

Preparing your appeal – what you need to consider

Tenth Stakeholders' Day

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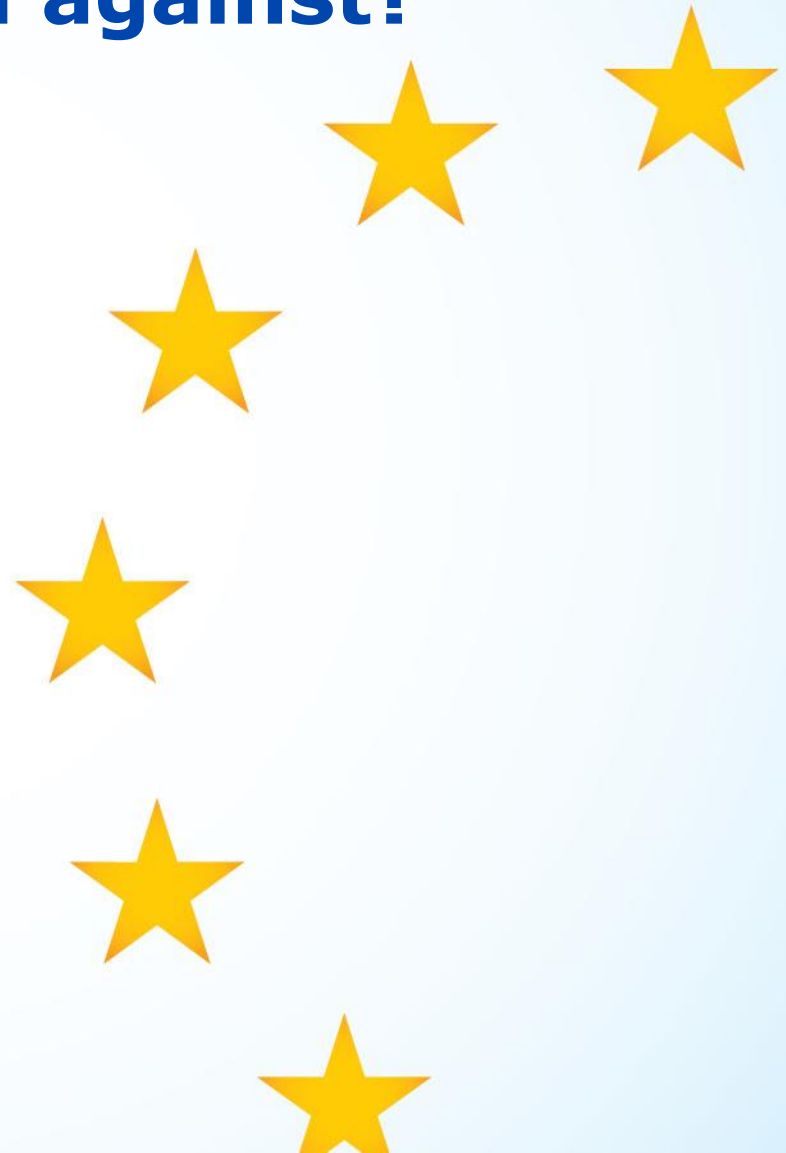


Outline

- What can be appealed against?
- What kind of legal redress? Possible outcomes
- How to prepare and what to expect from the appeals process?



What can be appealed against?



Appeal possibility exists

- Independent and impartial review
- Clarifies REACH and BPR legislation
- Right to challenge decisions before an independent body with technical expertise
- Suspensive effect





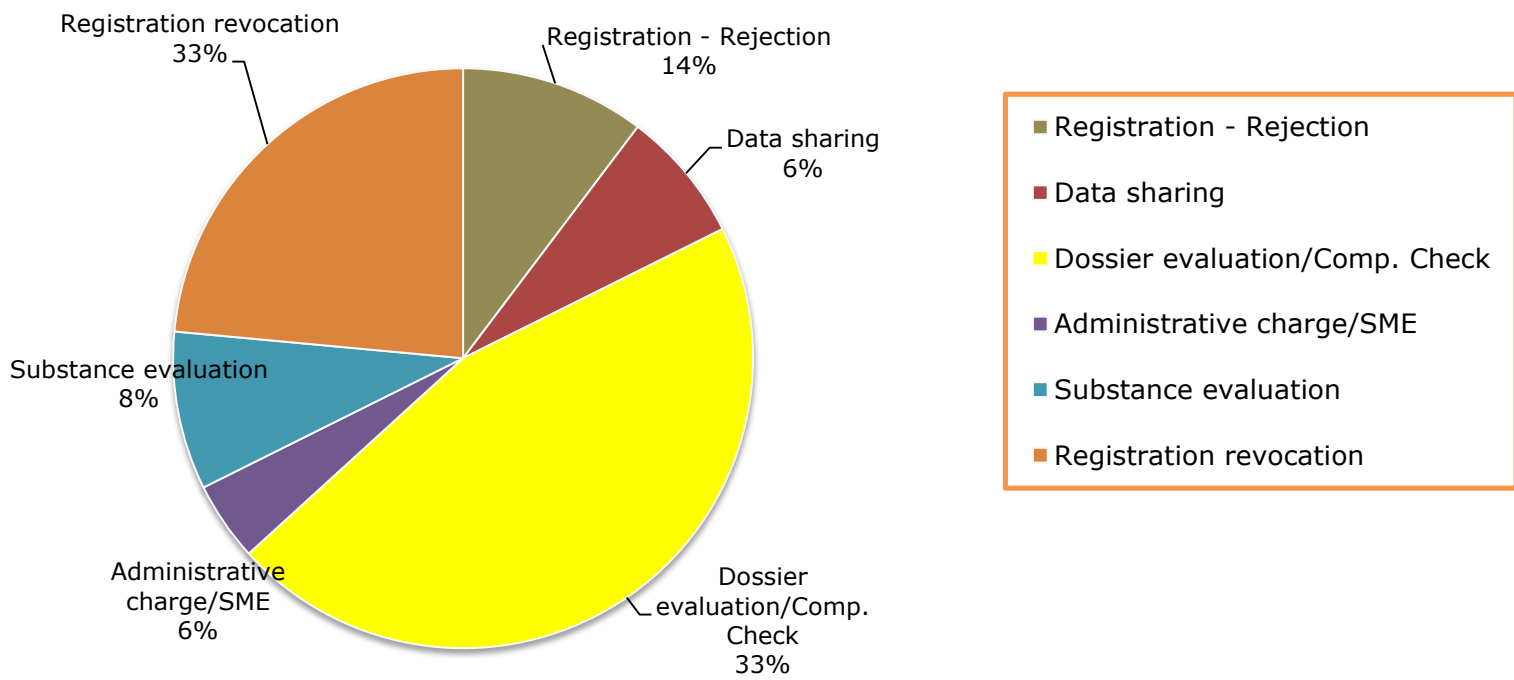
BoA competence under REACH

- **Only ECHA** decisions listed in Article 91 of REACH
 - PPORDs (conditions, extension)
 - Rejection of registrations
 - Data-sharing decisions
 - Examination of testing proposals
 - Compliance checks
 - Substance evaluations
- Where no right of appeal before the BoA → General Court
- The Board of Appeal decisions may be challenged before the General Court



Appeal types

APPEALS PER TYPE OF CONTESTED DECISION



What kind of legal redress?





Possible outcomes

- Appeal can be dismissed or upheld
- BoA may exercise any power which lies within the competence of the Agency or
- Remit the case to the competent body of the Agency for further actions
- 'Safety net' – legal redress can also come through:
 - Rectification by the Executive Director
 - Settlement between parties



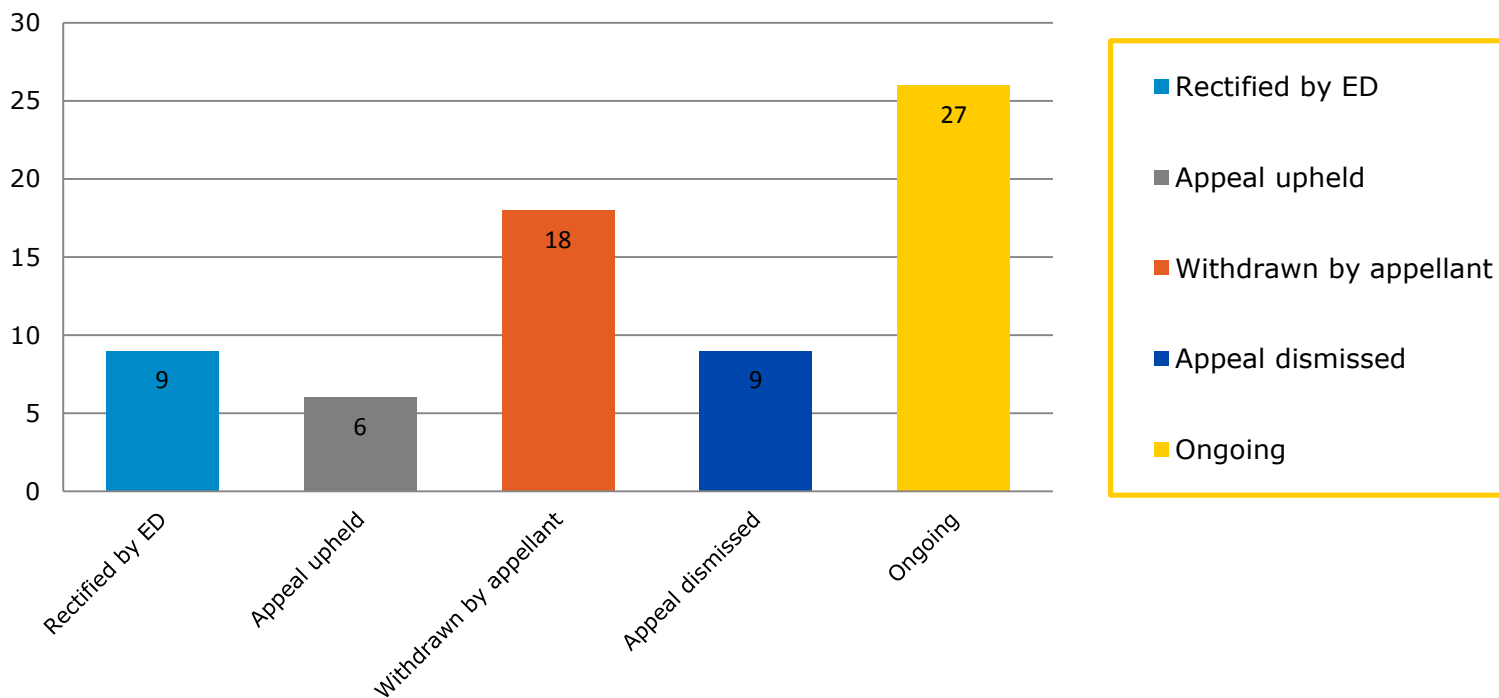
Possible outcomes

- Final BoA decisions need to be read in full to fully understand them
- Summaries also available
- ECHA decisions will not be overturned just because the BoA disagrees with ECHA's assessment: a legal flaw needs to be identified
- Scientific assessment is often needed in verifying whether there is a legal flaw in the contested decision

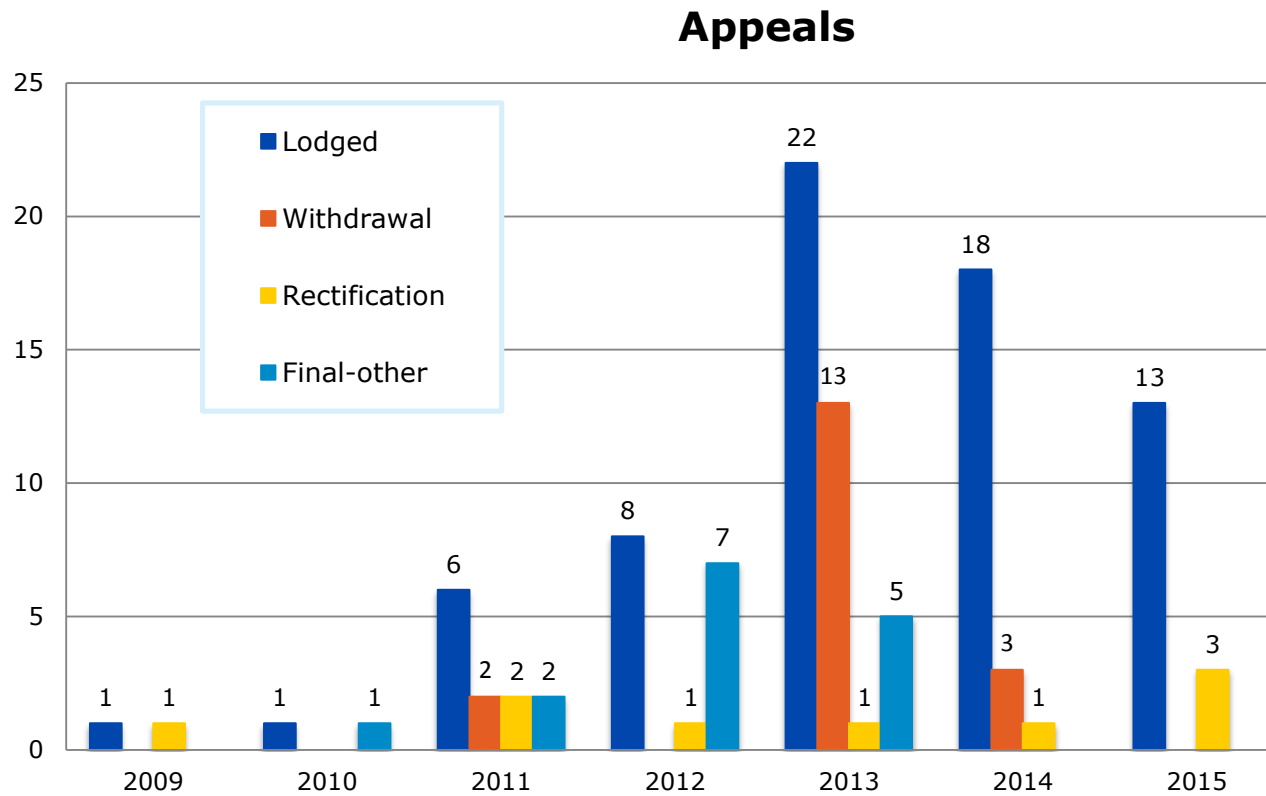
Results



APPEALS PER RESULT (Total 69)



Appeals per year



How to prepare/what to expect?





Remember to act in time

- Appeal has to be lodged within three months of the contested decision
- Do not leave it to the last day
- Date of receipt by the registry counts
- Receipt by email or fax is sufficient → paper copies can be sent at the same time

Explain your legal pleas and claims

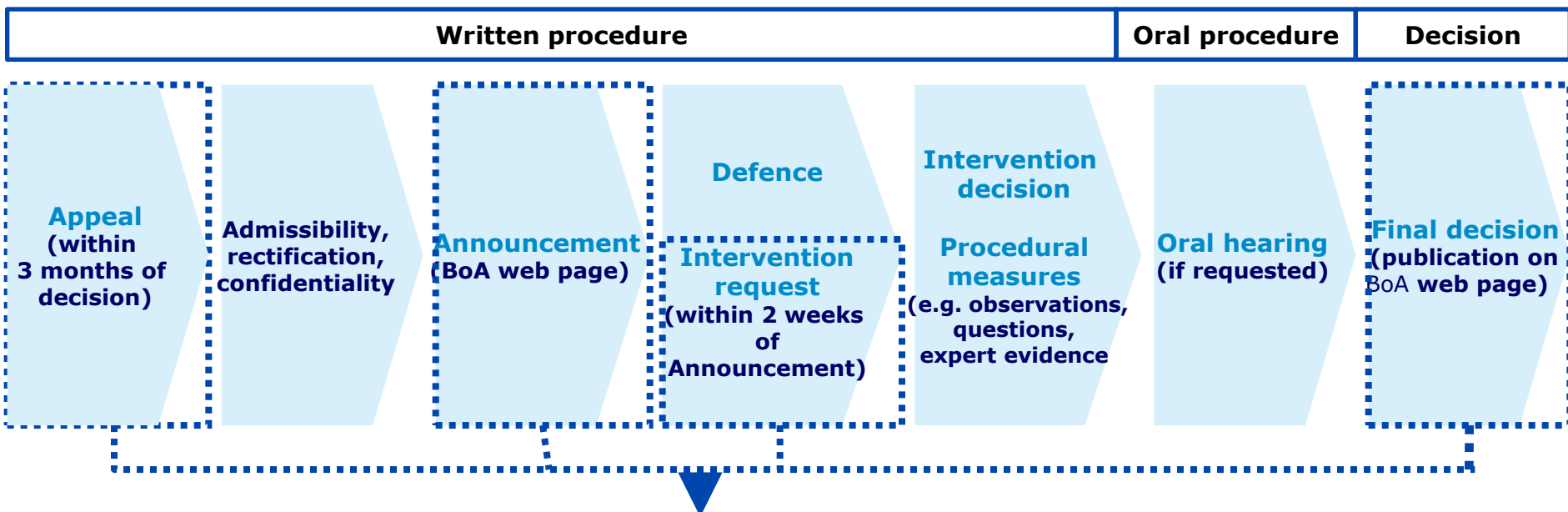
- Written notice of appeal
 - You must explain what is wrong in the contested decision
 - Prepare carefully, no right to have several rounds
 - Not compulsory to use a lawyer
- Forms and checklists available - not mandatory but hopefully helpful
- The review of the legality of an ECHA decision is based on the pleas, arguments and evidence presented by the parties
- The Board of Appeal will not make the case for you

Remember to pay the appeal fee

- Appeal fee has to be paid on your own initiative
- ECHA will not send you an invoice
- Appeal is not considered received before the appeal fee is paid
- Amount varies depending on the type of decisions appealed against
- Please check the right, up-to-date amount
- Fee Regulation change forthcoming



The appeal process in a 'nutshell'



Might be important for stakeholders, even if they are not addressees of the decision

- Appeal criterion: Addressee or direct and individual concern → protecting own interests
- Intervention criterion: Interest in the outcome of the case → May be co-registrant, data-sharing party, Member State, NGO

Some observations from evaluation appeals

- Keep documentation and correspondence – it might be needed later
- Voluminous cases
- Collective appeals (several appellants) accepted if:
 - One voice, same arguments and pleas
 - Identical procedure leading to one contested decision
 - No confidentiality issues between the appellants



Some learnings from evaluation appeals

- Evaluation decisions may be rectified by the Executive Director
- Follow the procedure and timelines set by the Agency
 - Dossier updates after notification of a draft decision ('cut-off point') are not accepted by ECHA
 - The obligations applicable to registrants must be clear and precise and be clearly brought to their attention
- Published guidelines on administrative procedure may limit ECHA's discretion



Some learnings from evaluation appeals

- It is registrant's duty to state reasons for adaptation or waiving
 - Registrants must clearly set out the reasons for the decision not to provide certain information
 - ECHA needs to balance the objectives of the read-across provisions with the inherent uncertainty in any read-across adaptation and the precautionary principle underpinning REACH



Thank you

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