

Final report from the outgoing Chairman of the Board of Appeal

53rd Meeting of the Management Board 28-29 March 2019

Key messages

After chairing the Board of Appeal ('BoA') for nearly 10 years, and before her term of office ends, the BoA Chairman briefly presents her views on the ground covered by the BoA so far. The Chairman adds some thoughts on the future of the BoA and on the steps taken to ensure the continuous operability of the BoA before the next Chairman joins.

In addition to the above, the report includes a list of the BoA Members and some information on the resources supporting BoA. The Report also includes the latest figures related to BoA's activity.

Background

Every year, the Chairman of the Board of Appeal presents a comprehensive report on the BoA's activities during the June meeting of the Management Board. As the term of office of the current BoA Chairman - Ms Mercedes Ortuño - ends on 15 April 2019, it was agreed with the Management Board Working Group for the BoA (the 'MBWG-BoA')¹ that she would present her views on the past and present, and share some thoughts on the possible future path of the BoA at this Management Board meeting.

Rationale

As an independent and impartial body of ECHA, the BoA is accountable to the Management Board that acts as appointing authority of the BoA members. The present report aims to discharge that accountability on the occasion of the conclusion of the 10 years of office of the outgoing BoA Chairman.

Drawbacks

N/A

Attachments:

- Annex I: Outgoing BoA Chairman's views on BoA's past, present and future
- Annex II: Table of BoA Members: 'full time' and alternate and additional members
- Annex III: BoA in figures

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¹ MB WG-BoA is currently composed of: Mr Hans Meijer (Chair of the MBWG-BoA), Ms Luminița Tîrchiță, Ms Miroslava Bajanikova, Mr Kęstutis Sadauskas, and Mr Oscar Gonzalez Sanchez.

Outgoing BoA Chairman's views on BoA's past, present and future

1. Introductory remarks
2. Early days
3. Later days
4. Look ahead and steps taken to ensure continuity of BoA's work before the next Chairman enters into office
5. Concluding thoughts

1. Introductory remarks

The BoA is an ECHA body, set up by the REACH Regulation, tasked with the review of ECHA decisions. Parties (mainly economic operators) considering that they have been adversely affected by certain ECHA decisions under the REACH Regulation or Biocidal Products Regulation ('BPR') may challenge those decisions before the BoA. When deciding on an appeal, the BoA is composed of three members, appointed by the Management Board. The BoA reviews the challenged decisions of ECHA in an impartial and independent manner.

When deciding on a case, the BoA considers the pleas and arguments of the appellants and the Agency. The BoA examines whether the contested decisions comply with the REACH Regulation, the BPR, the associated implementing regulations, and with EU law in general. An appeal before BoA has suspensive effect, meaning that the addressee of the contested decision does not have to comply with that decision whilst the appeal is pending before the BoA.

BoA decisions are decisions of the Agency. They can be challenged before the General Court of the European Union. Currently, the BoA awaits the decisions of the General Court in two cases brought by an unsuccessful appellant and by a Member State respectively. The outcome of those two cases will most likely have a significant impact on the scope and extent of the BoA's review, in particular in substance evaluation cases.

This report, which will be presented orally during the meeting, briefly outlines some personal reflections of the BoA Chairman, Ms Mercedes Ortuño, as her second term of office is, after 10 years chairing the BoA, drawing to an end.

2. Early days

- Setting up BoA
- BoA is quite a 'unique animal'
- Importance of Alternate/Additional members (non-permanent BoA members)
- Life with a 'Chinese wall' mind-set
- Challenging path to administrative autonomy of the BoA by managing its supportive unit

3. Later days

- Positioning within ECHA
- Finding BoA's identity; defining the scope and intensity of BoA's review
- Consolidating (R)BoA autonomy from the ED
- Major contributions to the better implementation of the REACH Regulation (on Registration, Data Sharing, Dossier Evaluation and Substance Evaluation processes)
- Maintaining a high level of acceptance among all stakeholders
- BoA decisions helpful for REACH implementing measures

4. Look ahead and steps taken to ensure continuity of BoA's work before the next Chairman enters into office

- Ensuring continuity, consistency and legal certainty to deal with changes (e.g. new Chairman, possible effects of Brexit effects)
 - Measures to be taken to ensure the continuous and timely processing of appeals in the period until the next BoA Chairman takes over (e.g. delegation of certain of the Chairman's competencies on the longer serving BoA member and, when needed, the appointment of an alternate Chairman to oversee certain steps in appeals).
- Possible adjustments of BoA's scope of review resulting from forthcoming decisions of the General Court
- Whenever extending ECHA's competences in new legislative acts, the legislator should also consider extending BoA's role

5. Concluding thoughts

- BoA has demonstrated its value in the correct implementation of the REACH regulation and the BPR
- BoA has provided legal certainty for REACH actors and consistent approaches to the most difficult aspects of REACH
- Stakeholders, as well as the last REACH Review Report, recognise the importance of BoA's work for the regulatory system
- BoA can be quite a vulnerable body
- Pivotal role of the BoA Chairman
- BoA's appointing authority should be able to swiftly address any element that may destabilise the BoA
- The Management Board and the European Commission have an important role in ensuring the stability and autonomy of the BoA
- Close communication between the BoA Chair and the Management Board Working Group on BoA is recommendable

Table of BoA members: 'full-time' and alternate and additional members (11 March 2019)

Name	Role	Term started	Term ends
Mercedes ORTUÑO	Chairman	16 Apr 2009	15 April 2019**
Andrew FASEY	TQM	1 March 2011	28 February 2021**
Sari HAUKKA	LQM	1 November 2015	30 October 2020*
Christoph BARTOS	Alt Chair	15 Oct 2010	14 October 2020**
Ioannis DIMITRAKOPOULOS	Alt Chair	15 Oct 2010	14 October 2020**
Cristopher HUGHES	Alt Chair	15 Oct 2010	14 October 2020**
Jonna SUNELL-HUET	TQAAM	16 May 2009	15 May 2019**
Angel M. MORENO MOLINA	LQAAM	15 December 2014	14 December 2019*
Sakari VUORENSOLA	LQAAM	15 December 2014	14 December 2019*

*- First mandate

** - Second mandate

Registry Unit supporting BoA's work during the reporting period

- Registrar: Alen Močilnikar
- 4 Legal Advisors
- 2 Legal Assistants
- 2 Administrative Assistants

BoA in figures

Figure 1:

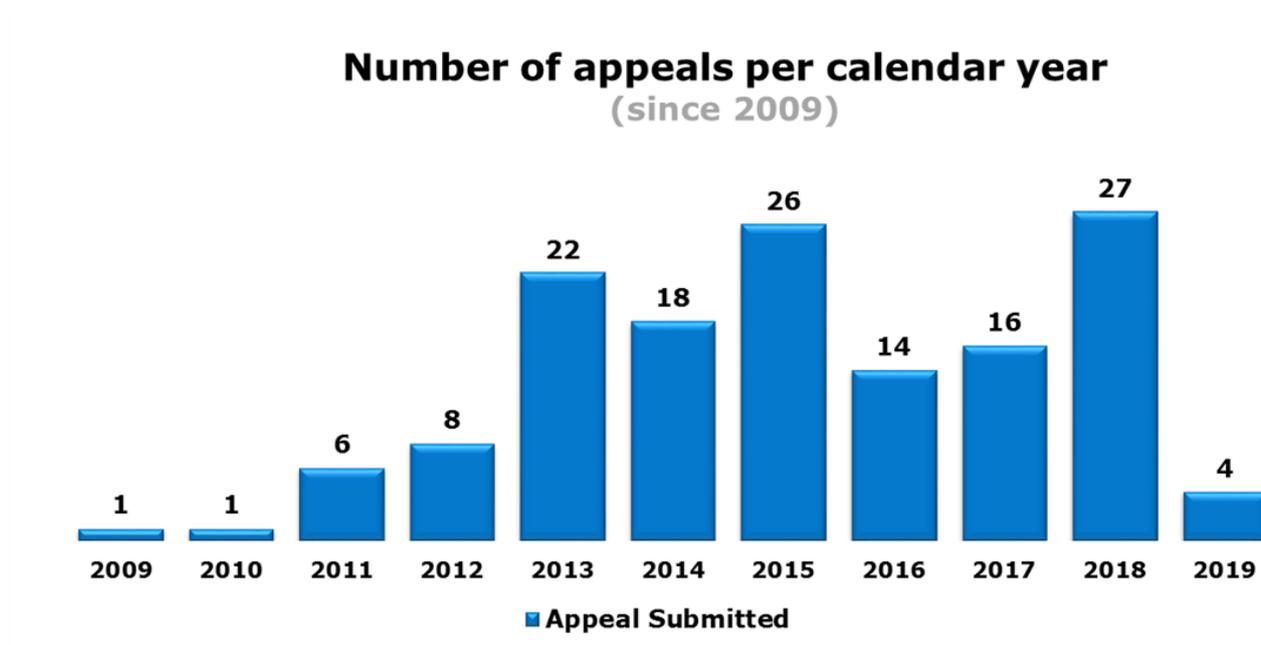


Figure 2:

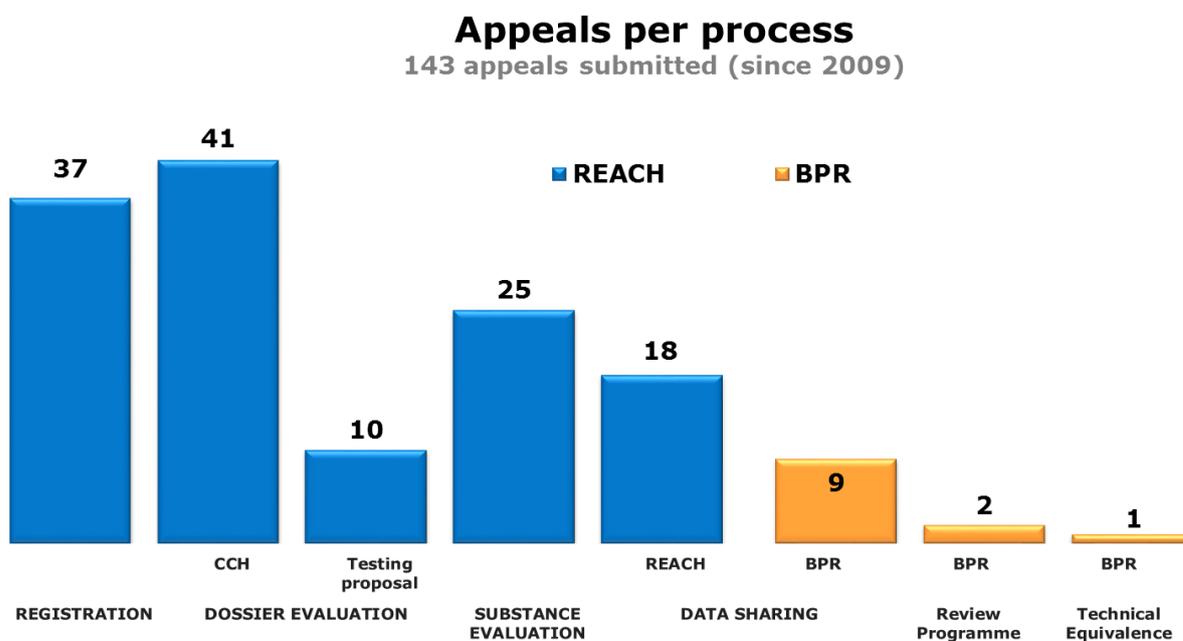


Figure 3:

Appeals per legislation

143 cases (since 2009)

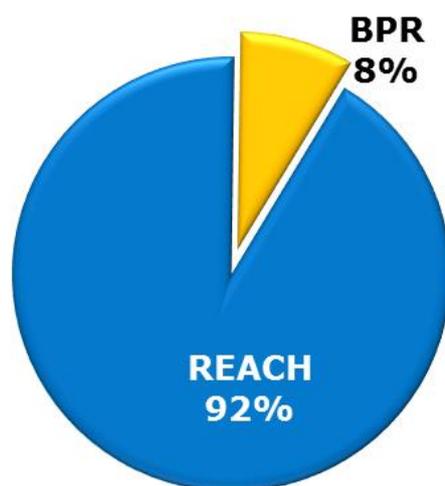


Figure 4:

Appeals per result

112 appeals closed (since 2009)

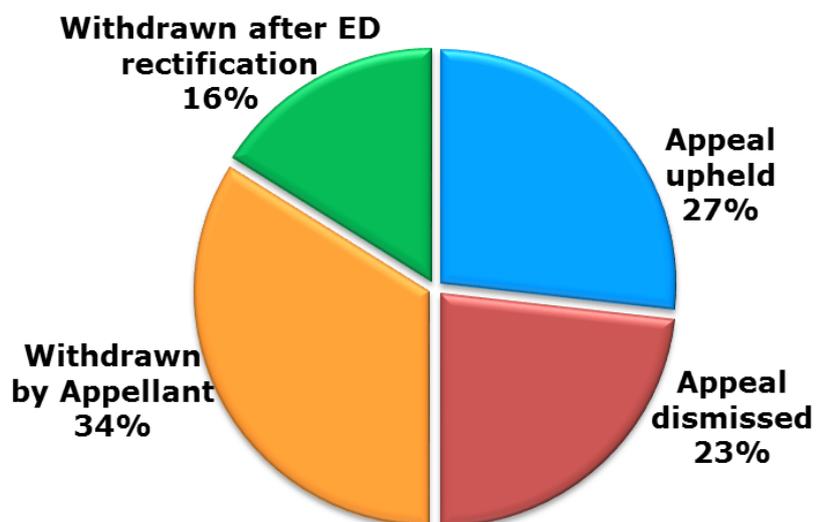


Figure 5:

