

## Announcement of appeal<sup>1</sup>

<b>Published on</b>	10 September 2024
<b>Case</b>	A-004-2024
<b>Appellant</b>	BASF SE, Germany
<b>Appeal received on</b>	26 July 2024
<b>Subject matter</b>	A decision taken by the European Chemicals Agency under Article 40 of the REACH Regulation <sup>2</sup>
<b>Keywords</b>	<i>Dossier evaluation – Testing proposal – Rectification of a decision by the Executive Director</i>
<b>Contested Decision</b>	TPE-D-2114679596-27-01/F
<b>Language of the case</b>	English

### Background and remedy sought by the Appellant

On 29 November 2022, the Agency notified the Appellant of a draft decision following the examination of a testing proposal for the substance 2,4,4-trimethylpentene<sup>3</sup>.

On 19 December 2022, the Appellant updated its registration dossier by downgrading the tonnage band from 100 to 1000 tonnes per year (Annex IX level) to 10 to 100 tonnes per year (Annex VIII level). On the same date, the Agency adopted a decision finding the Appellant's updated registration dossier complete.

On 14 May 2024, the Agency adopted the Contested Decision under Article 40, according to which the Appellant is requested to submit information on an extended one-generation reproductive toxicity study under Annex IX. The Appellant is one of the addressees of that decision and appears in the list of registrants to which the highest applicable Annex is Annex IX.

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<sup>1</sup> Announcement published in accordance with Article 6(6) 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).

<sup>2</sup> 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). All references to Articles and Annexes concern the REACH Regulation unless stated otherwise.

<sup>3</sup> EC No 246-690-9 (the **Substance**).

The Appellant requests the Board of Appeal to annul the Contested Decision insofar as it identified the Appellant as an addressee to which Annex IX applies and order the Agency to refund the appeal fee.

### **Pleas in law and main arguments**

In support of its appeal, the Appellant raises two pleas in law.

First, the Appellant argues that, by adopting the Contested Decision, the Agency breached the Appellant's right to good administration, as the Agency failed to respect its duty to examine each case individually. The Appellant also argues that the Agency erred when it disregarded the Appellant's tonnage downgrade during the decision-making procedure leading to the adoption of the Contested Decision and when it ignored the information provided by the Appellant which demonstrated the objective industrial or commercial considerations for the tonnage downgrade.

Second, the Appellant argues that, by requesting it to submit information under Annex IX, the Agency breached Article 40, since at the time of the adoption of the Contested Decision the Appellant's ability to legally manufacture/import the Substance was already restricted to a maximum of 100 tonnes per year, due to the prior Agency's decision on a completeness check on the Appellant's updated registration dossier.

### **Rectification, withdrawal of the appeal and closure of the case**

The Executive Director of the Agency rectified the Contested Decision under Article 93(1) by removing the Appellant from the list of the concerned registrants in Appendix 3 to that decision. Subsequently, the Appellant withdrew the appeal, and the Chairman of the Board of Appeal closed the case on 10 September 2024.

### **Further information**

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>