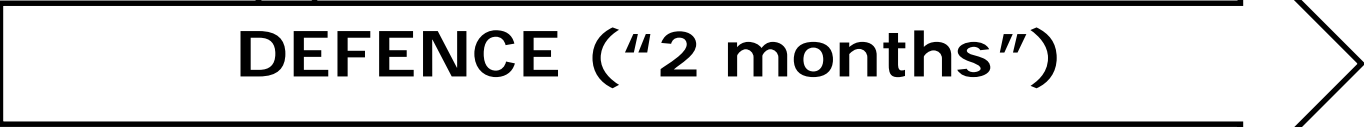
# ECHA DECISIONS CHALLENGED BEFORE COURT AND BOARD OF APPEAL

Board of Appeal	General Court
Registration decisions	Board of Appeal decisions
Datasharing decisions	Identification of substances of very high concern (also ECJ on appeal)
Dossier evaluation decisions	Access to documents
Substance evaluation decisions	Public Procurement decisions
Statement of non-compliance	Statement of non-compliance
Company size verifications	Company size verifications

## WRITTEN PROCEDURE Board of Appeal (1)

- Article 93(1) REACH: **Rectification** within 30 days
- Article 7(1) RoP of BoA: **Defence** "within 2 months of service"
- Article 12(3) allows for further observations

### DEFENCE ("2 months")



#### RECTIFICATION (1 month)

- Analysis of the case
- Searching for legal errors (e.g. reasons)
- Meeting with Executive Director
- Decision on (no) rectification

Remaining time for **defence**  
(1 month)

Overlap



**No separation between rectification and defence timelines**

## WRITTEN PROCEDURE Board of Appeal (2)

- Issues in relation to rectification (see previous slide).
  - Impact on defence deadline
  - Should ECHA partially rectify?
- How to deal with new evidence in dossier and substance evaluation cases?
  - Member States are integral part of these processes – how far can ECHA review without them?
  - Article 42(1) and Article 46 REACH already allow ECHA/ Member State to examine any information submitted after decision
- How to deal with new pleas?
  - Should ECHA address them or raise admissibility.

## WRITTEN PROCEDURE GENERAL COURT

- Article 81 RoP of the General Court: **Defence** within 2 months (10 days) (can be preceded by objection on admissibility)
- Possibility for reply and rejoinder
- Written questions

## ADMISSIBILITY – Board of Appeal

- Article 93(2) REACH: examination of admissibility by BoA Chairman within 30 days
  - ➔ Only on one occasion chair has dismissed case inadmissible within 30 days
- If chairman does not decide on admissibility, appeal remitted to the Board of Appeal for examination of grounds and admissibility:
  - Questions on direct and individual concern of Appellant, e.g. downstream user and registrant of other substance
  - Time of lodging an appeal by such an appellant
- Potentially can lead to unnecessary submissions and longer proceedings than needed

## ADMISSIBILITY: General Court

- Article 130 Rules of Procedure of the General Court
- Agency can submit a separate objection as to admissibility
  - ➔ Proceedings can go more quickly as can be closed without going into the merit of the cases
  - ➔ But, can also delay proceedings as separate Defence may need to be submitted
- Useful to clarify quality of ECHA's acts and who can bring an action
  - E.g., Identification of SVHCs are regulatory acts (individuals who show direct concern can bring action against candidate listing)
  - Standing of applicants (e.g., mere participation by animal welfare association in BoA procedure insufficient to establish direct and individual concern)

## INTERVENTIONS: Board of Appeal

- Article 8 Rules of Procedure: Any person establishing an interest in the result of the case
- Member States have no automatic right to intervene even in cases where they are co-decision makers
  - Except since 2015 - Automatic right to intervene for evaluating Member States in substance evaluation cases
- Parties legally affected by a measure can intervene – e.g., other party in a datasharing dispute, co-registrants in dossier evaluation appeals
- Accredited stakeholders of ECHA – animal welfare NGOs allowed to intervene in cases involving animal testing but not datasharing
- Many issues on confidentiality



## **INTERVENTIONS - General Court (Article 40 Statute of the ECJ and Articles 141 *et seq* of Rules of procedure)**

- Member States and Institutions have privileged access
- Other persons which can establish an interest in the case:
  - ECHA has shown interest as intervener in cases where it was involved in the decision making process (e.g., Annex XIV inclusion and classification and labelling)
  - Non-EU manufacturer can intervene if it can show economic interests are affected by decision
  - Representative association allowed to intervene where decision is liable to affect its members' interests (e.g., CEFIC)
  - EEA Member States
- Limited issues on confidentiality

## ORAL HEARINGS

- No margin of discretion for BoA (Article 13 BoA RoPS)
  - limited discretion for Court
- BoA hearings normally full working day whereas General Court/ Court normally a couple of hours
- Generally more questions are asked by BoA
- Useful to know scope of hearing in advance to focus on the relevant issues for BoA/Court

## OTHER DIFFERENCES/SIMILARITIES

	Board of Appeal	General Court
Fee	Yes	No
Possibility for the Agency to appeal	No	Yes
Suspensive effect	Automatic	Conditional
Legal representation	Not required	Required
Lodging system	Paper copies	e-Curia
Costs recovery	No	Yes
Average duration	16 Months	23 Months

**THANK YOU**

