

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

27 May 2011

Request for confidential treatment of certain information

Case number	A-004-2011
Language of the case	English
Appellant	Kronochem GmbH Germany
Representative	Kamila Pavelcová Dukol Ostrava, s.r.o. Chemická 1/2039 CZ – 709 03 Ostrava / Mariánské Hory Czech Republic
Contested decision	SUB-D-2114193011-62-01/F of 1 March 2011 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 20 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 11 April 2011, the appellant filed an appeal at the Registry of the Board of Appeal against the contested decision of 1 March 2011 which rejected its registration because of the late payment of the registration fee.
2. The notice of appeal contained a request that the appeal should be regarded as confidential.
3. The appellant indicated this request by ticking the box marked 'confidentiality requested' on the cover form which the Board of Appeal has made available to parties to help them submit procedural documents. No justifications supporting the request or further details as to which information should be regarded as confidential, or in respect to who this request was made, were however provided by the appellant.
4. In a communication of the Registry dated 3 May 2011 the appellant was asked to clarify *inter alia* exactly which of the information contained in the appeal it would like to be considered confidential and the reasons for that request.
5. By letter received at the Registry on 4 May 2011 the appellant informed the Board of Appeal that as far as it is compliant with the Regulations of the Board of Appeal it requested that all information contained in its notice of appeal, which is set out as Annexes 1 to 10, should be regarded as confidential.

GROUNDS OF THE REQUEST

6. In requesting that all the information contained in the notice of appeal be regarded as confidential the appellant did not provide any justification as to why that information should be treated as such. The appellant simply requested that all information contained in Annexes 1 to 10 of its notice of appeal should be regarded as confidential, as far as that is compliant with the Regulations of the Board of Appeal.

REASONS

7. Article 6(1)(g) 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 (hereinafter the 'Rules of Procedure') (OJ L 206, 2.8.2008, p. 5) provides that the appellant may request that information contained in its notice of appeal be regarded as confidential.
8. In accordance with the second subparagraph of Article 6(6) of the Rules of Procedure, the Chairman of the Board of Appeal shall decide on such requests for confidentiality.
9. Since the appellant does not specify with respect to exactly what information and against who the request is directed, it is necessary to examine the request on the basis of the facts of the case as it stood at the time the request was made. In this respect, it is necessary to examine the request in relation to the announcement of the appeal (hereinafter the 'announcement') and the eventual final decision of the Board of Appeal which are published on the website of the

Agency in accordance with Articles 6(6) and 21(5) of the Rules of Procedure respectively.

10. The information required for the announcement is set out in Article 6(6) of the Rules of Procedure and the Decision of the Board of Appeal of 30 September 2009 on implementing the rules on publication of an announcement of the notice of appeal on the website of the Agency (hereinafter the 'Decision on publication of the announcement'). The information required for the final decision is set out in Article 21(1) of the Rules of Procedure.
11. In the opinion of the Chairman, the explicit inclusion of the information set out in Articles 6(6) and 21(1) of the Rules of Procedure, as well as the Decision on publication of the announcement, implies a public interest in its disclosure. That public interest can also be expressed as being transparency in the actions of a public body.
12. In addition, it should be remembered that the announcement must provide potential interveners with the necessary information to allow them to exercise their rights (see by analogy the Order of the President of the Seventh Chamber of the General Court of 8 September 2010 in Case T-421/08, *Performing Right Society Ltd*, paragraph 18).
13. In the opinion of the Chairman there therefore exists a presumption that confidentiality cannot be granted with regards to the information necessary for an announcement set out in Article 6(6) of the Rules of Procedure and the Decision on publication of the announcement. Such a presumption also exists with regards to the information required for the final decision set out in Article 21(1) of the Rules of Procedure.
14. In exceptional circumstances, however, the presumptions referred to above can be rebutted by a reasoned request.
15. For the purposes of deciding on such requests the Chairman is required to carry out an assessment of the legitimacy of the private interest opposing disclosure of the information concerned which is claimed by the applicant weighed against the public interest at large (see Cases T-198/03, *Bank Austria Creditanstalt AG v. Commission*, paragraph 71 and T-30/91, *Solvay SA v. Commission*, paragraph 88). In that respect, the Chairman must take into consideration the public's right to information, in particular where that information concerns the processes related to the REACH Regulation.
16. In addition, with regards to the announcement, there is also the special interest of any potential intervener to be taken into account which amounts to a general right to participate in proceedings that affect its legal interests. Consequently, the principle of protection of a private interest through non-disclosure must be observed in such a way as to reconcile it with the requirement to allow for an effective participation of interveners in the appeal proceedings.
17. In this respect, it must be observed that in order to rebut the presumptions referred to in paragraph 13 above, the party requesting confidentiality has the task of specifying the documents or information which the request covers and of duly stating the reasons for which they are confidential (see by analogy Order of the President of the Sixth Chamber of the General Court of 8 October 2009 in Case T-314/06, *Whirlpool Europe Srl v Council of the European Union*, paragraph 24). Based on the reasons provided in support of the request balanced against all other circumstances, the Chairman is then able to reach her conclusion on the request.

18. In relation to the information required for the final decision, this duty to state reasons is explicitly restated in Article 21(5) of the Rules of Procedure which provides that the final decision shall be published in full “unless the Chairman decides otherwise on the reasoned request of a party”.
19. With respect to confidentially requests in general, this is also reiterated in point 39 of the Practice directions to parties to appeal proceedings before the Board of Appeal of the European Chemicals Agency, which provides that requests for confidentiality “shall indicate the relevant words, figures or passages for which confidentiality is claimed, together with the reasons for that request. For every confidentiality request sufficiently detailed reasons are required”.
20. In the present case, however, the appellant has not provided any justification as to why the information required for the announcement or the final decision should be regarded as confidential.
21. Consequently, the Chairman is unable to assess whether the private interests of the appellant in having the information regarded as confidential outweigh the public’s right to be informed of the information concerned. In these circumstances, the request can therefore only be accepted in so far as the information and documents which it covers can be considered confidential by their very nature (see by analogy the Order of the President of the Sixth Chamber of the General Court of 18 November 2008 in Case T-274/07, *Zhejiang Harmonic Hardware Products Co. Ltd v Council of the European Union*, paragraph 25).
22. In this instance, the Chairman considers that Annexes 4 to 7, which relate to the financial and legal identity of the appellant, and Annex 8, which consists of a proof of payment of the registration fee, can be considered to be confidential by their very nature.
23. Furthermore, an individual examination of Annexes 4 to 8 shows that, based on the current circumstances of the case, the information contained therein, with the exception of the name and address of the appellant, is not required for the purposes of either the announcement or the final decision.
24. In particular, that information is not relevant for an understanding of the case and is not necessary for the purposes of allowing potential interveners to exercise their rights since that information does not relate to the issues raised in the appeal. In that respect there is no public interest in the disclosure of that information.
25. Consequently, in so far as that information is not required for the announcement or the final decision, the request can be accepted with regards to Annexes 4 to 8.
26. Annex 2 contains an extract of the company register as required by the second subparagraph of Article 6(2) of the Rules of Procedure. Since such information is already available to the public at large it cannot be considered to be confidential in relation to these proceedings (see by analogy the Order of the President of the Third Chamber of the General Court of 5 July 2010 in case T-304/08, *Smurfit Kappa Group v Commission*, paragraph 35). The request in relation to Annex 2 must therefore be rejected.
27. Annex 1 contains in particular the pleas in law and the arguments of fact and law relied on by the appellant as well as its contact details and those of its representative. Annexes 3 and 10 consist of a copy of the Agency decision

contested in the appeal and several copies of Annex 1 respectively. Annex 9 contains a power of attorney permitting the representative to act on behalf of the appellant for the purposes of the present appeal.

28. An individual examination of those Annexes has shown that the information contained therein is required for the purposes of the announcement and the final decision of the Board of Appeal which will be published on the website of the Agency. As stated above, the appellant has not provided any justifications as to why that information should not be included in those documents.
29. Furthermore, the Chairman does not consider that any of the information contained in Annexes 1, 3, 9 and 10 should be regarded as confidential by its very nature.
30. For those reasons, the request for confidentiality concerning the information contained in Annexes 1, 3, 9 and 10, in so far as that information is required for the announcement and the final decision, must be rejected.

ORDER

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

1. Decides to reject the request for confidential treatment of the information contained in Annexes 1, 2, 3, 9 and 10 of the notice of appeal.
2. Decides to accept the request for confidential treatment of the information contained in Annexes 4 to 8, with the exception of the information which can be found in the Annexes of the notices of appeal for which the confidentiality request was rejected. The information for which the request is accepted will not be included in the announcement or the final decision which will be published on the website of the Agency.

Mercedes ORTUÑO
Chairman of the Board of Appeal