

10 years of REACH Litigation

Closure of the Seminar

24 May 2017

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Panel 1

Litigation before the General Court and the ECHA Board of Appeal – Similarities & differences

- Board of Appeal:
 - Administrative or judicial review? In the BoA a 'Court or Tribunal' under Article 6 ECHR?
 - Independent body or part of ECHA? Both?
 - Does Article 6 ECHR apply? -> equality of arms, rights of defence, etc.
 - Functional continuity? (various differences compared to EUMTR / EUIPO Board of Appeal. But many similarities)

Discussion

Litigation before the General Court and the ECHA Board of Appeal – Similarities & differences

- Can ECHA appeal BoA decisions to the GC?
- Should the ECHA Secretariat defend its views or the BoA's before the GC?
- Can BoA replace ECHA decision?
- Does the procedure target the ECHA decision (looking for errors) only? New evidence (de novo)? (T-163/98 Baby Dry)

Panel 2

Scope of review by the Courts and the ECHA Board of Appeal

- ECJ -> points of law only. 'Manifest distortion of the facts/evidence' does not mean the Court re-assesses facts
- GC -> manifest error of assessment / manifest inappropriateness
- BoA -> 'high intensity' legal review, 'error of assessment' in science
- New evidence – reopening of file (de novo) or only to establish 'error of assessment'?

Discussion

Scope of review by the Courts and the ECHA Board of Appeal

- BASF v ECHA - Issues before the General Court:
 - BoA standard of review
 - Should BoA perform de novo assessment?
 - Does it apply a consistent and coherent standard?

Panel 3

Impact of Courts and ECHA Board of Appeal decisions on REACH and ECHA's processes

- Clarification of various aspects of REACH. Focus on:
 - Confidentiality/access to documents
 - SVHCs
 - SME verification
 - Fees and charges
- Upcoming:
 - First case challenging authorisation decision (Sweden v Commission) -> risk assessment? Assessment of alternatives?
 - First case challenging review decision under Aarhus Regulation of an authorisation decision (ClientEarth v Commission)

Discussion

Impact of Courts and ECHA Board of Appeal decisions on REACH and ECHA's processes

- Intensity of review v 3 people second guessing ECHA
- How to ensure flexibility?
- Role of Commission -> Key players: ENV / GROW / LS

Conclusive remarks

- Clarifications on nature of BoA and standard of review upcoming (BASF v ECHA)
- Major consideration -> suspensive effect, delay in gathering data and implications for public health
- Other players -> EFTA Court currently considering extent of harmonisation created by Title VIII (restrictions)

THANK YOU

