

DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY SETTING OUT THE RULES ON THE DESIGNATION OF ALTERNATE AND ADDITIONAL MEMBERS

THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY (hereinafter referred to as the 'Board of Appeal'),

Having regard to Commission Regulation (EC) No 771/2008 of 1 August 2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency¹ (hereinafter referred to as the 'Rules of Procedure'), and in particular Articles 3(2) and 27(1) and (3) thereof,

Whereas:

- (1) Article 89(2) and (3) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals² (hereinafter referred to as the 'REACH Regulation') obliges the Management Board of the European Chemicals Agency (hereinafter referred to as the 'Management Board') to appoint alternate members, including alternate Chairmen, of the Board of Appeal.
- (2) Article 89(3) of the REACH Regulation also gives the Management Board the possibility to appoint additional members.
- (3) Persons may be appointed by the Management Board to both roles and may therefore be called upon to act as either an alternate or additional member in separate cases.
- (4) Alternate and additional members of the Board of Appeal are not appointed as members of the temporary staff of the European Chemicals Agency. Their involvement in the Board of Appeal is of an ad hoc nature and does not require them to suspend their principal professional activities.
- (5) The situations in which alternate members are to be called upon to act are set out in Articles 89(2) and 90 of the REACH Regulation and Articles 2 and 3 of the Rules of Procedure. The use of additional members is foreseen in order to enable the Board of Appeal to reach final decisions within a reasonable time.

¹ OJ L 206, 2.8.2008, p. 5.

² OJ L 396, 30.12.2006, p. 1. Corrected version in OJ L 136, 29.5.2010, p. 3.

- (6) In accordance with Article 27(1) of the Rules of Procedure, rules concerning the allocation of cases between members should be laid down.
- (7) The use of alternate and additional members should not alter the composition of the Board of Appeal as set out in Article 1(1) of Commission Regulation (EC) No 1238/2007 of 23 October 2007 on laying down rules on the qualifications of the members of the Board of Appeal of the European Chemicals Agency³ and Article 1(1) of the Rules of Procedure.
- (8) For reasons of efficiency and transparency, the criteria for the designation of an alternate or an additional member should be objective and prescribed in advance. To that end, alternate and additional members should, where appropriate, be designated using a system of rotation.
- (9) In order to ensure, however, that appeals are processed in the most efficient and cost effective manner, it may, in particular with regard to additional members, be necessary to select the alternate or additional member most suitable for the case in question having regard to such criteria as workload, availability, qualifications and experience. Consequently, those objective criteria should also be examined when designating alternate and additional members,

HAS ADOPTED THIS DECISION:

Article 1
Subject matter and scope

1. This Decision lays down the rules applicable to the designation of an alternate or additional member in appeal proceedings before the Board of Appeal where the Management Board has appointed more than one alternate or additional member.
2. These rules shall apply in the circumstances foreseen in Articles 89(2) and 90 of the REACH Regulation and Articles 2 and 3 of the Rules of Procedure where it is necessary to replace a member of the Board of Appeal, including the Chairman, with an alternate.
3. These rules shall also apply to the designation of additional members where the use thereof is considered necessary to ensure that appeals can be processed at a satisfactory rate.
4. This Decision shall apply without prejudice to the rules on the composition of the Board of Appeal set out in Article 89(1) of the REACH Regulation and Article 1(1) of the Rules of Procedure.

³ OJ L 280, 24.10.2007, p. 10.

Article 2
Lists of alternate and additional members

Alternate and additional members appointed by the Management Board in accordance with Article 89(3) of the REACH Regulation shall be grouped in lists according to whether they are technically qualified or legally qualified. The lists shall be presented in the alphabetical order of the last name of the persons concerned.

In circumstances where all or certain of the persons concerned are not appointed to both positions of alternate and additional member, separate lists for the two functions may be maintained.

The list of alternate Chairmen shall also be presented in the alphabetical order of the last name of the persons concerned.

Article 3
Criteria for the selection of alternate or additional members

1. Without prejudice to paragraph 2 of this Article, alternate and additional members shall be designated to specific cases from the appropriate list in the alphabetical order established in accordance with Article 2 of this Decision.

When designating additional members, the Chairman shall be responsible for deciding, based on the facts of the case, whether a technically qualified or legally qualified person is required.

Where a person is prevented for any reason from accepting a designation as either an alternate or additional member, the next person on the same list shall be called upon. The designation of alternates or additional members in subsequent cases shall then continue in alphabetical order.

2. Where it is considered to be in the interests of the effective and efficient processing of an individual case or appeal proceedings in general, the alternate or additional member with the most suitable profile may be designated.

In deciding on the most suitable person for the purposes of the first subparagraph, the following criteria in particular shall be taken into consideration:

- (a) the individual workload of the alternate or additional members;
- (b) the actual or anticipated overall workload of the Board of Appeal;
- (c) the language requirements of the case;
- (d) relevant technical or legal expertise.

Where following the application of the first and second subparagraphs it becomes apparent that the relevant list contains more than one suitable alternate or additional member the person who would be called upon next using the criteria set out in paragraph 1 of this Article shall be called upon.

The designation of subsequent cases to alternate or additional members shall continue from the point in the list reached before the application of this paragraph and in accordance with the rules set out in paragraph 1 of this Article.

3. In cases where the member of the Board of Appeal to be replaced by an alternate has already been appointed as rapporteur, the Chairman may designate another member of the Board of Appeal for that role or fulfil the function herself/himself.

*Article 4
Procedure*

1. Alternate members shall be designated in accordance with Article 3 of the Rules of Procedure.
2. Additional members shall be designated by the Chairman, or where necessary, by her/his designated alternate.

The Chairman shall inform the Executive Director of the European Chemicals Agency and the Management Board of the Board of Appeal's intention to designate one or more additional members.

3. When designating an alternate or additional member the appeal case to which the designation applies shall be clearly indicated.
4. The reasoning applied in the designation of an alternate or additional member shall be documented in an appropriate manner.
5. The Chairman shall be responsible for ensuring that the rules set out in this Decision are implemented.

*Article 5
Entry into force*

This Decision shall enter into force on the day of its adoption.

Done at Helsinki, 12 November 2010

Signed

Mercedes ORTUÑO

Chairman of the Board of
Appeal

Signed

Mia PAKARINEN

Member of the Board of
Appeal

Signed

Henricus SPAAS

Member of the Board of
Appeal