

DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY ON IMPLEMENTING RULES ON COSTS RELATING TO THE TAKING OF EVIDENCE IN APPEAL PROCEEDINGS

THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY (hereinafter 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 the 'Rules of Procedure'), and in particular Articles 17 and 27(3) thereof,

Having regard to Management Board Decision on rules for the calculation of the amounts and advances to be paid in relation to the taking of evidence in appeal proceedings before the Board of Appeal of the European Chemicals Agency,

In agreement with the Management Board, in accordance with Article 17(4) of the Rules of Procedure,

Whereas:

- (1) Article 17(1) and (2) of the Rules of Procedure lay down only general rules concerning costs related to the taking of evidence.
- (2) Detailed rules should be laid down regarding who bears the costs with regard to the taking of evidence and concerning the arrangements for any payments for reimbursement, compensation and fees to the witnesses and experts.
- (3) The rules concerning costs relating to the taking of evidence should contribute to smooth, transparent and proper conduct of proceedings before the Board of Appeal.
- (4) Comparable rules concerning costs relating to the taking of evidence existing in other areas of Community law should be taken into account where appropriate.
- (5) Proceedings before the Board of Appeal are *ex parte* proceedings.
- (6) Each party to the proceedings before the Board of Appeal should meet the costs it has incurred in appeal proceedings. The Board of Appeal may nevertheless, for reasons of equity, decide on an award of costs for taking evidence as provided for in Article 21(1)(h) of the Rules of Procedure.

¹ OJ L 206, 2.8.2008, p. 5.

- (7) As provided for in Article 8(6) of the Rules of Procedure, interveners in appeal proceedings before the Board of Appeal must bear their own costs.

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision lays down the rules on costs relating to the taking of evidence in appeal proceedings before the Board of Appeal.
2. This Decision shall apply only to costs relating to the taking of evidence. Any other costs incurred in relation to appeal proceedings shall be borne by the party concerned, without prejudice to Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)².

Article 2

Costs regarding the taking of evidence

1. Each party to appeal proceedings shall meet the costs it has incurred with regard to the taking of evidence.
2. Where the Board of Appeal, on its own initiative, considered it necessary to take certain evidence, the final liability for the amounts due for the taking of evidence shall lie with the Agency.
3. In exceptional cases and if applied for, the Board of Appeal may decide that the Agency pays the costs for taking evidence where the evidence taken proved necessary and decisive for the outcome of the proceedings and such a decision is in the interest of the proper administration of justice.
4. The decision on reimbursement taken pursuant to paragraphs 2 or 3 of this Article shall be in conformity with the Management Board Decision on rules for calculation of the amounts and advances to be paid in relation to the taking of evidence in appeal proceedings before the Board of Appeal of ECHA.

Article 3

Payments to witnesses and experts summoned by the Board of Appeal

1. Witnesses and experts who are summoned by and appear before the Board of Appeal on its own initiative shall be entitled to reimbursement of reasonable expenses for travel and subsistence. An advance for these expenses may be granted to them in accordance with the Decision of the Management Board on rules for calculation of the amounts and advances to be paid in relation to the taking of evidence in appeal proceedings before the Board of Appeal of ECHA.

² OJ L 107, 17.4.2008, p. 6.

2. The compensation for loss of earnings referred to in the second subparagraph of Article 17(1) of the Rules of Procedure shall be paid to a witness only if it has been requested.
3. Payments due pursuant to this Article, except advances, shall be effected only after evidence has been given by the witness or the expert has fulfilled the duties or tasks requested.

Article 4
Other applicable rules

This Decision shall be implemented in accordance with the Financial Regulation of the European Chemicals Agency.³

Article 5
Entry into force

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

Done at Helsinki, 18 December 2009

Mercedes ORTUÑO
Chairman of the Board of
Appeal

Mia PAKARINEN
Member of the Board of
Appeal

Henricus SPAAS
Member of the Board of
Appeal

³ MB/58/2008 final