

**DECISION OF THE CHAIRMAN OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**24 February 2011**

**Request for confidential treatment of certain information**

*(Document concerning an internal meeting – Protection of personal data –  
Regulation (EC) No 45/2001)*

<b>Case number</b>	A-001-2010
<b>Language of the case</b>	English
<b>Appellant</b>	N.V. Elektriciteits – Produktiemaatschappij Zuid-Nederland EPZ Borssele The Netherlands
<b>Representative</b>	C.H.M. Verwijs – van Fraassen N.V. Elektriciteits – Produktiemaatschappij Zuid-Nederland EPZ Zeedijk 32 4454 PM Borssele The Netherlands
<b>Contested decision</b>	SUB-D-2114130952-53-01/F of 24 September 2010 adopted by the European Chemicals Agency (hereinafter the ‘Agency’) pursuant to Article 20(2) of 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; corrected by OJ L 136, 29.5.2007, p. 3) (hereinafter the ‘REACH Regulation’)

**THE CHAIRMAN OF THE BOARD OF APPEAL**

gives the following

## Decision

### SUMMARY OF THE FACTS

1. On 21 December 2010, the appellant filed an appeal at the Registry of the Board of Appeal against the contested decision, which rejects the registration because of the late payment of the fee for registration and states that the received registration fee will not be reimbursed.
2. On 16 February 2011, the Agency lodged the defence at the Registry of the Board of Appeal.
3. In accordance with Article 7(2)(d) of Commission Regulation (EC) No 771/2001 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. 8, hereinafter the 'Rules of Procedure'), the defence contained a request for confidential treatment of certain particulars in the defence with regard to third parties.
4. In its request for confidential treatment, the Agency asks the Board of Appeal to keep confidential the names of certain Agency staff mentioned in Annex IV a and b to the defence. The Agency further specified that the information was requested to be kept confidential with regard to third parties.

### GROUNDS OF THE REQUEST

5. The Agency bases its confidentiality request on Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p.1, hereinafter the 'Regulation (EC) No 45/2001').
6. The Agency argues that the names of the members of the Agency's staff should be regarded as confidential, in particular, as Recital 7 of Regulation (EC) No 45/2001 provides that "*the persons to be protected are those whose personal data are processed by Community institutions or bodies in any context whatsoever, for example because they are employed by those institutions or bodies*".

### REASONS

7. By way of a preliminary remark, it should be noted that since the Rules of Procedure are silent on who should decide on a confidentiality request when it is submitted by the Agency, the present confidentiality request should be decided by analogy with the provision of the second subparagraph of Article 6(6) of the Rules of Procedure which provides that the Chairman of the Board of Appeal shall decide on whether information indicated by an appellant in its notice of appeal is to be regarded as confidential.
8. The issue to be decided in the present case is whether or not the names of the Agency staff contained on page 42 of the defence, that is on page 1 of Annex IV a to the defence, should be regarded as confidential vis-à-vis third parties, as requested by the Agency.
9. Articles 6(1)(g), 7(2)(d) and 8(4)(g) of the Rules of Procedure provide respectively that an appellant, the Agency and possible interveners may all

request that certain information that they provide in their respective procedural documents should be treated as confidential.

10. In determining whether confidential treatment may be accorded vis-à-vis third parties to the information as requested by the Agency, it is necessary to determine whether the Agency's interest in protecting certain information as confidential is justified taking into account that the public interest in disclosure of information on appeals is properly respected.
11. The Agency contends that the present request for confidential treatment should be accepted on the basis of Regulation (EC) No 45/2001. It is therefore necessary first to examine whether Regulation (EC) No 45/2001 is applicable in the present case; that is whether the information for which the Agency requested confidential treatment falls within the scope of Regulation (EC) No 45/2001.
12. Pursuant to Article 2(a) of Regulation (EC) No 45/2001, 'personal data' means any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his or her physical, physiological, mental, economic, cultural or social identity. Personal data would therefore also include surnames and forenames (see Case C-28/08 P, *Commission v The Bavarian Lager Co. Ltd*, [2010] ECR I-0000, paragraph 68).
13. In addition, under Article 2(b) of Regulation (EC) No 45/2001, 'processing of personal data' means any operation or set of operations which is performed upon personal data, whether or not by automatic means, such as collection, recording, organisation, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, blocking, erasure or destruction. Therefore, the communication of surnames and forenames falls within the definition of 'processing', for the purposes of Regulation (EC) No 45/2001 (see to that effect, Case C-28/08 P, *Commission v The Bavarian Lager Co. Ltd*, [2010] ECR I-0000, paragraph 69).
14. In this case, the request for confidential treatment at issue concerns the written record of the internal meetings of the Agency held in the context of the REACH registration process, which were attended by certain members of its staff. The record contains a list of the participants at the meetings, identified by their respective forenames and surnames. Consequently, the list simply indicates which individual staff members were present at the meetings and it can be inferred that the Agency did not intend to present the names of those individuals as part of the evidence as they do not appear to be relevant for the defence.
15. The list of participants at the meetings appearing in the written record in question thus contains personal data for the purposes of Article 2(a) of Regulation (EC) No 45/2001 since the persons who participated in that meeting can be identified.
16. The Chairman considers that although the names of individual staff members of the Agency appear in documents which are submitted (Annex IV a) as evidence, there is no public interest to disclose the list of the names to third parties or the public in general.

17. Moreover, the publication or disclosure of the names of individuals that participated at the meetings in question could undermine the privacy of the individuals concerned. It has to be noted that the fact that the individuals concerned were all members of the Agency's staff and were acting in their professional capacity does not prevent the application of the data protection legislation, which is intended to apply also to persons at work, as stated in Recital 7 of Regulation (EC) No 45/2001 and also argued by the Agency in its request.
18. Consequently, the Chairman is of the opinion that the disclosure to third parties of the names of the members of the Agency's staff present in the internal meetings could interfere with their private life, their right to privacy and their integrity and could expose them to undue external pressure.
19. In addition, it should be noted that there is, in principle, no need to disclose in documents supporting the defence, the information containing personal data of certain members of the Agency's staff that is not relevant to the understanding of the case. Such information may therefore be omitted.
20. For those reasons and having balanced all the relevant factors, the request not to disclose the names of certain Agency staff contained on page 42 of the defence should be accepted.

## **ORDER**

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

Decides to accept the Agency's request for confidential treatment with regard to third parties of the information, concerning the names of certain Agency staff present at the meetings related to *Regulation Rules Updates* as appearing on page 42 of the defence (page 1 of Annex IV a to the defence).

Mercedes ORTUÑO  
Chairman of the Board of Appeal