

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

17 January 2023

(Admissibility – Competence of the Board of Appeal – ‘Assessment of regulatory needs’)

Case number	A-012-2022
Language of the case	English
Appellant	International Flavors & Fragrances I.F.F. (Nederland) B.V., the Netherlands
Representatives	Jean-Philippe Montfort, Thomas Delille and Maximilien Pallu Mayer Brown Europe-Brussels LLP, Belgium
Contested Act	Document entitled ‘Assessment of regulatory needs, group name: Aralkylaldehydes’, published by the Agency on 21 September 2022

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

1. Background to the dispute

1. On 21 September 2022, the Agency published on its website a document, dated 19 September 2022, entitled 'Assessment of regulatory needs, group name: Aralkylaldehydes' (the **contested ARN**).¹
2. The purpose of the contested ARN is to assist the relevant authorities in examining and deciding on the most appropriate way to address the identified concerns for a group of aralkylaldehydes. To that end, the ARN identifies future regulatory risk management measures and any intermediate steps needed for those measures.
3. The contested ARN covers, amongst others, the substance 3-(p-cumenyl) propionaldehyde.² The Appellant is one of the registrants of that substance.
4. On 19 December 2022, the Appellant filed the present appeal. The Appellant requests the Board of Appeal to:
 - annul the contested ARN;
 - order the Agency to refrain from initiating or further developing any other ARN(s) without respecting the applicable procedures as well as the associated procedural rights of registrants and, when it seeks to rely on grouping and read-across, to rely on clear, foreseeable and sound criteria; and
 - refund the appeal fee.

2. Reasons

5. Under Article 93(2) of the REACH Regulation³, the Chairman of the Board of Appeal may dismiss an appeal within 30 days of it being filed if he considers the appeal to be inadmissible.
6. Under Article 11(1)(c) of the Rules of Procedure⁴, an appeal is inadmissible if it is not brought against a decision referred to in Article 91(1).
7. The Board of Appeal is competent to examine only those acts which are formally adopted on the basis of one of the provisions referred to in Article 91(1).⁵
8. The contested ARN was not formally adopted on the basis of any of the provisions referred to in Article 91(1). The appeal is consequently inadmissible.
9. That conclusion is not called into question by the Appellant's arguments.

¹ Available at <https://echa.europa.eu/documents/10162/778e0bee-4e9e-a968-5ed8-83758ac7c5af> (last accessed on 9 January 2023).

² EC No 231-885-3; CAS No 7775-00-0.

³ 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 hereafter concern the REACH Regulation unless stated otherwise.

⁴ 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. 1).

⁵ Judgment of 8 May 2018, *Esso Raffinage v ECHA*, T-283/15, EU:T:2018:263, paragraphs 33 to 38; see also decision of the Chairman of the Board of Appeal of 16 September 2019, *Symrise*, A-012-2019, paragraphs 20 to 30.

10. First, the Appellant argues that the contested ARN should have been adopted under Article 51, and can therefore be challenged before the Board of Appeal. According to the Appellant, the findings of the General Court in *Esso Raffinage v ECHA*⁶ do not apply in the present case, because those findings concern specifically decisions adopted under Article 42.
11. Under the case-law, an act can be challenged before the Board of Appeal only if it is formally adopted on the basis of one of the provisions referred to in Article 91(1).⁷ That case-law is general in nature and is not based on the specificities of Article 42.
12. Second, the Appellant argues that, although it may be able to challenge any measures adopted following the contested ARN before the General Court, the Appellant would not be able to challenge directly the contested ARN before the General Court. The Appellant further argues that it should be entitled to a full review of the contested ARN, whilst the review carried out by the General Court is limited to manifest errors of assessment. Moreover, proceedings before the Board of Appeal have suspensive effect, whilst proceedings before the General Court do not. Finally, the Board of Appeal may exercise every power that lies within the competence of the Agency, whilst the General Court cannot do so.
13. The Appellant's arguments do not alter the fact that the contested ARN was not adopted based on one of the provisions referred to in Article 91(1).
14. In addition, if the Appellant considers that the Agency should have adopted the contested ARN following a procedure that has not been respected in the present case, it must challenge the contested ARN before the General Court in accordance with Article 94(1).
15. Furthermore, as set out in Article 94(1), the Appellant may challenge any Board of Appeal decision, including a decision of the Chairman, before the General Court.

3. Result

16. The appeal must be dismissed as inadmissible in accordance with Article 11(1)(c) of the Rules of Procedure. The appeal fee is not refunded in accordance with Article 10(3) of the Fee Regulation.⁸

⁶ See footnote 5 above.

⁷ See footnote 5 above.

⁸ Commission Regulation (EU) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to the REACH Regulation (OJ L 107, 17.4.2008, p. 6).

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

- 1. Dismisses the appeal as inadmissible.**
- 2. Decides that the appeal fee is not refunded.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal