

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

<b>Published on</b>	28 February 2023
<b>Case</b>	A-001-2023
<b>Appellant</b>	BASF SE, Germany
<b>Appeal received on</b>	24 January 2023
<b>Subject matter</b>	A decision taken by the European Chemicals Agency ('the Agency') pursuant to Article 41 of the REACH Regulation <sup>2</sup>
<b>Keywords</b>	<i>Dossier evaluation – Compliance check – Tonnage downgrade – Right to good administration</i>
<b>Contested Decision</b>	CCH-D-2114616073-60-01/F
<b>Language of the case</b>	English

### Background and remedy sought by the Appellant

On 13 January 2022, the Agency notified a draft decision to the Appellant following the compliance check of the Appellant's registration dossier for 1,6-dichlorohexane (the **Substance**)<sup>3</sup>.

On 18 May 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 3 November 2022, the Agency adopted the Contested Decision requesting the Appellant to submit, amongst other information, several studies under Annex IX.

The Appellant requests the Board of Appeal to annul the Contested Decision insofar as the Appellant is identified as an addressee to which Annex IX is applicable as the highest annex to the REACH Regulation. The Appellant requests also the Board of Appeal to amend the Contested Decision to the effect that the Appellant is identified as an addressee to which Annex VIII is applicable as the highest annex to the REACH Regulation.

The Appellant also requests the Board of Appeal to order the Agency to refund the appeal fee.

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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 218-491-7, CAS No 2163-00-0.

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

In support of its appeal, the Appellant raises two pleas in law. According to the Appellant, the Agency breached the Appellant's right to good administration and Article 41.

The Appellant supports its pleas in law with the following main arguments.

First, the Appellant argues that, in adopting the Contested Decision, the Agency failed to respect its duty to examine each case individually and therefore breached the Appellant's right to good administration. According to the Appellant the Agency erred by limiting its assessment to the Appellant's manufacture/import volume in the calendar year preceding the tonnage downgrade and by ignoring the information provided by the Appellant which demonstrated the objective industrial or commercial considerations for the tonnage downgrade.

Second, the Appellant argues that the Agency breached Article 41 in requesting the Appellant to submit information under Annex IX 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. This was due to the fact that the Agency had earlier adopted a completeness check decision on the Appellant's updated registration dossier under Articles 22(3) and 20(2).

### **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>