

Announcement of appeals¹

Joined Cases	A-003-2018, A-004-2018, and A-005-2018
Appellants	BASF SE, Germany (A-003-2018) Kemira Oyj, Finland (A-004-2018) Kemira Oyj, Finland (A-005-2018)
Appeals received on	16 March 2018
Subject matter	Decisions taken by the European Chemicals Agency (the 'Agency') pursuant to Article 46(1) of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 52 of the REACH Regulation
Keywords	<i>Substance evaluation – Proportionality – Grounds for concern – Grouping</i>
Contested Decisions	Decision of 21 December 2017 on the substance evaluation of aluminium chloride (Case A-003-2018); Decision of 21 December 2017 on the substance evaluation of aluminium chloride basic (Case A-004-2018); and Decision of 21 December 2017 on the substance evaluation of aluminium sulphate (Case A-005-2018).
Language of the case	English

Remedy sought by the Appellants

The three appeals against three separate substance evaluation decisions have been joined by the Board of Appeal. In each appeal the respective Appellant requests the annulment of the relevant Contested Decision, with regard to all addressees, in so far as it requires information on a combined *in vivo* mammalian erythrocyte micronucleus test and an *in vivo* mammalian comet assay with additional specific investigation on oxidative DNA damage on the following issues: liver, kidney, glandular stomach and duodenum (test methods EU B.12/OECD TG 474 and OECD TG 489 in rats, oral route). In all three Contested Decisions the respective Appellant is required to perform the required tests using aluminium sulphate.

In each of the appeals the Appellants also request the refund of the appeal fee.

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency, as amended by Commission Implementing Regulation (EU) 2016/823.

Pleas in law and main arguments

The same pleas and arguments are made in all three appeals.

The Appellants argue that the Agency breached Article 46 of the REACH Regulation and the principle of proportionality. The Appellants claim that the Agency failed to demonstrate the necessity of the contested information requirements as the Agency did not demonstrate that the substance in question poses a potential risk to human health or the environment. In addition, the Agency failed to demonstrate that there is a real need for the requested information and that that information has a realistic possibility of leading to improved risk management measures.

The Appellants also argue that the Agency did not take into consideration all the relevant facts and circumstances of the case. For example, the Agency did not take into account the actual exposure to the substances and the risk management measures already in place. In addition, the Appellants argue that there is sufficient information on structurally related substances to clarify any possible concern. The Agency also incorrectly dismissed the Appellants' read-across proposals. In addition, the Agency failed to demonstrate that the required studies would achieve the objective pursued or that they were the least onerous measure to achieve the objective.

The Appellants argue that the Agency breached the principles of legal certainty and equal treatment as it failed to adequately justify its grouping together of the substances which are the subject of the three Contested Decisions. In addition, the Agency's approach to grouping in the three Contested Decisions lacks coherence and scientific soundness.

The Appellants also argue that the Agency breached Article 25(1) of the REACH Regulation requiring testing on vertebrate animals to be a last resort, the right to be heard and the duty to state reasons.

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>

The CoRAP list of substances is available here:

<https://echa.europa.eu/information-on-chemicals/evaluation/community-rolling-action-plan/corap-list-of-substances>